

NOTICE

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2017 IL App (4th) 160650-U

NO. 4-16-0650

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

January 26, 2017
Carla Bender
4th District Appellate
Court, IL

In re: B.M. and J.M., Minors,)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
Petitioner-Appellee,)	Champaign County
v.)	No. 15JA53
SHELLY McMURRAY,)	
Respondent-Appellant.)	Honorable
)	Brett N. Olmstead,
)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Justices Harris and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed, concluding the trial court did not err in terminating the wardship and closing the neglect case.

¶ 2 In September 2015, the State filed a petition for adjudication of neglect, alleging respondent, Shelly McMurray, subjected her children, J.M. (born March 23, 2005) and B.M. (born September 27, 2010), to an injurious environment by leaving them in the care of a registered sex offender. Casey McMurray, the children's father, obtained physical custody of the children. After an April 2016 dispositional hearing, the court found respondent unfit to care for the children; however, the court found Casey fit. The court made the children wards of the court and granted guardianship to the Department of Children and Family Services (DCFS). Casey retained physical custody of the children. Following an August 2016 permanency hearing, the

trial court found respondent remained unfit and thereafter (1) returned guardianship to Casey, (2) terminated the wardship, and (3) closed the neglect case.

¶ 3 Respondent appeals, asserting the trial court erred by terminating the wardship and closing the case. For the following reasons, we affirm.

¶ 4 I. BACKGROUND

¶ 5 A. The Petition and Adjudication

¶ 6 Respondent and Casey are married with divorce proceedings pending in Champaign County case No. 14-D-0525. As part of the divorce proceedings, respondent had been granted temporary custody of the children.

¶ 7 In September 2015, the State filed a petition for adjudication of neglect and shelter care; however, the allegations are not contained within the record on appeal. The shelter-care report stated DCFS received a hotline report that respondent was allowing a registered sex offender to live in her home and care for the children. Following a shelter-care hearing, the trial court found probable cause existed to support the allegations that respondent allowed the children unsupervised contact with a sex offender. Accordingly, the court placed the children in shelter care, granting respondent supervised visitation and Casey unsupervised visitation. The court also appointed DCFS as guardian of the children.

¶ 8 In February 2016, the State filed an amended petition for adjudication of neglect and shelter care that appears to contain the September 2015 allegations with changes made through interlineations. The amended petition alleged the children were neglected in that respondent and Casey subjected them to an injurious environment with (1) domestic violence (count I), (2) substance abuse (count II), and (3) risk of physical harm (count III). See 705 ILCS 405/2-3(1)(b) (West 2014). Further, the amended petition alleged respondent subjected the

children to an injurious environment when she left the children in the care of an inappropriate caregiver (count IV) and allowed the children to have unsupervised contact with a registered sex offender (count V). See *id.*

¶ 9 In February 2016, respondent admitted count IV of the petition. Casey waived adjudication given respondent's admission. Following a March 2016 adjudicatory hearing, the court found the children neglected based on count IV of the petition.

¶ 10 B. Dispositional Hearing

¶ 11 In April 2016, the trial court held a dispositional hearing, where the court considered DCFS's April 2016 dispositional report and an April 2016 report from the court-appointed special advocate (CASA).

¶ 12 1. *DCFS's Report*

¶ 13 DCFS's dispositional report contained the following relevant information. Respondent had been employed by a bank for eight years; however, in May 2015, she went on a medical leave of absence after suffering a breakdown that led her to self-admit at a crisis center. At the time, respondent was diagnosed with bipolar disorder and referred for a psychological evaluation. Respondent engaged in monthly counseling, but she recently switched to a new therapist who was more familiar with DCFS requirements. By the time the report was filed, respondent had only met with the new therapist twice. However, the therapist found respondent actively engaged, ready to work, and willing to take responsibility for her bad judgment.

¶ 14 Respondent had a strong relationship with her children and visits progressed well. Respondent engaged in recommended domestic-violence counseling, where she was progressing. She also participated in a substance-abuse assessment, but no further treatment was recommended.

¶ 15 The children lived with Casey, his paramour, and her daughter. Casey had steady employment and a stable relationship with his paramour. As a result of a domestic-violence conviction arising from an incident involving respondent, Casey engaged in and successfully completed a domestic-violence program and alcohol-counseling services. Of his own volition, Casey enrolled himself and the children in therapy, where his progress was gradual and consistent.

¶ 16 J.M. initially struggled to adjust to Casey's home and living with Casey's paramour, but he had since adapted to his new surroundings. The report described B.M. as "happy" and "easy going," and he adjusted quickly to living with Casey.

¶ 17 At the end of the report, DCFS recommended (1) Casey be found fit, willing, and able to care for the children; and (2) custody and guardianship be granted to Casey.

¶ 18 *2. CASA Report*

¶ 19 The report from CASA contained the following additional information. Casey provided a neat and orderly home for the children, and the children were well cared for. During visits, respondent acted appropriately with the children, preparing dinner, playing games, and keeping a tidy home. B.M. said he liked living with Casey. J.M. stated he missed respondent and wanted to spend the night at her house so he could see his friends in the neighborhood. Both children enjoyed spending time with respondent.

¶ 20 The CASA report recommended Casey maintain custody while the trial court retained wardship.

¶ 21 *3. The Trial Court's Dispositional Order*

¶ 22 The trial court found Casey was fit, willing, and able to care for the children. Although the court acknowledged respondent's willingness to parent and her participation in

services, the court determined she was presently unfit and unable to care for the children due to her need for ongoing counseling. In determining whether to grant guardianship to Casey and close the neglect case, the court considered the complication of the pending divorce case, where respondent had been granted temporary custody. Because the court found respondent would likely be restored to fitness within a short time, the court made the children wards of the court and granted guardianship to DCFS. Casey retained custody of the children.

¶ 23 C. August 2016 Permanency Hearing

¶ 24 At the August 2016 permanency hearing, the trial court considered the following evidence.

¶ 25 1. *DCFS's Permanency Report*

¶ 26 DCFS's July 2016 permanency report contained the following information. Respondent indicated she was no longer with her paramour. She was also seeking disability benefits due to her bipolar diagnosis. Visits with the children continued to go well, and the children repeatedly asked for more time and overnight visits with respondent. Respondent successfully completed her domestic-violence classes. Respondent had been consistently attending and progressing in therapy. One significant problem was that respondent cancelled a July 2016 psychological evaluation because she was incarcerated in the Macon County jail.

¶ 27 Casey relocated to a larger home that allowed the children to have their own bedrooms and had temporary custody of the children in the parties' pending divorce case. He continued to be employed. Casey expressed concern that respondent was still dating her paramour, as witnesses had observed them together and he had seen pictures of the paramour at respondent's home. However, Casey was interested in co-parenting with respondent to allow her

more involvement with the children but provide him with the ultimate decision-making responsibility. Respondent, on the other hand, sought equal parenting time and authority.

¶ 28 The children continued to thrive under Casey's care, with J.M. participating in sports and obtaining high grades. He was working on controlling his anxiety and emotions in therapy. B.M. was enrolled in a fall sports program.

¶ 29 Respondent had completed all of her services and was engaged in therapy, but the caseworker found respondent's incarceration troubling. Accordingly, DCFS recommended all prior orders remain in effect.

¶ 30 *2. August 2016 CASA Report*

¶ 31 An August 2016 CASA report contained similar information as its April 2016 report, and recommended the children remain in their current placement with respondent's supervised visits to continue.

¶ 32 *3. Addendums to DCFS's Permanency Report*

¶ 33 The trial court also considered two addendums—one from July 2016 and one from August 2016—to DCFS's permanency report. These addendums included a police report, a crisis-screening report, and a psychological evaluation.

¶ 34 a. Police Report

¶ 35 Respondent was arrested in July 2016, following a fight at the Lincoln Lounge in Decatur, Illinois. Respondent had been drinking heavily and refused to leave when asked to do so by an employee. As employees attempted to remove her from the premises, respondent grabbed an employee's hair and punched the employees. Police issued respondent a trespass warning form that barred her from the premises for one year. While police were in the process of making the arrest, respondent attempted to pull away and eventually kicked one of the

positive light, free from any shortcomings. Testing revealed respondent to have superior cognitive functioning, and she exhibited no signs of a personality disorder.

¶ 41 The psychologist administering the evaluation found respondent recognized the developmental needs of her children, particularly J.M.'s struggles with anxiety. The report found respondent's prognosis positive if she made the necessary changes in her life to provide for her children's safety. The psychologist ultimately recommended respondent (1) continue with psychotherapy to address her depression, anxiety, and past traumatic experiences; (2) consult with a psychiatrist for medicine management; and (3) be reassessed for cognitive and adaptive functioning if her mental-health symptoms became more severe.

¶ 42 *4. The Trial Court's Ruling*

¶ 43 Following the August 2016 permanency hearing, the trial court found Casey remained fit and able to safely exercise guardianship over the children, whereas respondent remained unfit and unable. Although respondent had made reasonable efforts toward the return home of the children, the court found she had not made reasonable and substantial progress due to her need for further therapy. In making its ruling, the court noted, "This is a situation where [respondent] *** is really at the beginning stages of dealing with misconceptions that she has about herself, about her situation, about decisions that she's made in the past, about decisions she continues to make, and where those decisions come from and the effect that these decisions have on her children." The court also explained, "if I don't terminate now what I get is one fit parent, one unfit parent and an unknown length of time." The court then stated, "I think [respondent] is at the beginning of something that's going to take some time to work through and it's not in the children's best interest to keep guardianship held away from a fit parent while this case just goes

on for an indeterminate length of time." Accordingly, the court found it was in the children's best interest to terminate the wardship, return guardianship to Casey, and close the neglect case.

¶ 44 This appeal followed.

¶ 45 II. ANALYSIS

¶ 46 On appeal, respondent asserts the trial court erred when it terminated the wardship and closed the neglect case. Specifically, respondent argues the court's decision was not in the best interest of the children.

¶ 47 "We will not disturb a trial court's determination in a child custody case unless the court exceeded its broad discretion or unless its determination is against the manifest weight of the evidence." *In re M.M.*, 337 Ill. App. 3d 764, 779, 786 N.E.2d 654, 666 (2003). Respondent argues the abuse-of-discretion standard of review is appropriate. However, where the court weighs evidence, we will only reverse where the judgment is against the manifest weight of the evidence. *In re Aaron L.*, 2013 IL App (1st) 122808, ¶ 28, 988 N.E.2d 688. "A judgment is against the manifest weight of the evidence only when an opposite conclusion is clearly apparent." *M.M.*, 337 Ill. App. 3d at 779, 786 N.E.2d at 666. Under either standard of review, our decision remains the same.

¶ 48 Pursuant to section 2-31(2) of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/2-31(2) (West 2014)), "Whenever the [trial] court determines, and makes written factual findings, that health, safety, and the best interests of the minor and the public no longer require the wardship of the court, the court shall order the wardship terminated and all proceedings under this Act respecting that minor finally closed and discharged."

¶ 49 In this case, following the August 2016 permanency hearing, the trial court found Casey remained fit, willing, and able to care for the children. Casey provided stability, had

completed all of his service goals, and enrolled the family in therapy. He moved into a larger home to accommodate the children's desire for separate bedrooms, and the children appeared to be happy under his care. Accordingly, both the CASA and DCFS reports recommended the children remain in Casey's custody.

¶ 50 Conversely, the trial court found respondent remained unfit and unable to care for the children due to long-standing mental-health issues that required further counseling. The court found respondent's latest breakthrough, where she disclosed a long history of sexual, physical, and emotional abuse, would take time for her to work through such that she could regain fitness. In light of the issues respondent needed to work through, the court expressed concern that respondent's therapy would take a considerable amount of time and have an impact on when respondent could be restored to fitness. Even though closing the case would prevent respondent from utilizing DCFS services—such as her therapy—nothing prevented respondent from engaging in services independently. As the court noted, continuing the proceedings indefinitely where one parent was fit was not in the best interest of the children.

¶ 51 The State cites *In re C.L.*, 384 Ill. App. 3d 689, 894 N.E.2d 949 (2008), in support of its position that the trial court properly terminated the wardship and closed the case. Respondent asserts *C.L.* is factually distinguishable but concedes it is useful for the legal principles it provides.

¶ 52 In *C.L.*, the trial court adjudicated the children neglected after the children were subjected to an injurious environment under the respondent mother's care. *Id.* at 691, 894 N.E.2d at 951. Following a dispositional hearing, the court found the respondent mother unfit, but it found the respondent father, who was divorced from the respondent mother, fit. *Id.* Because the

respondent father was fit, the court declined to exercise wardship over the children and closed the case. *Id.* at 693, 894 N.E.2d at 953.

¶ 53 The appellate court noted, "[e]ven when one parent is determined to be unfit under the Act, and wardship arises, the other parent's rights are superior to the State's interest." *Id.* at 696, 894 N.E.2d at 955. "By analogy, when one parent is found dispositionally unfit and the other parent is without fault and willing to assume the role of parenting the children, a court may not interfere unless the court determines it is in the best interests of the minors to *become* wards of the court." (Emphasis in original.) *Id.* In *C.L.*, just as in the present case, the court stated:

"After the court found the children to be neglected by mother, the children still had a biological father who was ready, willing, and legally able to step in to protect and provide for his children and by all accounts has done so. Mother does not dispute the temporary placement of the children with this father or the court's subsequent finding the children had been neglected. No one has claimed that this father, who was divorced from mother, contributed to the injurious environment that resulted in the determination of neglect." *Id.*

¶ 54 Here, as in *C.L.*, respondent did not contest the finding of unfitness against her, dispute the placement of the children with Casey, or assert Casey contributed to the children's injurious environment. Because the trial court believed it would take respondent time to be restored to fitness while Casey remained fit, willing, and able, the court found it was in the children's best interest to terminate the wardship and close the neglect case. Under the

