

2012 IL App (2d) 120165-U
No. 2-12-0165
Order filed June 25, 2012

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

<i>In re</i> L.J., a Minor,)	Appeal from the Circuit Court
)	of McHenry County.
)	
)	No. 11-JA-37
)	
)	
(The People of the State of Illinois,)	Honorable
Petitioner-Appellee, v. James J.,)	Maureen P. McIntyre
Respondent-Appellant.))	Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Justices Bowman and Burke concurred in the judgment.

ORDER

Held: The trial court did not err in admitting into evidence, at the dispositional hearing, letters from a case worker and psychologist reporting that respondent met the criteria for polysubstance dependency, failed a drug test, and refused to undergo substance abuse treatment as required by his service plan. Respondent develops no argument that the letters were improperly admitted under section 2-22(1) of the Juvenile Court Act of 1987 (705 ILCS 405/2-22(1) (West 2010)), which governs the admission of evidence at dispositional hearings.

Given respondent's failure to comply with DCFS's requirement that he undergo substance abuse treatment, which the evidence suggests was properly imposed, the trial court did not err in finding him unfit.

¶ 1 In May 2011, the State filed a petition for wardship on behalf of L.J., the biological child of respondent, James J., and Courtney S. At the October 27, 2011, adjudicatory hearing, Courtney S. stipulated to the neglect allegations against her while the court entered a directed finding in favor of respondent on the neglect allegations against him. On November 17, 2011, the court held a dispositional hearing, at which it found respondent unfit and declared L.J. a ward of the court. The court later denied respondent's motion to reconsider the dispositional order. Respondent appeals the dispositional order and the order denying his motion to reconsider. We affirm.

¶ 2 **BACKGROUND**

¶ 3 L.J. was born on November 1, 2009. The State's May 19, 2011, petition for wardship alleged that L.J. was neglected in that her environment was injurious to her welfare. The petition contained multiple allegations against Courtney S., which we number as follows. First, the petition alleged that, on or about April 12, 2011, Courtney S. (1) "stated she and [respondent] used heroin, while [she] had the care and custody of [L.J.]" Second, the petition alleged that, on or about April 21, 2011, Courtney S. (2) "tested positive for marijuana and opiates while she had the care and custody of [L.J.]," (3) "stated she used controlled substances, marijuana every other day with last usage on April 20, 2011[, and] heroin with last usage on April 18-19, 2011[,] while [she] had the care and custody of [L.J.]," (4) "showed DCFS [the Department of Children and Family Services] an injection area on her inner right elbow from heroin use," and (5) "was identified as having been diagnosed with personality disorder/borderline, bipolar and having anxiety." Third, it was alleged that, on or about April 27 or 28, 2011, Courtney S. (6) "took [L.J.] to the residence of a paramour who has had past contacts with law enforcement for drug overdose incidents."

¶ 4 The petition alleged of respondent that (1) on or about April 28, 2011, he “tested positive for opiates,” (2) on or about May 4, 2011, he “stated he takes [V]icodin and [N]arco which are not prescribed to him but obtained through a friend,” and (3) on or about May 4, 2011, he “stated he consumed marijuana, with a last use of a couple of weeks prior.”

¶ 5 The petition also alleged that L.J.’s “family” had prior “history” with DCFS, namely an indicated finding for “substantial risk of physical injury/environment injurious to health and welfare by neglect.”

¶ 6 The record contains an order dated August 4, 2011, reflecting that an adjudicatory hearing transpired that day. The record contains no transcript of a proceeding on that day. The August 4 order indicates that Courtney S. waived her right to an adjudicatory hearing and stipulated to (1) through (3) of the neglect allegations against her as enumerated above. The adjudicatory proceeding was continued to October 27, 2011, for a hearing on the allegations against respondent.

¶ 7 When the hearing continued on October 27, the sole witness was Janet Lennemann, a DCFS investigator. Lennemann testified that she was assigned to the case on April 20, 2011, after DCFS received a hotline call that Courtney S. and her boyfriend Kyle H. were using illegal drugs. The State introduced into evidence a collection of documents relating to Lennemann’s investigation (investigatory documents). The documents include Lennemann’s safety plan for Courtney S. and respondent, which was approved by DCFS on May 16, 2011. The plan states that L.J. will reside with Courtney S. and Tina S., L.J.’s maternal grandmother, and that Tina S. will supervise all contact between Courtney S. and L.J. The plan further grants respondent visitation, to be supervised by Tina S. The plan also requires each parent to submit to random drug tests, and to undergo a substance abuse assessment and any recommended treatment.

¶8 Lennemann testified that, during her investigation, she spoke with Courtney S., who said that she and respondent had recently used heroin together. Lennemann could not recall the date on which Courtney S. made the remark. After her recollection was exhausted, Lennemann was directed to a series of “contact notes,” or notes of interviews, in her investigatory documents. She was directed specifically to a contact note dated April 21, 2011, with Tina S. designated as “interviewee.” In this interview, Tina S. frequently reports what “mother,” presumably Courtney S., told her. Lennemann was pointed to the following lines: “Regarding treatment, stated mother just recently told her that she/mother has been using drugs; tried heroin. Stated mother said that on previous Tuesday, mother was at [respondent’s] house and they used heroin together.” Lennemann acknowledged that these sentences accurately reflect her conversation with Courtney S. on April 21, 2011, in which Courtney S. reported that she and respondent had used heroin at his house on the prior Tuesday.

¶9 The obvious problem with Lennemann’s testimony is that the contact note of which she spoke concerned a conversation with Tina S., not Courtney S. Remarkably, respondent’s own counsel adopted the State’s misinterpretation. In cross-examining Lennemann, counsel referred to Lennemann’s prior testimony regarding a conversation with Courtney S. in which she said that she had used heroin with respondent on the previous Tuesday. Counsel even elicited from Lennemann that Courtney S. did not say what time on Tuesday the use occurred or whether anyone was present other than she and respondent. The State continued the error into closing argument where it noted “Lennemann’s testimony that she spoke to Courtney S.,” who “said that they [she and respondent] used heroin together.”¹

¹ There is a contact note of an interview with Courtney S. on April 21, 2011, in which she stated that she used heroin a couple of days ago at a “friend’s” house. Courtney S. would not provide

¶ 10 Lennemann further testified that her first meeting with respondent was on April 28, 2011, at his home. Lennemann first discussed with respondent the allegation that Courtney S. was using drugs with Kyle H. Lennemann then asked respondent if he had ever used illegal drugs. Respondent admitted that he had used marijuana “with a friend” approximately a week before. Lennemann asked if respondent took any prescription drugs, and respondent replied that he took Vicodin and Narco for a back injury. Lennemann could not recall if she asked respondent on that date whether he had a prescription for the drugs. While she was speaking with respondent, Lennemann noticed a “small, round red area inside the crease of his elbow.” When Lennemann asked respondent about the area, he replied that it could be a pimple. Lennemann could not determine whether the redness was from heroin use or some more benign cause. Respondent denied any heroin use, and, at Lennemann’s request, provided a urine sample that day for drug testing. The State admitted into evidence the test results, which were positive for the presence of opiates.

¶ 11 Lennemann testified that she next met respondent on May 4, 2011, to discuss the test results. At her request, they met at the Lakemoor police station. Two police officers also were present, at Lennemann’s request. When respondent arrived, he asked Lennemann if there was a “problem.” Lennemann informed respondent that he had tested positive for opiates. Respondent asked what an opiate is, and Lennemann told him to ask that question to a pharmacist. Lennemann asked respondent what medicines he was taking. Respondent said that he was taking Vicodin and Norco for back pain and that he purchased the medications from a “friend.” Respondent did not “indicate if his friend was a physician or a pharmacist or licensed to deal in controlled substances.” Respondent then remarked that he had “a prescription over a year ago from Centegra Hospital when

the friend’s name.

he went to the E.R.” Respondent admitted that the prescription was not still current. Respondent stated that he “rarely” took the pills. He asked Lennemann if it were possible that the test results could have been due to his eating a hotdog bun with poppy seeds. Lennemann did not consider poppy seeds a “viable” explanation for the test result. During the conversation, respondent “continually expressed that he was confused.” Lennemann testified that, at that time, she had “concerns” about how respondent obtained the Vicodin and Norco because she had no “information that he obtained them legally.”

¶ 12 Lennemann testified that she did not ask respondent for the dates and times he had custody of, or visitation with, L.J. Respondent also never suggested to Lennemann that he ever used illegal substances in L.J.’s presence or was under the influence while taking care of her. Furthermore, Lennemann has never seen respondent under the influence of any drug while L.J. was in his care. Lennemann added, however, that a finding of injurious environment based on drug use does not require that the “parent be under active use or influence at the time the child is present.” Continuing on the subject, Lennemann was asked why she did not indicate abuse or neglect against Kyle H. Lennemann answered, “He was not in a caretaker role when the minor was at his home.” Lennemann then was asked, “Was [respondent] ever in a caretaker role that you’re aware of when the minor was in his home when he was using illicit substances?” She replied no.

¶ 13 At the close of Lennemann’s testimony, respondent moved for a directed finding on the neglect allegations against him. The court granted the motion, reasoning:

“[T]here apparently was a statement made by [Courtney S.]. It’s uncontroverted in the evidence that she made such a statement that she and [respondent] used heroin.

There is no testimony whatsoever that [Courtney S.] said that that [*sic*] heroin was consumed, used, taken while the child was under the care of [respondent] or even around or nearby or anything. There is no evidence to support that at all.

With respect to the allegation that [respondent] takes Vicodin and Narco and he indicated that he has taken it [*sic*] and he doesn't have a prescription, well—and he gets it from some friend, well, certainly, that may be an illegal act. But that in and of itself does not rise to the level of neglect or environment injurious.

There is no indication, again, when he had the child, where the child was, when he took it, how long it was in his system, what effect.

The [S]tate has not met its burden of making that allegation rise to the level of environment injurious.

And the other one is [*sic*] that he consumed marijuana within a couple of weeks prior. You know, usually marijuana stays in the system about thirty days. The test here shows no marijuana.

But let's even give the [S]tate the benefit of the doubt and say he was making a true statement. Again, there is no evidence whatsoever that he had any care, custody, control of the minor child when he consumed that marijuana.

Based on all the evidence, looking at the evidence in the light most favorable to the [S]tate, the court grants [respondent's] motion for a directed finding.”

¶ 14 The court continued the adjudicatory hearing to November 17, 2011, and on that date entered an order adjudicating L.J. neglected, based on Courtney S.'s stipulation to neglect. The court's written order directed respondent to comply with all services required by DCFS.

¶ 15 The case proceeded immediately to the dispositional phase. The State moved to introduce documents from DCFS including (1) an integrated assessment (consisting in part of a social history), (2) a service plan with an initiation date of June 17, 2011, (3) a November 10, 2011, letter to the court from Carlos Acosta, respondent's caseworker, and (4) a June 21, 2011, letter to Acosta from Sara Kozak of Family Service & Community Mental Health Center. The service plan required, *inter alia*, that respondent undergo a substance abuse evaluation and comply with any recommended treatment plan.

¶ 16 In her letter, Kozak wrote that respondent underwent a substance abuse assessment on June 14, 2011, according to which he met the criteria of the DSM-IV (Diagnostic and Statistical Manual of Mental Disorders IV) for "Polysubstance Dependence." Kozak further indicated that a urine sample provided by respondent on June 14, 2011, revealed the presence of cannabis and cocaine metabolites. Kozak recommended that respondent "attend substance abuse intensive outpatient services to address his substance abuse issues."

¶ 17 Acosta's letter to the court contained an update on Courtney S.'s and respondent's compliance with services recommend by DCFS. Referencing Kozak's findings, Acosta wrote in part:

¶ 18 "Respondent has not cooperated with DCFS-recommended services. Based on the initial assessment by this worker, [respondent] was recommended to complete a substance abuse evaluation and cooperate with any recommendations. [Respondent] participated in a Substance Abuse Evaluation at Family Service on 6/14/11, which resulted in a positive urine screen (cannabis and cocaine metabolites) and a recommendation for their Intensive Outpatient Program (recommendation letter attached). [Respondent] has refused to

cooperate with the recommended treatment for two primary reasons. He has made statements that the testing procedure at Family Service is flawed and, therefore, he does not accept their positive test result. This worker has provided [respondent] with contact information for other treatment providers in the area, but there is no evidence he has engaged with them. In addition, he has stated his belief that, by accepting the recommendation, he is ‘admitting’ that he has a substance abuse problem, which he continues to insist he does not.

It should be noted that [respondent] has been randomly drug tested by DCFS [three] times and all those tests have been negative/clean. [Respondent] has also stated to this worker that, because of the clean tests, he does not have to cooperate with the Family Service recommendation. This worker has consistently stated that DCFS policy does not allow him to simply disregard a recommendation from a licensed professional. In addition, this worker has consistently stated that, without evidence of cooperation in recommended services, visitation would remain at the minimum mandated (weekly, supervised, for one hour). [Respondent] has often become argumentative and belligerent concerning these restrictions.”

¶ 19 Respondent objected to the introduction of Kozak’s and Acosta’s letters. Respondent acknowledged that section 2-22(1) of the Juvenile Court Act of 1987 (705 ILCS 405/2-22(1) (West 2010)) contains a liberal standard for admission of evidence at the dispositional hearing. Respondent argued, however, that Kozak’s and Acosta’s references to the June 14, 2011, drug screen did not meet even this low threshold. Respondent elaborated:

“[T]he adjudicatory hearing in this matter was heard on October 27th. So it’s a four-and-a-half-month span. At any time during those four and a half months[,] the State could

have amended the petition to include that positive urine screen, and they chose not to do so such that we were unable to address the issue at the adjudicatory hearing. And now we get a letter from a doctor in the social history investigation saying [respondent] tested positive for some substances that are illegal. I've not had the chance to cross-examine any witnesses who would have been entering that into [e]vidence. There's been no foundation laid for the screens.

The actual test results aren't even attached in the social history investigation, Judge. And so any reference to this—I understand hearsay is admissible in a disposition. However, on the grounds of relevance, it's not supported by sufficient competent evidence, and it's not credible, and, therefore, should be inadmissible on the grounds of relevance.

* * *

*** Without having an individual here that I can cross-examine, without having—yes, an actual result presented within the social history investigation, it's not sufficiently competent evidence, and it shouldn't be taken into consideration by your Honor. It should be withheld because it's not relevant without further supporting documentation, your Honor.”

¶ 20 The State responded:

“[T]his isn't the adjudicatory hearing. It's what services are necessary in order to get this child back to the home of a parent.

We already have the recommendation that [respondent] be ordered to attend the intensive outpatient program. It's unfortunate that rather than—[respondent] could have been in a position of looking at return home today had he focused on the issues necessary to get him there. But unfortunately at this point, given the dispositional standards, any evidence

comes in. The weight that the Court deems to give it is—is up to the Court as to the service needs.

But, your Honor, I would argue that we are dealing with a very young child, very serious issues. And we want to get this child returned home, and we hope that the parents can direct their attention towards those necessary services so that that can be accomplished.”

¶ 21 In reply, respondent asserted that the probative value of the June 14, 2011, test result was “so low” that it was inadmissible under section 2-22(1).

¶ 22 The trial court held that it would “consider” the test result because “there are some drug concerns here all the way through.” The court, therefore, admitted the letters from Acosta and Kozak into evidence. Respondent did not object to admission of the integrated assessment or the service plan. With no objection from the State, respondent introduced two negative drug screens from May 26 and June 17, 2011. No further evidence was submitted at the dispositional hearing.

¶ 23 The court determined that it was in the best interests of L.J. that she be made a ward of the court. The court found that respondent and Courtney S. did not “eliminate the need for removal” of L.J. and that they were “unfit and unable to care for [L.J.]” The court commented that respondent and Courtney S. had “serious issues” and that respondent was “evasive” in his interviews contained in the social history. The court placed custody and guardianship of L.J. with Tina S. The court’s written order states that respondent was unfit and unable to care for L.J. because he “has not completed [the] recommended intensive outpatient program.”

¶ 24 On December 15, 2011, respondent filed his motion to reconsider. Citing *In re J.H.*, 212 Ill. App. 3d 22 (1991), respondent argued that the letters of Acosta and Kozak were inadmissible because the positive drug screen they referenced was “not unsupported by any documentation,” such

as an “actual lab report,” “chain of custody form,” or “certification of records from [the] testing agency.” Respondent asserted that, without the June 14 drug screen, the evidence at the dispositional hearing was “insufficient to support the Court’s order requiring [respondent] to undergo intensive outpatient treatment for substance abuse.”

¶ 25 The Stated filed no written response, but argued as follows at the hearing on the motion:

“[I]f all we had for disposition was the social history and letters, [respondent] may have some basis [for argument]. However, we also have the adjudicatory hearing information wherein he had the—together with the stipulations. If I may go chronologically, we have [Courtney S.’s] stipulation that she and [respondent] used heroin. At the adjudicatory hearing, we also had the certified records which were received as self-authenticating of [respondent’s] testing positive for opiates. We also had the testimony of [Lennemann] of how [respondent] related that he had purchased from friends controlled substances that were not prescribed to him for purposes of his own consumption. So we have a totality of the—the social history with the information therein, the supporting letters for which, for the dispositional hearing, any evidence is admitted for the weight the Court deems fit. The dispositional standards are very different than the adjudicatory hearing standards. But when we take the totality, [Courtney S.’s] statements of use with [respondent], [respondent’s] testing positive for controlled substance, [Lennemann’s] testimony that [respondent] related he purchased and used controlled substances not prescribed by him, the evaluation for intensive outpatient [treatment], the picture is complete. ***

DCFS is obligated and must provide services consistent with any impediments and we have a totality of impediments that have been identified that require [*sic*] and those have been recognized by the evaluator as [respondent] needing intensive outpatient treatment.

Unfortunately, if we would have had this done, *** [respondent] may be in a position for restoration of custody if only we could complete that, but that finding that he should complete that recommended service is supported by all of those pieces for which your Honor has received into evidence and which are before your Honor.”

¶ 26 The court denied the motion to reconsider, reasoning:

“I will concede this, that perhaps you are correct about the admission of the letters [from Acosta and Kozak] independently if they were not a part of the social history investigation, and I honestly don’t remember offhand whether they were introduced as independent documents; but looking at the totality of the evidence that is presented, and in the social history investigation itself, there are statements that [respondent] tested positive for opiates, that he engaged in the use of prescription medication without the benefit of prescriptions, and then I also have the admissions.

So I do believe that there is sufficient evidence for the Court to have made its finding. What you are talking about is more weight and—to be given to the evidence as opposed to that which the Court considered in making its decision. And, again, you may be right, if the letters stood alone, they should have—not necessarily go into a chain of custody, but there may have been a situation where a body should have testified to what was in the letters. But even if I take the letters out of the mix, there still is sufficient evidence with respect to the

stipulations and also what is in the social history investigation. And the [*J.H.* case] you cite is a different factual scenario because it deals with the statements of the child.

And [in *J.H.*] the law is very clear that the statements of the child need to be corroborated and there never was any corroboration. This is an indicated admission by your own client, and also information in the report. So I'm going to deny the motion to reconsider and the motion to modify."

¶ 27 Respondent filed this timely appeal.

¶ 28 ANALYSIS

¶ 29 First, we clarify the scope of respondent's appeal. The trial court entered separate adjudicatory and dispositional orders on November 17, 2011. Respondent's notice of appeal, argument headings, conclusion, and all but a handful of words in the body of his argument reference only the dispositional order. His argument is that the trial court erred in admitting into evidence at the dispositional hearing "Kozak's letter alleging a positive drug test by [respondent] and the references to that letter in Acosta's letter to the court." Without that evidence, respondent claims, the court had insufficient grounds upon which to declare L.J. a ward of the court and find him unfit.

¶ 30 Respondent also, however, periodically references the standards governing neglect proceedings and discusses some cases on neglect findings. These appear to be gratuitous, for the letters that are the focus of respondent's argument were not admitted into evidence until the dispositional hearing, and respondent makes no independent argument against the adjudicatory order.² We construe his appeal, therefore, as a challenge to the dispositional order alone.

² Incidentally, we note that respondent claims that he testified at the adjudicatory hearing,

¶ 31 Respondent argues that the trial court should have excluded the letters from Kozak and Acosta because “the State failed to provide any foundation for admitting the letters or chain of custody as to the alleged drug test.” Respondent elsewhere states that it was improper for the trial court to rely “on the hearsay letters of Kozak and Acosta without any competent foundation or actual lab results.” It is not clear whether respondent challenges only the test result reported in the letters, as seemed to be the scope of his argument below, or whether he challenges the letters in their entirety. In any event, we find no error in the admission of the letters.

¶ 32 Respondent seems confused as to the governing evidentiary standards. He cites both the standards pertaining to adjudicatory hearings and those pertaining to dispositional hearings. The standards are distinct, however, the former being more stringent. For instance, “[a]lthough hearsay and other types of incompetent evidence may not be admissible at the adjudicatory hearing, they are admissible at the dispositional hearing.” *In re D.L.*, 226 Ill. App. 3d 177, 187 (1992); 705 ILCS 405/2-22(1) (West 2010) (all evidence “helpful” in determining the proper disposition is admissible, “even though not competent for the purposes of the adjudicatory hearing”). The letters respondent challenges were not admitted until the dispositional hearing. Therefore, the standards governing dispositional hearings apply. Accordingly, two of the three main cases on which respondent relies are inapposite. Both *In re J.C.*, 2012 IL App (4th) 110861, ¶¶ 17-29, and *In re J.Y.*, 2011 IL App (3d) 100727, ¶¶ 12-15, concerned the propriety of an evidentiary ruling at an adjudicatory hearing.

¶ 33 Respondent does, however, also cite the criteria for admissibility at the dispositional hearing. He cites section 2- 22(1) of the Act, which sets forth the standards for admission of evidence at

but the record indicates that only Lennemann testified.

dispositional hearings as well as the substantive criteria guiding the court's determination at such hearings. That section provides:

¶ 34 “At the dispositional hearing, the court shall determine whether it is in the best interests of the minor and the public that he be made a ward of the court, and, if he is to be made a ward of the court, the court shall determine the proper disposition best serving the health, safety and interests of the minor and the public. The court also shall consider the permanency goal set for the minor, the nature of the service plan for the minor and the services delivered and to be delivered under the plan. *All evidence helpful in determining these questions, including oral and written reports, may be admitted and may be relied upon to the extent of its probative value, even though not competent for the purposes of the adjudicatory hearing.*” (Emphasis added.) 705 ILCS 405/2-22(1) (West 2010).

¶ 35 The italicized portion evinces the legislature's intent to grant the trial court “wide latitude” in determining admissibility at the dispositional hearing. *In re C.H.*, 398 Ill. App. 3d 603, 607 (2010). The trial court has discretion to admit and consider evidence that is helpful and relevant to the court's determination of a proper disposition. *Id.* Section 2-22(1) “plainly provides that the circuit court should consider all reports, whether or not the author testifies, which would assist the court in determining the proper disposition for the minor.” *In re L.M.*, 189 Ill. App. 3d 392, 399 (1989). We review the admission of evidence under section 2-22(1) for an abuse of discretion. *C.H.*, 398 Ill. App. 3d at 607.

¶ 36 Although respondent cites section 2-22(1), he makes no argument applying its standards to Acosta's and Kozak's letters. Rather, he repeatedly stresses the hearsay nature of the letters. Hearsay, however, is not generally inadmissible under section 2-22(1), which permits a trial court

to consider any “helpful” evidence to the extent of its probative value. For instance, in *In re White*, 103 Ill. App. 3d 105 (1982), the minor was mentally impaired. At the dispositional hearing, the trial court admitted into evidence brochures describing Woodhaven, a home for the mentally impaired. The witness who testified about Woodhaven could not vouch for the accuracy of the brochures. The appellate court held that the brochures were admissible under section 2-22(1). *Id.* at 114. The court explained that there was “no doubt that the brochures could be helpful to the trial court” in determining the placement of the minor. *Id.* “The lack of testimony supporting the accuracy of the brochures was merely a factor for the trial court to consider in determining the weight to be given them.” *Id.* See also *L.M.*, 189 Ill. App. 3d at 399 (affirming admission of psychological evaluation without testimony from author).

¶ 37 The third main case on which respondent relies is *J.H.*, 212 Ill. App. 3d 22. In *J.H.*, the State filed a petition alleging that the minors, J.H. and M.H. were neglected in that their mother was deceased and the respondent, their father, was incarcerated. At the adjudicatory hearing, the parties stipulated to the allegations in the petition, and the minors were adjudicated neglected. DCFS then prepared a social history of the respondent. The social history recounted that DCFS had found credible evidence to support three reports that M.H. had been sexually abused. The respondent was the focus of one of the investigations. The report also related that the respondent was an alcoholic, had an extensive criminal history including arrests for public intoxication, and had successfully completed a drug and alcohol treatment program. The State moved to introduce the social history at the dispositional hearing. The respondent objected that the portions relating to sexual abuse and alcoholism were irrelevant. The trial court admitted the report, and the appellate court affirmed. Citing *L.M.*, the court noted that section 2-22(1) “clearly contemplate[s] admission of the type of

report at issue here.” *Id.* at 28. (This remark, in light of the citation to *L.M.*, seems to concern the reliability of the report, yet the respondent’s challenge was based on relevancy alone.) The court further asserted that “the information concerning respondent’s alleged sexual and alcohol abuse was relevant to the issue of possible reunification of the children with their father after his release from prison.” *Id.* at 27. The court also addressed the sufficiency of the evidence in support of the trial court’s disposition. We address that portion of *J.H.* below.

¶ 38 Again, respondent articulates no argument applying the particular criteria of section 2-22(1). He does not contend that Acosta’s and Kozak’s letters were not “helpful,” nor is it evident how he could have persuaded us so. The letters advised the trial court of the degree to which respondent was complying with services that were ordered in response to indications that he had a drug abuse problem. Specifically, the letters reported that respondent (1) complied with the directive that he undergo a substantive abuse assessment, (2) was found to have polysubstance dependency and was recommended for substance abuse treatment, (3) tested positive on June 14, 2011, for cannabis and cocaine metabolites, and (4) refused to undergo substance abuse treatment. Respondent’s mantra that the letters are hearsay fails to engage the criteria of section 2-22(1). At the dispositional hearing, the trial court is allowed to consider evidence for whatever probative value it may have, even if the evidence would be inadmissible in other venues. Respondent makes no argument that the hearsay nature of the letters so vitiated any probative value that they were worthless as proof. He identifies no aspect in which the letters were less reliable than the social history in *J.H.*, a case he himself cites for support. We conclude that the trial court did not err in admitting the letters from Acosta and Kozak.

¶ 39 Having determined that the letters from Acosta and Kozak were properly before the trial court, we reject respondent's challenge to the trial court's disposition. At the dispositional stage, the court shall determine whether it is in the best interests of the public and the minor that the minor be made a ward of the court. 705 ILCS 405/2-22(1) (West 2010). If the minor is made a ward of the court, the court shall then determine the proper disposition of the minor. 705 ILCS 405/2-22(1) (West 2010). If the court determines that the parents, guardian or legal custodian of the minor are "unfit or are unable, for some reason other than financial circumstances alone, to care for, protect, train or discipline the minor or are unwilling to do so," and that the best interest of the minor will be jeopardized if the minor remains in the custody of his or her parents, guardian or custodian, the court may commit the minor to the custody of a suitable relative, as was done here. 705 ILCS 405/2-27(1) (West 2010).

¶ 40 Respondent challenges the court's finding that he is unfit and unable to care and provide for L.J. The trial court's determination of unfitness will be reversed only if it is against the manifest weight of the evidence. *In re K.R.*, 356 Ill. App. 3d 517, 523 (2005).

¶ 41 Respondent points to the directed finding in his favor at the neglect hearing and argues that the only subsequent evidence from the State that he had a drug problem was the June 14, 2011, positive result for opiates and cannabis referenced in Acosta's and Kozak's letters. Respondent points also to the evidence he introduced of negative drug screens on May 26 and June 17, 2011. Respondent fails to note, however, Kozak's statement that respondent met the DSM-IV's criteria for polysubstance abuse. Respondent has at best shown that the evidence is in conflict over whether he has a drug problem. More importantly, however, the trial court found respondent unfit not because he has a drug problem *per se*, but because he failed to undergo substance abuse treatment as required

by DCFS. Respondent overlooks the fact that, though the trial court entered a directed finding in his favor on the neglect allegations against him, the court still ordered him to comply with all services required by DCFS. The service plan approved on June 17, 2011, continued the requirement in the original safety plan (of May 16, 2011) that respondent undergo a substance abuse evaluation and comply with recommendations for treatment. Respondent asserts before us that the requirement in the dispositional order that he undergo substance abuse treatment is against the manifest weight of the evidence. The record, however, shows no point at which respondent made that challenge prior to the dispositional hearing. In any case, there was sufficient cause for DCFS to require that respondent be evaluated for drug abuse and, if necessary, treated. In his April 28 and May 4, 2011, conversations with Lennemann, respondent admitted that he used marijuana, as well as narcotics for which he had no prescription. The positive test results of April 28 and June 14, 2011, corroborate these admissions. The State's failure to demonstrate that respondent's alleged or admitted drug use was endangering L.J. did not nullify respondent's obligation to comply with DCFS directives. Given respondent's failure to follow DCFS directives that the evidence shows were reasonably aimed at determining his capacity to parent, the trial court did not err in finding him unfit.

¶ 42 We return to *J.H.*, as respondent cites it for its holding that the social history did not support the trial court's dispositional order that the respondent in that case undergo sexual abuse counseling and alcohol treatment. *J.H.*, 212 Ill. App. 3d at 29-30. The court explained that the allegation that M.H. was sexually abused by the respondent lacked sufficient corroboration and that the references to the respondent's alcohol use and treatment did not in themselves suggest that he needed further treatment. *Id.*

¶ 43 Respondent argues that evidence was similarly lacking that he has a drug problem. Again, for our purposes here the evidence did not have to establish that respondent has a drug problem, but only that the requirement of substance abuse treatment, which respondent did not challenge until the dispositional stage, was justified. *J.H.* is distinguishable.

¶ 44 CONCLUSION

¶ 45 For the foregoing reasons, we affirm the judgment of the circuit court of McHenry County.

¶ 46 Affirmed.