2016 IL App (3d) 160299-U

Order filed October 18, 2016

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2016

In re A.S. & F.A.,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
Minors	)	Peoria County, Illinois.
	)	
(The People of the State of	)	
Illinois,	)	Appeal Nos. 3-16-0299 & 3-16-0300
	)	Circuit Nos. 15-JA-310 & 15-JA-311
Petitioner-Appellee,	)	
	)	
v.	)	
	)	Honorable
Tiany'ann H.,	)	Kirk D. Schoenbein,
	)	Judge, Presiding.
Respondent-Appellant).	)	
	)	

PRESIDING JUSTICE O'BRIEN delivered the judgment of the court.
Justices McDade and Schmidt concurred in the judgment.

ORDER

¶ 1 *Held*: The appeal of a shelter care order for one minor was moot, but also not against the manifest weight of the evidence when it was entered after that minor was already adjudicated neglected and the trial court found that it was consistent with the health, safety and best interests of the minor to order shelter care. The order finding the mother dispositionally unfit was also not against the manifest weight of the evidence where the evidence showed that the mother had not completed counseling, had screamed at caseworkers, and had violated an order of protection.

¶ 2 The minors, A.S. and F.A. were adjudicated neglected because of an environment injurious to their welfare under section 2-3(1)(b) of the Juvenile Court Act of 1987, 705 ILCS 405/2-3(1)(b) (West 2012). At the dispositional hearing, the respondent mother, Tiany'ann H., and the fathers of both minors, Arnez S. and Donald A., were found to be unfit. The mother appealed, challenging the trial court's order taking F.A. into protective custody and challenging the finding of unfitness.

¶ 3 FACTS

¶ 4 On December 7, 2015, the State filed juvenile petitions alleging that A.S. and F.A. were neglected due to an injurious environment. The petitions alleged domestic violence between the mother and A.S.'s father, Arnez S. The petitions further alleged that Arnez S. had a criminal history. An order for temporary shelter care of A.S. was entered the same day, placing him in the temporary custody of the Department of Children and Family Services (DCFS). F.A. was to reside with her father, Donald A., and an order of protection was entered requiring all contact between the mother and F.A. to be supervised.

¶ 5 At the adjudication hearing, Arnez S.'s mother testified to an incident that occurred on October 21, 2015, in her apartment where Arnez S. had an argument with her and ripped her shirt. He also pushed down on A.S.'s head while he was being held by another relative. The mother and F.A. were not present on that date. Alyssa Hoerr, a child protection investigator with DCFS, testified to an incident that occurred on November 25, 2015, when she was trying to locate A.S. and F.A. in response to an earlier report of a risk of harm to the children. Hoerr observed Arnez S. put F.A. in her car seat and then get in the vehicle holding A.S. Hoerr approached the vehicle and asked if Arnez S. had a car seat for the infant, but there was not one.

Arnez became upset, and Hoerr called the police. The police arrived, and A.S. and F.A. were removed from the home pursuant to a safety plan and sent home with Arnez's mother.

¶ 6 The State then offered a proffer that Peoria police officer Elizabeth Blair would testify that she responded to an apartment in Peoria on the morning of November 25, 2015. Arnez told Blair that the mother had woken up that morning and started scratching Arnez. Officer Brittany Martzluf would testify that she spoke with the mother on the evening of that same day. The mother told Martzluf that she got into an argument with Arnez that morning and that it became physical. Martzluf observed bruising on both sides of the mother's face. Peoria Police Officer William Calbow Jr., would testify that he saw a man and woman arguing on October 2, 2015, while off-duty as a security guard at the mall. Calbow would testify that he spoke to both Arnez and the mother, and they both stated that they argued, it did not become physical, but that the mother spit on Arnez. The mother told Calbow that she only did so after Arnez spit on her.

¶ 7 Peoria Police Officer Jarvis Harrison would testify that he was dispatched and talked to the mother on August 19, 2015. She told Harrison that she got in an argument with Arnez and that he broke her cell phone, hit her with a belt, punched her in the mouth and stomach, and broke her front windshield with a rock. She was pregnant with A.S. at the time. Hoerr would testify that initially the mother told her the incident of November 25, 2015, was not physical, but later told Hoerr that Arnez kicked her in the head, put a knife to her face and neck, hit her with a belt, and choked her. The State would also offer records of Arnez's convictions. The trial court found that the State proved by a preponderance of the evidence an injurious environment for both minors and both were adjudicated neglected.

¶ 8 Prior to the start of the dispositional hearing, there was a request for the shelter care of F.A. The State offered a proffer that Angela Venzon, a caseworker with the Center for Youth

and Family Solutions (CYFS), would testify in accordance with her dispositional report dated February 9, 2016, and two addendums, dated February 23, 2016, and March 8, 2016. The proffer indicated that Donald, F.A.'s father, continued to use cannabis and was not home when A.S.'s grandmother attempted to return F.A. after a sibling visit. Also, Donald allowed the mother to pick up F.A., in violation of the order of protection. The mother testified that she thought that her parents could supervise her visits with F.A., and she brought her father along to pick up F.A. Brenda Cotton, a family support worker at CYFS testified that she did not tell the mother that her parents were allowed to supervise her visits with F.A. Cotton did tell the mother on one occasion that she could go to a restaurant where her parents were eating with F.A. Donald admitted that he allowed the mother to pick up F.A., but he thought the mother's father was in the car, although he never looked. The trial court found Donald not to be credible and believed that he allowed the mother to pick up F.A. unsupervised. The trial court ordered shelter care for F.A., finding that it was in F.A.'s best interest.

¶ 9 The dispositional hearing was held on May 3, 2016. The trial court considered the dispositional report, along with four addendums. The latest addendum indicated that Cotton and a supervisor made an unannounced visit to the relative foster placement of F.A. They found the foster mother, who was the mother's sister, absent and three boys around the ages of 7 and 8 home alone. F.A. was not there. Eventually, Cotton located F.A., and she was removed to a traditional foster home. However, the mother's response to the incident was to scream at the caseworker, not her sister, and the trial court found that the mother did not seem honest regarding F.A.'s whereabouts. The addendum also recommended a psychological evaluation of the mother. Venzon testified that the mother had completed her required domestic violence class and that she had started individual counseling. The trial court found the mother and both fathers to be unfit.

The mother appealed the order removing F.A. from her father's custody and the dispositional order finding that she was unfit.

¶ 10 ANALYSIS

¶ 11 The mother argues that the trial court committed reversible error by taking F.A. into protective custody. She argues that the judicial notice of the dispositional reports and the order of protection were improper. The State argues that the shelter care issue was moot.

¶ 12 "An appeal becomes moot where the issues involved in the trial court no longer exist because events occur which render it impossible for the reviewing court to grant effective relief." *In re A.D.W.*, 278 Ill. App. 3d 476, 480 (1996) (citing *In re A Minor*, 127 Ill.2d 247, 255 (1989)). In *A.D.W.*, the trial court found probable cause to place the minor in temporary protective custody. Thereafter, the trial court adjudicated the minor dependent and neglected and, at the dispositional hearing, found the father unable to care for or protect the minor and made the minor a ward of the court. *A.D.W.*, 278 Ill. App. 3d at 479-80. The appellate court found that the appeal of the findings at the shelter care hearing was moot because there was no relief available to respondent. *Id.* at 480. The appellate court noted that, even if it determined that the trial court erred at the shelter-care hearing, DCFS would still retain custody of the minor pursuant to the findings at the subsequent dispositional hearing. *Id.* Such is the case here, and the appeal of the shelter care order with respect to F.A.. is moot.

¶ 13 In any event, even if the issue was not moot, we would find no abuse of discretion or that the judgment was against the manifest weight of the evidence. At a temporary custody hearing, a trial court determines whether there is probable cause to believe that a minor is abused, neglected, or dependent and, if it is consistent with the health, safety and best interests of the minor, the court may order shelter care. 705 ILCS 405/2-10 (2) (West 2012). The temporary

custody hearing is preliminary in nature and the focus is on the necessity of removal for the protection of the minor. *In re I.H.*, 238 Ill. 2d 430, 442 (2010). The mother contends that the trial court should not have taken judicial notice of the dispositional report and the order of protection, citing to section 2-18(1) of the Juvenile Court Act, 705 ILCS 405/2-18(1) (West 2012). However, that section specifically refers to the standard of proof and rules of evidence applicable at the adjudicatory hearing, where the trial court makes a finding on abuse or neglect. 705 ILCS 405/2-18(1) (West 2012); *In re I.H.*, 238 Ill. 2d at 441. There is no finding of abuse or neglect at the temporary custody hearing, only a finding of probable cause. *In re I.H.*, 238 Ill. 2d at 441. Thus, the Supreme Court concluded in *In re I.H.* that the evidentiary limitation in another subsection of section 2-18 of the Juvenile Court Act, section 2-18(4)(c), was inapplicable to temporary custody hearings. *Id.* We find that the trial court appropriately considered court filings in making its determination at the temporary custody hearing for F.A. Also, the record is clear that the trial court conducted its own questioning of the witnesses, acting affirmatively to illicit the necessary information to determine F.A.'s best interest, but not departing from its job as the judge. See *In re N.T.*, 2015 IL App (1st) 142391, ¶ 42 ("[T]he [Juvenile Court] Act requires that [the court] must act affirmatively, and perhaps at times aggressively, to ferret out information before it can decide that a child's interest is better served by removal from the family." (quoting *In re Patricia S.*, 222 Ill.App.3d 585, 592 (1991)).

¶ 14 The trial court is vested with wide discretion in its determination of the best interests of the minor in temporary custody hearings, and that determination will not be disturbed on appeal absent an abuse of discretion or where the judgment is against the manifest weight of the evidence. *In re A.H.*, 195 Ill. 2d 408, 425 (2001). In this case, due to the timing and the circumstances of F.A.'s shelter care hearing, the trial court had already adjudicated F.A.

neglected, a finding that the mother does not challenge. The testimony at the hearing, along with the proffer offered by the State, established that it was consistent with F.A.'s health, safety, and best interest to order shelter care.

¶ 15 The mother argues that the trial court's dispositional finding that she was unfit was against the manifest weight of the evidence. A trial court may make a child a ward of the court if the trial court finds that the parents are unfit, unwilling, or unable for some reason, other than financial circumstances alone, to care for, protect, train, or discipline the minor and that the health, safety, and best interest of the minor will be jeopardized if the minor remains in the custody of the parents. 705 ILCS 405/2-27(1) (West 2012). At this stage, where a finding of unfitness will not result in a complete termination of parental rights, the State has the burden of proving unfitness by a preponderance of the evidence. *In re April C.*, 326 Ill. App. 3d 245, 257 (2001). On review, the trial court's dispositional decision will be reversed only if the findings of fact are against the manifest weight of the evidence or the trial court committed an abuse of discretion by selecting an inappropriate disposition. *In re Ta.A.*, 384 Ill. App. 3d 303, 307 (2008). A determination will be found to be against the manifest weight of the evidence only if the record shows that the opposite conclusion is clearly evident. *April C.*, 326 Ill. App. 3d at 257.

¶ 16 The trial court's decision that the mother was an unfit parent was not against the manifest weight of the evidence. The trial court found that both minors were neglected due to the domestic violence between the mother and Arnez. The mother stipulated that the State could prove the allegations of domestic violence in the petition. Even though the mother completed her domestic violence program, she had not completed individual counseling. The trial court found that the mother's response was not appropriate when the caseworkers could not locate F.A.

Also, the mother violated the order of protection and had unsupervised contact with F.A. Since the trial court's finding of unfitness was not against the manifest weight of the evidence, we affirm that finding.

¶ 17 CONCLUSION

¶ 18 The judgments of the circuit court of Peoria County are affirmed.

¶ 19 Affirmed.