

No. 1-18-1639

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re:

N. C.-S., a Minor,)	
)	Appeal from the
Respondent-Appellant,)	Circuit Court of Cook County.
)	
(THE PEOPLE OF THE STATE OF ILLINOIS,)	
)	15 JA 1150
Petitioner-Appellee,)	
)	
v.)	
)	Honorable Bernard J. Sarley,
MARIA C. and JOSE S.,)	Judge Presiding.
)	
Respondents-Appellees.))	

JUSTICE CONNORS delivered the judgment of the court.
Presiding Justice Delort and Justice Cunningham concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court’s finding that it was not in minor’s best interest to vacate an order of protective supervision and remove him from his mother’s custody was not against the manifest weight of the evidence.

¶ 2 This is an interlocutory appeal from the trial court’s order finding that although Maria C. violated an order of protection while in custody of her son, N. C.-S., it was not in N. C.-S.’s best interests to vacate the order and remove N. C.-S. from Maria C.’s custody. On appeal, the Office

of the Cook County Public Guardian (counsel for N. C.-S.) contends that it was in N. C.-S.'s best interest to vacate the order of protection and remove him from Maria C.'s custody. The State also filed a brief in support of the minor's appeal. Maria C. and N. C.-S.'s father, Jose S., contend that the trial court properly found that the protective order should not be vacated and that N. C.-S. should remain in Maria C.'s custody.¹ For the following reasons, we affirm the trial court's decision.

¶ 3

BACKGROUND

¶ 4 N. C.-S. was born on October 26, 2015, to Maria C. and Jose S. Maria C. has had custody of N. C.-S. for most of his life. On July 17, 2018, the guardian *ad litem* (GAL) for N. C.-S. filed an emergency motion requesting that the trial court find Maria C. in violation of the order of protection that was in existence at the time, and to vacate that order of protection. The GAL stated in its motion that Maria C. had been residing with Maria C.'s mother, and that in May 2018, Maria C. and her mother "got into a physical altercation." The GAL stated that the police were involved, and that the body camera video provided by the police demonstrated that N. C.-S. was in grave danger. The GAL stated that the video recording revealed the following admissions: the maternal grandmother reported on camera that Maria C. hits her; Maria C. reported that her mother and her older sons have hit Maria C.; Maria C. reported that her son was "bagging weed" on a table at the maternal grandmother's home and hit Maria C.'s one-year-old son in the head when he spilled soda on the weed; the maternal grandmother told police officers that Maria C. was not welcome in her home but refused to leave; and the maternal grandmother reported that Maria C. had threatened to kill her.

¹ Jose S. and Maria C. each filed separate briefs in support of Maria C.'s continued custody of N. C.-S., with Maria C. adopting the points, authorities, and argument set forth in Jose S.'s brief.

¶ 5 The GAL also argued in its motion that N. C.-S. suffers from developmental delays and needs therapy services, and that in the fall of 2017, Maria C. failed to attend his therapy sessions which resulted in N. C.-S. being put on a waitlist for speech and occupational therapy. The GAL also argued that Maria C. had failed to attend her individual therapy sessions since August 2017, and had failed to attend any domestic violence services.

¶ 6 On July 19, 2018, a hearing was held on the GAL's motion to vacate the order of protection. The public guardian first admitted into evidence a DVD which depicted in part a video recording that was taken by a police officer's body camera on May 27, 2018. The grandmother had called police to report a battery by Maria C. When the police officers arrived, the maternal grandmother told them that Maria C. was not welcome in her home and that she would not leave. Maria C. told the police officers that she was getting "beat up" by her mother and her 21-year-old son, Christian, who was also in the house. She stated that her one-year-old spilled soda on Christian's marijuana so he hit the one-year-old. Maria C. stated that when she defended the one-year-old, Christian then hit her, and that her mother hit her with her cane. The video depicts the women and Christian arguing. Maria C. stated that she was taking blood thinners and had just been in the hospital. Police officers then arrested Maria C. for hitting her mother.

¶ 7 Yiczel Diaz testified at the hearing that she had worked for ChildLink since December 2016, and that she worked with N. C.-S. Diaz testified that N. C.-S. needed developmental, speech, and occupational therapy. Although he was in developmental therapy, the therapist reported that she had not heard from Maria C. for two weeks. Diaz testified that from September 2017 to April 2018, N. C.-S. did not receive treatment because the therapist could not get ahold of Maria C.

¶ 8 Diaz testified that N. C.-S. has needed speech therapy since 2017, but stopped attending in December 2017 or January 2018 because the speech therapist had a difficult time scheduling appointments with Maria C. Diaz stated that N. C.-S. was discharged from speech therapy for failure to attend services. Diaz further testified that N. C.-S. qualified for occupational therapy back in 2017, and that he has been on a wait list ever since.

¶ 9 Diaz testified that Maria C. needs individual therapy, domestic violence classes, and parenting classes. Diaz stated that although Maria C. attended domestic violence classes in the past, she continued to need them because people continue to call the police on her. Diaz stated that since being assigned to this case in 2016, Maria C. had been involved in three domestic violence incidents.

¶ 10 Diaz testified that in January 2018, there was a hotline call indicating Maria C. failed to take N. C.-S. in for his urology appointment. Other than that incident, Diaz stated that there had been about five other hotline calls about Maria C.'s medical neglect of N. C.-S.

¶ 11 Diaz stated that Maria C. was not allowed to live in her mother's home because Maria C.'s older son, George, lived with the maternal grandmother, and there was a Department of Child Protection (DCP) investigation pending regarding an incident between Maria C. and George. Diaz testified that she recently heard that Maria C. left her mother's home and was living with her aunt in Cicero, where she had previously lived. Diaz testified that Maria C. had obtained a part-time job at a home healthcare facility. Diaz stated that while Maria C. works, her aunt or her sister watch the children, and that both are authorized to do so.

¶ 12 On cross-examination, Diaz stated that she was aware that Maria C. attended court dates in connection with the video that was played earlier, and that she was aware that those charges were dropped. Diaz also testified that she had previously been to the aunt's house, where Maria

C. and N. C.-S. were residing, and had done a background check on the aunt and deemed the house appropriate and safe. Diaz further stated that when she spoke to Maria C. in June, Maria C. showed her a medical form from N. C.-S.'s latest pediatrician visit. She stated that Maria C. was able to appropriately feed her children, and that she had no concerns about the medical well-being or the physical appearance of the children. Diaz also stated that Maria C. was able to clothe her children, and was working with the landlord to fill out the appropriate paperwork for an apartment. Diaz also indicated that it would be easier to get N. C.-S. necessary services when he turned three years old because at that point, he would be enrolled in school and the services would be offered at school.

¶ 13 The public guardian indicated that he would like the trial court to consider testimony it had already heard at prior hearings from February 2016 to June 2018. The trial court stated that it was familiar with that testimony and would take judicial notice of it, as well as the exhibits introduced during those hearings.

¶ 14 The trial court stated that “[c]learly, the environment that I saw on the video is not an appropriate environment for anyone, much less the minor.” The trial court stated that if the minor was still living there, it would be an easy decision, but that was not the case. The trial court stated, “we have come back many times over the last couple of years, and I heard about the minor’s services, and it’s kind of the same story.” The trial court noted that N. C.-S. started services, but would then stop services, which was caused by Maria C.’s availability. The court stated “I know that [N. C.-S.] loves his mother. They are bonded. You can see in court that they are. But he needs his services, and the mother does too.”

¶ 15 The trial court then stated, “I’m not convinced that it’s in the best interest of the minor to remove the minor from the mother’s care, so I’m not going to do that.” The trial court denied the

motion to vacate the order of protection. It stated that it would give Maria C. a chance to get into the necessary services, and to get N. C.-S. into the necessary services. The trial court continued, “I’m just not convinced that it’s in the best interest of the minor, given that the mother is now living in another home, and it’s even testified to be a safe and appropriate home.” The trial court noted that although Maria C. violated the order of protection by not keeping N. C.-S. in the necessary services, it would not vacate the order of protection.

¶ 16

ANALYSIS

¶ 17 On appeal, counsel for N. C.-S. contends that the best interests of the child warranted vacating the protective order and placing the minor in the custody of the Department of Child and Family Services (DCFS), rather than returning N. C.-S. to the Maria C.’s care. Section 2-24 of the Act states that rules or orders of court “shall define the terms and conditions of protective supervision, which may be modified or terminated when the court finds that the health, safety and best interests of the minor and the public will be served thereby.” 705 ILCS 505/2-24(3) (West 2016). A court’s decision to change custody is based on a finding that the terms of the order of protective supervision were violated and that “circumstances and the best interests of the child warranted such action.” *In re P.P.*, 261 Ill. App. 3d 598, 601 (1994). The determination of the best interests of the minor “is left to the sound discretion of the court and the court’s determination shall not be reversed unless it is against the manifest weight of the evidence.” *Id.* at 605.

¶ 18 Here, the court found that Maria C. violated the order of protective supervision by failing to keep N. C.-S. in necessary therapy services. However, the trial court found that circumstances and the best interests of N. C.-S. warranted him to remain in custody with Maria C.. We find that

the trial court's determination that it was in N. C.-S.'s best interests to remain in Maria's custody was not against the manifest weight of the evidence.

¶ 19 The Act states that whenever a "best interests" determination is required, the following factors should be considered in the context of the child's age and developmental needs: the physical safety and welfare of the child including food, shelter, health, and clothing; the development of the child's identity; the child's sense of attachments including where the child actually feels love, attachment, and a sense of being valued (as opposed to where adults believe the child should feel such love, attachment, and sense of being valued), the child's sense of security, the child's sense of familiarity, continuity of affection for the child, and the least disruptive placement alternative for the child; the child's wishes and long-term goals; the child's community ties, including church, school, and friends; the child's need for permanence which includes the child's need for stability and continuity of relationships with parent figures and with siblings and other relatives; the uniqueness of every family and child; the risks attendant to entering and being in substitute care; and the preferences of the persons available to care for the child. 705 ILCS 405/1-3 (4.05) (West 2018).

¶ 20 In this case, the trial court took judicial notice of the evidence that had been presented at prior hearings. During those hearings, the evidence showed that in August 2016, Maria C. had violated provisions of the July 2016 protective order when she drove N. C.-S. in a car without a license and allowed N. C.-S.'s father to have unsupervised contact with him. In November 2016, Maria C. violated the protective order by failing to enroll N. C.-S. in developmental therapy, and by failing to consistently participate in individual therapy. She did not schedule a psychiatric evaluation for herself, or successfully complete domestic violence services. In February 2017, the court ruled that Maria C. violated the order of protective supervision when she failed to

attend individual therapy, and when she failed to cooperate with DCFS. In February 2018, Maria C. failed to attend domestic violence classes and did not take N. C.-S. to speech therapy.

¶ 21 The following evidence was presented at the July 19, 2018, hearing on the GAL's emergency motion to vacate the most recent order of protective supervision. There had been police involvement regarding an altercation at Maria C.'s mother's house between Maria C., Maria C.'s mother, and Maria C.'s adult child. A video from a police body camera was played for the court, which depicted Maria C., her mother, and her adult son arguing. Maria C. claimed her adult son had pushed or hit her one-year-old child and that Maria C. had defended that child, and then her mother had stepped in and hit Maria C.. Maria C. was arrested for hitting her mother but the charges against her were ultimately dropped.

¶ 22 Diaz testified at the hearing that N. C.-S. needed developmental, occupational, and speech therapy services, but that he had recently been put on a wait list for occupational therapy, and had been discharged from speech therapy because his mother failed to take him to the scheduled appointments or was difficult to get ahold of to make the appointments. However, Diaz testified that when N. C.-S. turned three years old in October 2018, it would be easier for him to receive these necessary services because he would be enrolled in school, and those services would be offered at school. Diaz testified that in June, Maria C. had shown Diaz a medical form from N. C.-S.'s most recent pediatrician appointment. Diaz testified that Maria C. was now employed, and had filled out appropriate paperwork to move into her own apartment. In the meantime, Maria C. was living with her aunt, who was authorized to care for N. C.-S. Diaz had previously visited Maria C.'s aunt's home and deemed it an appropriate place for Maria C. and N. C.-S. to reside. Diaz testified that N. C.-S. was being appropriately cared for, fed, and clothed, and that she had no concerns for the medical well-being of N. C.-S.

¶ 23 Based on the foregoing, we cannot say that it was against the manifest weight of the evidence for the trial court to find that it would not be in N. C.-S.'s best interests to remove him from Maria C.'s custody. While the trial court expressed concerns with the living arrangement at the home depicted in the police recording, it noted that Maria C. and N. C.-S. were now residing at Maria C.'s aunt's house in Cicero, which was already deemed an appropriate and safe home. The trial court also noted that a strong bond existed between N. C.-S. and his mother, and expressed its hesitation to break that up. The trial court indicated that it wanted to give Maria C. a chance to get herself and N. C.-S. into necessary services, and did not believe putting N. C.-S. in substitute care was in N. C.-S.'s best interest. The trial court properly considered the physical safety and welfare of N. C.-S., his sense of attachments, the long term goals for N. C.-S.'s therapy services, his need for permanence and continuity of relationships with relatives, and the overall uniqueness of this particular family. 705 ILCS 405/1-3 (4.05) (West 2018). Accordingly, the trial court's decision that it would be in N. C.-S.'s best interest not to vacate the order of protective supervision was not against the manifest weight of the evidence.

¶ 24 **CONCLUSION**

¶ 25 For the foregoing reasons, we affirm the trial court's order denying the motion to vacate the order of protective supervision.

¶ 26 Affirmed.