

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).

2014 IL App (4th) 140068-U

NO. 4-14-0068

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

June 16, 2014

Carla Bender

4th District Appellate

Court, IL

In re: N.D., a Minor,)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
Petitioner-Appellee,)	Champaign County
v.)	No. 12JA23
LATRICE DUPREE,)	
Respondent-Appellant.)	Honorable
)	John R. Kennedy,
)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Justices Knecht and Turner concurred in the judgment.

ORDER

- ¶ 1 *Held:* The appellate court affirmed, concluding the Juvenile Court Act of 1987 did not violate respondent's right to equal protection under the law.
- ¶ 2 In June 2012, the State filed a petition for adjudication of wardship of N.D. (born Dec. 1, 2001) and L.D. (born Jan. 26, 2011), alleging both minors were neglected. In October 2013, respondent mother, Latrice Dupree, surrendered her parental rights to L.D., and in January 2014, the trial court found (1) respondent was unfit to exercise custody and guardianship of N.D. and (2) it was in N.D.'s best interest to restore guardianship to her father.
- ¶ 3 Respondent appeals, arguing the Juvenile Court Act of 1987 (Juvenile Act) (705 ILCS 405/1-1 to 7-1 (West 2012)) violated her right to equal protection because it treats indigent parents differently from similarly situated nonindigent parents.
- ¶ 4 For the reasons that follow, we affirm.

¶ 5

I. BACKGROUND

¶ 6 In February 2011, the Department of Children and Family Services (DCFS) opened an intact case for respondent because of respondent's alleged cocaine use. Between February 2011 and June 2012, respondent participated sporadically in residential and outpatient treatment, initiating but subsequently discontinuing services through the Prairie Center on multiple occasions due to attendance issues and relapses. During this time, DCFS requested respondent take approximately 39 drug tests. Respondent failed to complete 15 of the requested tests. Of the remaining tests, 2 tests were positive for hydrocodone, 3 were positive for cocaine, 2 were "negative/specimen diluted," and 14 were negative. In September or October 2011, the minors went to live with their grandparents because of respondent's failure to engage in services.

¶ 7 In June 2012, DCFS received a hotline report indicating respondent, who was pregnant with a third child, tested positive for cocaine on April 22, 2012, and June 22, 2012, during prenatal-care visits at a clinic. Later that month, the State filed a petition for adjudication of wardship of N.D. and L.D., alleging (1) both minors were neglected based on having an environment injurious to their welfare when they resided with respondent because they were exposed to substance abuse (705 ILCS 405/2-3(1)(b) (West 2012)); and (2) L.D. was neglected in that she was an infant born with blood, urine, or meconium containing cocaine (705 ILCS 5/2-3(1)(c) (West 2012)). Following a hearing, the trial court granted temporary custody and guardianship of L.D. to DCFS and of N.D. to N.D.'s father, Matthew Meyer, with whom respondent shared custody of N.D.

¶ 8 In August 2012, the trial court entered an adjudicatory order. The court accepted respondent's admission and stipulation to count I of the State's petition and dismissed count II. At a dispositional hearing the following month, the court found respondent unfit and unable to

care for the minors. However, the court found (1) Meyer was fit, able, and willing to exercise custody of N.D.; and (2) placing custody of N.D. with Meyer would not endanger her health or safety and would be in her best interest. Accordingly, the court placed custody of N.D. with Meyer and custody of L.D. with DCFS.

¶ 9 Following a December 2012 permanency hearing, the trial court entered a permanency order. The permanency report, filed and considered by the court, reflected respondent was unemployed and failed to respond to two letters from the counselor to whom she had been referred. According to the report, respondent was "in the process of being assigned" a new therapist. After respondent completed an October 2012 substance-abuse assessment, the treatment provider recommended that she participate in a residential-treatment program and attend Alcoholics Anonymous/Narcotics Anonymous (AA/NA) meetings. Respondent failed to provide the caseworker with documentation showing she attended AA/NA meetings, and on two separate occasions, she declined available spots at a residential-treatment facility. During that time period, Respondent consistently visited with N.D. and L.D., during which she acted "appropriate" and demonstrated a "close bond" with her children.

¶ 10 With respect to Meyer, the permanency report indicated DCFS received two hotline calls on Meyer for drinking. The trial court entered a permanency order finding Meyer unfit and removed N.D. from her father's home based on his alcohol use.

¶ 11 In May 2013, the caseworker filed another permanency-hearing report. This report indicated respondent completed a 28-day residential-treatment program at Chestnut Health Center in January 2013. Respondent told the caseworker in April 2013 that she attended AA/NA meetings every Thursday; however, she failed to provide documentation demonstrating that she did in fact attend these meetings. She also failed to attend eight scheduled drug tests.

Respondent continued to act appropriately during her visits with the minors, but she did not attend visits consistently.

¶ 12 The May 2013 permanency report stated that Meyer completed a substance-abuse assessment, which indicated "no treatment was recommended." Meyer continued to maintain employment and a two-bedroom home. He visited four hours per month with N.D., occasionally having to cancel visits based on his work schedule. The report described Meyer as "caring and loving" toward N.D.

¶ 13 The trial court entered a May 2013 permanency order finding (1) respondent failed to make reasonable efforts or substantial progress toward returning the minors home, but (2) Meyer made reasonable efforts and substantial progress toward returning N.D. home. The court ordered DCFS to have continued custody and guardianship of the minors. A September 2013 permanency report indicated respondent made little progress during the reporting period. Respondent told the caseworker she discontinued attending AA/NA meetings but had been attending "Candle Light" meetings; however, she failed to provide proof of her attendance. Respondent also did not complete the substance-abuse assessment to which she had been referred. In addition, she failed to complete four scheduled drug tests and tested positive for cocaine in May 2013. Respondent's individual counselor at Lutheran Social Services closed respondent out of counseling based on the positive drug test. The counselor indicated respondent could reengage in services if she produced two negative drug tests. Respondent visited "inconsistently" with her children during the reporting period. Meyer continued to maintain stable housing and employment and visited N.D. 16 hours a week. The trial court entered a September 2013 permanency order finding respondent made no reasonable progress or efforts.

The court also suspended respondent's visitation with the minors. The court returned custody and guardianship of N.D. to Meyer and continued custody and guardianship of L.D. with DCFS.

¶ 14 That month, the State filed a motion seeking a finding of unfitness and termination of respondent's parental rights. Specifically, the motion alleged respondent was unfit because she failed to (1) make reasonable efforts to correct the conditions that were the basis of the minors' removal (750 ILCS 50/1(D)(m)(i) (West 2012)); (2) make reasonable progress toward the return of the minors within the initial nine months of the adjudication of abuse or neglect (750 ILCS 50/1(D)(m)(ii) (West 2012)); and (3) maintain a reasonable degree of interest, concern, or responsibility as to the minors' welfare (750 ILCS 50/1(D)(b) (West 2012)).

¶ 15 In October 2013, respondent surrendered her parental rights to L.D. In December 2013, the caseworker filed a permanency report. According to the report, respondent's whereabouts were unknown but respondent had contacted the caseworker to say she was "entering into a substance abuse facility out of state." A January 2014 permanency report indicated respondent moved to Utah to engage in a substance-abuse program. The caseworker received from respondent's therapist some urine screens and a letter indicating respondent started services on October 22, 2013; however, the caseworker did not receive a progress report or final report stating respondent successfully completed the services. Following a January 2014 hearing, the trial court entered a permanency order finding respondent made reasonable efforts but not reasonable or substantial progress toward N.D.'s return home. The court found respondent unfit to exercise custody and guardianship of N.D. and that it was in N.D.'s best interest to restore guardianship to Meyer. The court also found it was no longer in N.D.'s best interest to be a ward of the court. Accordingly, the court vacated wardship and closed the case.

¶ 16 This appeal followed.

¶ 17

II. ANALYSIS

¶ 18 On appeal, respondent argues the Juvenile Act violated her right to equal protection because it treats indigent parents differently from similarly situated nonindigent parents. Specifically, respondent contends the trial court's dismissal of the petition for a finding of unfitness "effectively terminated [respondent's] parental rights" because respondent's only practical access to the remedial services necessary to restore her to fitness was through the Juvenile Act, access which is now unavailable due to the closure of the case. Respondent claims that pursuing a supplemental petition to reinstate her wardship under section 2-33 of the Juvenile Act (705 ILCS 405/2-33 (West 2012)) will fail because her indigency limits her availability to seek further remedial treatment.

¶ 19 A party may challenge the constitutionality of a statute at any time. *In re S.F.*, 359 Ill. App. 3d 63, 65, 834 N.E.2d 453, 455 (2005). Because an issue regarding the constitutionality of a statute is a question of law, our review is *de novo*. *In re D.W.*, 214 Ill. 2d 289, 309, 827 N.E.2d 466, 480 (2005). Where reasonably possible, the reviewing court must construe the statute in such a way as to affirm its constitutionality. *Id.* at 310, 827 N.E.2d at 480.

¶ 20 In analyzing respondent's constitutional claim, this court begins "with the presumption that the statute is constitutional." *Id.* The burden is on the party challenging the constitutionality of the statute to rebut this presumption and clearly demonstrate a constitutional violation. *In re R.C.*, 195 Ill. 2d 291, 296, 745 N.E.2d 1233, 1237 (2001). When the constitutional right at issue concerns an individual's fundamental rights, such as the right of parents to control their children's upbringing, "the presumption of constitutionality is weaker, and courts must subject the statute to the more rigorous requirements of strict scrutiny analysis."

D.W., 214 Ill. 2d at 310, 827 N.E.2d at 481. Under a strict scrutiny analysis, the reviewing court determines whether "the measures employed by the legislature [are] necessary to serve a compelling state interest, and [are] narrowly tailored thereto, *i.e.*, the legislature must use the least restrictive means consistent with the attainment of its goal." *Id.*

¶ 21 In this instance, respondent raises an equal-protection challenge concerning her ability to regain custody and control over N.D.'s upbringing pursuant to section 2-33(1)(a) of the Juvenile Act (705 ILCS 405/2-33(1)(a) (West 2012)). According to respondent, based on the disparate treatment of indigent parents under the Juvenile Act, she will be unable to pursue such a remedy. "The constitutional guarantee of equal protection requires that the government treat similarly situated individuals in a similar manner." *D.W.*, 214 Ill. 2d at 313, 827 N.E.2d at 482. Thus, to successfully argue an equal-protection claim, respondent must allege and demonstrate that she was treated differently from similarly situated individuals. *In re C.E.*, 406 Ill. App. 3d 97, 112, 940 N.E.2d 125, 138 (2010).

¶ 22 As a preliminary matter, we note respondent's equal-protection argument lacks clarity and is not well-developed. In spite of the shortcomings of respondent's argument, we do analyze the equal-protection claim presented and find respondent fails to make the necessary showing.

¶ 23 First, respondent asserts the Juvenile Act interferes with her fundamental right to parent her child and build a family relationship due to her indigency. However, the Juvenile Act addresses the child's interest in "a loving, stable and safe home environment." *In re D.T.*, 212 Ill. 2d 347, 363-64, 818 N.E.2d 1214, 1226 (2004). The Juvenile Act's stated purpose is to protect "the safety and moral, emotional, mental, and physical welfare of the minor." 705 ILCS 405/1-2(1) (West 2012). To accomplish this goal, "[t]he parents' right to the custody of their child shall

not prevail when the court determines that it is contrary to the health, safety, and best interests of the child." 705 ILCS 405/1-2(3)(c) (West 2012). Nothing in the language of the Juvenile Act prescribes disparate treatment for those who are indigent, nor does it permit the trial court to give special consideration to those who complete privately funded services. Rather, the Juvenile Act and the Children and Family Services Act (20 ILCS 505/1 to 41 (West 2012)) provide guidelines so DCFS can provide services to all parents, both indigent and nonindigent. See 705 ILCS 405/2-10(2) (West 2012), 20 ILCS 505/5(a)(3)(B) (West 2012). Because respondent has failed to show how (1) the Juvenile Act prescribes disparate treatment for indigent parents or (2) she, as an indigent parent, was treated differently than a similarly situated nonindigent parent, this argument fails to state an equal-protection violation.

¶ 24 Second, respondent argues the Juvenile Act violated her right to equal protection because her indigent status precluded her from entering into privately funded remedial services. We note respondent does not challenge the trial court's finding of unfitness or its decision to return N.D. to her father. Thus, respondent does not dispute that she failed to make reasonable progress toward the return home of N.D. during the pendency of the case, which is supported by her numerous failed attempts at substance-abuse treatment and sporadic visits with N.D. The fact that respondent could not take advantage of privately funded remedial services does not demonstrate she has been denied equal protection. Respondent entered into numerous substance-abuse-treatment facilities throughout the pendency of her case, including facilities in central Illinois and a facility in Utah, but she failed to maintain sobriety such that she could demonstrate reasonable progress toward the return on N.D. Nothing in the record or respondent's briefs indicates she would have successfully completed substance-abuse treatment if she had access to a privately funded treatment center, nor has she shown the services provided to indigent parents

under the Juvenile Act are any different from the services provided to nonindigent parents.

Thus, this argument fails to establish an equal-protection violation.

¶ 25 Finally, respondent contends her indigent status precludes her from initiating civil proceedings to regain custody of N.D. Respondent has failed to demonstrate that the Juvenile Act has prevented her from seeking an alternative civil remedy based solely on her indigency, thus treating her differently from other similarly situated nonindigent parents. In fact, respondent appears to argue that because she is indigent, the court should prolong the proceedings and delay permanency for N.D. The order entered by the trial court in this case was available to the court irrespective of the economic status of the respondent. The order was properly entered based on the evidence and the purpose and goals of the Juvenile Act, not respondent's economic status. Speculation as to respondent's future financial wherewithal is not appropriate and has no relevance in determining whether respondent's right to equal protection was violated. Thus, respondent's final argument fails to demonstrate the Juvenile Act violated her right to equal protection and thus precluded her from seeking alternative remedies.

¶ 26 We therefore conclude respondent has not demonstrated the Juvenile Act violates her constitutional right to equal protection by treating indigent parents differently from nonindigent parents.

¶ 27 III. CONCLUSION

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

¶ 29 Affirmed.