2019 IL App (2d) 190063-U
No. 2-19-0063
Order filed May 8, 2019

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re D.D., a minor.	)	Appeal from the Circuit Court
	)	of Winnebago County.
	)	
	)	Nos. 18-JD-17 & 17-JD-310, cons.
	)	
(People of the State of Illinois,	)	Honorable
Petitioner-Appellee, v. Ashley D.,	)	Patrick Yarbrough,
Respondent-Appellant).	)	Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Justices McLaren and Burke concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not abuse its discretion in transferring guardianship and custody of the delinquent minor to DCFS and in excluding the mother and grandmother as possible placements.

¶ 2 D.D. (born June 29, 2002)[1] pleaded guilty to two violations of an order of protection and one charge of burglary. The trial court adjudicated him to be a delinquent minor. Following an evidentiary hearing, the court granted the State's motion to transfer custody and guardianship of D.D. to DCFS until D.D. is 21 years old. Also, the court ordered that D.D.'s mother (respondent,

[1] The record alternatively states that D.D. was born June 29, 2001. However, at a status hearing, D.D. testified that he would turn 17 in June 2019, making 2002 the correct year.

Ashley D.) and grandmother be excluded as possible placements. D.D.'s father did not wish to provide a placement for D.D., and he is not a party to this appeal. Similarly, the grandmother does not challenge the trial court's ruling. Respondent appeals, arguing that the trial court abused its discretion in transferring guardianship and custody to DCFS and in excluding her as a possible placement for D.D. For the reasons that follow, we reject her arguments and affirm.

¶ 3 I. BACKGROUND

¶ 4 In October 2017, D.D. came to the attention of the courts and service providers. D.D. had spent most of his life in the care of his paternal grandmother, Ethel Jean Carey Touray (Jean). Jean, who required a walker and a wheelchair, sought an order of protection against D.D., because she was afraid to continue living with him. Jean alleged that D.D. stole $2000 from her, threatened her with physical violence, and hurt animals.

¶ 5 In December 2017, the State filed a delinquency petition, because D.D. violated the order of protection. In January 2018, the State amended the petition, listing respondent as D.D.'s mother.

¶ 6 On January 26, 2018, the court conducted a detention hearing. Respondent did not attend. D.D.'s paternal aunt, Cynthia S., and D.D. testified. Cynthia testified that Jean had been raising D.D. She did not like to refer to Jean as her mother, because Jean had not provided a good home environment for her. There was never any food. There was always chaos. It was difficult to sleep. Cynthia was sexually abused by one of Jean's paramours. That man was also a "drug supplier and pimp." Jean committed attempted murder and went to prison for "a long time." (The detention reports confirm that Jean served five years in prison for attempted murder.) Cynthia was ultimately placed in foster care, and she was glad that she had been removed from the home. Cynthia began to cry on the stand.

¶ 7 Cynthia did not believe that respondent could provide a safe home. According to Cynthia, respondent abuses alcohol, beats D.D., and "busted" D.D.'s lip. Also, respondent is the one who caused D.D. to violate the order of protection. After the order of protection issued, D.D. moved into respondent's home. Within a short time, respondent drove D.D. back to Jean's house, told him to get out of the car, and said, "you will live here."

¶ 8 Further, Cynthia did not believe D.D.'s father, her brother, could provide a safe home. "He is a very dirty individual."

¶ 9 Cynthia told the court that she would like to provide for D.D. for the short term. She was unemployed and received disability payments. However, she believed that, for a one-month period, until more suitable arrangements were made, she could provide D.D. with food, clothing, and shelter. Cynthia believed that she was the only person in the family who could provide "appropriate" housing, because "for one, I have never been in trouble criminally at all." Cynthia said of D.D., "He trusts me, and we can work together."

¶ 10 D.D. testified that his relationship with respondent was "[h]orrible. I do not even want to consider her as my mother anymore." When he lived with her, she ignored him. When he did well in school, she did not tell him she was proud. Similarly, he did not want to recognize his father. "I don't claim him as my father. He doesn't think I'm his child." D.D. promised that he would follow all the rules if the court allowed him to live with Cynthia.

¶ 11 The court determined that neither Jean nor respondent were appropriate placements. The court agreed to allow D.D. to reside with Cynthia until the next hearing.

¶ 12 On February 26, 2018, the court conducted a second detention hearing. Again, respondent did not attend. D.D. testified that he left Cynthia's home after only three days. According to D.D., she told him that she "ha[d] her own problems." D.D. lived with a great

uncle. Then, the great uncle allowed D.D. to live with a 25-year-old cousin. The cousin has a criminal history, including aggravated assault with a deadly weapon. It was also revealed that D.D. has been diagnosed with attention deficit hyperactivity disorder (ADHD). Bipolar disorder has not been ruled out.

¶ 13 The court ordered that D.D. be sent to detention. The court characterized D.D. as manipulative, "devising" ways to live where he wants to live and do what he wants to do. Detention was necessary for the protection of D.D. and others in the community.

¶ 14 In May 2018, the State moved to transfer guardianship and custody to DCFS. Also in May 2018, the court appointed a guardian *ad litem* (GAL). In June 2018, D.D. was moved from detention to a Bridge shelter care house. In July 2018, 20 months after Jean sought the order of protection, respondent made her first appearance at a status hearing.

¶ 15 In August 2018, while on a Bridge fieldtrip to the YMCA, D.D. ran away. He attempted to go to Jean's house, thereby violating the order of protection a second time. He later reported that this was the only home he knew, and he wanted to live with his grandmother again.

¶ 16 In September 2018, the police located D.D. He had not simply been living with his grandmother. He had been burglarizing cars with friends. Police caught him near the scene of a burglary, with a stolen CD player. The victim identified the CD player.

¶ 17 On December 21, 2018, the court conducted a hearing concerning pending charges against D.D. for the car burglaries and for twice violating the order of protection. D.D. was represented by counsel, and he pleaded guilty to all charges. The court adjudicated D.D. a delinquent minor. It sentenced D.D. to 30 days in the detention, two years of probation, and 24 hours of community service.

¶ 18 Next, the court proceeded to the State's motion to transfer guardianship and custody to DCFS. The State submitted documentary evidence, such as the transcripts from the prior hearings and D.D.'s detention reports. Respondent was present and represented by counsel but did not testify.

¶ 19 DCFS caseworker L'Tanya Jones testified to her recommendation that D.D. be placed with respondent. Also in the home were two adult roommates and respondent's two other children, one of whom was younger than five. D.D. could live with respondent, while respondent cooperated with DCFS workers. "This is gonna give mom an opportunity to get a social history done, an integrated assessment." Jones's supervisor informed her that neither respondent nor her two roommates have *disqualifying* criminal histories. However, Jones could not speak independently to whether they had *no* criminal histories. She did not see the report; she only spoke with her supervisor over the phone. Jones did not know how many times respondent attended D.D.'s court proceedings. Jones only recently became involved in the case.

¶ 20 Jones spoke with D.D. the day prior, and she gained a "pretty good" understanding of his wishes. D.D. wished to live with respondent. "He says he will cooperate and do what he needs to do." If D.D. does not live with respondent, it will be difficult to find a placement. Minors over 15 are difficult to place, and he might have to live as far as five hours from family. She did not know where he would be placed. She just knew it would not be in Chicago: "That's all I was told."

¶ 21 After Jones testified, the State argued that D.D. needed a stable environment to flourish. It pointed to D.D.'s behavior reports, which showed that D.D. "did well" in detention. In contrast, outside detention or Bridge housing, D.D. was subject to a variety of unpredictable and

suboptimal living arrangements. Some of these living arrangements were unsafe and did not provide sufficient food and shelter.

¶ 22 The GAL then reminded the court that, if it transferred guardianship and custody to DCFS, the court could not decide placement. Rather, it could exclude certain placements. She also reminded the court that, even if respondent were prohibited as a placement at this time, respondent could still access social services in relation to this case. She recommended that the court exclude respondent and Jean as possible placements. She noted that, throughout most of D.D.'s childhood, respondent allowed D.D. to live in unsafe environments, such as with Jean or with friends. Respondent has not had regular contact with D.D. since 2015. Respondent attended only three hearings over the years. "I don't think mom in the past has stepped up and been fit and willing and able to take care of this—this child, so I am unsure why [Jones] believes that with one [second-hand] conversation *** with mother and one conversation *** with the minor, that [she has] it all solved."

¶ 23 The court granted the State's motion to transfer custody and guardianship to DCFS. It determined that respondent was not a good placement for D.D. for reasons other than financial. DCFS was not permitted to place D.D. with respondent or Jean.

¶ 24 The court explained its decision. It discounted Jones's testimony. Jones had been assigned to investigate respondent's living conditions, but Jones's report lacked specificity. She acquired much of her information over the phone. She had no independent knowledge of respondent's criminal history. The court had previously determined that respondent was not a proper placement, and Jones's testimony did not convince it that anything had changed. D.D. has not lived with his mother for several years. Instead, he lived with other family members or with friends. (When D.D. did live with his mother, she returned him to Jean, who had an order

of protection against him.) When D.D. was out of the State's care, he was "out of control." When he was in detention, his behavior improved. Therefore, although unfortunate that D.D. might be placed as far as five hours from family, D.D.'s need for structure and discipline was paramount. Respondent is unable to provide D.D. with sufficient structure. However, respondent may participate in services and counseling. This appeal followed.

¶ 25 II. ANALYSIS

¶ 26 At a sentencing hearing in a delinquency case, the court must determine whether it is in the best interest of the minor and the public that the minor be made a ward of the court. 705 ILCS 405/5-705 (West 2018); *In re Seth S.*, 396 Ill. App. 3d 260, 275 (2009). If the minor is made a ward of the court, the court's disposition of the minor, be it to detention or otherwise, must also be in the best interest of the minor and the public. *Seth S.*, 396 Ill. App. 3d at 275. The court's determination will be reversed only if its findings of fact were against the manifest weight of the evidence or its ultimate disposition was an abuse of discretion. *Id.*

¶ 27 In making its best interest determination, the court should consider the following factors in the context of the child's age and developmental needs: (1) the physical safety of the child, including food, shelter, health, and clothing; (2) the development of the child's identity; (3) the child's background and ties, including familial, cultural, and religious; (4) the child's sense of attachments; (5) the child's wishes and long-term goals; (6) the child's community ties, including church, school, and friends; (7) the child's need for permanence and stability; (8) the uniqueness of every family and child; (9) the risks attendant to entering and being in substitute care; and (10) the preferences of persons available to care for the child. 705 ILCS 405/1-3(4.05) (West 2018).

¶ 28 Here, the trial court did not abuse its discretion in transferring guardianship and custody to DCFS and in excluding respondent as a potential placement. Respondent offered herself as a

placement at the eleventh hour. There is little to no evidence to suggest she would be an appropriate placement. She attended few hearings. She chose not to testify. She has had nearly 17 years to exert a stronger, more positive influence on D.D.'s life, and she has failed to do so. It is undisputed that respondent chose to send D.D. to live with Jean, who could not manage him. D.D. has lived with friends and various relatives, with little to no supervision or accountability. Some of these relatives have serious criminal histories (attempted murder and aggravated assault with a deadly weapon). Historically, respondent has failed to provide D.D. with an environment that is safe (factor 1) and stable (factor 7), so as to enable D.D. to form a positive sense of self and to participate in a culturally rich and law-abiding community (factors 2, 3, 4, and 6). D.D. has a unique need for a structured environment (factor 8), and respondent has not shown that she can provide this. All evidence shows that, at this stage, she cannot.

¶ 29 Moreover, at delinquency proceedings, it is appropriate to consider the effect of a placement on others. The court did not expressly comment on this factor, but it may have been mindful that there was no evidence that it would be safe to place a 17-year-old minor who has hurt animals and threatened violence in the same home as a young child.

¶ 30 We reject respondent's argument that the trial court should have given greater weight to Jones's testimony. Respondent notes that DCFS, "the very entity with which the court placed [D.D.]," recommended that respondent receive custody. The court reasonably gave little weight to Jones's testimony. Jones's familiarity with the case was limited. Jones received information on the safety of respondent's home from her supervisor over the telephone. Jones spoke with D.D. one day before the hearing, in which time she merely acquired a "pretty good" sense of what he wanted.

¶ 31 We also reject respondent's argument that the trial court should have given greater weight to D.D.'s wishes (factor 5) and D.D.'s proximity to family (factor 4). First, D.D.'s wish to live with respondent is but one factor to consider. The court previously found D.D. to be manipulative when stating his wishes. When the court last ceded to D.D.'s wishes in allowing him to live with Cynthia, D.D. left within three days and moved in with a cousin who had a criminal history. Second, the court acknowledged that D.D. might be placed as far as five hours from his family. Still, the court reasonably determined that it was more important for D.D. to be in a disciplined environment. D.D.'s improved behavior while in detention did not show that D.D. was ready to live with family. Instead, it showed that he thrived in a structured environment. The court conducted a well-reasoned analysis of the best-interest factors. It did not abuse its discretion.

¶ 32 III. CONCLUSION

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

¶ 34 Affirmed.