

NOTICE  
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2012 IL App (4th) 120577-U  
NO. 4-12-0577  
IN THE APPELLATE COURT  
OF ILLINOIS  
FOURTH DISTRICT

FILED  
November 14, 2012  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

In re: D.H. and N.T., Minors,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Champaign County
v.	)	No. 12JA11
MATTHEW HODLER,	)	
Respondent-Appellant.	)	Honorable
	)	John R. Kennedy,
	)	Judge Presiding.

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JUSTICE COOK delivered the judgment of the court.  
Presiding Justice Turner and Justice Knecht concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* The trial court's dispositional order, adjudicating respondent's child neglected, naming the child a ward of the court, removing custody and guardianship from respondent, and placing custody and guardianship of the child with DCFS, was not against the manifest weight of the evidence.
- ¶ 2 Respondent, Matthew Hodler, appeals the trial court's dispositional order, making his child, D.H. (born March 26, 2006), a ward of the court and placing custody and guardianship of the minor with the Illinois Department of Children and Family Services (DCFS). We affirm.
- ¶ 3 D.H. is the child of respondent and Johnnita Hodler. On April 3, 2012, the State filed a petition for adjudication of wardship, alleging D.H. and his half-sibling, N.T. (born March 20, 2012), were neglected minors due to an injurious environment when they lived with Johnnita and Calvin Thatch, N.T.'s putative father, because they were exposed to domestic violence (count I) and at risk of physical harm (count II). On May 9, 2012, the trial court conducted an

adjudicatory hearing and Johnnita and Thatch stipulated to count I of the petition. On May 11, 2012, the court entered its adjudicatory order, finding the minors neglected and setting the matter for a dispositional hearing.

¶ 4 On June 15, 2012, the trial court conducted the dispositional hearing in the matter. It considered the dispositional report prepared by DCFS and the recommendations of the parties. The report showed 6-year-old D.H. and 12-day-old N.T. were taken into protective custody following a domestic dispute between Johnnita and Thatch. Respondent was married to Johnnita but lived in Ohio. Although he previously lived with D.H. until D.H. was three years old, respondent had only visited D.H. twice in the previous two years. Respondent asserted Johnnita denied him access to D.H. "to get back at him" for their failed marriage. Nevertheless, respondent expressed a desire for D.H. to live with him and a willingness to engage in services with DCFS.

¶ 5 After D.H. was taken into protective custody, respondent was given six opportunities to have supervised phone contact with D.H. The dispositional report showed respondent called on only one occasion, asserting he was "getting used to the Illinois time difference." Respondent also began supervised, biweekly visits with D.H. As of the date of the report, he had attended two out of two visits and "was appropriate and demonstrated appropriate parenting skills."

¶ 6 The dispositional report further showed D.H. and N.T. had been placed in a home with their maternal cousin. D.H. adjusted well to the placement and there were no behavioral concerns. The report stated D.H. seemed aware of who his father was, but he did not speak much about respondent and no bond appeared to have been established between the two.

¶ 7 On June 19, 2012, the trial court entered its dispositional order, adjudicating the minors neglected and naming them wards of the court. It also determined it was in the minors' best interests to be placed in the custody and guardianship of DCFS.

¶ 8 This appeal followed. Although the underlying proceedings in this matter also involved N.T., Johnnita, and Thatch, this appeal concerns only respondent and D.H.

¶ 9 On appeal, respondent does not challenge the trial court's neglect adjudication. Instead, he argues the court's decision to remove custody and guardianship of D.H. from him and place it with DCFS was against the manifest weight of the evidence. To support his contention, respondent argues he did not create or contribute to the injurious environment that resulted in the filing of the State's petition.

¶ 10 In proceedings for adjudication of wardship, the State has the burden of proving allegations of neglect by a preponderance of the evidence. *In re Arthur H.*, 212 Ill. 2d 441, 463-64, 819 N.E.2d 734, 747 (2004). If the State satisfies its burden, the trial court must then "determine whether it is in the best interests of the child to be made a ward of the court and the 'proper disposition best serving the health, safety and interests of the minor and the public.'" *In re Austin W.*, 214 Ill. 2d 31, 43, 823 N.E.2d 572, 580 (2005) (quoting 705 ILCS 405/2-22(1) (West 2000)). "In all guardianship and custody cases, 'the issue that singly must be decided is the best interest of the child.'" *Austin W.*, 214 Ill. 2d at 49, 823 N.E.2d at 583 (quoting *In re Ashley K.*, 212 Ill. App. 3d 849, 879, 571 N.E.2d 905, 943 (1991)). "Even the superior right of a natural parent must yield unless it is in accord with the best interests of the child." *Austin W.*, 214 Ill. 2d at 50, 823 N.E.2d at 584.

¶ 11 In proceedings under the Juvenile Court Act of 1987 (705 ILCS 405/1-1 to 7-1

(West 2010)), "the trial court has the best opportunity to observe the demeanor and conduct of the parties and witnesses and, therefore, is in the best position to determine the credibility and weight of the witnesses' testimony." *In re E.S.*, 324 Ill. App. 3d 661, 667, 756 N.E.2d 422, 427 (2001). Its best-interests determination will not be disturbed on review unless it is against the manifest weight of the evidence. *Austin W.*, 214 Ill. 2d at 51-52, 823 N.E.2d at 585. "A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident." *Arthur H.*, 212 Ill. 2d at 464, 819 N.E.2d at 747.

¶ 12 Here, although D.H. was aware respondent was his father, the two had little contact in the three years prior to the underlying proceedings and no established bond. Respondent lived in a different state and acknowledged having visited D.H. on only two occasions in the previous two years. After D.H. was taken into protective custody, respondent failed to take advantage of opportunities for supervised telephone contact, calling D.H. on only one of the six available opportunities. Moreover, D.H. was adjusting well to his placement with his maternal cousin and had only attended two face-to-face visits with respondent.

¶ 13 Respondent correctly points out that he was not a party to the domestic dispute which formed the basis for trial court's neglect finding. Nevertheless, the court's decision was supported by the record which showed a lack of contact between respondent and D.H., the lack of an established bond between the two, and respondent's failure to take full advantage of opportunities to maintain contact with D.H. after D.H. was taken into care. An opposite conclusion from that of the court is not clearly evident and its decision was not against the manifest weight of the evidence.

¶ 14 For the reasons stated, we affirm the trial court's judgment.

¶ 15 Affirmed.