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2017 IL App (3d) 160688-U

Order filed March 9, 2017

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2017

<i>In re</i> A.P.,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
a Minor,	)	Peoria County, Illinois,
	)	
(The People of the State of Illinois,	)	
	)	
Petitioner-Appellee,	)	
	)	
v.	)	Appeal No. 3-16-0688
	)	Circuit No. 16-JA-139
Dyrice P. and Luz E.,	)	
	)	
Respondents,	)	
	)	
and	)	
	)	
LaSharla P.,	)	Honorable
	)	Kirk D. Schoenbein,
Guardian-Appellant).	)	Judge, Presiding.

JUSTICE WRIGHT delivered the judgment of the court.
Justice Carter concurred in the judgment.
Justice McDade dissented.

ORDER

¶ 1 *Held:* The trial court's finding that A.P.'s best interests supported the appointment of DCFS as guardian was not against the manifest weight of the evidence.

¶ 2 On the same date of the State’s petition alleging the parents neglected A.P. by placing her in an environment injurious to her welfare, the parents executed documents giving temporary guardianship of their newborn child, A.P., to appellant. After finding A.P. to be a neglected minor, the court made A.P. a ward of the court, terminated appellant’s temporary guardianship, and appointed DCFS guardian of the infant. Appellant appeals the trial court’s ruling that it was in A.P.’s best interest to terminate appellant’s guardianship.

¶ 3 FACTS

¶ 4 On June 6, 2016, the State filed a neglect petition alleging mother and father neglected A.P., born on May 30, 2016, due to an injurious environment in that mother and father had previously been found unfit parents in case No. 15-JA-11. The petition alleged both parents were previously found unfit, in part, due to domestic violence, failing to cooperate with DCFS requests to see the minor, mother’s failure to report the birth of A.P. to her caseworker, and A.P.’s guardian not allowing DCFS to see the child. The petition also alleged neither parent completed services necessary to restore their fitness.

¶ 5 On the same date, June 6, 2016, mother and father executed a temporary guardianship agreement and designated LaSharla P. (appellant) as the legal custodian of their newborn daughter, A.P. According to the subsequent social service investigation, appellant was mother’s purported godmother.

¶ 6 After the shelter care hearing took place on June 7, 2016, the trial court placed A.P. with appellant and entered an order mandating appellant to cooperate with DCFS, sign releases as requested, provide information as requested, and allow DCFS access to A.P. at all times. On June 9, 2016, the court entered an order which stated that appellant was the “guardian,” and added her as a party to the case.

¶ 7 On July 14, 2016, The Center For Youth and Family Solutions (the Agency) filed a status report highlighting that appellant had not been fully cooperative with DCFS due to sluggish responses to DCFS inquiries. Therefore, the Agency requested that DCFS be named guardian of A.P. However, a subsequent status report filed on July 28, 2016, informed the trial court that appellant had become cooperative in her role as guardian and recommended that A.P. remain in appellant's care and custody.

¶ 8 Prior to the adjudicatory hearing, the State amended the neglect petition. An adjudicatory hearing took place on September 21, 2016. At the hearing, the parties stipulated to the events related in the amended neglect petition. The court found that A.P. was neglected by her parents.

¶ 9 The trial judge ordered the Agency to prepare a social history report on appellant. The report, filed November 2, 2016, noted that appellant has been cooperative and supportive of the parent/daughter relationship, has demonstrated an ability to care for A.P.'s health, safety, and well-being, and the social worker has no concerns with appellant's guardianship. According to the report, the 55-year-old appellant resides in a rental home, has two adult children, is currently unemployed, and her only source of income is social security benefits. Further, the report indicated appellant was arrested in Tazewell County in 2016.

¶ 10 On November 2, 2016, the trial court conducted a dispositional hearing. During the hearing, the prosecutor asked that DCFS be granted guardianship over the minor. The prosecutor argued the change was necessary because if DCFS became A.P.'s guardian, appellant would be eligible to receive financial assistance as a foster mother. The prosecutor also noted that appellant was "doing a fine job," and argued that this case did not appear to be a short-term guardianship situation.

¶ 11 It is undisputed that the permanency goal for A.P. was a return home goal that would not be achieved within the short time frame applicable to the temporary guardianship. Appellant’s counsel acknowledged problems may arise because the term of temporary guardianship lasts for only one year. However, appellant’s attorney, father’s attorney, and the guardian *ad litem* (GAL) argued that respondent should remain A.P.’s court-appointed guardian to maintain stability for the infant.

¶ 12 After hearing arguments, the trial judge found it was in A.P.’s best interests to be made a ward of the court and appointed DCFS as guardian with the right to place the child. The trial judge found that both mother and father remained unfit due to multiple ongoing issues involving domestic violence and the presence of firearms in the parental household.¹

¶ 13 The trial judge explained he was making A.P. a ward of the court because: “I want more control and say in the situation.” The trial judge added that appellant would be a “very good placement” for A.P., would feed, comfort, bathe, and clothe A.P., and that there was no difference between appellant being a foster mother as opposed to a guardian. The trial judge stated his primary consideration was the best interests of A.P.

¶ 14 In the dispositional order dated November 2, 2016, the trial judge carefully noted that appellant “has done a fine job with the minor and encourages the agency to place [the minor] with her.” However, after terminating appellant’s guardianship the court dismissed appellant as a party in the proceeding.

¶ 15 On November 4, 2016, appellant filed a timely notice of appeal.

¹The record remains unclear as to whether the parents even contested their fitness at the dispositional hearing.

¶ 16

ANALYSIS

¶ 17

On appeal, appellant asserts the statutory best interest factors weigh in favor of appellant's continuing guardianship. Conversely, the State argues the trial judge's finding that A.P.'s best interests favored the termination of appellant's short-term guardianship and the appointment of DCFS as guardian was not against the manifest weight of the evidence.

¶ 18

In this case, A.P.'s parents arranged for a short-term guardian pursuant to section 11-5.4 of the Probate Act of 1975 (755 ILCS 5/11-5.4 *et seq.* (West 2014)). This section provides that "a court may vacate any short-term guardianship for the minor appointed under this Section, provided the vacation is consistent with the minor's best interests." 755 ILCS 5/11-5.4(e-5) (West 2014).

¶ 19

When making a best interest determination, the court must weigh certain factors. The trial court's considerations should include: (1) the physical safety and welfare of the child, including food, shelter, clothing, and health; (2) the development of the child's identity; (3) the child's background and ties, including familial, cultural, and religious; (4) the child's sense of attachments; (5) the child's wishes and long-term goals; (6) the child's community ties, including church, school, and friends; (7) the child's need for permanence; (8) the uniqueness of every family and child; (9) the risks attendant to entering and being in substitute care; and (10) the preferences of the persons available to care for the child, *inter alia*. 705 ILCS 405/1-3(4.05) (West 2016); *In re A.F.*, 2012 IL App (2d) 111079, ¶ 45.

¶ 20

A trial court's best interest determination is accorded great deference as the trial court is in the best position to assess the conduct and demeanor of the witnesses. *In re B.B.*, 386 Ill. App. 3d 686, 698 (2008). A trial judge's best interest determination will not be reversed on appeal unless it is against the manifest weight of the evidence. *Id.* at 697-98. Such a determination is

against the manifest weight of the evidence only if the opposite conclusion is clearly evident, or the determination is unreasonable, arbitrary, or not based on the evidence presented. *Id.*

¶ 21 At the time of the hearing, A.P. was approximately five months old. Consequently, many of the statutory best interests factors do not apply to A.P. However, based on this record, the trial court had information that the return home goal would not be achieved within the short duration of a temporary guardianship. The court noted appellant was providing very good care for A.P. at all times, but recognized her legal authority to do so would terminate when the short-term guardianship expired.

¶ 22 Although appellant appears to be seeking a more permanent guardianship role, the trial judge's comments indicate that he believed DCFS guardianship provides the court, and the parties, with a more effective way of monitoring mother's progress towards fitness and is thus in A.P.'s best long-term interests. Based on this record, we cannot definitively say that the trial judge's decision was unreasonable, arbitrary, or not based on the evidence presented. Therefore, the trial court did not err when it appointed DCFS guardian of A.P. and terminated appellant's short-term guardianship while encouraging DCFS to allow the minor to remain in the current placement with appellant.

¶ 23 CONCLUSION

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

¶ 25 Affirmed.

¶ 26 JUSTICE McDADE, dissenting.

¶ 27 The majority affirms the order of the circuit court of Peoria County discharging LaSharla P. as guardian of the minor, A.P., awarding her custody of the child, and appointing DCFS the official guardian. For the reasons that follow I respectfully dissent from that decision.

¶ 28 The initial guardianship arrangement between the parents and the person they selected to care for their newborn child was totally legal. The only basis on which the court could appropriately divest her of guardianship was to find that it was in the best interests of A.P. to do so. In making that determination, the factors to be considered are those set out in the statute which the majority has cited: 705 ILCS 405/1-3(4.05) (West 2016). Everyone, including the trial judge, agreed that those factors favored the temporary guardian: she “was doing a fine job” and the court found that A.P. should remain in her custody. Nonetheless, she was removed as guardian in favor of DCFS. Three reasons were given for that decision.

¶ 29 First, the trial court wanted “more control and say in the situation.” But it had all the control it needed over the parents because the claims against them were pending before it. Also, if problems were to develop with the guardian at any time, the court had full authority to make a new best interest determination and change guardianship. More importantly, the court having “more control and say” is not one of the statutory factors and that consideration should not drive the decision.

¶ 30 Second, the temporary guardianship would expire. The easy and reasonable resolution of that concern is that the court could (and, in my opinion, should) by order, have, by its order, appointed her the child’s guardian in the same way that it did DCFS.

¶ 31 Third, the court suspected “there was, you know, a little bit of a plan here. ‘How can we do an end around the case agency? Let’s come up with our own plan.’ ” The statutory language permitting even “adjudicated parent(s) whose rights have not been terminated” to appoint a short term guardian “without court approval,” seems to contemplate and validate exactly what the court suspected had happened. See 755 ILCS 5/11-5.4(a) (West 2016). This, again, is not one of the statutory factors nor is legal reliance on the statute a legitimate basis to terminate the

guardianship of a person who has been fulfilling her responsibilities to the child in a manner that elicited praise and approval from the trial court.

¶ 32 I believe we should find that the trial court's conclusion that the guardian was carrying out her duties to the child appropriately was correct and its decision terminating the guardianship was unreasonable, arbitrary, and not based on either the evidence presented or either of the two applicable statutes.