2017 IL App (3d) 170273-U

Order filed November 7, 2017

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2017

In re K.C.,	)	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. 3-17-0273
	)	Circuit No. 17-JA-31
v.	)	
	)	
C.B.,	)	
	)	Honorable Katherine Gorman,
Respondent-Appellant).	)	Judge, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court.
Justices McDade and Wright concurred in the judgment.

ORDER

¶ 1 *Held*: The State's evidence supported the trial court's dispositional fitness finding.

¶ 2 On March 28, 2017, the trial court adjudicated K.C. neglected. The same day, the court held a dispositional hearing in which it found respondent father and K.C.'s mother unfit, deemed K.C. a ward of the court, and assigned guardianship to the Department of Children and Family

Services (DCFS). Respondent appeals the trial court's dispositional fitness finding. He does not challenge the court's adjudication order. We affirm.

¶ 3 BACKGROUND

¶ 4 On February 7, 2017, days after K.C.'s birth, the State filed a petition claiming that K.C. was neglected due to an injurious environment, as defined by the Juvenile Court Act of 1987 (Act) (705 ILCS 405/2-3 (West 2016)). The petition alleged that K.C.'s parents "have been involved in domestic violence," and K.C.'s mother refused "to separate from [respondent] and/or … follow DCFS directions." The petition also asked the court to name DCFS as K.C.'s guardian pursuant to section 2-27 of the Act (705 ILCS 405/2-27 (West 2016)).

¶ 5 The petition alleged that respondent physically abused K.C.'s mother and neglected his children on several occasions. On February 28, 2013, respondent "punched the mother on the arm, pushed her down and kicked her on the privates, threw her cell phone and the phone struck [K.C.'s sibling]." When police responded to this incident, K.C.'s mother turned over respondent's .22-caliber handgun. She told police that respondent threatened her with the gun several weeks earlier. In 2013, the State charged respondent with possessing a firearm after his Firearm Owner's Identification Card (FOID) expired; the federal government charged respondent with possessing a firearm "with an obliterated serial number." The petition does not state whether respondent's .22-caliber handgun from the February 28 incident gave rise to these charges.

¶ 6 On January 23, 2015, respondent "punched [K.C.'s] mother on the face a few times causing injury." On May 21, 2016, respondent "hit the mother" in front of K.C.'s four-year-old sibling. During the incident, respondent pushed K.C.'s four-year-old sibling down. Afterward, the child told police that "he saw his dad make his mom's mouth bleed." However, K.C.'s

mother told police that the child did not see the incident and asked them not to take her children away.

¶ 7 DCFS opened a case following the May 21 incident. During a home visit on July 8, respondent walked into the house to get some clothing. K.C.'s mother refused to identify respondent to the caseworker, and respondent did not participate in the visit.

¶ 8 On July 14, K.C.'s mother signed a safety plan stipulating that respondent "would not enter the home nor have unsupervised contact with the minors." The next day, July 15, respondent bit K.C.'s mother on the arm in front of two of their children during an argument in the car. During the 15 to 20 minute car ride, they left K.C.'s two-year-old sibling home alone.

¶ 9 On July 24, K.C.'s mother called the police after respondent refused to give her the car keys. She told police that respondent "punch[ed] her on the shoulder" in front of K.C.'s sibling earlier that morning.

¶ 10 Respondent answered the petition on February 28, 2017. He stipulated to the allegations concerning the events on July 15, 2016, and his criminal history, but denied or claimed lack of knowledge as to the other allegations.

¶ 11 On March 14, 2017, FamilyCore filed a dispositional hearing/social history report. The report stated that respondent failed to maintain sufficient contact with his caseworker and ignored phone calls. He refused to enroll in parenting, domestic violence, or counseling courses without a court order. He also failed to regularly attend his scheduled weekly visits with his children. When he attended, he would often arrive late and/or leave early. FamilyCore recommended that respondent follow his service plan, complete a domestic violence course, complete a parenting course, enroll in individual counseling, and regularly attend his weekly visits with his children.

¶ 12 FamilyCore attached DCFS's family service plan to its March 14 report. The plan's case history corroborated the petition's allegations. The plan also described several domestic disputes between respondent and K.C.'s mother after DCFS opened the case. One such dispute occurred on September 12, 2016; respondent pushed K.C.'s mother and "hit her in the neck and collar bone area with his fist." Like FamilyCore's report, the plan stated that respondent refused to cooperate or engage in services without a court order. It also stated that respondent believed "he does not need visitation to get his children back."

¶ 13 On March 28, 2017, the trial court held adjudication and dispositional hearings on the State's petition. During the adjudication hearing, the State presented certified copies of K.C.'s siblings' cases in which the State proved its neglect allegations. The court found that the State proved its neglect allegation in this case by a preponderance of the evidence and entered an adjudication order. Respondent failed to incorporate the certified copies of K.C.'s siblings' cases into the appellate record.

¶ 14 During the dispositional hearing, the State relied upon K.C.'s siblings' adjudications, FamilyCore's report, DCFS's plan, and a Peoria Police department report. The hearing transcript does not state the police report's substance, and respondent failed to incorporate the report into the appellate record.

¶ 15 Respondent testified at the hearing that he enrolled in a parenting course scheduled to begin the following week. He also enrolled in "Elite," which he described as "a program to give back to the youth and get back into society." He could not enroll in a domestic violence course because the classes were full. K.C.'s mother testified that she waited approximately three months for an opening in a domestic violence course.

¶ 16 When the court asked the parties for recommendations, the State recommended that K.C. "be made a ward of the Court and DCFS be made guardian, both parties remain unfit and essentially remain in the same services they're currently on for the prior cases." K.C.'s mother agreed with the State's recommendation. Respondent recommended that FamilyCore refer respondent to a domestic violence course within 10 days of the court's order. He also informed the court that he "obviously would prefer not to do the counseling." K.C.'s guardian *ad litem* (GAL) recommended that the court "adopt the same recommendation as was presented previously in the other cases: wardship regarding this child, parents' unfitness."

¶ 17 The court found that K.C.'s parents remained unfit, deemed K.C. a ward of the court, and appointed DCFS as K.C.'s guardian. The court ordered respondent to cooperate "fully and completely" with DCFS and FamilyCore; participate and successfully complete counseling, a parenting course, and a domestic violence course; provide his caseworker with any change in address, phone number, or members of his household within three days of the change; and visit his children as scheduled and demonstrate appropriate parenting conduct during the visits. The court also admonished FamilyCore and DCFS to promptly enroll the parents in recommended services.

¶ 18 On appeal, respondent challenges the court's dispositional fitness finding pursuant to section 2-27 of the Act (705 ILCS 405/2-27 (West 2016)). He does not challenge the court's adjudication order.

¶ 19 ANALYSIS

¶ 20 Defendant argues that the trial court lacked sufficient evidence to find him dispositionally unfit. He claims that the court "must avail itself of a detailed history of the parent in order to make an informed ruling as to fitness." He also cites his hearing testimony where he claimed he

"engaged in services and was waiting to enroll in domestic violence classes." We find the record sufficient to support the trial court's dispositional fitness finding.

¶ 21 Section 2-27(1) authorizes trial courts to assign guardianship "of a minor adjudged a ward of the court" if the minor's "heath, safety, and best interest *** will be jeopardized if the minor remains" in the parents' custody. 705 ILCS 405/2-27(1) (West 2016). Section 2-27 "does not authorize placing a ward of the court with a third party absent a finding of parental unfitness, inability, or unwillingness to care for the minor." *In re M.M.*, 2016 IL 119932, ¶ 31.

¶ 22 Because dispositional fitness findings under section 2-27 do not terminate a parent's rights, the State must prove a parent unfit by a preponderance of the evidence. See *In re K.B.*, 2012 IL App (3d) 110655, ¶ 22; *In re April C.*, 326 Ill. App. 3d 225, 238 (2001). Reviewing courts must affirm a trial court's finding unless it is against the manifest weight of the evidence. *In re T.B.*, 215 Ill. App. 3d 1059, 1062 (1991). A court's decision is against the manifest weight of the evidence if the opposite conclusion is clearly evident or if the decision is unreasonable, arbitrary, or not based on the evidence. *In re Tiffany M.*, 353 Ill. App. 3d 883, 890 (2004). The trial court is in the best position to weigh the evidence; reviewing courts should give trial courts' findings "great deference." *In re S.D.*, 213 Ill. App. 3d 284, 290 (1991).

¶ 23 The record indicates that respondent failed to cooperate with DCFS or FamilyCore prior to the hearing. Additionally, FamilyCore's prehearing filings showed that respondent abused K.C.'s mother several times in front of their children, pushed K.C.'s four-year-old sibling down during a domestic dispute, and left K.C.'s infant sibling home alone. This evidence sufficiently supported the court's dispositional fitness finding.

¶ 24 Even if the trial court found respondent credible, his hearing testimony did not demonstrate his fitness. Although respondent testified that he was willing to *start* recommended

courses, he failed to attend a single class prior to the hearing. When the court asked for recommendations during the hearing, respondent did not recommend that the court find him fit. Instead, he asked the court to order prompt enrollment in a domestic violence course and informed the court that he "obviously would prefer not to do the [individual] counseling." On appeal, respondent asks this court to attribute his lack of progress to FamilyCore's failure to promptly place him in a domestic violence course. This alleged delay does not merit jeopardizing K.C.'s "health, safety, and best interest" by prematurely placing her in respondent's custody before he has corrected any injurious condition leading to K.C.'s adjudication. See 705 ILCS 405/2-27(1) (West 2016).

¶ 25 The record supported the trial court's finding that respondent remains unfit. Like the trial court, we are disturbed by the prospect of parents being forced to wait several months to enroll in necessary services. However, despite respondent's stated willingness to enroll in *some* recommended courses, the record contains no evidence that he has completed steps to correct the conditions that led to K.C.'s adjudication. We affirm the trial court's dispositional order.

¶ 26 CONCLUSION

¶ 27 For the foregoing reasons, we affirm the judgment of the circuit court of Peoria County.

¶ 28 Affirmed.