

2018 IL App (4th) 180053-U

No. 4-18-0053

IN THE APPELLATE COURT
OF ILLINOIS

FOURTH DISTRICT

FILED

May 24, 2018

Carla Bender

4th District Appellate
Court, IL

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

<i>In re</i> A.E., a Minor)	Appeal from the
)	Circuit Court of
(The People of the State of Illinois,)	McLean County
Petitioner-Appellee,)	No. 17JA93
v.)	
Kendall Edwards,)	Honorable
Respondent-Appellant).)	Kevin P. Fitzgerald,
)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justices DeArmond and Turner concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed, concluding the trial court’s finding respondent was unfit to care for his son was not against the manifest weight of the evidence.

¶ 2 Respondent father, Kendall Edwards, appeals from the trial court’s dispositional order adjudging his son, A.E. (born October 6, 2016), a ward of the court and placing guardianship and custody with the Department of Children and Family Services (DCFS). On appeal, respondent argues the trial court’s finding he was unfit to care for A.E. is against the manifest weight of the evidence. We disagree and affirm.

¶ 3 I. BACKGROUND

¶ 4 A. Petition for Adjudication of Wardship

¶ 5 On October 11, 2017, the State filed a petition for adjudication of wardship,

alleging A.E. was a neglected minor as defined by sections 2-3(1)(b) of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/2-3(1)(b) (West 2016)). Paragraph A of the petition alleged A.E. was subject to an injurious environment due to his mother, Kaitlyn Alltop, having unresolved issues of domestic violence and/or anger management. Paragraph B of the petition alleged A.E. was subject to an injurious environment due to respondent having unresolved issues of domestic violence and/or anger management. Paragraph C of the petition alleged A.E. was subject to an injurious environment due to respondent having unresolved issues of alcohol and/or substance abuse.

¶ 6 B. Shelter-Care Hearing

¶ 7 On October 12, 2017, the trial court held a shelter-care hearing. The court heard testimony from Lindsey Lustfeldt, the assigned intact caseworker from Children's Home and Aid from January to October 6, 2017. Lustfeldt filed with the court a status report, which provided her recommendations concerning shelter care. The status report also had attached to it multiple reports showing contacts between the police and respondent and/or Kaitlyn. The following is gleaned from Lustfeldt's testimony and her status report as it relates to respondent.

¶ 8 Children's Home and Aid became involved after two December 2016 domestic violence incidents between respondent and Kaitlyn. On December 3, 2016, police were called after respondent struck Kaitlyn outside of A.E.'s bedroom. Respondent was arrested and a no-contact order was issued. The police officer involved in the incident noted respondent smoked marijuana. On December 14, 2016, police were called after respondent pushed Kaitlyn into a wall and choked her. Kaitlyn was observed with scratches and bruising on her neck and a cut inside her mouth, which was bleeding. Police were called five times prior to the December 2016

incidents.

¶ 9 Respondent and Kaitlyn are involved in a family court case. In that case, respondent was granted visitation with A.E. Sundays through Tuesdays. Visitation was not consistently followed, resulting in police involvement. Kaitlyn reported respondent's drug and alcohol use had, on occasion, affected his ability to comply with visitation. As part of the family court case, respondent and Kaitlyn were ordered to take parenting classes. It was unclear at the time of the shelter-care hearing if respondent was taking those classes.

¶ 10 As part of the intact case, respondent was referred to engage in anger-management classes. Respondent attended those classes. However, he had not shown sufficient progress and continued to repeat the same behaviors and not be accountable for his actions. Respondent's anger-management teacher reported an incident where an argument occurred between respondent and Kaitlyn outside the facilities where the anger-management classes occur and while in the presence of A.E.

¶ 11 As part of the intact case, respondent was referred to complete a substance-abuse evaluation and any treatment recommendations. Respondent was scheduled to complete drug screens on August 2 and August 18, 2017. He was marked as "failure to appear" on August 2 and "service denied" on August 18. On September 11, 2017, respondent's anger-management teacher reported concerns with respondent smoking marijuana after several students from the class noticed such a smell emanating from his body. On September 14, 2017, respondent completed a "Quik Cup" drug test at Children's Home and Aid, which testified positive for Tetrahydrocannabinol (THC) and Oxycodone. After receiving the results from the drug test, respondent admitted to "THC use" a few weeks prior but denied using Oxycodone. At the time

of the shelter-care hearing, respondent had not completed a substance-abuse evaluation.

¶ 12 In argument, respondent acknowledged he was not the custodial parent and conceded probable cause existed to believe A.E. was neglected and an immediate and urgent necessity existed to remove A.E. from Kaitlyn's care.

¶ 13 Based on the evidence and arguments presented, the trial court found probable cause to believe A.E. was neglected and an immediate and urgent necessity existed to remove A.E. from Kaitlyn's care. The court placed temporary custody with DCFS.

¶ 14 C. Adjudicatory Hearing

¶ 15 In December 2017, the trial court held an adjudicatory hearing. Kaitlyn admitted to paragraph A of the State's petition. As a factual basis, the State indicated the evidence would show (1) multiple incidents of domestic violence between Kaitlyn and respondent, (2) at least two hotline calls were made concerning domestic violence between Kaitlyn and respondent since the end of 2016, and (3) Kaitlyn failed to complete a domestic-violence evaluation. Based on the admission and factual basis, the court found A.E. to be neglected. At the end of the hearing, the court noted it had received a certificate indicating both respondent and Kaitlyn had completed parenting classes.

¶ 16 D. Dispositional Hearing

¶ 17 On January 2, 2018, the trial court held a dispositional hearing.

¶ 18 1. *Dispositional Report*

¶ 19 The trial court was presented with a dispositional report authored by caseworker Lustfeldt, which was filed on December 26, 2017. The following is gleaned from the dispositional report as it relates to respondent.

¶ 20 a. Domestic Violence

¶ 21 The intact case was opened due to reported domestic violence between respondent and Kaitlyn. At the October 12, 2017, shelter-care hearing, the State presented numerous police reports describing incidents of domestic violence between respondent and Kaitlyn. Respondent acknowledged issues of domestic violence in his relationship with Kaitlyn.

¶ 22 b. Substance Abuse

¶ 23 Respondent reported he “would smoke [marijuana] every day until about a year and a half ago” and “about ‘[one] month and a half ago’ he stopped smoking all together.” Respondent denied having a problem with marijuana after he quit.

¶ 24 c. Service Plan

¶ 25 On December 4, 2017, a service plan was created, which was issued to respondent on December 6. As required by the service plan, respondent (1) maintained adequate housing, (2) maintained a suitable source of income, and (3) completed a domestic-violence assessment and domestic-violence program. Respondent was also required as part of his service plan to participate in individual counseling to address his involvement with DCFS and learn coping skills to help manage stress, anger, and the trauma he endured throughout his life. Respondent was referred for individual counseling on December 11, 2017, but he had not been assigned to a counselor at the time the dispositional report was created. Respondent was also required as part of his service plan to complete a substance-abuse assessment and refrain from the consumption of any and all illegal substances. Respondent completed a substance-abuse assessment, which did not recommend substance-abuse treatment. Respondent tested negative for illegal substances on November 27, December 6, December 15, and December 18, 2017.

¶ 26

d. Author's Assessment

¶ 27

Lustfeldt made the following assessment concerning respondent and Kaitlyn:

“It is evident that [respondent] and [Kaitlyn] have the motivation and dedication to correct the conditions that led their family to the attention of DCFS and engage in all recommended services.

[Kaitlyn] successfully completed [a] parenting class and has appropriate income/housing. She is engage[d] in domestic[-]violence treatment and individual counseling. She has been compliant with random drug screens and in[-]home visits. [Kaitlyn] has attended all parent/child visits and is very bonded to [A.E.] [Kaitlyn] is currently 5 months pregnant and attends all medical appointments. [Kaitlyn] is in a romantic relationship with Aaron Browning. A background check has been cleared and he has been cooperative with the agency. Mr. Browning is not recommended for any services at this time.

[Respondent] successfully completed a parenting class on his own and provided a certificate. He has completed domestic[-]violence treatment and a substance[-]abuse assessment. [Respondent] has been screening negative since case opening and was not recommended for substance[-]abuse treatment. This worker completed a referral for individual counseling and once assigned [respondent] will be expected to complete a mental[-]health assessment. [Respondent] has attended all parent/child visits and in[-]home visits. [Respondent] and [A.E.] have a strong bond. [Respondent] has been cooperative with the agency. [Respondent] is in a romantic relationship with Brittany Neal.

Ms. Neal has been cooperative with the agency and cleared a background check. She is not recommended for services at this time.

[A.E.] is placed with traditional caregivers in Bloomington, [Illinois]. They have been in communication with [Kaitlyn] and [respondent] since the last court date to ensure they have up to date information on [A.E.] [A.E.] is on target developmentally and there are no concerns.

At this time, the agency is recommending [respondent] and [Kaitlyn] be found unfit and the goal be set to [r]eturn [h]ome within 12 months. Both parents took initiative and engaged in services since [October 12, 2017,] when [A.E.] came into care. The agency would like to see a consistent period of time of sobriety of [respondent]. [Kaitlyn] will be expected to continue engaging in domestic[-]violence treatment and individual counseling. The agency asks a court date be set in [three] months to review the progress of both parents in their services.”

¶ 28 *2. Recommendations*

¶ 29 The State, the guardian *ad litem*, respondent, and Kaitlyn recommended the trial court make A.E. a ward of the court, find Kaitlyn unfit to care for A.E., and grant guardianship to DCFS. The parties disagreed, however, as to (1) whether respondent was fit to care for A.E. and therefore should be granted custody, and (2) the appropriate return-home goal.

¶ 30 The State acknowledged it was “a close call” with respect to respondent’s fitness. The State believed it was important for respondent to complete individual counseling and maintain sobriety. The State noted respondent’s last positive screen for marijuana was in

September 2017 and indicated it would like to see a few months of additional clean screens before the case was closed. The State recommended the trial court (1) find respondent fit and grant him custody, and (2) set a return-home goal of five months. Both the guardian *ad litem* and respondent agreed with the recommendations of the State.

¶ 31 Kaitlyn recommended the trial court follow the dispositional report and (1) find respondent unfit due to his short period of his sobriety, (2) grant custody to DCFS, and (3) set a return-home goal of 12 months.

¶ 32 *3. Trial Court's Finding*

¶ 33 In the oral pronouncement of its decision, the trial court stated as follows:

“I think both parents are off to an excellent start. This was a pretty violent incident which caused the minor to come into care. So I would like to see a little more of a period of no domestic[-]violence incidents with [respondent]. And it looks like he’s been having a long-term relationship with marijuana at least. And just relatively—he’s been doing great since he says he stopped and the screens have been clean. I’d just like to see a little bit longer period of sobriety before finding him fit.

I think mom is also off to a good start and pretty close to fitness. All things being equal, I think we ought to try to return kids to the home from which they were removed. And it feels like I’m going to make a custody determination based on a report here without knowing really where the best place is. I think we’ll be in a better situation—if [respondent] still has clean screens and there’s no incidents, he certainly will be found fit at the next hearing. Mom may or may not

be able to be found fit at that point in time. And I guess I would like everyone to consider—particularly, the [g]uardian *ad [l]item*, I really want to know what he feels is the best placement. Looks like both of them have good paramours that they're with that don't have any issues and would be supportive of either parent. I just feel making a determination today makes basically a custody determination without enough evidence or without at least enough time to make sure that there's a safe environment for [A.E.] But I feel really confident that next time one and maybe both parents will be found fit, and we'll have a return home in [five] goal. But I'll leave it return 12 right now.”

¶ 34 The trial court entered a written order (1) making A.E. a ward of the court, (2) finding respondent and Kaitlyn unfit to care for A.E., (3) placing guardianship and custody with DCFS, and (4) setting a return-home goal of 12 months. With respect to respondent's fitness, the court's written order notes respondent must demonstrate sobriety, refrain from engaging in any incidents of domestic violence, and participate in individual counseling.

¶ 35 This appeal followed.

¶ 36 II. ANALYSIS

¶ 37 On appeal, respondent argues the trial court's finding he was unfit to care for A.E. is against the manifest weight of the evidence. Specifically, respondent asserts “there was no reason to find [him] unfit” and then posits the only reason the court did so was because A.E. was in previously in Kaitlyn's custody and it sought to give her more time to achieve fitness. The State contends the court's finding of unfitness is not against the manifest weight of the evidence.

¶ 38 After A.E. was adjudged a ward of the court, the trial court was tasked with

determining a disposition best serving A.E.'s interest. 705 ILCS 405/2-22(1) (West 2016)); *In re Al. S.*, 2017 IL App (4th) 160737, ¶ 40, 73 N.E.3d 1178. Under section 2-27(1) of the Act (705 ILCS 405/2-27(1) (West 2016)), a trial court may commit a minor to the custody of DCFS if it determines the parents 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[.]”

¶ 39 On appeal, 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.” *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.” *Al. S.*, 2017 IL App (4th) 160737, ¶ 41.

¶ 40 The record demonstrates a major concern was respondent’s history of domestic violence. The police were contacted multiple times for incidents of domestic violence between respondent and A.E.’s mother. Another major concern was respondent’s history of substance abuse. According to the December 2017 dispositional report, respondent reported he “would smoke [marijuana] every day until about a year and a half ago” and “about ‘[one] month and a half ago’ he stopped smoking all together.” While it is clear respondent made great strides in the approximate three months following the filing of the petition for adjudication of wardship, the evidence showed a lengthy history of domestic violence and substance abuse. Given this evidence, we find the trial court’s finding respondent was unfit to provide for A.E. was not

against the manifest weight of the evidence.

¶ 41

III. CONCLUSION

¶ 42

We affirm the trial court's judgment.

¶ 43

Affirmed.