

NOTICE

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2018 IL App (4th) 180202-U

NO. 4-18-0202

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

August 7, 2018

Carla Bender

4th District Appellate

Court, IL

<i>In re</i> B.S., a Minor)	Appeal from
)	Circuit Court of
(The People of the State of Illinois,)	Logan County
Petitioner-Appellee,)	No. 17JA38
v.)	
Phillip Menzie,)	Honorable
Respondent-Appellant).)	
)	William G. Workman,
)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Justices Knecht and DeArmond concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed, concluding the trial court’s dispositional order was not against the manifest weight of the evidence.

¶ 2 In December 2017, the State filed a petition for adjudication of neglect, alleging B.S. (born June 16, 2017) was neglected in that her environment was injurious to her welfare (705 ILCS 405/2-3(1)(b) (West 2016)), and she was a newborn infant whose blood, urine, or meconium contained any amount of a controlled substance or a metabolite of a controlled substance (705 ILCS 405/2-3(1)(c) (West 2016)). Respondent, Phillip Menzie, is B.S.’s father, and her mother, Mercedes Skelton, is not a party to this appeal. In February 2018, the trial court entered an adjudicatory order finding B.S. neglected, pursuant to the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(1)(c) (West 2016)), in that she was a newborn infant whose blood, urine, or meconium contained a controlled substance. That same month, the court

entered a dispositional order making B.S. a ward of the court and granting custody and guardianship to the Department of Children and Family Services (DCFS).

¶ 3 Respondent appeals, asserting the trial court’s dispositional finding of unfitness was against the manifest weight of the evidence. For the following reasons, we affirm.

¶ 4 I. BACKGROUND

¶ 5 A. Initial Proceedings

¶ 6 In December 2017, the State filed a petition for adjudication of wardship, alleging B.S. was neglected in that (1) her environment was injurious to her welfare as evidenced by her mother’s drug use (705 ILCS 405/2-3(1)(b) (West 2016)); (2) her environment was injurious to her welfare as evidenced by respondent’s drug use (705 ILCS 405/2-3(1)(b) (West 2016)); and (3) she was a newborn infant whose blood, urine, or meconium contained any amount of a controlled substance or a metabolite of a controlled substance (705 ILCS 405/2-3(1)(c) (West 2016)).

¶ 7 B. Adjudicatory Order

¶ 8 On February 8, 2018, respondent and Skelton each admitted B.S. was neglected because she was a newborn infant whose blood, urine, or meconium contained a controlled substance. Accordingly, the trial court entered an adjudicatory order finding B.S. neglected.

¶ 9 C. Dispositional Hearing

¶ 10 On February 22, 2018, the trial court held a dispositional hearing. DCFS submitted a dispositional-hearing report, which indicated an intact family case was put in place following a June 17, 2017, hotline call reporting B.S. was born substance exposed. On December 5, 2017, B.S. was removed from Skelton’s care following a positive drug screen. At the time DCFS became involved, respondent was on probation for domestic battery. The

dispositional-hearing report indicated respondent was arrested on December 25, 2017, for driving on a suspended license and possession of a controlled substance.

¶ 11 The dispositional-hearing report outlined the following relevant goals for respondent: successful discharge from probation and a substance-abuse assessment with completion of any recommended follow-up treatment. As noted above, respondent was arrested for driving on a suspended license and possession of a controlled substance. As a result of that arrest, respondent had a petition pending to revoke his probation for domestic battery.

¶ 12 Between August 2017 and February 2018, respondent submitted to 24 drug screens. Respondent tested positive for cocaine on the following dates: November 1, 2017, January 23, 2018, January 24, 2018, January 30, 2018, and February 5, 2018. Additionally, respondent failed to appear for five drug screens.

¶ 13 The State argued respondent was unfit based on the pending petition to revoke his probation and his current drug charge. The State also noted respondent's five positive drug screens between November 2017 and February 2018. Counsel for respondent argued the petition to revoke and the pending drug charge should not lead to an immediate finding of unfitness. Counsel noted respondent felt consideration of drug screens "that took place long ago" was unfair and unconstitutional. Counsel further argued, "[Respondent] had drug screens long ago that indicated positive and the one recently, we'd proffer, had something to do with—the positive finding had something to do with his diabetes medication."

¶ 14 Following the dispositional hearing, the trial court determined it was in B.S.'s best interest to be made a ward of the court. The court found respondent unfit based on his drug use, and the court noted one of respondent's first positive drug tests was dated November 1,

2017. Accordingly, the court entered an order finding respondent unfit, making B.S. a ward of the court, and placing guardianship with DCFS.

¶ 15 Following the entry of the dispositional order, respondent sent the trial court a letter (1) indicating his desire to appeal the court’s ruling, and (2) raising the claim that his positive drug tests were attributable to his diabetes medication. Attached to this letter was a printout from a website, which included a report based on side effects users reported to the Food and Drug Administration. The document indicated 26,284 people reported side effects from the diabetes medication respondent took and, of those, 7 people (0.03%) reported false positives on a drug screen. The court filed the letter as a notice of appeal.

¶ 16 This appeal followed.

¶ 17 **II. ANALYSIS**

¶ 18 On appeal, respondent argues the trial court’s dispositional finding of unfitness was against the manifest weight of the evidence.

¶ 19 The Juvenile Court Act provides a two-step process for determining whether a child should be removed from parental custody and made a ward of the court. *In re A.P.*, 2012 IL 113875, ¶ 18, 981 N.E.2d 336. As an initial matter, the trial court must conduct an adjudicatory hearing to determine whether the child is abused, neglected, or dependent. *Id.* ¶ 19. A neglected minor 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). Here, the court adjudicated the child neglected based on respondent’s admission that B.S. was born with a controlled substance present in her blood, urine, or meconium. Respondent does not challenge the court’s neglect adjudication. Accordingly, we turn to the court’s dispositional finding of unfitness.

¶ 20 After a child is found neglected, the matter proceeds to a dispositional hearing. *A.P.*, 2012 IL 113875, ¶ 21. The trial court must determine, by a preponderance of the evidence, whether it is in the health, safety, and best interest of the minor to remain with the parent, or if alternative custody and guardianship placement, *i.e.*, with DCFS, is more appropriate. 705 ILCS 405/2-22 (West 2016). The court’s central concern in fashioning a dispositional order is the best interest of the child. *In re M.P.*, 408 Ill. App. 3d 1070, 1073, 945 N.E.2d 1197, 1200 (2011). In making its decision, the court “should consider all reports, whether or not the author testifies, which would assist the court in determining the proper disposition for the minor.” *In re L.M.*, 189 Ill. App. 3d 392, 400, 545 N.E.2d 319, 325 (1989). “A trial court’s determination regarding dispositional unfitness will be reversed ‘only if the findings of fact are against the manifest weight of the evidence or if the trial court committed an abuse of discretion by selecting an inappropriate dispositional order.’ ” *In re K.B.*, 2012 IL App (3d) 110655, ¶ 23, 973 N.E.2d 470 (quoting *In re T.B.*, 215 Ill. App. 3d 1059, 1062, 574 N.E.2d 893, 896 (1991)).

¶ 21 In this case, the trial court determined it was in B.S.’s best interest to place custody and guardianship with DCFS based on respondent’s unfitness as evidenced by his need for substance-abuse treatment and five positive drug tests in the months prior to the dispositional hearing. Respondent argues the five drug screens that indicated the presence of cocaine in his system were actually false positives attributable to his diabetes medication. In support, respondent relies on information printed from a website that indicated 26,284 people reported side effects from the diabetes medication respondent took and, of those, 7 people (0.03%) reported false positives on a drug screen.

¶ 22 We note respondent contends in his brief that he objected to the admission of the positive drug tests. However, the record shows that counsel for respondent at no time objected to

the drug test results attached to the dispositional-hearing report. Respondent further contends he “submitted evidence to the trial court regarding his diabetes medication.” This information was not presented to the court during the dispositional hearing—it was attached to respondent’s *pro se* letter sent to the court following the entry of the dispositional order. Nevertheless, respondent contends the State failed to introduce evidence (other than the positive drug screens attached to the dispositional report) contradicting respondent’s false positive argument. Respondent further asserts the court erred by giving no weight to his argument that the drug screens were false positives and by failing to ask the State to have the samples retested.

¶ 23 Respondent cites no authority to support his position that the trial court should have asked the State to have the samples retested (see Ill. S. Ct. R. 341(h)(7) (eff. Nov. 1, 2017) (“Argument, which shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on.”)), and our research revealed no case that placed such a duty on the trial court. Moreover, respondent never requested retesting of the samples from the positive drug tests.

¶ 24 While it is true the State did not introduce evidence contradicting respondent’s argument that the positive drug tests were attributable to his diabetes medication, respondent did not introduce any evidence in support of this argument. The State relied on the five positive drug tests attached to the dispositional-hearing report in support of its argument that respondent was unfit and it was in B.S.’s best interest to be made a ward of the court. Counsel for respondent argued that “[respondent] had drug screens long ago that indicated positive and the one recently, we’d proffer, had something to do with—the positive finding had something to do with his diabetes medication” and, therefore, the trial court should not have considered the tests in making its dispositional determination. However, this argument ignores the fact that there were

five positive drug tests, all of which were completed within four months of the February 2018 dispositional hearing. This evidence is sufficient to support the court's finding that respondent was unfit to care for B.S. and, thus, placing her with DCFS was in her best interest. Accordingly, we conclude the court's dispositional order was not against the manifest weight of the evidence.

¶ 25

III. CONCLUSION

¶ 26

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

¶ 27

Affirmed.