2018 IL App (4th) 180519-U

NO. 4-18-0519

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
December 11, 2018
Carla Bender
4th District Appellate
Court, IL

In re Br. D., C.D., and Bl. D., Minors	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Champaign County
Petitioner-Appellee,	)	No. 18JA29
v.	)	
Ronald D.,	)	Honorable
Respondent-Appellant).	)	John R. Kennedy,
	)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Justices DeArmond and Cavanagh concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's finding that respondent father was unfit at the dispositional hearing was not against the manifest weight of the evidence.

¶ 2 Respondent, Ronald D., is the father of Br. D. (born December 2017), C.D. (born July 2016), and Bl. D. (born March 2014). Heather D. is the mother of Br. D., C.D., and Bl. D. In April 2018, the State filed a three-count petition for adjudication of neglect. Count III of the petition alleged that the children were neglected due to their being minors less than 18 years of age whose environment is injurious to their welfare when they reside with Heather and respondent because that environment exposes the minors to domestic violence. 705 ILCS 405/2-3(1)(b) (West 2016). In June 2018, at an adjudicatory hearing, respondent and Heather stipulated to the allegations in count III, and the trial court determined that a factual basis supported the stipulation.

¶ 3 In July 2018, the trial court conducted a dispositional hearing, adjudicated the minors wards of the court, and vested guardianship of the children with the guardianship administrator of the Department of Children and Family Services (DCFS). The court found (1) Heather fit, willing, and able to exercise custody of the minors, (2) respondent unfit and unable to care for the minors, and (3) it was in the minors' best interest to remain in the custody of Heather.

¶ 4 Respondent appeals, arguing (1) the trial court failed to provide a written factual basis in support of its dispositional order and (2) the finding that respondent was unfit was against the manifest weight of the evidence. We disagree and affirm.

¶ 5 I. BACKGROUND

¶ 6 A. The Petition and Adjudicatory Hearing

¶ 7 In April 2018, the State filed a three-count petition for adjudication of neglect. Count I of the petition alleged that Br. D. was abused due to his being a minor less than 18 years of age whose parents inflict physical injury or allow such injury to be inflicted upon him by other than accidental means. *Id.* § 2-3(2)(i). Count II alleged that Br. D., C.D., and Bl. D. were neglected due to their being minors less than 18 years of age whose environment is injurious to their welfare when they reside with their parents because that environment exposes them to the risk of being physically injured other than by accidental means. *Id.* § 2-3(1)(b). Count III alleged that the children were neglected due to their being minors less than 18 years of age whose environment is injurious to their welfare when they reside with their parents because that environment exposes them to domestic violence. *Id.*

¶ 8 In June 2018, the matter proceeded to an adjudicatory hearing. Pursuant to an agreement, Heather and respondent stipulated to the allegations in count III, and the State dismissed counts I and II. The State offered a police report as a factual basis to support the stipula-

tion. The report indicated that in April 2018, Heather was arrested for domestic battery after she admitted to police officers that she had hit respondent in the face during an argument. The trial court accepted the stipulation, found the minors were neglected, and found that a factual basis supported the stipulation.

¶ 9 B. The Dispositional Hearing

¶ 10 1. *The Evidence Presented*

¶ 11 In July 2018, the trial court conducted a dispositional hearing. The dispositional report prepared by a DCFS caseworker indicated that respondent and Heather had separated, filed for divorce, and were living in separate apartments. Respondent and Heather were sharing custody of the children, who would spend a week at a time at each parent's house. The report stated there were "no current continued safety concerns" and recommended custody and guardianship of the children remain with the parents.

¶ 12 The State offered two exhibits as evidence. The first was a series of police reports from February 2018 relating to an injury to Br. D. The reports indicated that respondent and Heather brought Br. D. to the hospital because they were concerned that he was in pain. X-rays revealed that Br. D. had suffered an acute spiral fracture on his upper right femur, caused by a sharp twisting force. Heather and respondent spoke with police officers separately and stated they did not know how the injury occurred. Heather recalled that prior to taking Br. D. to the hospital, she observed Bl. D. patting Br. D's stomach and saying "I'm sorry." Respondent and Heather later came into the police station for further interviews after the police had interviewed other people who had watched Br. D. recently. The interviewing officers suggested that the injury could have occurred accidentally, such as if Br. D. had fallen off of a bed and was caught by the leg. Respondent and Heather again denied having any knowledge of such an incident.

¶ 13 Shortly thereafter, respondent called the police and requested they come to the family home. Upon arrival, respondent stated that he had caused the injury the day before they took Br. D. to the hospital. Respondent indicated that he was watching the children by himself and had set Br. D. on the couch next to him and in front of Bl. D. Respondent then turned to help C.D. onto the couch when Bl. D. "kicked" Br. D. off. Respondent stated he caught Br. D. by the right leg as he was falling. Respondent stated he did not tell the police about the incident because he was scared.

¶ 14 The second exhibit was a 2012 police report from respondent's arrest for impersonating a firefighter. The trial court admitted the report over respondent's objection that it was irrelevant. The State also asked the court to take judicial notice of the court file in that 2012 criminal case, and respondent had no objection. No other testimony or documentary evidence was offered by any party.

¶ 15 2. *The Arguments of the Parties*

¶ 16 The State argued that the minors should be made wards of the court and requested that guardianship be removed from the parents and placed with DCFS. The State requested that the trial court find Heather fit and able to care for the minors and retain custody of them. Regarding respondent, the State expressed concerns about his ability to parent the children due to his failure to be truthful and forthcoming with the details of his causing Br. D.'s injury. The State noted that the parents were currently splitting custody with little difficulty and therefore recommended that respondent have supervised visitation.

¶ 17 The guardian *ad litem* agreed with the State's recommendations and further stated that although a report had not been filed, a court-appointed special advocate (CASA) had "some concern" based on a visit to respondent's home with his "ability to safe[l]y manage young chil-

dren and supervise them correctly in the home."

¶ 18 Respondent agreed the minors should be made wards of court, but insisted he should retain custody. Respondent noted (1) the CASA had not filed a report and (2) the DCFS report recommended he retain custody and specifically found there was no continued safety concern. Respondent further contended that no criminal charges had been filed in relation to Br. D.'s broken leg and Bl. D.'s apologizing to Br. D. corroborated respondent's claim that the injury was not intentional. Respondent indicated that the minors were adjudicated as neglected because of a domestic violence issue and he and Heather had separated, filed for divorce, and were sharing custody without problems. Respondent requested he be found fit, willing, and able to exercise custody and that the best interests of the children would be to continue the current arrangement rather than disrupt the parenting schedule.

¶ 19 Heather expressed no opinion regarding respondent's fitness but agreed with the State and guardian *ad litem* that she was fit, willing, and able to exercise custody. Although she did not object to wardship, Heather argued she should retain guardianship. Heather requested that if the court were to permit visitation, that it appoint an independent third party to supervise.

¶ 20 3. *The Trial Court's Findings*

¶ 21 The trial court found it was in the best interest of each of the minors and the public that they be named wards of the court and adjudicated neglected minors. The court found Heather was fit, able, and willing to exercise custody of the minors and her retaining custody would not "endanger the minors' health, safety and best interests." Regarding respondent, the court concluded he was unfit and unable for reasons other than financial circumstances alone to care for, protect, train, and discipline any of the minors. Accordingly, the court found it would be "contrary to their health, safety and best interests to be in his custody." The court ordered

guardianship be removed from the parents and placed in the guardianship administrator of DCFS and custody be removed from respondent. The court further ordered respondent to establish and maintain supervised visitation with a supervisor, other than Heather, as designated by DCFS.

¶ 22 4. *The Written Order*

¶ 23 Later in July 2018, the trial court entered a written order that contained its oral findings and orders from the dispositional hearing. Regarding respondent, the written order stated as follows:

> "[t]he respondent father is unfit and unable for reasons other than financial circumstances alone, to care for, protect, train or discipline the minors and the health, safety, and best interest of the minors will be jeopardized if the minors remain in custody of such parent. The Court adopts and incorporates herein its findings rendered orally and in writing at all prior hearings including the temporary custody hearing and adjudicatory hearing. The respondent father has difficulty supervising the children." (We note no indication exists in the record that a temporary custody hearing was ever conducted.)

¶ 24 This appeal followed.

¶ 25 II. ANALYSIS

¶ 26 Respondent appeals, arguing (1) the trial court failed to provide a written factual basis in support of its dispositional order and (2) the finding that respondent was unfit was against the manifest weight of the evidence. We disagree and affirm.

¶ 27 A. The Writing Requirement

¶ 28 Respondent first argues that the trial court failed to provide a factual basis for its fitness finding, either in writing or orally, at the dispositional hearing. The State responds that

the court's written order specifies that "[t]he respondent father has difficulty supervising the children" and this finding is sufficient to satisfy the requirements of section 2-27(1). We agree with the State.

¶ 29 The Juvenile Court Act of 1987 (Act) provides a systematic framework for determining when a minor can be removed from his or her parents and made a ward of the State. *In re A.P.*, 2012 IL 113875, ¶ 18, 981 N.E.2d 336. A trial court must make a finding of abuse, neglect, or dependence regarding a child before it can adjudicate the child a ward of the court. 705 ILCS 405/2-10 (West 2016). If a trial court finds a child is neglected, then the court holds a dispositional hearing at which the "court determines whether it is consistent with the health, safety and best interests of the minor and the public that the minor be made a ward of the court." *A.P.*, 2012 IL 113875, ¶ 21. Section 2-27(1) of the Act provides as follows:

> "If the court determines and puts in writing the factual basis supporting the determination of whether the parents *** 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 ***, the court may [remove the minor from a parent's custody.]" 705 ILCS 405/2-27(1) (West 2016).

"[T]he writing requirement contained 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." *In re Madison H.*, 215 Ill. 2d 364, 374, 830 N.E.2d 498, 505 (2005). "[A]n oral finding on the record may satisfy section 2-27(1), provided that it is explicit and advises the parties of the basis for the court's decision." *Id.* at 377. If a trial court fails to comply with this require-

ment, the matter should be remanded for more specific findings. *Id.* at 378.

¶ 30 Here, we find it significant that respondent did not object in the trial court, either at the hearing or in a posttrial motion, about the lack of a factual basis for the court's findings. Additionally, on appeal, respondent has not complained that he does not know to what the court was referring when it found he had difficulty supervising the minors. Accordingly, we conclude that the court's finding put respondent on sufficient notice, thus complying with the purpose of the Act.

¶ 31 Although the trial court's order is sufficient, we suggest it would be a good practice for trial courts to make detailed, case-specific findings orally or in writing whenever possible. "Cases involving abuse, neglect[,] and wardship are *sui generis*; each case must be decided on its own distinct set of facts and circumstances." *In re M.W.*, 386 Ill. App. 3d 186, 197, 897 N.E.2d 409, 418 (2008). Generic statements mirroring the language of the statute "fail[] to give the respondent fair notice of the reasons for [a trial court's] decision and, therefore, do[] not satisfy section 2-27(1)." *Madison H.*, 215 Ill. 2d at 378. The record in this case demonstrates the trial court gave this case individualized thought when it decided to remove custody from respondent following the dispositional hearing. However, multiple reasons for doing so were present in the record, including the guardian *ad litem*'s representation that the CASA had concerns about respondent's ability to supervise the children. The court's oral and written findings could have been clearer, and had they been, both this court and respondent would have benefited.

¶ 32 Further, we note that proceedings in front of trial courts are particularly important in neglect cases. If litigants have concerns about trial court proceedings, they should raise objections as the proceedings occur rather than after the fact. Such objections would ensure that trial courts comply with the Act's requirements and purposes.

¶ 33 B. The Manifest Weight of the Evidence

¶ 34 Last, respondent also argues that the trial court's finding of his unfitness at the dispositional hearing was against the manifest weight of the evidence. Specifically, respondent argues the State did not present any evidence in support of the court's finding whereas the dispositional report demonstrated there were no safety concerns and respondent had been successfully sharing custody of the minors with Heather. The State responds that it presented sufficient evidence to support the finding, including respondent's lying to police about causing the injury and his providing an explanation only after the police offered a factual scenario. We agree with the State.

¶ 35 A trial court's ruling at a dispositional hearing "will be reversed only if the findings of fact are against the manifest weight of the evidence[.]" *In re J.W.*, 386 Ill. App. 3d 847, 856, 898 N.E.2d 803, 811 (2008). A finding is against the manifest weight of the evidence if the opposite result is clearly proper. *In re Audrey B.*, 2015 IL App (1st) 142909, ¶ 32, 31 N.E.3d 892. When reviewing a trial court's judgment under the manifest weight of the evidence standard, a reviewing court will not substitute its judgment for that of the trial court on matters of witness credibility, the weight to be given to the evidence, and inferences to be drawn from the evidence. *In re Parentage of W.J.B.*, 2016 IL App (2d) 140361, ¶ 25, 68 N.E.3d 977.

¶ 36 The record in this case does not clearly show that the opposite result was the proper result. *Audrey B.*, 2015 IL App (1st) 142909, ¶ 32. The rules of evidence do not apply to dispositional hearings, and the trial court is free to consider anything that it finds helpful to make an appropriate disposition. *In re A.L.*, 409 Ill. App. 3d 492, 502-03, 949 N.E.2d 1123, 1131 (2011); 705 ILCS 405/2-22(1) (West 2016). Here, the guardian *ad litem* reported to the trial court that the CASA had concerns about respondent's ability to supervise the minors, which mir-

rored the State's recommendation. Further, the police reports indicated that the doctor who treated Br. D. stated a spiral fracture is caused by an acute twisting force and the person causing the injury would know immediately that it had occurred. Respondent denied knowing how the injury could have occurred, but later admitted he caused it the night before he took Br. D. to the hospital. Respondent's explanation of events was almost identical to a hypothetical scenario provided to him by the police. Given these facts, the trial court could have had misgivings about respondent's truthfulness regarding what had happened and, even if the court agreed the injury was accidental, the court could have concluded that respondent had problems supervising the minors.

¶ 37 This case is similar to *In re J.W.*, 386 Ill. App. 3d 847, 898 N.E.2d 803 (2008). In that case, the respondent mother was told her infant child had bruises on his body after the child had stayed with the respondent father. *Id.* at 849. The doctor who treated the child opined that the bruises were about two days old and could not have been self-inflicted. *Id*. The trial court adjudicated the child abused and neglected and at the dispositional hearing found both parents unfit. *Id.* at 849-51. This court affirmed and agreed with the trial court's explanation, which was as follows:

> "[s]omeone in this world knows how those injuries got there, and there's [*sic*] two people in this courtroom [who] are supposed to know. There's [*sic*] two people in this courtroom that are responsible for the welfare of [J.W.] And when injuries like that occur and there is no good explanation, that's neglect." *Id.* at 856-57.

¶ 38 Here, similar to *J.W.*, respondent admitted he caused the injury but claimed it was an accident. Regardless of the accuracy of this claim, respondent failed to recognize Br. D. had a broken leg and take him in for treatment. Even considering the dispositional report's recom-

mendation that respondent retain custody, the opposite result is not clearly evident. Accordingly, the trial court's finding was not against the manifest weight of the evidence.

¶ 39 III. CONCLUSION

¶ 40 For the reasons stated, we affirm the trial court's judgment.

¶ 41 Affirmed.