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2018 IL App (3d) 180104-U

Order filed September 18, 2018

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2018

<i>In re</i> J.M., & Z.M.,)	Appeal from the Circuit Court
)	of the 10th Judicial Circuit,
Minors)	Peoria County, Illinois.
)	
(The People of the State of Illinois,)	
)	Appeal Nos. 3-18-0104
Petitioner-Appellee,)	3-18-0105
)	Circuit Nos. 17-JA-104
v.)	17-JA-105
)	
L.M.,)	
)	Honorable James A. Mack,
Respondent-Appellant).)	Judge, Presiding.

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

ORDER

¶ 1 *Held:* Neither the circuit court’s finding of neglect nor its dispositional order finding respondent unfit was against the manifest weight of the evidence.

¶ 2 The circuit court of Tazewell County held a hearing to determine whether J.M. and Z.M., respondent’s minor children, were neglected in that their environment was injurious to their welfare. 705 ILCS 405/2-3(1)(b) (West 2016). The court found that the minors were neglected.

Following that determination, the circuit court proceeded to the dispositional hearing. The court found respondent unfit due to his history of criminality and drug use, in addition to the testimony elicited at the dispositional hearing, and made the minors wards of the court. Respondent appeals the circuit court's finding of neglect and unfitness, arguing the court's findings were against the manifest weight of the evidence. We affirm.

¶ 3

FACTS

¶ 4

On September 20, 2017, the State filed shelter care petitions for J.M. and Z.M., alleging they were neglected in that their environment was injurious to their welfare. 705 ILCS 405/2-3(1)(b) (West 2016). The petition described recent events involving the children's mother, D.K., and her drug use. Z.M. went to the school principal because he found D.K. unresponsive. The principal ordered a welfare check. Police arrived and found D.K. locked in her room with a known criminal. The petition also listed respondent's and D.K.'s criminal history. As to respondent, it listed six criminal cases, all of which were battery charges. The record on appeal indicates some of those charges were domestic battery charges for violence against D.K. On December 28, 2017, respondent defaulted on said petitions after failing to appear or answer.

¶ 5

On February 9, 2018, the circuit court held an adjudicatory hearing on the issue of neglect. Both respondent and D.K. were present. Both parties waived a factual basis. Respondent requested a finding of neglect be made only as to D.K., arguing that the father's criminal history was too remote in time to result in neglect of the minors. The circuit court noted the dates of respondent's prior charges but found it substantial enough, in conjunction with the allegations against D.K., to adjudicate J.M. and Z.M. neglected.

¶ 6

The circuit court immediately proceeded to the dispositional hearing as to the fitness of both respondent and D.K. The State first called D.K. as a witness. She admitted to being in

federal custody on pending drug charges. She testified respondent was involved with methamphetamine and refused to provide a urine sample for a drug test. She testified she saw respondent use methamphetamine as recently as August 2017. She also admitted to using methamphetamine with respondent. Due to their drug use, she did not feel respondent was the best person to take care of the children while she served her likely sentence in the pending federal case. She explained respondent took J.M. and Z.M. the last time she was in custody and, during that time, respondent sold Z.M.'s medication for money. She also said respondent returned J.M. to her custody without any shoes. Although she felt respondent was a "great dad" when sober, she did not think it was in the best interests of her children to be placed with their father while he was actively using drugs. She testified she understood that her best chance for maintaining a relationship with her children, pending the disposition of her federal case, would be to have them placed with respondent. Nevertheless, she did not believe that was the best choice for J.M. or Z.M.

¶ 7 Respondent took the stand in his own defense, denying he sold methamphetamine. On cross-examination, he testified he was not using methamphetamine. He refused to submit to a drug test, maintaining he should not have to prove his innocence. The State highlighted the social worker's report, which indicated respondent would "do anything" to get his kids back. He testified the kids should be with him, he had not done anything wrong, but that he would not take a drug test. The State asked respondent for his current address but respondent provided inconsistent responses. He claimed he was living at his current residence month-to-month and did not have proof of address. The State also questioned respondent as to pending retail theft charges. Respondent asserted his Fifth Amendment right and refused to testify but maintained his innocence in that case.

¶ 8 Next, the guardian *ad litem* (GAL) questioned respondent. Respondent testified he was unable to get into contact with the children’s caseworker despite several attempts. He had only seen J.M. and Z.M. once since the filing of this case. Respondent was previously on a prescription for Vicodin, which is why he originally refused to take a drug test. He was no longer taking the medication. He testified he was unable to see his children because he was without a car and in Savanna, Illinois, for work. Respondent acknowledged he was arrested for trespass in September of 2017. He also acknowledged a recent charge for driving with his license revoked.

¶ 9 On redirect, respondent denied selling Z.M.’s prescription medication. He also testified D.K.’s characterization of J.M. was not accurate, in that J.M. did not have his shoes on when she came to get the children because the shoes were dirty. He was a good father and believed the children should be with him. Again, he was unable to provide an address to the court and was inconsistent with his previous answers.

¶ 10 Counsel for D.K. called the children’s caseworker, Donna Williams, to the stand. She testified she had been the minors’ caseworker since December 2017, after taking over for the previous caseworker. She had access to all of the previous caseworker’s files. She spoke with respondent in January 2018 about setting up visitation. He informed her he was in Kansas at that time. She asked that he contact her when he returned to Illinois because she was unable to bring the children to Kansas. She had not heard from respondent until the day of the hearing. She set up a visit between respondent and the children for later that month. She testified about a service that would bring respondent to the Peoria area to see his kids but he was unavailable in the past when the service arrived.

¶ 11 The State cross-examined Williams as to her ability to get into contact with respondent. She stated respondent did not give her an accurate address and did not receive her court report.

She testified respondent spoke to Z.M. by phone but has not spoken to J.M. Additionally, he did not send either child Christmas presents.

¶ 12 The State recalled respondent to the stand in an attempt to get an accurate address. He maintained he was not sure of the address as he had been back in the state of Illinois for only two weeks.

¶ 13 In closing, the State recommended the court take wardship of the minors as it was in their best interest. It asked the court to find respondent unfit based on his criminal history and drug use. The State highlighted respondent's refusal to submit to a drug test or to provide an accurate address. Counsel for D.K., in closing, agreed with the State's assessment, acknowledging she had much to lose by being forthcoming with the court about her drug use and parenting.

¶ 14 Respondent disagreed, highlighting the amount of time that had passed since respondent's battery charges. Respondent maintained D.K. was unreliable and testified falsely out of spite. The GAL disagreed with respondent's characterization. He also cited respondent's unwillingness to submit to a drug test or to provide an accurate address. He highlighted evidence of respondent's lies concerning his pending criminal charges and address, in addition to respondent's inability to communicate with the minors' caseworker. Finally, he mentioned the children had behavioral and emotional issues as a result of trauma and believed a stable environment with access to the appropriate counseling services would be the best outcome.

¶ 15 The circuit court found respondent unfit and made the minors wards of the court. It noted respondent's "elusive, evasive, excuses" in response to questions about his address and taking a drug test. The court based its finding on respondent's history of criminality and drug use. It believed D.K.'s testimony was credible and that she had much to lose by being honest. The court

warned respondent's parental rights could be terminated if he failed to correct the conditions that resulted in the finding of unfitness.

¶ 16 This appeal followed.

¶ 17 ANALYSIS

¶ 18 On appeal, respondent argues (1) the court erred in adjudicating the minors neglected with regard to him and (2) the circuit court's dispositional order was against the manifest weight of the evidence in finding respondent unfit and making the minors wards of the court. The State disagrees, arguing it met its burden on both issues. We address each issue in turn.

¶ 19 I. Finding of Neglect

¶ 20 The Juvenile Court Act of 1987 states a minor who is neglected includes "any minor under 18 years of age whose environment is injurious to his or her welfare." 705 ILCS 405/2-3(1)(b) (West 2016). Neglect has been described as an "unintentional disregard of duty" but without a quantifiable measurement. *People ex rel. Wallace v. Labrenz*, 411 Ill. 618, 624 (1952). An injurious environment must include a parental breach of the duty to provide a safe shelter for one's children. *In re M.K.*, 271 Ill. App. 3d 820, 826 (1995). Each case containing an allegation of neglect is fact specific. *In re N.B.*, 191 Ill. 2d 338, 346 (2000). A finding of neglect must be proved by the preponderance of the evidence. 705 ILCS 405/1-3(1) (West 2016). The State must show the allegations are more probable than they are not. *N.B.*, 191 Ill. 2d at 343.

¶ 21 Respondent argues the circuit court erred in adjudicating the minors neglected with respect to him. The State argues the court properly made the finding because a finding of neglect does not distribute fault. To support this contention, the States cites *In re Arthur H.*, 212 Ill. 2d 441, 465 (2004). In *Arthur*, our supreme court reversed the lower court's holding that both parents must be found to be neglectful in order for the circuit court to adjudicate minors

neglected. *Id.* at 459. It interpreted the Juvenile Court Act of 1987 and found the legislature did not intend the court to “assess the proportion of blame with respect to such individuals.” *Id.* The court said to hold otherwise “would lead to the unacceptable proposition that a child who is neglected by one parent would be without the protections of the Act.” *Id.* at 467.

¶ 22 Here, the State presented sufficient evidence to find the minors neglected. Both parties waived the factual basis of the petition, which described the environment of the home. Both minors attempted to revive an unresponsive D.K., who invited a known criminal to spend substantial time in her home. D.K. is facing federal charges for the possession and distribution of drugs. Respondent is also facing pending charges. He is unable to provide an address and is admittedly inconsistent in housing. The circuit court found D.K.’s testimony credible as to respondent’s and her own drug use. There is also the allegation respondent misappropriated his son’s medication for monetary gain. We agree with the State that whether respondent and D.K. individually contributed to the minors’ neglect is immaterial. The evidence provides for a finding of neglect by the preponderance of the evidence. The circuit court’s finding was not against the manifest weight of the evidence.

¶ 23 II. Finding of Fitness

¶ 24 The purpose of a dispositional hearing is to determine whether it is in the best interests of the minor to be made a ward of the court. 705 ILCS 405/2-27(1) (West 2016). The court must “put[] in writing the factual basis supporting the determination of whether the parent[] *** of a minor adjudged a ward of the court [is] unfit or [is] unable, for some reason other than financial circumstances alone, to care for, protect, train, or discipline the minor.” *Id.* The State must prove unfitness by a preponderance of the evidence. *In re K.B.*, 2012 IL App (3d) 110655, ¶ 22. A court’s finding of unfitness will be reversed “ ‘only if the findings of fact are against the manifest

weight of the evidence or if the [circuit] court committed an abuse of discretion by selecting an inappropriate dispositional order.’ ” *Id.* ¶ 23 (quoting *In re T.B.*, 215 Ill. App. 3d 1059, 1062 (1991)). A court’s finding of unfitness is against the manifest weight of the evidence only if, from the record, the opposite conclusion is clearly evident. *Id.*

¶ 25 Several factors support the circuit court’s dispositional order of unfitness. The minors’ GAL opined respondent was dispositionally unfit. Respondent claims he would do anything to have his children back but refuses to submit to a drug test. Respondent, by the court’s characterization, was evasive and contradicting when asked to provide an address. Williams was unable to get into contact with respondent for weeks concerning her court report. She testified respondent had seen the minors once since the filing of the State’s petition and had missed opportunities to see them more times. He also failed to communicate with them consistently; in the case of J.M., there was no communication at all. Respondent has a documented history of battery, sometimes against D.K., which was included in the factual basis he waived. He also has open cases against him. D.K. testified respondent is still using drugs and sold Z.M.’s medication. Respondent denied these claims but the court found D.K.’s testimony credible as she admitted to much personal wrongdoing. She acknowledged her best option would be respondent taking care of the children but testified she did not want that as long as he was still using. The simplest thing respondent could have done would have been to submit to the drug test. He repeatedly refused. The circuit court gave respondent the option once again during its disposition. The court said respondent would have an accelerated track to regain custody of his children if he submitted to a drug test that day. Respondent refused again.

¶ 26 Respondent attempts to characterize the circuit court’s dispositional order as purely a result of his criminal history. While the court did take that into consideration and stated it was a

reason for its finding, the court also noted respondent's drug use and the testimony provided at the hearing. Respondent maintains he can provide a good home for the children, but provides no address. He says he took good care of them when D.K. previously left the children in his care but ignores allegations of selling Z.M.'s medication and returning J.M. with no shoes. He says he has a strong bond with the children, which D.K. and the GAL confirmed, but that does not change the fact Williams notes behaviors in the children she believes are in response to trauma. Williams stated the children need stability and someone who can facilitate the proper care and access to therapy. Respondent cannot be relied upon to communicate with Williams or provide stable housing or access to the required services. In light of these facts, we cannot say the circuit court's dispositional order finding respondent unfit and making the minors wards of the court was against the manifest weight of the evidence.

¶ 27

CONCLUSION

¶ 28

For the foregoing reasons, we affirm the judgment of the circuit court of Tazewell County.

¶ 29

Affirmed.