2019 IL App (1st) 181687-U

SIXTH DIVISION
March 29, 2019

No. 1-18-1687

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 THE INTEREST OF G.P., a minor	)	Appeal from the
	)	Circuit Court of
(THE PEOPLE OF THE STATE OF ILLINOIS,	)	Cook County.
	)	
Petitioner-Appellee,	)	
	)	No. 17 JA 834
v.	)	
	)	
BRIAN P.,	)	Honorable
	)	Diane Rosario,
Respondent-Appellant.)	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justices Cunningham and Connors concurred in the judgment.

ORDER

¶ 1 *Held*: In its disposition, the circuit court noted respondent's "substantial progress," but was concerned that he "get specific training as to [G.P.'s] condition" and "get help in terms of stopping smoking" due to the minor's respiratory issues. The court also wanted to see "mediation involved in terms of [respondent] and the foster parents" because respondent needed to work on his aggression towards the foster parents. The court, however, wanted to put the case "on somewhat of a fast track" given respondent's intent and motivation. We find that the circuit court did not abuse its discretion in adjudging G.P. a ward of the court, and affirm its determination.

¶ 2 Respondent, Brian P., appeals the trial court's disposition order which adjudged minor G.P. a ward of the court. On appeal, respondent contends that the trial court's determination was against the manifest weight of the evidence where he had completed requested services, was

involved in G.P.'s life, and no evidence was presented that he could not adequately parent G.P. For the following reasons, we affirm.

¶ 3 JURISDICTION

¶ 4 After a finding of neglect, the trial court adjudicated R.M. a ward of the court on July 20, 2018. Respondent filed a notice of appeal on July 31, 2018. Accordingly, this court has jurisdiction pursuant to Illinois Supreme Court Rules 301 (eff. Feb. 1, 1994) and 303 (eff. July 1, 2017) governing appeals from final judgments entered below.

¶ 5 BACKGROUND

¶ 6 The State filed a petition for adjudication of wardship on August 21, 2017, after G.P. and his mother tested positive for illegal substances at his birth. The petition alleged neglect of G.P. due to an injurious environment and due to his blood, urine, or merconium containing a controlled substance, and alleged abuse due to substantial risk of physical injury. In support, the petition alleged that G.P.'s mother had one prior report of substance misuse, and had two other minors in the custody of the Illinois Department of Children and Family Services (DCFS), for abuse, neglect, and/or drug exposed infant. The petition also alleged that respondent, as the putative father, had domestic violence issues with the mother and had a history of substance abuse.

¶ 7 At the adjudication hearing, Kenisha Lindsay testified for the State. Lindsay, an investigator for DCFS, was assigned to G.P.'s case on August 16, 2017, and spoke with G.P.'s mother at the hospital. His mother admitted to using cocaine and marijuana in July of 2017, and to drinking two or three days before giving birth to G.P. She also admitted to having two other children in DCFS custody. G.P. was the mother's second drug-exposed infant. Another investigator, Heather Parker, informed respondent that he had been named as the putative father of G.P. Respondent acknowledged that he and G.P.'s mother had domestic violence issues and that

he had used drugs in the past. He lives separately from G.P.'s mother in a two bedroom apartment he shares with an adult daughter who has had DCFS involvement in her life. Respondent stated that he worked at Portillos. He denied knowing that G.P.'s mother used illegal substances, but knew she consumed alcohol while pregnant.

¶ 8 The court admitted G.P.'s medical records indicating he was born positive for cocaine. The court also admitted documents indicating the involvement of G.P.'s siblings with DCFS and the juvenile court system. The court found that "the mother's extensive abuse of drugs created a neglectful injurious environment and a substantial risk of injury towards [G.P] who, again, was born positive for drugs." She was also noncompliant with services required for reunification, and her lack of concern for G.P. was "evident."

¶ 9 The court conducted the disposition hearing on July 20, 2018. Renata Perlman testified that she is a counselor/caseworker at Lutheran Social Services of Illinois (LSSI). Respondent participated in a mental health assessment and presented with mild to moderate symptoms of depression, hopelessness, and occasional isolation. He was also diagnosed with alcohol abuse in remission and substance abuse in remission, and was recommended for therapy.

¶ 10 Respondent's therapy with Perlman began in February 2018 and continued once a month for five sessions. Respondent expressed his frustrations with G.P.'s case and told her that he had prepared his home for G.P. by getting a crib, changing table, diapers and wipes. He had friends who he could depend on for help with childcare and he discussed getting a full-time job with different hours because he now worked part-time at Jewel during the overnight hours. Respondent stated that, unlike what he noticed while visiting G.P. in foster care, he would not put shoes on G.P until he was walking so he would not put shoes on the incorrect feet. Because G.P. had seizures and recently had bronchitis, respondent told Perlman that he would take G.P. to

the doctor and get an MRI for him if he heard fluid in G.P.'s lungs. Respondent stated that he allowed G.P.'s mother to keep belongings at his home because she was homeless. Although they had contact with each other by phone, he had no intention of reuniting with G.P.'s mother.

¶ 11 Perlman testified that during her therapy sessions with respondent, she encountered nothing that would lead her to believe that he was not fit, willing, or able to parent G.P. Respondent showed concern and compassion for G.P., and Perlman believed he would be able to provide for G.P.'s needs and protect G.P. from risks or dangers as any parent could.

¶ 12 Perlman also stated that she was not aware that G.P. could be irritable and fussy, had hypotonia, and woke up in the middle of the night crying for one to three hours on a daily basis. She acknowledged that such issues could pose more of a challenge to parents and she did not know respondent's tolerance for having a child displaying those characteristics. Perlman was also aware that G.P. had respiratory issues and should not be around people who smoke. While she did not see any risks currently, she did not feel comfortable making a recommendation that respondent have unsupervised visits with G.P.

¶ 13 Ieshia Harris, a supervisor at ChildServ, testified that she has had G.P.'s case since August 2017. Respondent has been assessed for services and needs individual therapy, random urine drops, a JCAP assessment, and domestic violence services. Respondent told Harris that he did not know why his urine drop came back positive for cocaine in December 2017, since he had not used cocaine for several years. Also, respondent failed to appear for three urine drops even though he was aware that a missed drop is considered a positive drop. After testing positive for cocaine in December, respondent has had random drops monthly and all have been negative.

¶ 14 In 2016, G.P.'s mother was convicted of domestic battery for cutting respondent with a knife. She claimed it was self-defense because respondent had beat her leaving bruises on her

body. The police report noted bruises on her body, but also noted that they did not look recent. In the police report, G.P.'s mother stated that respondent grabbed her arm and choked her with his hands, but it was not clear who was the aggressor. Although respondent completed domestic violation education on his own, Harris did not know if the service met this requirement overall since the program respondent completed was for domestic violence victims, not perpetrators. G.P.'s mother also reported in January 2018 that she slept at respondent's home a few times per week, and Harris believed she posed a risk of harm to G.P. if left unsupervised with him.

¶ 15 Since January 2018, respondent has had four visits with G.P. in which he played with G.P., changed his diapers and fed him. He told G.P. he loved him and read books to him. Harris testified that they had a good relationship and respondent is always interested in G.P.'s medical condition. On his last visit in March 2018, respondent interacted well with G.P. Respondent missed one visit because he overslept, and another when he was not feeling well. In April 2018, G.P. was taken to the hospital in respiratory distress and diagnosed with sinus bradycardia. G.P.'s respiratory issues are exacerbated by being around people who smoked, and although respondent's smoking was an issue in the past, they spoke with him and he no longer smelled like smoke. Harris stated that if visits between G.P. and respondent are increased, they need to make sure that respondent did not smoke around G.P. and that his home is smoke-free.

¶ 16 G.P. currently receives physical therapy, occupational therapy, developmental therapy, and nutritional therapy. He drinks a special formula that keeps him from regurgitating and has arching of the spine which needs monitoring. G.P. has also been diagnosed with hypotonia which is characterized by abnormal movements and poor self-regulation. Harris's agency has spoken to respondent about G.P.'s special needs, but has not taken respondent to any of G.P.'s doctor's

appointments. G.P.'s foster mother speaks with respondent weekly about his medical needs and respondent is "accepting" and asks questions.

¶ 17 Harris testified that ChildServ has not been to respondent's home, and a CERAP of his home has not been completed. They did not have names of people who could help respondent with childcare, and respondent needs to complete another JCAP due to his positive urine drop. She recommended more supervised visits between G.P. and respondent, that respondent submit to additional random urine drops, and to make sure respondent's relationship with G.P.'s mother was not ongoing. Due to G.P.'s ongoing medical needs, and her recommendation that respondent continue to engage in services, Harris believed a guardian should be appointed with the right to place G.P.

¶ 18 Charlene C., G.P.'s foster parent, testified that she has been his foster parent for 11 months and also fosters G.P.'s older sibling. She stated that G.P.'s mother is still in contact with respondent, and described an incident in April 2018 where the mother became very aggressive with respondent and asked for the keys to his house. She was told by G.P.'s physical therapist to put shoes on the wrong feet to motivate him to walk. Charlene is willing to supervise visits between respondent and G.P., although respondent has been verbally aggressive towards her regarding G.P. He used foul language when talking of G.P.'s shoes, and he put G.P. in his car seat rather than giving him to Charlene. At the last visit, respondent gave G.P. to Charlene's daughter rather than give him to her, which upset Charlene because she is the parent and not her daughter. Charlene stated that she has no problem with respondent's visits as long as he does not smell of smoke. When he visits G.P. and smells of smoke, "after the visit the baby gets sick."

¶ 19 Caseworker Lisa Garcia testified regarding another incident between respondent and Charlene. A court hearing was scheduled for the following day and respondent thought G.P.

would be brought to court. Charlene, however, informed him that she did not have to bring G.P. to court and respondent became upset, telling Charlene "you better bring him." Respondent was upset because he thought there may be a chance that G.P. could come home with him after the court appearance. Garcia explained that the judge would make that decision and respondent left. Charlene was crying because she felt threatened when respondent told her "you better bring him." Garcia observed another visit when respondent used profanity and took off G.P.'s shoes because they were on the wrong feet. Garcia believed that respondent's reaction was directed at the shoes and not at G.P. She testified that respondent's visits with G.P, are very appropriate and she did not believe respondent would harm G.P.

¶ 20 The State presented documentary evidence of respondent's past arrests for domestic violence and battery, and a conviction for possession of 44 grams of cocaine in 1992. The integrated assessment report noted discrepancies between the substance abuse respondent reported for the report, and what he reported in his initial JCAP screening. The JCAP screener concluded that respondent "was evasive and appeared to minimize his use in an effort to circumvent receiving a referral. He appeared to rationalize and blame others for his choices." The report recommended individual therapy, substance abuse treatment and recovery monitoring, and a domestic violence partner abuse intervention program.

¶ 21 The trial court found respondent unable to care for G.P., but noted his "substantial progress." The court was concerned that respondent "get[s] specific training as to [G.P.'s] condition" and noted that respondent may want to "get help in terms of stopping smoking." Respondent also needs to make sure that his house does not smell of smoke. If G.P. has respiratory issues due to the smoking, "that's going to affect [respondent's] visitation time, duration, frequency." Although the court did not authorize unsupervised visitation, it did want to

increase supervised visits by a considerable amount. It also wanted the visits "to involve unannounced pop-ins on the part of the agency."

¶ 22 The court ordered that respondent become involved in G.P.'s medical appointments so he "know[s] what's going on" and "show[s] that he can, in fact, handle everything." The court also "want[ed] mediation involved in terms of [respondent] and the foster parents." Respondent needed to work on his aggression towards the foster parents so that the parties could come together in G.P's best interests.

¶ 23 The trial court adjudged G.P. a ward of the court. After the disposition, the court held a permanency hearing. At the hearing, respondent expressed his frustration at the situation, telling the court that he was not aware of the mother's drug habit and that he intended to pick up G.P. from the hospital after he was born. The court acknowledged respondent's frustration, but noted that the case was before it on disposition, not adjudication, and as such the court must "deal with the realities" of G.P.'s condition. The court did state that it wanted to put the case "on somewhat of a fast track" given respondent's intent and motivation. However, the court must make sure that "everything [is] addressed before you're flying solo with him. It's as simple as that." The court found the permanency goal of return home to be appropriate, but did not specify a number of months. It set a three-month date for status, rather than six months, because the court "want[s] to make sure that things are moving along." Respondent filed this appeal.

¶ 24 ANALYSIS

¶ 25 Respondent appeals only from the trial court's disposition to make G.P. a ward of the court. Section 2-27 of the Juvenile Court Act (Act) provides that the trial court may commit a minor to DCFS wardship if it determines that the parent is unfit or unable, for some reason other than financial circumstances alone, to care for, protect, train, or discipline the minor or is

unwilling to do so. 705 ILCS 405/2-27(1) (West 2016). In a disposition hearing, the court must determine whether it is in the best interest of the minor to be made a ward of the court. *In re Kamesha J.*, 364 Ill. App. 3d 785, 795 (2006). "The health, safety and interests of the minor remain the guiding principles when issuing an order of disposition regarding the custody and guardianship of a minor ward." *Id.* A reviewing court will reverse the trial court's determination only if it is against the manifest weight of the evidence. *In re Stephen K.*, 373 Ill. App. 3d 7, 25 (2007). A finding is against the manifest weight of the evidence if the record clearly demonstrates that the opposite result is the proper one. *In re M.W.*, 386 Ill. App. 3d 186, 196 (2008).

¶ 26 The record shows that G.P. was born testing positive for cocaine. He continues to have medical issues including hypotonia and arching of the spine, and requires a special formula to prevent regurgitation. G.P. also was diagnosed with sinus bradycardia and suffers from respiratory issues. As a result, he cannot be around people who smoke or stay in a place where people smoke. G.P. presently receives physical, occupational, developmental and nutritional therapy to address his needs. G.P.'s foster parents have provided appropriate care and attend G.P.'s doctor appointments.

¶ 27 Respondent was a smoker and although he now makes sure he does not smell of smoke when he visits G.P., there is no indication in the record that he has stopped smoking. Evidence was also presented that respondent has continued contact with G.P.'s mother, and that their interactions are volatile. They have a history of domestic violence. Respondent does not get along with G.P.'s foster parents, particularly Charlene. Charlene testified that she felt threatened by respondent after one visit.

¶ 28 The record also shows that respondent has completed some services and has made progress addressing his drug use. All parties agree that respondent is motivated to have G.P. home with him and that he displays care and appropriate conduct when interacting with G.P. Respondent expresses interest in G.P.'s medical care and wants to accompany him to doctor appointments. However, while respondent has made much progress, that does not mean a disposition other than what the trial court determined is in the best interest of G.P. *In re April C.*, 326 Ill. App. 3d 245, 258 (2001).

¶ 29 Instead, the trial court found that additional services are needed for respondent to address G.P.'s particular medical needs, and respondent needs to become knowledgeable about G.P.'s condition by attending his doctor appointments. The court also noted that no evaluation had been made of respondent's residence to determine whether it was appropriate for G.P., and was especially concerned with respondent's smoking habits as G.P. cannot be around people who smoke. However, the court acknowledged respondent's positive conduct and wanted to move the process along quickly. It set forth specific requirements it wanted to see fulfilled, and encouraged respondent to sit with caseworkers and counselors to make a plan. The court cautioned respondent about his interactions with Charlene, telling him that he needed to work with her in order to best care for G.P. The court set a permanency goal of return home. We find the trial court's determination that respondent is unable to care for G.P. given his medical needs, and that it would be in G.P.'s best interest to become a ward of the court, was not against the manifest weight of the evidence.

¶ 30 For the foregoing reasons, the judgment of the circuit court is affirmed.

¶ 31 Affirmed.