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2014 IL App (3d) 140066-U

Order filed October 31, 2014

IN THE
APPELLATE COURT OF ILLINOIS
THIRD JUDICIAL DISTRICT
A.D., 2014

<i>In re</i> T.G.,)	Appeal from the Circuit Court
)	of the 10th Judicial Circuit,
a Minor,)	Peoria County, Illinois,
)	
(PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Petitioner-Appellee,)	Appeal No. 3-14-0066
)	Circuit No. 13-JA-307
v.)	
)	
THOMAS G.,)	
)	Honorable David Dubicki,
Respondent-Appellant).)	Judge Presiding.

PRESIDING JUSTICE WRIGHT delivered the judgment of the court.
Presiding Justice Lytton and Justice Holdridge concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court's finding that father was dispositionally unfit was not against the manifest weight of the evidence.
- ¶ 2 The State filed a neglect petition on behalf of three-week old T.G. alleging T.G.'s parents provided an environment injurious to the minor's welfare. The petition alleged, in part, the minor was neglected because he was born prematurely with methadone in his system, and his

father had a history of substance abuse and criminal convictions. After a finding of neglect and a contested dispositional hearing, the court found both parents were unfit to care for the minor. Respondent-father, Thomas G. (father), appeals the trial court's finding of his dispositional unfitness. We affirm.

¶ 3

BACKGROUND

¶ 4

T.G. was born on October 31, 2013. On November 22, 2013, the State filed a neglect petition on behalf of T.G., upon his release from the hospital, alleging T.G. was neglected because his parents provided an environment that was injurious to his welfare. This petition alleged T.G. was born prematurely, at 34 weeks, and he had methadone in his system at birth. The petition alleged T.G.'s mother had a long history of substance abuse, most recently using heroin for the past three years, and mother admitted using heroin, non-prescribed prescription pills, and alcohol during the first five months of the pregnancy. According to the petition, mother also had the following five criminal convictions: unlawful possession of a controlled substance and consumption of liquor in a public way in 2012, possession of a controlled substance and a DUI in 2009, and retail theft in 2002.

¶ 5

Regarding father, the neglect petition asserted that father had an extensive criminal history and a substance abuse problem. The petition alleged father told DCFS he had prescriptions for narcotic medication but, on three different occasions, refused to show DCFS workers the prescriptions upon request. Further, the petition identified father's criminal history to include the following convictions: unlawful possession of a controlled substance in 2012; aggravated battery, battery, criminal damage to property, and violation of bail bond in 2009; two batteries in 2008; possession with intent to deliver LSD (federal charge) in 1999; possession of a

hallucinogen and distribution of a hallucinogen (federal charge) in 1997; obstructing justice and retail theft in 1996; aggravated assault in 1994; and criminal damage to property in 1993.

¶ 6 On December 19, 2013, father and mother both stipulated for purposes of the adjudicatory hearing that the State could prove the allegations in the petition. The court held the dispositional hearing on January 9, 2014. The court admitted a “Dispositional Hearing Court Report” (dispositional report) prepared by a caseworker for Lutheran Social Services of Illinois (LSSI), and its attached documentation into evidence. The dispositional report stated father was currently on parole for unlawful possession of a controlled substance and resided with the minor’s mother since his release from prison. Father’s parole conditions required him to complete a substance abuse assessment, which he completed on November 18, 2013. The substance abuse screener determined father did not need further substance abuse treatment based on father’s self-reported answers to the screener’s questions.

¶ 7 The dispositional report referred to a DCFS “Integrated Assessment with Clinical Screener” report (integrated assessment), prepared by LSSI, that documented father had two orders of protection issued against him in the past. Both orders included findings that father was “dangerous and suicidal.” This integrated assessment noted father and mother had been living together for three years, renting their current three-bedroom house for nine months, and that father depended on T.G.’s mother for his own support after suffering a work-related injury in 2008.¹ It was noted in the integrated assessment that father consistently visited with the minor together with T.G.’s mother, at the agency’s office, for four hours a week.

¶ 8 During the dispositional hearing, the State called father as a witness. Father testified he was sentenced to prison for unlawful possession of a controlled substance, on June 17, 2013, and he was released from custody and placed on parole on October 30, 2013. Father explained that

¹ Father testified the injury actually occurred in 2006.

he was not guilty of the 2012 charge of possession of cocaine. Father said he confessed to the offense in exchange for a plea agreement because he had "three driving on suspendeds [*sic*] and three no insurance tickets and a petition to revoke on two aggravated batteries which he [the prosecutor] offered me a year if I took the drug charge. So, I took the lesser of two evils."

¶ 9 Father said he was injured at work in 2006 and received a lump sum settlement as a result of that injury, and received "work comp" until October of 2012. Father stated the doctors diagnosed him with "complex regional pain syndrome," and he had prescriptions for Fentanyl, Norco, Soma, and Xanax. Father said he was currently waiting for approval from social security to get a morphine pump, and eventually surgery for his injury. Father did not attend any AA or NA meetings because he did not drink alcohol or use illegal drugs.

¶ 10 At the close of the dispositional hearing, the trial court found it was in the best interests of T.G. to make him a ward of the court. The court found both mother and father unfit to care for the minor at that time. The trial court found father was not credible and determined father was unfit based on his recent 2012 conviction for possession of a controlled substance, as well as his history of criminality and substance abuse. The court ordered father to comply with random drug screening, complete a substance abuse assessment, participate in and successfully complete individual counseling, and obtain and maintain stable housing. Father filed a timely appeal.

¶ 11 ANALYSIS

¶ 12 On appeal, father argues that the trial court erred in finding that father was unfit to care for the minor at the dispositional hearing. The State contends the court's finding of unfitness was not against the manifest weight of the evidence.

¶ 13 During a dispositional hearing, the State must prove a parent's dispositional unfitness pursuant to section 2-27 of the Juvenile Court Act of 1987 (705 ILCS 405/2-27 (West 2012)) by

a preponderance of the evidence. *In re K.B.*, 2012 IL App (3d) 110655, ¶ 22; *In re April C.*, 326 Ill. App. 3d 225, 238 (2001). A trial court's determination regarding dispositional unfitness will be reversed “only if the findings of fact are against the manifest weight of the evidence or if the trial court committed an abuse of discretion by selecting an inappropriate dispositional order.” *In re K.B.*, 2012 IL App (3d) 110655, ¶ 23 (quoting *In re T.B.*, 215 Ill. App. 3d 1059, 1062 (1991)). A trial court’s finding is against the manifest weight of the evidence if the record clearly demonstrates that a result opposite to the one reached by the trial court was the proper result. *T.B.*, 215 Ill. App. 3d at 1062. The manifest weight of the evidence standard of review “recognizes that the trial court is in a much better position than is this court to observe the witnesses, assess credibility, and weigh the evidence.” *Id.* For this reason, a reviewing court “will not overturn the trial court's findings merely because the reviewing court might have reached a different decision.” *Id.*; *In re K.B.*, 2012 IL App (3d) 110655, ¶ 23.

¶ 14 Here, the court found father’s testimony was not credible. The court noted discrepancies between father’s statements and the integrated assessment. The court also recognized father minimized his criminal actions and his history of substance abuse. The court observed father lived with mother, and father (and mother) needed to demonstrate a period of sobriety and stability before father could be considered fit to care for his three-month old son.

¶ 15 After careful review of the record, we conclude the court’s findings were supported by the record. Therefore, the court’s decision finding father dispositionally unfit was not against the manifest weight of the evidence.

¶ 16

CONCLUSION

¶ 17

For the foregoing reasons, we affirm the trial court decision finding father unfit to care for the minor at the dispositional hearing.

¶ 18

Affirmed.