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2017 IL App (3d) 160685-U

Order filed September 8, 2017

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2017

<i>In re</i> E.D.,)	Appeal from the Circuit Court
)	of the 10th Judicial Circuit,
a Minor,)	Peoria County, Illinois,
)	
(The People of the State of Illinois,)	
)	
Petitioner-Appellee,)	Appeal No. 3-16-0685
)	Circuit No. 16-JA-156
v.)	
)	
Dwayne D.,)	Honorable
)	Kirk D. Schoenbein,
Respondent-Appellant).)	Judge, Presiding.

JUSTICE WRIGHT delivered the judgment of the court.
Justices O'Brien and Schmidt concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court properly found the minor to be neglected and father to be unfit.

¶ 2 Following an adjudication of neglect and a dispositional hearing, the trial court found father unfit and made the minor a ward of the court. Father appeals the trial court's neglect and fitness rulings.

FACTS

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¶ 4

On June 27, 2016, the Department of Children and Family Services (DCFS) filed a two-count petition alleging mother and father neglected E.D., born June 20, 2016. The petition alleged E.D. was neglected because E.D.’s meconium sample, taken on June 21, 2016, tested positive for cocaine. In addition, the petition alleged both of E.D.’s parents were previously found unfit in Peoria County case Nos. 14-JA-224 and 14-JA-225,¹ and that both parents failed to complete services in order to be restored to fitness. Further, the allegations included facts asserting mother had a criminal history and experienced mental health issues resulting in both auditory and visual hallucinations.

¶ 5

On September 19, 2016, the trial court conducted an adjudicatory hearing. As a preliminary matter, the State introduced various records including E.D.’s hospital records, mother’s health clinic records, FamilyCore counseling and visitation records, Help at Home records, and certified copies of court orders in Peoria County case Nos. 14-JA-224 and 14-JA-225. Following admission of the State’s exhibits, the State called Officer Clay Blum of the Peoria police department to testify. Blum testified that on April 22, 2016, he was summoned to help with an “involuntary commitment” of mother and witnessed mother acting frightened while she was experiencing both auditory and visual hallucinations.

¶ 6

According to father’s testimony before the court, he cooperated with DCFS in the prior juvenile case, completed a drug and alcohol assessment and treatment, provided clean drug drops with one exception, participated in counseling, completed a parenting class, obtained appropriate, stable housing, and missed only two or three scheduled visitations. Father admitted to a positive result for alcohol in a drug drop in May 2016.

¹The bases for father’s previous finding of unfitness were father’s criminal record and substance abuse issues.

¶ 7 Following arguments, the court found E.D. had been neglected. The court found the State established all facts supporting the petition by a preponderance of the evidence.

¶ 8 On October 31, 2016, the trial court conducted a dispositional hearing. The dispositional report submitted to and considered by the court included an integrated assessment, an addendum, the dispositional reports from Peoria County case Nos. 14-JA-224 and 14-JA-225. The court also received reports from Amy Stufflebeam, Meggan Goforth, Sharon Monier, Austin Williams, and Frank Disney documenting an incident on August 23, 2016. On that date, father came to FamilyCore to visit his children, including E.D. During this visit, caseworkers detected that father had a strong odor of alcohol about his person and had glassy bloodshot eyes. The caseworkers noticed father was speaking very loudly to his children and asked his other child for a kiss approximately 10-15 times. In response to the multiple requests for a kiss, the child ignored father and appeared upset. Thereafter, father dropped his phone. Father was unsteady when he leaned over to pick up the phone while holding E.D. Based on this observation, the caseworkers decided to cut the visit short. When Goforth and Stufflebeam requested father to submit to testing to determine whether father was under the influence of any substances, father refused to submit to testing, became agitated, and argued with the caseworkers. Father refused to voluntarily leave the building until the caseworkers threatened to call the police.

¶ 9 Father testified that he had completed all the required services except for counseling and drug drops. Father testified that he had no arrests in the last couple of years. Father believed he had a clean residence and plenty of space to house E.D. Father said he had not missed any visits with E.D., and would like E.D. returned to his custody.

¶ 10 The court questioned father about the events which took place during father's visit with E.D. on August 23, 2016. Father denied drinking that day or the night before. Father admitted he

used to drink a few beers every once in a while, but claimed to have reduced the frequency of this behavior. During cross-examination father claimed he could not complete the requested drug drop on August 23, 2016, because he did not have transportation. However, father admitted that DCFS provided him with a bus pass to reach the testing facility. Father also claimed he could not report for substance abuse testing because he had to watch his brother on August 23, 2016.

¶ 11 The State called Amy Stufflebeam to testify. Stufflebeam testified that father was making progress during counseling sessions. Stufflebeam explained that father has difficulty parenting both of his children at the same time but is parenting E.D. satisfactorily.

¶ 12 Following the parties' arguments, the trial court expressed concerns about father's denial that he was intoxicated during the August 23, 2016, visit which contradicted the consistent reports of numerous caseworkers. The trial court found that father's testimony was not credible on the issue. The court found father remained unfit due to father's ongoing substance abuse issues. However, the court did believe father was close to obtaining fitness. The court made E.D. a ward of the court, and appointed DCFS as guardian.

¶ 13 Father filed a timely notice of appeal on November 4, 2016.

¶ 14 ANALYSIS

¶ 15 Father raises two issues on appeal. Father argues the trial court's neglect finding was against the manifest weight of the evidence. Father also argues the trial court's finding of dispositional unfitness was against the manifest weight of the evidence. The State argues the trial court properly found the child was neglected and that father remained unfit.

¶ 16 I. Adjudication of Neglect

¶ 17 Count I of the State's petition alleged E.D. was neglected pursuant to section 2-3(1)(c) of the Juvenile Court Act of 1987 (the Act). 705 ILCS 405/2-3(1)(c) (West 2016). Section 2-3(1)(c)

of the Act states that those who are neglected include: “any newborn infant whose ***
meconium contains any amount of a controlled substance as defined in subsection (f) of Section
102 of the Illinois Controlled Substances Act.” *Id.*

¶ 18 During neglect proceedings, the State has the burden of proving the allegation of neglect
by a preponderance of the evidence. *In re K.L.S-P.*, 383 Ill. App. 3d 287, 291 (2008). “Only a
single ground for [child] neglect need be proven.” *In re Faith B.*, 216 Ill. 2d 1, 14 (2005). A trial
court’s neglect determination will not be overturned on appeal unless the ruling is against the
manifest weight of the evidence. *In re Arthur H.*, 212 Ill. 2d 441, 464 (2004). A trial court’s
determination is against the manifest weight of the evidence only when “the opposite conclusion
is clearly evident” or where the determination is “unreasonable, arbitrary, or not based on the
evidence presented.” *In re D.F.*, 201 Ill. 2d 476, 498 (2002).

¶ 19 The State conclusively proved the first count of the petition by admitting undisputed
hospital records documenting that E.D.’s meconium sample tested positive for the presence of
cocaine one day after E.D.’s birth. Accordingly, because the State presented conclusive evidence
concerning this allegation in the petition, the trial court did not err when it found E.D. neglected.

¶ 20 II. Fitness Finding

¶ 21 Father also argues the trial court erred by finding father remained dispositionally unfit.
During dispositional proceedings, the trial judge is charged with determining whether a parent is
currently fit to care for the minor and whether the minor’s health, safety, and interests are better
served by becoming a ward of the court. 705 ILCS 405/2-23(1)(a) (West 2016); *In re E.S.*, 324
Ill. App. 3d 661, 667 (2001); 705 ILCS 405/2-21(2) (West 2016); *In re N.B.*, 191 Ill. 2d 338, 343
(2000). Trial courts weigh dispositional fitness determinations under section 2-27 of the Act that
do not result in the complete termination of parental rights by a preponderance of the evidence

standard. *In re April C.*, 326 Ill. App. 3d 245, 257 (2001); 705 ILCS 405/2-27 (West 2016). On appeal, a trial court's fitness determination will not be disturbed unless the determination was against the manifest weight of the evidence. *In re T.B.*, 215 Ill. App. 3d 1059, 1062 (1991).

¶ 22 The trial court found that father remained unfit due to the incident which occurred on August 23, 2016, during father's visit with E.D. Father argues the State's evidence did not establish he was under the influence of any substance on August 23, 2016. In addition, father argues he adequately addressed the previous grounds for his finding of unfitness related to his substance abuse and prior criminal history. In support of this contention, father asserted that he had successfully completed court-ordered parenting classes, was participating in substance abuse counseling that included random testing, and was consistently visiting E.D.

¶ 23 The trial court determined that father was not a credible witness concerning the events which occurred on August 23, 2016. At the dispositional hearing, the judge viewed reports from five separate caseworker witnesses who documented an incident in which father showed up to E.D.'s child visit speaking loudly, exhibited glassy bloodshot eyes, and smelled overwhelmingly of alcohol. Caseworkers were afraid father was going to drop E.D., so they attempted to end the visit and requested father to submit to testing to determine whether he was under the influence of alcohol. At this point, father became agitated and would not leave until caseworkers threatened to call the police. Father's criminal history includes multiple arrests for driving under the influence and an arrest for possession of a controlled substance. Contrary to father's position, father's behavior during the August 23, 2016, visit with E.D. refuted father's testimony that he had been cured of his substance abuse issues.

¶ 24 The documents before the court at the time of the dispositional hearing also indicated that father had ongoing difficulties parenting both of his children at the same time. Further, the court received testimony that father did not show up for a visit on August 30, 2016.

¶ 25 For the aforementioned reasons, we conclude the trial court did not abuse its discretion by finding that father remained unfit. However, taken as a whole, the documentation before the court showed that father is making significant progress toward attaining fitness in the future.

¶ 26 **CONCLUSION**

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

¶ 28 Affirmed.