2011 IL App (3d) 100964-U

Order filed November 2, 2011

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2011

In re Z.P.,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
a Minor	)	Peoria County, Illinois,
	)	
(The People of the State	)	
of Illinois,	)	
	)	Appeal No. 3-10-0964
Petitioner-Appellee,	)	Circuit No. 10-JA-299
	)	
v.	)	
	)	
Zadie P.,	)	Honorable
	)	Richard D. McCoy,
Respondent-Appellant).	)	Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Justice Holdridge concurred in the judgment.
Justice O'Brien dissented.

ORDER

¶ 1 *Held*: The trial court's finding that mother was unable to care for her newborn child was not against the manifest weight of the evidence where respondent's parental rights to her five older children had been terminated, she exhibited emotional issues and her recommended counseling services had not been completed.

¶ 2 Respondent Zadie P. appeals from dispositional order of the circuit court finding her unfit and removing her newborn daughter from her care. On appeal, she argues that the trial court's finding of unfitness was against the manifest weight of the evidence. We affirm.

¶ 3 At the time of the petition, respondent was the mother of six children: C.N. (15), D.H. (13), D.H. (12), A.P. (10), Ze. P. (8), and Z.P. (2 months). Respondent gave birth to Z.P. on October 1, 2010. The Department of Children and Family Services (DCFS) took Z.P. into protective custody seven days later due to respondent's prior finding of unfitness and termination of her parental rights of her five older children.

¶ 4 Prior to the dispositional hearing, Craig Nellum, a permanency caseworker, and Andrea White, an assessment screener, conducted an interview and assessment of respondent. In his report, Nellum stated that respondent had been "very cooperative" and appeared to be "very committed and dedicated to having [Z.P.] returned to her care." Respondent indicated that she was willing to complete recommended services and attend parenting classes. Nellum referred respondent to counseling to address her "grief and loss issues" caused by the termination of her parental rights to her other children. At the conclusion of his assessment, Newell recommended that respondent participate in supervised visits with her daughter, complete parenting classes and counseling, and submit to a psychological evaluation to address any mental health issues.

¶ 5 White's social history report indicated that respondent lives in a two-bedroom apartment and has been employed full-time as a certified nurse assistant at the Bellwood Nursing Home since 2007. Respondent acknowledged that she had significant credit card debt and medical bills and stated that she planned to file bankruptcy to manage her debt.

¶ 6 According to the social history report, DCFS became involved with respondent in 2000,

when respondent's oldest son, C.N., was removed due to the death of respondent's niece. It was suspected that C.N. caused the injuries that led to the niece's death. Respondent's mother was caring for the children when the incident occurred. After years of unsuccessful attempts to complete counseling services, respondent's parental rights were terminated in 2008.

¶ 7 Respondent told White that she did not know why her older children were removed from her home. She stated that she was sad that her parental rights to her older children had been terminated, and she was upset that Z.P. had been removed from her care. She felt that the children were taken away from her for no reason. She did not believe that she had given up on her children; she felt that others had given up on her. Respondent believed that she had learned from her earlier mistakes.

¶ 8 White recommended counseling as a brief service to help respondent deal with her emotional sadness. During the interview, respondent was reluctant to agree to counseling. She told White that she agreed to participate in individual counseling and family counseling before and her rights were still terminated. However, White's report noted that several days after the interview, respondent contacted her to discuss counseling options. At that time, respondent agreed that counseling would be helpful.

¶ 9 At the conclusion of the dispositional hearing, the trial court noted that respondent needed counseling services and had yet to complete them. The court also noted respondent's commitment to Z.P. Specifically, the court stated:

> "[T]he prognosis for you is good. We don't always get those but I do think – and I'm confident you're going to successfully close out this case, but it's too early for the Court to restore your fitness."

The court adjudicated Z.P. a ward of the court and found respondent unfit based on her inability to

care for, protect, train or discipline Z.P. A permanency review hearing was set for May 24, 2011, and the respondent was ordered to undergo the recommended counseling services and psychological evaluations contained in the assessment and social history report.

¶ 10 On appeal, respondent contests the trial court's dispositional order and argues that the court's finding that she was unable to care for, protect or discipline Z.P. was against the manifest weight of the evidence.

¶ 11 Section 2-27 of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/2-27 (West 2008)) governs dispositional hearings and provides that a minor may be adjudged a ward of the court and custody taken away from the parent if the parent is found "unfit or unable, for some reason other than financial circumstances alone, to care for, protect, train or discipline the minor or [is] unwilling to do so." 705 ILCS 405/2-27 (West 2008). A finding of unfitness under section 2-27 does not result in complete termination of all parental rights; thus, the standard of proof, unlike other unfitness findings, is a preponderance of the evidence. *In re Stephen K.*, 373 Ill. App. 3d 7 (2007). In making a fitness determination, the trial court is in a superior position to assess the credibility of the witnesses, weigh the evidence and draw the appropriate inferences. *In re April C.*, 326 Ill. App. 3d 225 (2001).

¶ 12 On review, the trial court's determination will not be disturbed unless the findings of fact are against the manifest weight of the evidence or the trial court committed an abuse of discretion by selecting an inappropriate dispositional order. *In re J.P.*, 331 Ill. App. 3d 220 (2002). A finding is against the manifest weight of the evidence only where the opposite conclusion is clearly evident or the determination is unreasonable, arbitrary or not based on the evidence presented. *In re D.F.*, 201 Ill. 2d 476 (2002).

¶ 13 Here, there was ample evidence presented at the dispositional hearing for the trial court to find that respondent was unable to care for Z.P. Respondent's five older children had been removed from her care and her parental rights were terminated in 2008 based on her failure to complete counseling services. Although the record indicated that respondent was gainfully employed, had adequate housing and was willing to cooperate with the caseworker's recommendations, the evidence showed that she needed counseling services to help her deal with emotional issues caused by the loss of her older children and the removal of Z.P. In this case, the assessment and social report recommended counseling services and a psychological evaluation. The reports also indicate that respondent is committed to regaining custody of Z.P. The trial court's dispositional order merely instructs respondent to complete the services necessary to meet that goal.

¶ 14 Given the prior termination of parental rights and respondent's emotional instability, the trial court's finding that respondent was unable and unfit to care for Z.P. under section 2-27 of the Act was not against the manifest weight of the evidence.

¶ 15 The judgment of the circuit court of Peoria County is affirmed.

¶ 16 Affirmed.

¶ 17 JUSTICE O'BRIEN, dissenting:

¶ 18 I respectfully dissent from the majority. I believe the trial court abused its discretion when it terminated the respondent's parental rights to her five older children. See *In re C.N., Den. H., Deo. H., A.P., and Z.P.*, No. 3-10-1048 (2008) (unpublished order under Supreme Court Rule 23). If the respondent's parental rights had not been terminated in the previous case, the petition would not have been filed in the instant case. Since I do not believe respondent's parental rights should have been

terminated it logically follows that I do not believe there is any basis on which to find the respondent unfit in the instant case. Therefore, I would reverse the finding of unfitness.