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2017 IL App (3d) 170066-U

Order filed September 14, 2017

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

2017

<i>In re</i> S.M.,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
a Minor	)	Peoria County, Illinois,
	)	
(The People of the State of Illinois,	)	
	)	Appeal No. 3-17-0066
Petitioner-Appellee,	)	Circuit No. 16-JA-236
	)	
v.	)	
	)	
Brandon M.,	)	Honorable
	)	Katherine Gorman Hubler,
Respondent-Appellant).	)	Judge, Presiding.

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

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**ORDER**

- ¶ 1       *Held:* The trial court properly found father to be dispositionally unfit.
- ¶ 2       On October 7, 2016, the State filed a petition alleging S.M. was neglected based on an environment injurious to his welfare. On January 12, 2017, the trial court adjudicated S.M. neglected. On the same date, the trial court found father to be an unfit parent. Father appeals only the trial court's finding that he is an unfit parent.

¶ 3

## FACTS

¶ 4

On October 7, 2016, the State filed a petition alleging mother and father neglected S.M. born October 3, 2016, because S.M.'s environment was injurious to his welfare. The petition alleged: mother was previously found unfit in Peoria County case Nos. 11-JA-92, 11-JA-93, 13-JA-220, and 13-JA-221, and that there had been no subsequent finding of fitness. The petition further alleged that mother had a substance abuse problem and mental health difficulties including: anxiety disorder, bipolar disorder, histrionic personality disorder, and borderline antisocial personality features. In addition, the petition alleged mother had not completed services that would result in a finding of fitness and had a criminal history.

¶ 5

The petition also alleged father is a registered juvenile child sex offender following an adjudication of delinquency for the offense of aggravated criminal sexual assault, and was convicted of DUI in 2011.

¶ 6

On January 12, 2017, after an evidentiary hearing, the trial court adjudicated S.M. neglected due to an injurious environment. Thereafter, the court conducted a dispositional hearing. The dispositional report submitted to the court indicated when father was 12 years of age he was adjudicated delinquent due to an aggravated criminal sexual assault. Father has since completed several sex offender treatment programs and was last determined to be at a low level of risk to reoffend in 2008.

¶ 7

Throughout father's adolescence, he was incarcerated numerous times and violated parole following his release on two separate occasions. Father was also convicted of DUI in 2011. Father reported that he lives with his mother, but plans to obtain his own housing once he is financially stable. Father revealed to the caseworker preparing the dispositional report that his mother and her paramours engaged in domestic violence and regularly used alcohol and drugs

including: crack cocaine, methamphetamine, marijuana, and prescription medication. Father's past substance abuse issues include the usage of: alcohol, marijuana, cocaine, OxyContin, and Ritalin. Father reported to the caseworker that he has been diagnosed with multiple sclerosis and reported that he intends to apply for medicinal marijuana. Father reported that he had a GED and worked full time. However, father later reported to the caseworker that he was currently unemployed.

¶ 8 According to the report, father attended all of his visits with S.M. except one, has reliable means of transportation, and has the support of his family and friends. The dispositional report also indicated that father has two additional children but has sporadic and infrequent contact with those children.

¶ 9 Zach Teague, a caseworker, testified at the dispositional hearing. Teague indicated that father's integrated assessment showed that father had a history of substance abuse. Teague testified that father resided with his biological mother, but explained to the court that Teague had not been able to visit this home due to the short time the matter had been on Teague's caseload.

¶ 10 Father testified before the court and confirmed that he resided with his mother in a three bedroom home in Peoria, Illinois. Father stated that his mother's home was clean and safe. Father admitted that someone reported his mother's home was unsafe when father and his other son resided in that household in the past. Father advised the court that DCFS investigated this allegation regarding the unsafe conditions in his mother's household. Further, the testimony revealed that mother was the subject of a previous DCFS investigation for neglect because mother's former boyfriend sexually abused and beat father's sister back when father was six or seven years old.

¶ 11 Father testified that he had not engaged in any sex offender treatment since 2008. Father admitted to getting a DUI in 2011, but claimed he did not drink much anymore. Father stated that he missed a visit with his son on January 3, 2017, because he had a flat tire and his cell phone was stolen so he couldn't call caseworkers.

¶ 12 Following the hearing, the court found father to be an unfit parent based on father's history and his relationship with his mother. The trial court ordered father to complete a sex offender evaluation, drug drops, and parenting classes in hopes that father would progress toward parental fitness. Father filed a timely notice of appeal on January 25, 2017.

¶ 13 ANALYSIS

¶ 14 On appeal, father argues the trial court's fitness finding was against the manifest weight of the evidence. Father contends that his prior status as a registered sex offender, prior substance abuse, and the fact that he resides with his mother do not support the court's finding of dispositional unfitness. The State argues that the trial court properly found father to be an unfit parent based on the evidence.

¶ 15 Trial courts weigh dispositional fitness determinations that do not result in the complete termination of parental rights under section 2-27 of the Juvenile Court Act of 1987 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). The trial court's ruling will be found to be against the manifest weight of the evidence only when the opposite conclusion is clearly evident or where the trial court's determination is unreasonable, arbitrary or not based on the evidence presented. *In re D.F.*, 201 Ill. 2d 476, 498 (2002). During dispositional proceedings, the court focuses on an

individual's fitness to act as a parent, not the best interests of the child. See *In re Latifah P.*, 315 Ill. App. 3d 1122, 1128 (2000).

¶ 16 In this case, the dispositional report documents that father is currently unemployed and does not have stable, safe, or suitable housing for an infant since he resides with his mother, who has a history of DCFS involvement, substance abuse, and domestic violence. In addition, father was recently convicted of DUI in 2011. Father also has a disconcerting prior history that includes an adjudication of delinquency and more than one parole violation.

¶ 17 Based on this record, the trial court's ruling was not against the manifest weight of the evidence presented to the court.

¶ 18 CONCLUSION

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

¶ 20 Affirmed.