

NOTICE

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2018 IL App (4th) 170944-U

NO. 4-17-0944

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

April 17, 2018

Carla Bender

4th District Appellate Court, IL

<i>In re: A.W., a Minor</i>)	Appeal from
)	Circuit Court of
(The People of the State of Illinois,)	Logan County
Petitioner-Appellee,)	No. 17JA19
v.)	
Angela Mangalavite,)	Honorable
Respondent-Appellant).)	William G. Workman,
)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Justices Turner and Cavanagh concurred in the judgment.

ORDER

- ¶ 1 *Held:* The appellate court affirmed, concluding (1) respondent’s claim regarding the shelter-care hearing was moot in light of the subsequent adjudication of neglect and dispositional order making the minor a ward of the court and placing custody and guardianship with DCFS, and (2) respondent was not denied due process where DCFS filed the service plan on the day of the dispositional hearing.
- ¶ 2 In June 2017, the State filed a petition for adjudication of wardship, alleging respondent, Angela Mangalavite, neglected or abused her minor child, A.W. (born November 25, 2002). Respondent father, Richard West, is not a party to this appeal. In October 2017, the trial court accepted respondent’s admission that A.W. was neglected and adjudicated A.W. a neglected minor. Following a November 2017 hearing, the court entered a dispositional order making A.W. a ward of the court and granting custody and guardianship to the Department of Children and Family Services (DCFS).

¶ 3 Respondent appeals, asserting she was denied due process when (1) she was appointed counsel at the temporary-custody hearing and counsel was not present, and (2) DCFS failed to file a service plan until the day of the dispositional hearing. For the following reasons, we affirm.

¶ 4 I. BACKGROUND

¶ 5 A. Initial Proceedings

¶ 6 In June 2017, the State filed a petition for adjudication of (1) neglect pursuant to section 2-3(1)(b) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(1)(b) (West 2016)), in that A.W.'s environment was injurious to her welfare as evidenced by (a) respondent failing to ensure a safe and nurturing environment, (b) respondent's substance use, (c) domestic violence between respondent and A.W., and (d) domestic violence between respondent and her paramour; and (2) abuse pursuant to sections 2-3(2)(i) and (ii) of the Juvenile Court Act (705 ILCS 405/2-3(2)(i), (ii) (West 2016)), in that respondent (a) caused or allowed physical injury to be inflicted on A.W. by other than accidental means, and (b) created a substantial risk of physical injury to A.W. by other than accidental means, in that respondent told A.W. to commit suicide and A.W. cut her wrists.

¶ 7 On June 12, 2017, the trial court held a shelter-care hearing, where respondent appeared. The court advised respondent of her rights, including, in part, her right to be represented by counsel, the right to be appointed an attorney if she could not afford to hire one, the right to present evidence, and the right to cross-examine witnesses. The judge then stated, "I'm going to appoint counsel for you and that's going to be Mr. Mills." The court then asked the State if it was ready to proceed with the temporary-custody hearing, and the State called its first witness.

¶ 8 Kelley Brooks, a DCFS investigator, testified she received a telephone call at 1 a.m., reporting respondent and her paramour were arrested after getting “extremely drunk” and engaging in a domestic-violence altercation. According to Brooks, respondent struck A.W. during the course of the argument and “told [A.W.] she should just go kill herself, and so [A.W.] went and sliced her wrists[,] causing her to have to go to the emergency room.” Brooks testified both A.W. and A.W.’s one-month-old child were present when respondent and her paramour were engaged in a physical fight. According to Brooks, an officer reported that, at some point, respondent barricaded herself in a closet with the one-month-old child. A.W. was taken to the hospital, where she had nine stitches in the cuts on her wrists. The doctor recommended A.W. be psychiatrically hospitalized, and DCFS took protective custody and placed A.W. at Lincoln Prairie. Brooks opined no reasonable efforts could be made to keep A.W. in the home and safe at that point in time.

¶ 9 Following this testimony, the trial judge said to respondent, “[A]s I indicated earlier, you have a right to cross-examine witnesses, but I’ve also at this point appointed counsel for you, so I’ll give you the opportunity, if you wish, to ask this witness any questions about what she just testified to, you will have that opportunity, or you can wait until you have attorney [sic] with you.” Respondent replied, “I’ll wait.” The court gave the guardian *ad litem* the opportunity to cross-examine Brooks. The court admitted into evidence People’s exhibit No. 1, which was the sworn statement for respondent’s arrest on domestic battery charges. Finally, the court noted for the record that respondent had bruising on her face and a swollen right eye.

¶ 10 Neither the State nor the guardian *ad litem* offered further evidence. The trial court noted respondent was “waiting for her counsel,” and then turned to the State for argument. Following argument by the State and the guardian *ad litem*, the court found (1) probable cause,

(2) it was a matter of immediate and urgent necessity, (3) reasonable efforts were not possible, and (4) it was in A.W.'s best interest that DCFS be made her temporary custodian. The court's written order required DCFS to file a service plan within 45 days.

¶ 11 In July 2017, the trial court held "first appearance proceedings," where both respondent mother and respondent father appeared without counsel. The court advised respondent father of the allegations in the State's petition and his rights. The court noted both parents had the right to counsel and appointed Kelly Harms as counsel for respondent. Harms represented respondent at all subsequent proceedings.

¶ 12 B. Adjudication of Neglect

¶ 13 In October 2017, respondent admitted paragraphs two and three of the petition for adjudication of neglect. Specifically, respondent admitted A.W. was neglected pursuant to section 2-3(1)(b) of the Juvenile Court Act (705 ILCS 405/2-3(1)(b) (West 2016)), in that A.W.'s environment was injurious to her welfare as evidenced by respondent's substance use and domestic violence between respondent and A.W. The trial court advised respondent of her rights to a hearing, to present witnesses and evidence on her own behalf, and to testify. As part of the factual basis, the State represented it would submit a certified copy of conviction in Logan County case No. 17-CF-81 showing respondent pleaded guilty to a domestic-violence charge against A.W. The State further represented it would present testimony from law enforcement officers that had contact with respondent on the date of the incident and that she was intoxicated.

¶ 14 The trial court found respondent's admission knowing and voluntary and the factual basis supported the finding of neglect. Accordingly, the court accepted respondent's admission and entered an order adjudicating A.W. neglected.

¶ 15 C. Dispositional Hearing

¶ 16 On November 30, 2017, the matter proceeded to a dispositional hearing. That same date, DCFS filed a family service plan. At the hearing, the State relied on the dispositional hearing report and did not present additional evidence or testimony. The dispositional hearing report indicated that, at the time the case opened, respondent lived in Lincoln, Illinois, with a disabled, elderly man for whom she provided care. However, respondent had since moved out of that house and planned to move into the Oxford house, a transitional housing program for adults with substance-abuse issues, in Bloomington, Illinois. Respondent was independently employed by disabled individuals to care for their daily needs. According to the report, respondent was no longer providing care for the man she previously lived with, but she did provide care for another client on weekends. Respondent did not inform DCFS of her rate of pay or the hours she worked. Respondent reported she completed a substance-abuse assessment but failed to sign consents for the caseworker to verify that information.

¶ 17 The report outlined one primary goal of respondent as cooperating with DCFS. The report indicated respondent's contact and attendance at meetings was inconsistent, partially due to two periods of incarceration within the previous six months related to her domestic-battery charge. The caseworker had to leave messages for respondent with the elderly man she lived with and frequently did not receive return calls. The caseworker also sent letters to respondent's home, which respondent denied receiving. Respondent failed to complete the integrated assessment questionnaire provided to her in October 2017 and the parenting assessment provided to her in September 2017. According to the report, "these tools are used to assess client service needs to ensure that a service plan can be created that will address what areas [respondent] needs to work on in order to provide safe and stable living conditions for her

minor child.” The report noted respondent’s attendance and contact had been more consistent in the previous two months.

¶ 18 The trial court found respondent made some attempt to correct the situation which led to DCFS involvement, but she still had some distance to go on a few items. Specifically, the court was concerned about housing and emphasized the importance of respondent establishing a permanent residence. The court further emphasized the need to address the communication problems and noted respondent needed to make arrangements so DCFS could reach her more easily. Finally, the court found respondent unfit and set the permanency goal of return home within 12 months. The court entered a dispositional order making A.W. a ward of the court and placing custody and guardianship with DCFS.

¶ 19 This appeal followed.

¶ 20 II. ANALYSIS

¶ 21 On appeal, respondent argues she was denied due process when (1) she was appointed counsel at the temporary-custody hearing and counsel was not present, and (2) DCFS failed to file a service plan until the day of the dispositional hearing. We first note that, although respondent frames her arguments as a denial of due process, her brief in fact argues (1) she was denied her statutory right to counsel at the temporary-custody hearing (705 ILCS 405/1-5 (West 2016)); and (2) DCFS did not comply with the statutory requirement to file a service plan within 45 days of the minor being placed in shelter care (705 ILCS 405/2-10.1 (West 2016)). We turn first to respondent’s claim that she was denied her statutory right to counsel at the temporary custody hearing.

¶ 22 A. Temporary Custody Hearing

¶ 23 Respondent asserts she was denied her statutory right to counsel where the trial court appointed her a lawyer but immediately held the temporary custody hearing without that lawyer's presence. The State argues respondent has forfeited this claim by failing to (1) request any remedy or relief; (2) cite any authority demonstrating she is due any remedy or relief; or (3) file an interlocutory appeal within 14 days of the entry of the temporary-custody order (Ill. S. Ct. R. 306 (a)(5) (eff. Nov. 1, 2017)). The State further argues the claimed error is moot because there has been a subsequent adjudication of wardship supported by adequate evidence. In the alternative, the State argues there is no statutory right to an attorney at the temporary-custody hearing. Because we agree with the State's mootness argument, we need not resolve the statutory right to counsel issue.

¶ 24 "An appeal becomes moot where the issues involved in the trial court no longer exist because events occur which render it impossible for the reviewing court to grant effective relief." *In re A.D.W.*, 278 Ill. App. 3d 476, 480, 663 N.E.2d 58, 61 (1996). As an example, the *A.D.W.* court noted a challenge to the sufficiency of the evidence at a preliminary hearing would be deemed moot if the defendant were later indicted by a grand jury. *Id.* (citing *People v. Henderson*, 36 Ill. App. 3d 355, 378, 344 N.E.2d 239, 258 (1976)).

¶ 25 We conclude there is no relief available to respondent, as her challenge to the temporary-custody hearing, which resulted in the entry of a temporary custody order, is moot. In general, "an appeal of findings made in a temporary[-]custody hearing is moot where there is a subsequent adjudication of wardship supported by adequate evidence." (Internal quotation marks omitted.) *In re J.W.*, 386 Ill. App. 3d 847, 852, 898 N.E.2d 803, 808 (2008) (quoting *In re Edward T.*, 343 Ill. App. 3d 778, 792, 799 N.E.2d 304, 315 (2003)). In this case, respondent admitted A.W. was neglected pursuant to section 2-3(1)(b) of the Juvenile Court Act (705 ILCS

405/2-3(1)(b) (West 2016)), in that A.W.'s environment was injurious to her welfare as evidenced by respondent's substance use and domestic violence between respondent and A.W. The State presented an adequate factual basis. The court accepted respondent's admission and entered an order adjudicating A.W. neglected. Following the dispositional hearing, the court entered an order making A.W. a ward of the court and placing custody and guardianship with DCFS. Accordingly, even if we were to address respondent's challenge to the temporary-custody hearing, DCFS would still retain custody and guardianship of A.W. pursuant to the subsequent dispositional hearing. *A.D.W.*, 278 Ill. App. 3d at 480.

¶ 26

B. Service Plan

¶ 27 Respondent contends she was denied due process where DCFS failed to file a service plan until the day of the dispositional hearing. Respondent asserts the service plan is akin to a purge order in a civil contempt hearing and it serves as a blueprint for a respondent to "get her child back." The State contends respondent has forfeited this argument by failing to raise it before the trial court. Further, the State argues respondent's failure to cooperate or even maintain contact with DCFS demonstrates it was unlikely she would have sufficiently complied with a service plan so as to preclude entry of the dispositional order.

¶ 28

Section 2-10.1 of the Juvenile Court Act provides that DCFS "shall" file a service plan within 45 days of an order placing the minor in shelter care following the temporary-custody hearing. 705 ILCS 405/2-10.1 (West 2016). Although the statutory language uses the term "shall," that language is directory and not mandatory. *In re L.O.*, 2016 IL App (3d) 150083, ¶ 21, 65 N.E.3d 577. "The service plan is designed to, among other things, stabilize the family situation and reunify the family." *Id.* ¶ 18. In its dispositional ruling, the trial court "shall

enter any other orders necessary to fulfill the service plan[.]” 705 ILCS 405/2-23(3) (West 2016).

¶ 29 In the instant case, respondent never raised this issue before the trial court and, thus, has forfeited the claim. See *In re M.W.*, 232 Ill. 2d 408, 430, 905 N.E.2d 757, 772 (2009). Moreover, the record demonstrates the delay in the filing of the service plan was due to respondent’s failure to (1) contact DCFS, (2) complete the parenting assessment provided to her in September 2017, and (3) complete the integrated assessment questionnaire provided to her in October 2017. Respondent’s own actions caused the delay that she now complains of, and she cannot now complain that course of action was in error. See, e.g., *In re Commitment of Trulock*, 2012 IL App (3d) 110550, ¶ 41, 970 N.E.2d 560 (observing that the delays were either attributable to, or acquiesced in by, the respondent); *People v. Denson*, 2014 IL 116231, ¶ 17, 21 N.E.3d 398 (“[A] party may not request to proceed in one manner and then later contend on appeal that the requested course of action was in error.”).

¶ 30 Finally, we note that “a dispositional hearing serves the purpose of allowing the circuit court to decide what further actions are in the best interests of a minor, and the hearing and ruling on whether to make a minor a ward of the court gives the parents fair notice of what they must do to retain their rights to their child in the face of any future termination proceedings.” (Internal quotation marks omitted.) *In re April C.*, 326 Ill. App. 3d 225, 237, 760 N.E.2d 85, 95 (2001) (quoting *In re G.F.H.*, 315 Ill. App. 3d 711, 715, 734 N.E.2d 519, 522 (2000)). Respondent’s compliance with the service plan is not the focus of the dispositional hearing—the dispositional hearing is to determine the best interest of the minor going forward and to give respondent notice of what she must do going forward to retain her rights to the child. Indeed, as noted above, the statute specifically states that the trial court, in entering its

dispositional ruling, “shall enter any other orders necessary to fulfill the service plan[.]” 705 ILCS 405/2-23(3) (West 2016). Accordingly, we conclude respondent was not denied due process when DCFS filed the service plan more than 45 days after the temporary-custody order.

¶ 31

III. CONCLUSION

¶ 32

For the foregoing reasons, we affirm the trial court’s judgment.

¶ 33

Affirmed.