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2012 IL App (3d) 110892-U

Order filed August 21, 2012

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2012

<i>In re</i> J.L.W.,)	Appeal from the Circuit Court
)	of the 10th Judicial Circuit,
a Minor)	Peoria County, Illinois,
)	
(The People of the State)	
of Illinois,)	
)	Appeal No. 3-11-0892
Petitioner-Appellee,)	Circuit No. 11-JA-225
)	
v.)	
)	
Jimmie L.W.,)	Honorable
)	Mark E. Gilles,
Respondent-Appellant).)	Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Presiding Justice Schmidt and Justice O'Brien concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court's finding at the dispositional hearing that respondent was unfit to care for his minor daughter was not contrary to the manifest weight of the evidence.
- ¶ 2 Following a dispositional hearing, the circuit court found respondent, Jimmie L.W., was unfit to care for the minor, J.L.W. On appeal, respondent argues that the court's unfitness finding was

against the manifest weight of the evidence. We affirm.

¶ 3 On September 29, 2011, the State filed a juvenile petition, alleging that J.L.W. was neglected due to an injurious environment in that (1) the minor was born with cocaine in her system, (2) the mother was previously found unfit and there had been no subsequent finding of fitness, (3) the father had a prior 1988 conviction for possession of cannabis and a 1992 conviction for resisting police, (4) the father was indicated by the Department of Children and Family Services (DCFS) for sexual molestation in June of 2001, and (5) the mother and father resided together. The trial court placed the minor into temporary shelter care and named DCFS as her guardian.

¶ 4 The minor was adjudicated neglected on November 30, 2011. A dispositional hearing was held immediately thereafter. The DCFS caseworker testified that it was her recommendation that respondent be declared unfit based on a DCFS report from 2001 in which respondent was indicated for sexually molesting a ten-year-old girl that he was babysitting.

¶ 5 In preparation for the dispositional hearing, the caseworker also filed an integrated assessment report. In the interview for the assessment report, respondent acknowledged that he had been arrested five times. A subsequent background check revealed that respondent had been convicted of obstruction of justice.

¶ 6 The report also indicated that respondent demonstrated a desire to engage in services to regain custody of the minor. He was employed and able to provide for his family. He also provided a random urine screen that was negative for all controlled substances. Respondent currently lived with J.L.W.'s mother.

¶ 7 J.L.W.'s mother had been found unfit and her parental rights to her three other children had been terminated in 2011. In her interview, the mother told the caseworker that she was unsure

whether she would be able to remain drug free.

¶ 8 The State recommended that respondent be declared dispositionally unfit to have custody of the minor based on the 2001 report of sexual molestation. Counsel for the mother and the guardian *ad litem* agreed with the State's recommendation. Respondent's counsel argued that respondent should not be found unfit, but admitted that placement would be necessary for J.L.W. because respondent was living with the minor's unfit mother.

¶ 9 At the conclusion of the dispositional hearing, the trial court found respondent unfit based on the DCFS indication of sexual molestation. The court stated that the indicated finding suggested that credible evidence existed that the act of sexual abuse did occur and that there was a need to assess the risk of any future problems before finding respondent fit. The court granted the State's petition against respondent and made DCFS the guardian of the minor.

¶ 10 ANALYSIS

¶ 11 Respondent argues that the trial court's finding that he was an unfit parent was against the manifest weight of the evidence.

¶ 12 A dispositional hearing represents one step in a multistep process that determines whether children should be removed from their parents. At the dispositional stage, the trial court determines whether it is consistent with the health, safety, and best interests of the minors and the public that the minors be made wards of the court. 705 ILCS 405/2-21(2) (West 2010). The trial court also determines whether the minors' parent is fit to care for the minor. 705 ILCS 405/2-27(1) (West 2010). Hearsay evidence is permissible at a dispositional hearing. *In re D.L.*, 226 Ill. App. 3d 177 (1992). Because a finding of unfitness at this stage does not result in a complete termination of all parental rights, the standard of proof to determine unfitness is a preponderance of the evidence. *In*

re M.B., 332 Ill. App. 3d 996 (2002). The trial court may modify the dispositional order at any time until the case is closed or the minor reaches the age of majority. 705 ILCS 405/2-23(2) (West 2010).

¶ 13 A trial court's dispositional decision regarding a minor rests within the court's discretion and will not be overturned unless it is against the manifest weight of the evidence or the court abused its discretion. *In re William H.*, 407 Ill. App. 3d 858 (2011). A decision is against the manifest weight of the evidence only where the opposite result is clearly evident or where the court's determination is unreasonable, arbitrary, or not based on the evidence. *Sperl v. C.H. Robinson Worldwide, Inc.*, 408 Ill. App. 3d 1051 (2011).

¶ 14 Here, the trial court's determination that respondent was unfit was not against the manifest weight of the evidence. The evidence at the dispositional hearing established that the indication of sexual molestation was a serious concern. Although the incident had occurred several years earlier, the 2001 report revealed that the victim was a young girl and that respondent was in a position of authority and trust. The dispositional report does not demonstrate whether respondent received or successfully completed treatment in response to the incident.

¶ 15 In addition, the dispositional report shows that respondent continues to exercise poor judgment by living with J.L.W.'s mother. The mother's parental rights to her other children have been terminated; she used cocaine while she was pregnant with J.L.W.; and she expressed to the caseworker that she was unwilling to remain sober. Respondent's desire to have custody of the minor while still living with the unfit mother demonstrates a lack of concern for J.L.W.'s well being. In light of these concerns and the indication of sexual molestation, the court's finding that respondent was unfit was not against the manifest weight of the evidence.

¶ 16

CONCLUSION

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

¶ 18 Affirmed.