2018 IL App (1st) 17-2251-U

THIRD DIVISION
March 7, 2018

No. 1-17-2251

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

IN THE INTEREST OF K.M., a minor,	)	Appeal from the
	)	Circuit Court of
Minor-Respondent-Appellee,	)	Cook County.
	)	
(PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Petitioner-Appellee,	)	No. 09 JA 1047
	)	
v.	)	
	)	
S.M-J.	)	The Honorable
	)	Robert Balanoff
Respondent-Appellant).	)	Judge, presiding.

JUSTICE LAVIN delivered the judgment of the court
Presiding Justice Cobbs and Justice Fitzgerald Smith concurred in the judgment

ORDER

¶ 1 *Holding*: It was unnecessary for the trial court to reiterate its unfitness/inability finding regarding the natural mother when entering a private guardianship dispositional order for the minor, K.M., and the record was insufficient to adequately address the natural mother's claim that the court failed to set for an adequate written finding as to her unfitness/inability to care for K.M. The private guardianship judgment was not against the manifest weight of the evidence. The circuit court's judgment was affirmed.

¶ 2 Respondent, Shamyra Kalesia M.-J., appeals from a trial court order placing her natural daughter K.M., who is now age 16, in a private guardianship under the care of K.M.'s then foster parents, vacating the court's wardship and the Department of Children and Family Services'

(DCFS) guardianship over K.M., and closing the case in juvenile court. Shamyra primarily challenges the validity of the order as lacking a written factual basis, while also claiming the judgment is against the manifest weight of the evidence. We affirm.

¶ 3 BACKGROUND

¶ 4 The limited record[1] reveals that in 2005, Shamyra, having been sentenced to a term of imprisonment, unwittingly gave her own mother guardianship over K.M.[2] In 2009, on the State's adjudication petition, K.M. was removed from that home based on allegations that she was a "dependent minor" without proper care (see 705 ILCS 405/2-4(1)(c) (West 2008)) and adjudicated a ward of the court subject to the temporary custody of DCFS. Evidence revealed that 8-year-old K.M. had been admitted to a psychiatric hospital due to aggressive behavior, and labwork showed she tested positive for Chlamydia, after having also tested positive for Chlamydia two years before at age 6 without anyone able to explain how she contracted the disease.[3] Mental health reports contained in the common law record revealed she had a history of sexual and physical abuse/neglect, and the parties stipulated that K.M. had undergone psychiatric hospitalizations. Services for her grandmother-guardian proved fruitless, as she refused to develop a safety plan with DCFS or follow parenting recommendations of service providers, and "[s]ervices to stabilize the family" were "unsuccessful." The State subsequently amended their adjudication petition to encompass abuse, and a hearing followed, although we do not have the transcript of that hearing.

[1] The 2-volume record consists of a common law record, mostly containing court orders and several psychological evaluations, and a report of proceedings from the final hearing granting the private guardianship over K.M. and closing the case.
[2] K.M.'s father is deceased.
[3] The parties agreed to stipulated facts, which were entered the same day as the adjudication order on August 30, 2010, regarding the STD testing, the guardian's failure to comply with parenting classes and a safety plan, and the lack of success in stabilizing the family.

¶ 5 In a 2010 adjudication order, the trial court determined that K.M. had been abused or neglected (see 705 ILCS 405/2-3(1)(b), (2)(ii), (2)(iii) (West 2008)) due to an injurious environment, substantial risk/physical injury, and sexual abuse by an unknown perpetrator. The court adjudged K.M. a ward of the court, declaring it was in her best interests and the public's, and also found neither Shamyra nor her mother was able to care for, protect, train or discipline K.M. for some reason other than financial circumstances alone. Additionally, the court found reasonable efforts to prevent K.M.'s removal from the home had been made, but the services aimed at family preservation had been unsuccessful, making it in the best interests of K.M. to be removed from Shamyra and her mother. Accordingly, the court terminated the temporary custody order and placed K.M. in DCFS's guardianship, presenting DCFS with the right to place K.M. See 705 ILCS 405/2-27 (West 2008)).

¶ 6 Thereafter, K.M. lived in residential treatment facilities and group homes. In 2014, K.M. was placed in non-relative foster care with Joann and Larry D. Although Shamyra made progress towards reunification with K.M., at various points gaining a permanency goal of return home, this did not ultimately happen and visits became inconsistent. As of June 24, 2015, the court found Shamyra was not involved in services and visited K.M. only once per month. The court noted that K.M. was bonded to her foster parents. The court entered a permanency goal instead of substitute care and continuing foster care. In conjunction with this order, the record contains a June 24 "permanency hearing report to the court," filed by the DCFS caseworker, stating that although Shamyra visited with K.M. monthly, the visits were prompted by the caseworker, and Shamyra had only called once since the last court hearing to schedule an appointment. She also had not made any effort to engage in therapeutic services, and the

caseworker opined that she had not made substantial progress towards the goal of returning K.M. home.

¶ 7 On January 28, 2016, the court entered a permanency order (which states that Shamyra was present among the parties) for private guardianship. The order noted that K.M. had been placed in a specialized foster home where her needs were being met and where she wished for a guardianship. The court stated, "Return home has been ruled out." Apparently, one of the exhibits was a counselor report by K.M.'s therapist and K.M.'s own handwritten note (file-stamped also on January 28, 2016) expressing her desire to remain with her foster parents while also maintaining contact with her mother. She stated, "I fear if I were to move I would have to start from square one. I know this may make my mother very sad because she has been fighting for a long time, but it is time that I start thinking about me."

¶ 8 In 2017, DCFS then moved to vacate the DCFS guardianship, terminate the State wardship, and close the case. In that motion, DCFS noted it had also filed a petition to appoint Joanne and Larry D. guardians of K.M., and K.M. had nominated them as her guardians. In support, DCFS attached exhibits, including the 2009 temporary custody order finding K.M. a dependent minor, removing her from her home, and granting DCFS temporary custody; the 2010 adjudication order finding K.M. abused or neglected due to an injurious environment, substantial risk/physical injury, and sexual abuse by an unknown perpetrator; the 2010 dispositional order adjudging K.M. a ward of the court, finding that Shamyra was unable to care for K.M., and appointing DCFS as guardian of K.M.; K.M.'s 2017 nomination of Joanne and Larry D. as her guardians; and an April 2017 permanency order citing private guardianship as the goal for K.M. because K.M. was doing well in her foster home, she desired her foster parents to be her guardians, and return home had been ruled out.

¶ 9 A hearing followed in August 2017, at which K.M.'s caseworker and foster mother Joann testified in support of the guardianship. Their combined testimony revealed that K.M. was thriving in her current foster placement both personally and in school, she was integrated into the extended family, and had been discharged from therapy and was not on any medication. K.M.'s foster parents were responsible for all her needs, including food, shelter, and education, the home was safe and appropriate, and her foster parents advocated for K.M. in her education. Additionally, K.M. desired guardianship with her foster parents and was able to maintain contact with her natural mother once a month provided it was in her best interests. Shamyra testified in opposition to the guardianship that she had two jobs and could provide for K.M. She had passed the drug test, completed therapy, and had not missed any visits. She and K.M. had a strong bond and talked just about every day. According to Shamyra, K.M. wanted to be at home with her, and Shamyra was seeking her return.

¶ 10 Pursuant to DCFS's petition and following the hearing, the court placed K.M. in a private guardianship with her foster parents until age 18, while also vacating the DCFS guardianship and the court's wardship. The court ordered the private guardian to permit unsupervised visitation with K.M.'s natural parent at least once per month. The case was closed in the juvenile court. This appeal followed.

¶ 11 ANALYSIS

¶ 12 Shamyra now contends that the private guardianship order is "fatally defective" because it lacks a written factual basis demonstrating she was unable to care for K.M. or that K.M.'s best interests would be jeopardized if returned to her natural mother's custody. She adds that no evidence was introduced at the private guardianship hearing showing Shamyra unfit or unable to care for K.M., and the court's determination was against the manifest weight of the evidence.

¶ 13 The Office of the Cook County Public Guardian has responded on behalf of K.M. and the State's Attorney has responded for DCFS that Shamyra forfeited her claims, and regardless, they are meritless. We agree. To preserve an alleged error for appellate review, a party must, even in child custody cases, object at trial and file a written posttrial motion addressing it. *In re William H.*, 407 Ill. App. 3d 858, 869-70 (2011); see also *In re S.L.*, 2014 IL 115424, ¶¶ 17, 27 (concluding, respondent forfeited claim that State failed to comply with statutory notice requirements because she failed to raise the issue in the trial court when error could have been remedied). Here, Shamyra forfeited her challenge to the trial court's order by failing to argue the issue below, where it could have been remedied. *But see In re Madison H.*, 215 Ill. 2d 364, 371 (2005) (declining to apply forfeiture on similar contention).

¶ 14 Even absent forfeiture, Shamyra's claims still fail. Under the Juvenile Court Act of 1987 (Act) (705 ILCS 405/1-1 *et seq*. (West 2008 and 2016)), after a court determines, and places in writing with supporting facts, that a minor is abused or neglected, the court is required to hold a dispositional hearing to determine whether it's in the best interests of the minor and public that the minor be made a ward of the court. 705 ILCS 405/2-21(2), 2-22(1) (West 2008); *In re M.M.*, 2016 IL 119932, ¶ 17. If made a ward of the court, the court must then determine the "proper disposition best serving the health, safety and interests of the minor and the public." 705 ILCS 405/2-22(1) (West 2008); *In re M.M.*, 2016 IL 119932, ¶ 18. Among the possible dispositional orders a court can enter is that the minor be "placed in accordance" with section 2-27 of the Act. 705 ILCS 405/2-23(1)(a) (West 2008); *In re M.M.*, 2016 IL 119932, ¶ 18.

¶ 15 Section 2-27 (705 ILCS 405/2-27 (West 2008 and 2016)), states, "If the court determines and puts in writing the factual basis supporting the determination of whether the parents, guardian, or legal custodian of a minor adjudged a ward of the court are unfit or are unable, for

some reason other than financial circumstances alone, to care for, protect, train or discipline the minor or are unwilling to do so, and that the health, safety, and best interest of the minor will be jeopardized if the minor remains in the custody of his or her parents, guardian or custodian, the court may at this hearing and *at any later point*" place the minor in various scenarios, *i.e.* with a relative, in an agency, with a probation officer guardian, or, as in this case, with DCFS's approval in a "private guardianship" with a relative or other person (where a return home or adoption have been ruled out). *Id*. Where the State does not also seek to terminate parental rights, a proceeding held under section 2-27(1) is concerned only with placement of the minor. *Madison H.*, 215 Ill. 2d at 374; see also *In re April C.*, 326 Ill. App. 3d 225, 237 (2001) (a dispositional hearing allows the trial court to determine what's in the minor's best interests, and the decision of whether to make a minor a ward of the court gives the parents notice of what they must do to retain their rights to their child in the face of any future termination proceedings). The writing requirement in section 2-27(1) exists to give the parties notice of the reasons forming the basis for the removal of the child and to preserve this reasoning for appellate review, and an on-the-record oral finding may likewise satisfy the statute if it's explicit and reasoned. *Id*. at 374, 377. In addition, under the plain language of the statute, a circuit court may subsequently modify placement of a minor without once again finding the parent, guardian, or custodian unfit or unable to care for the minor. *In re Terrell L.*, 368 Ill. App. 3d 1041, 1049 (2006); see also *April C.*, 326 Ill. App. 3d at 238 (noting, the standard of proof for unfitness in a 2-27 hearing that does not result in termination of parental rights is preponderance of the evidence). We liberally construe the Act so as to carry out its stated purposes of securing permanency for minors in a timely manner. See *Madison H.*, 215 Ill. 2d at 374.

¶ 16 Here, the State attached the 2010 adjudicatory and dispositional orders to its petition to terminate DCFS guardianship and close the case, along with the 2017 permanency order, among other relevant documents. The 2010 orders contain the printed, check-marked basis, which tracks the statute, for the court's decision. In addition, the court hand-wrote on the adjudicatory order, "Minor tested positive for chlamydia in Oct. 2009. Minor has a history of psychiatric hospitalizations. Intact services were unsuccessful to stabilize the family. Legal guardian was custodial. Mother was non-custodial." Other than that, we do not have the report of proceedings of the adjudicatory or dispositional hearings or a record containing the court's oral pronouncements. We likewise do not have a report of proceedings from any of the permanency orders. It is those oral pronouncements that could potentially fill in the gaps on the court's factual basis for concluding that Shamyra was unfit or unable/unwilling to care for K.M. by a preponderance of the evidence. See, *e.g.*, *In re S.H.*, 2018 IL App (3d) 170357, ¶ 16 (circuit court's oral pronouncement, along with dispositional order's reference to unfitness finding in other ongoing proceedings, was sufficient under section 2-27(1)). As stated, the court would not necessarily need to repeat these findings in the 2017 guardianship hearing, although they were incorporated into DCFS's petition to terminate the wardship, grant the private guardianship, and close the case, which is a petition that the trial court granted. See *Terrell L.*, 368 Ill. App. 3d at 1049. It is the appellant's burden to provide this court with a sufficient record to grant the relief she requests on the claims raised, and we resolve doubts arising from the incompleteness against the appellant. See *Doe v. Township High School District 211*, 2015 IL App (1st) 140857, ¶ 80. Given the incomplete record before this court, and Shamyra's failure to raise the matter in a timely fashion, we cannot adequately address her contention that the written findings of the court

from 2010, which also were integrated into the 2017 private guardianship petition, or subsequently were insufficient.

¶ 17 Additionally, there is no indication that Shamyra challenged the 2010 dispositional order or abuse/neglect findings on appeal. See *In re Barion*, 2012 IL App (1st) 113026, ¶ 36 (noting, the dispositional order is final and appealable for purposes of challenging abuse/neglect findings); see also *In re Leona W.*, 228 Ill. 2d 439, 456-57 (2008) (error pertaining to dispositional order forfeited if not filed within 30 days of order or posttrial motion). Nor is there any indication that Shamyra applied to the trial court to restore K.M. to her custody once the permanency goal changed or appealed the change in the permanency goal. See 705 ILCS 5/2-28(4) (West 2016); *In re Curtis B.*, 203 Ill. 2d 53, 63 (2002) (a party may petition the appellate court for leave to appeal an interlocutory permanency order); see also *In re Tajannah O.*, 2014 IL App (1st) 133119, ¶ 33 (setting a permanency goal is within the broad discretion of the trial court and will not be disturbed unless it's against the manifest weight of the evidence). Given these facts, and in the absence of a complete record, we presume the judgment of the trial court was correct. See *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). The court's final judgment and record as a whole indicate that by the time of the private guardianship hearing, it was a foregone conclusion that Shamyra was unable/unwilling to care for K.M.

¶ 18 Shamyra also maintains the court's private guardianship judgment was against the manifest weight of the evidence. Shamyra fails to even define the legal standard for "manifest weight," let alone develop a sufficient argument about the dispositional hearing. See Ill. S. Ct. R. 341(h)(7) (eff.) (argument of appellant must contain contentions and reasons therefor with citation to legal authority); See *Marzouki v. Nagar-Marzouki*, 2014 IL App 1st 132841, ¶ 12 (requiring arguments to be well formed and cohesive). This court is not a repository for an

appellant to foist the burden of argument and research, and therefore she has forfeited her argument. *Cimino v. Sublette*, 2015 IL App (1st) 133373, ¶ 3. Regardless of Shamyra's shortcomings in her brief, we note that the limited record before us does not support her contention that the court's decision to place K.M. in a private guardianship with her then foster parents was against the manifest weight of the evidence. Rather, the hearing testimony by K.M.'s caseworker and foster mother demonstrated that she was thriving in her current placement, bonded to her foster family, provided for, and doing well in school and personally. See 705 ILCS 405/1-3(4.05) (West 2016) (listing the best interests factors). K.M. also desired the guardianship. See *id*. The court correctly noted that after some eight years in various homes under DCFS, K.M. was entitled to permanency. In short, the entry of the private guardianship order was not against the manifest weight of the evidence, insofar as the opposite conclusion was not clearly evident. See *In re C.N.*, 196 Ill. 2d 181, 208 (2001) (defining manifest weight); see also *Tajannah O.*, 2014 IL App (1st) 133119, ¶ 20 (noting, there is a strong and compelling presumption in favor of the result reached by the trial court in child custody cases). Shamyra's testimony that she completed services and could provide for K.M. was contradicted by other evidence in the limited record does not necessarily mean the court was required to reach a different conclusion about K.M.'s dispositional placement after the case had been in the system for so long. See also *In re R.G.*, 2012 IL App (1st) 120193, ¶ 31 (trial court has the best opportunity to observe the demeanor and conduct of the parties and witnesses and, therefore, it is in the best position to determine the credibility and weight of the witnesses testimony).

¶ 19 CONCLUSION

¶ 20 For the reasons set forth above, we affirm the judgment of the trial court.

¶ 21 Affirmed.