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**FILED**  
September 7, 2017  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

2017 IL App (4th) 170275-U

NOS. 4-17-0275, 4-17-0299 cons.

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

<i>In re: G.C., a Minor</i>	)	Appeal from
	)	Circuit Court of
(The People of the State of Illinois,	)	Champaign County
Petitioner-Appellee,	)	No. 17JA2
v. (No. 4-17-0275)	)	
Kimberly Conner,	)	
Respondent-Appellant.)	)	
_____	)	
<i>In re: G.C., a Minor</i>	)	
	)	
(The People of the State of Illinois,	)	
Petitioner-Appellee,	)	
v. (No. 4-17-0299)	)	Honorable
David Conner,	)	Brett N. Olmstead,
Respondent-Appellant.)	)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.  
Presiding Justice Turner and Justice Appleton concurred in the judgment.

**ORDER**

¶ 1 *Held:* The appellate court affirmed, concluding the trial court’s findings of fact were not against the manifest weight of the evidence, and its dispositional order was not an abuse of its discretion.

¶ 2 In January 2017, the State filed a petition for adjudication of neglect, alleging G.C. (born September 5, 2015) was a neglected minor as defined by the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(1)(b) (West 2016)). At a March 2017

adjudicatory hearing, respondent mother, Kimberly Conner, stipulated to the allegation of neglect and respondent father, David Conner, waived his right to the adjudicatory hearing. At an April 2017 dispositional hearing, the trial court adjudicated G.C. a ward of the court and granted guardianship to the Illinois Department of Children and Family Services (DCFS), while allowing respondents to retain custody.

¶ 3 Respondent parents filed separate notices of appeal, and this court consolidated the cases. Respondents argue on appeal (1) the trial court's establishment of a guardianship was against the manifest weight of the evidence and (2) the placement of guardianship with DCFS was an abuse of the court's discretion. We affirm.

¶ 4 I. BACKGROUND

¶ 5 A. The State's Petition for Adjudication of Wardship

¶ 6 In its petition, the State alleged G.C. was a neglected minor because his environment was injurious to his welfare in that he was exposed to (1) domestic violence (count I) and (2) substance abuse (count II).

¶ 7 B. The March 2017 Adjudicatory Hearing

¶ 8 At the adjudicatory hearing, respondent mother stipulated to count II of the petition, which alleged G.C. was a neglected minor because his environment was injurious to his welfare in that he was exposed to substance abuse. Respondent father waived an adjudicatory hearing. The factual basis for count II of the petition established that, in December 2016, G.C. was at home and in the care of respondents or respondent mother when respondent mother intentionally overdosed on prescription medication. Respondent mother was admitted to the hospital, where she also tested positive for marijuana and cocaine. During DCFS's intervention,

respondent mother tested positive for marijuana at least two more times. She admitted substance abuse and had sought treatment for substance abuse in the past. She stated she was currently seeking counseling for her substance abuse and other conditions.

¶ 9 Based on the above evidence, the trial court accepted respondent mother's stipulation and respondent father's waiver and adjudicated G.C. a neglected minor in accordance with count II of the petition. Because respondent mother stipulated to count II, count I of the petition was dismissed.

¶ 10 C. The April 2017 Dispositional Hearing

¶ 11 1. *Evidence*

¶ 12 At the dispositional hearing, Janel Wager, a licensed clinical professional counselor, testified as follows. Respondent mother became her patient in March 2014. Respondent mother sought counseling on her own, and through a program offered by her school, she began treatment with Wager with some regularity in March 2014. Since January 2017, Wager has met with respondent mother on a weekly basis. Wager and respondent mother discuss issues such as grief and loss, and Wager helps respondent mother manage moods, marital issues, and other issues arising from her conditions. Following the December 2016 overdose, Wager and respondent mother discussed the triggers and events leading up to the overdose and talked about how to better cope and manage her issues as well as the consequences of her actions.

¶ 13 Wager and respondent mother frequently discussed her medication, and Wager concluded her medication was "a big piece of why she overdosed." Respondent mother's medication was adjusted following the overdose, and Wager believes this adjustment has been

effective.

¶ 14 In addition to meeting with respondent mother individually, Wager also provides marital counseling to respondents on a biweekly basis. Wager counsels respondents on trust, being responsive to each other's needs, and managing conflict. A "big part of the conversation" is how the two can manage and address respondent mother's medical symptoms. Specifically, they have discussed her needs in order to be stable, how she can express those needs, how respondent father can tend to those needs, and signs indicating respondent mother is losing stability. They have also discussed the need, should a crisis occur again, to arrange for alternative care for G.C., such as a parent or babysitter. They discussed how the overdose affected G.C. and caused instability in his routine and how they can mitigate that instability and return to normalcy.

¶ 15 During these counseling sessions, Wager had the opportunity to observe respondents as parents, as they would sometimes bring G.C. to the counseling sessions. Wager believes respondents are very good parents. "They set limits. They are loving and tender. They engage him appropriately. They get down on the floor and play with him or they, you know, have him on a schedule. They \*\*\* do what I would expect a good parent to do." Protecting G.C. from the negative impacts of respondent mother's conditions and overdose have been focuses during the counseling sessions and are very important to respondents.

¶ 16 Wager believes respondent mother has made progress in her stability since the overdose, and she did not believe respondent mother would relapse. Wager is of this opinion because respondent mother's medication has been stabilized and she has made progress with her counseling.

¶ 17 At the close of Wager’s testimony, the trial court asked Wager about respondent mother’s marijuana use. Wager knew respondent mother self-medicated with marijuana prior to obtaining a state-issued medical marijuana card. According to Wager, respondent mother is much more stable when she medicates with marijuana, as opposed to when she medicates with prescribed opiates. Wager stated, “[S]he’s alert, she’s interactive, she’s clear minded and capable of conversation.” “She has a rational intelligent approach to things that she’s doing.” Wager stated respondent mother is a person she would trust. The court then asked whether the fact that respondent mother’s marijuana use was illegal affected her opinion about respondent mother’s stability or ability to parent. Wager responded, “I think she has a medical marijuana card and so—and I believe that it’s prescribed.” Nonetheless, Wager indicated, whether the marijuana use was legal or illegal, her assessment of respondent mother’s ability to parent was unaffected because she was much more stable when she medicated with marijuana than when she was medicated with prescribed opiates.

¶ 18 Respondent mother’s attorney submitted three exhibits into evidence following Wager’s testimony. Exhibit No. 1 was a report written by Caitie Christian, a staff member of PATS Prevention and Treatment Services in Champaign, Illinois. The report stated that respondent mother had been participating in relapse prevention and dialectical behavior therapy classes to help manage her medical conditions since January 30, 2017, and she had attended approximately 10 classes since that date. She attends both group and individual sessions. Exhibit No. 2 was a letter from Penelope Shields, MSN, FNP-BC, which indicated respondent mother has been a patient of Shields’ medical practice since November 2015. Shields stated respondent mother has been compliant with her follow-up plan and the changes made to her

medication regime. Exhibit No. 3 was a copy of respondent mother's state-issued medical marijuana card, which was issued on March 14, 2017.

¶ 19

## *2. The Trial Court's Ruling*

¶ 20

Considering the above evidence, the trial court allowed respondents to retain custody of G.C. but also determined it was in the best interest of G.C. and the public to grant DCFS guardianship on a temporary basis. In so ruling, the court commended respondents for their proactive response to the events giving rise to the proceedings and respondent mother's initiative, evidenced by her efforts to correct the issues that led to her drug overdose.

¶ 21

However, the trial court expressed concern with the fact that respondent mother had illegally used marijuana in the home on a daily basis. The court also noted that respondent father did nothing to curb this substance abuse and questioned whether he had the ability to step up and take control of the situation if it were to get out of control, as when respondent mother overdosed. The court did highlight respondent mother's medical marijuana card and the fact that she may now legally use prescribed marijuana, but the court remained concerned about illegal drug use given the fact that her marijuana use prior to March 14, 2017, was illegal. The court stated:

“That doesn't change the fact though that up until very recently her turning to that particular drug was illegal and so she is obtaining the drug illegally from street dealers and having that drug used in the home with this very young child. Her obtaining the medical marijuana card resolves that issue on an ongoing basis to a large extent, but what I see in it is an indication of a problem within the

home of [respondent father] stepping in to gain control over the home in [G.C.'s] best interest.

I understand the benefits of marijuana and the role it's played in [respondent mother] managing her symptoms. Nonetheless illegal substance use is a bad thing to be happening within the home even if it has the best motives. It—it connects or it connected [respondent mother] to a distribution system that is underworld. It creates a home environment where the child—and I understand [G.C.] is very young. It's—it's easy right now to hide something like that from him but as he gets older it becomes impossible to hide illegal substance use from a child and that being in the home being an example to the child is a serious problem.”

¶ 22 Despite the trial court's concerns with substance abuse, it determined that respondent mother is stable and found respondents' response to the overdose to be a positive indicator that the stability will continue. For that reason, the court concluded respondents were fit and ordered custody of G.C. to remain with them. Noting the concern with respondent father's ability maintain control over the household and respondent mother's ongoing medical conditions and past illegal drug use, the court determined it was in G.C.'s and the public's best interest to place guardianship with DCFS to ensure further progress will be made. The court indicated it did not believe this guardianship would last for a long duration, given the initiative and progress already exhibited by respondents. The court then set the cause for a permanency review hearing in June 2017.

¶ 23 This appeal followed.

¶ 24 II. ANALYSIS

¶ 25 On appeal respondents argue the trial court’s decision to make G.C. a ward of the court was against the manifest weight of the evidence and its dispositional order granting DCFS guardianship was an abuse of discretion. We disagree.

¶ 26 Following an adjudication of neglect, the trial court must hold a dispositional hearing, during which “the court must first determine whether it is in the best interests of the minor and the public that the minor be made a ward of the court.” *In re M.M.*, 2016 IL 119932, ¶ 17, 72 N.E.3d 260 (citing 705 ILCS 405/2-21(2), 2-22(1) (West 2012)); see also 705 ILCS 405/1-3(4.05) (West 2016). If the minor is made a ward of the court, the court must fashion a dispositional order that best serves the interest of the minor. *In re Al. S.*, 2017 IL App (4th) 160737, ¶ 40, 73 N.E.3d 1178; see also 705 ILCS 405/1-3(4.05) (West 2016). According to Section 2-23(1)(a) of the Juvenile Court Act, the minor may be:

“(1) continued in the custody of his or her parents, guardian or legal custodian; (2) placed in accordance with Section 2-27; (3) restored to the custody of the parent, parents, guardian, or legal custodian, provided the court shall order the parent, parents, guardian, or legal custodian to cooperate with the [DCFS] and comply with the terms of an after-care plan or risk the loss of custody of the child and the possible termination of their parental rights; or (4) ordered partially or completely emancipated in accordance with the provisions of the Emancipation of Minors



Act.” 705 ILCS 405/2-23(1)(a) (West 2016).

¶ 27 In fashioning a dispositional order, the overriding concern is the best interest of the child. *In re Beatriz S.*, 267 Ill. App. 3d 496, 500, 641 N.E.2d 953, 956 (1994). “On review, a trial court’s decision ‘will be reversed only if the findings of fact are against the manifest weight of the evidence or the court committed an abuse of discretion by selecting an inappropriate dispositional order.’ ” *Al. S.*, 2017 IL App (4th) 160737, ¶ 41, 73 N.E.3d 1178 (quoting *In re J.W.*, 386 Ill. App. 3d 847, 856, 898 N.E.2d 803, 811 (2008)). “A court’s factual finding is against the manifest weight of the evidence where the opposite conclusion is clearly evident or where its finding is unreasonable, arbitrary, or not based on the evidence presented.” *Id.* An abuse of discretion occurs when no reasonable person would agree with the trial court’s decision. *Dawdy v. Union Pacific R.R. Co.*, 207 Ill. 2d 167, 177, 797 N.E.2d 687, 696 (2003).

We afford great deference to the trial court’s findings because it is in a superior position to assess credibility and weigh evidence. *Al. S.*, 2017 IL App (4th) 160737, ¶ 41, 73 N.E.3d 1178.

¶ 28 After reviewing the record, we cannot say the trial court's findings were of a nature that the opposite conclusion is clearly evident or that its findings were unreasonable, arbitrary, or not based on the evidence presented. Here, the manifest weight of the evidence supported the court's decision to make G.C. a ward of the court. In this matter, respondent mother admitted to illegal drug use in the home while G.C. was in her care. In addition, with G.C. in the home, she intentionally overdosed on prescribed medication. Though respondent mother and her care providers stated her marijuana use was medicinal, respondent mother only recently obtained a state-issued medical marijuana card, meaning her prior use of marijuana was illegal. Further, she tested positive for cocaine when hospitalized after her overdose and

admitted using cocaine on that date. With respect to respondent father, the court spoke of its concern with the fact that he allowed drug use to occur in the home and failed to step up and take control of the household for G.C.'s safety and well-being.

¶ 29 We also note, application of the statutory best-interest factors to the evidence reveals the appropriateness of the court's decision to make G.C. a ward of the court. For example, in considering the physical safety and welfare of G.C., the court properly determined wardship to be necessary in light of the evidence of the challenges respondent mother faced and respondent father's response to those challenges. The court also took into consideration the child's need for permanence, including the need for stability. We know this from the court's expression of its overriding concern that it be able to ensure continued monitoring of the situation in the home. Although the trial court did find respondents fit, it also, in light of the nature of the past difficulties, correctly determined wardship to be in the best interest of the minor.

¶ 30 After determining wardship to be appropriate, the trial court elected to allow G.C. to remain in the care of respondents but granted DCFS guardianship of G.C. Respondents assert this decision was an abuse of discretion. We find otherwise.

¶ 31 In *In re E.L.*, the trial court, after adjudicating the children neglected, ordered the children to remain in the custody of the respondent mother, whom it determined was fit, but placed guardianship with DCFS. *E.L.*, 353 Ill. App. 3d at 896, 819 N.E.2d at 1193. The Third District held, "So long as custody remains with the [parent], we can perceive no error in also granting guardianship with DCFS." *Id.* at 898, 819 N.E.2d at 1194. "We recognize that the court can generally split the guardianship and custody of a minor." *In re T.L.C.*, 285 Ill. App. 3d 922,

926, 675 N.E.2d 228, 230 (1996); see also 705 ILCS 405/2-23(1)(c) (West 2016); *In re E.L.*, 353 Ill. App. 3d 894, 898, 819 N.E.2d 1191, 1194 (2004); *In re M.P.*, 408 Ill App. 3d 1070, 1074, 945 N.E.2d 1197, 1200 (2011).

¶ 32 Here, despite respondents' progress, the fact remains that illegal drug use occurred in the home and respondent mother recently and intentionally overdosed on prescription medication while G.C. was in her care. Respondent mother's illegal drug use not only included marijuana but also cocaine, which she admitted using on the date of the overdose. The trial court's decision to place guardianship with DCFS to monitor this situation and ensure respondents make further progress is not unreasonable or arbitrary, especially in light of the safety concerns related to illicit drug use. These concerns bear directly on G.C.'s safety and health, particularly when respondent mother has used illicit drugs in the presence of G.C. and while he is in her care. Also, the court's dispositional order not only kept the family together, but it put in place mechanisms to ensure the minor's safety and health.

¶ 33 For these reasons, we cannot say the trial court's findings which led to its decision to make G.C. a ward of the court were against the manifest weight of the evidence or that granting DCFS guardianship of G.C. was an abuse of discretion, despite the fact that the court found respondents were fit and making progress. See, *e.g.*, *E.L.*, 353 Ill. App. 3d at 898, 819 N.E.2d at 1194.

¶ 34 III. CONCLUSION

¶ 35 For the foregoing reasons, we affirm the trial court's judgment.

¶ 36 Affirmed.