2019 IL App (3d) 180269-U

Order filed June 25, 2019

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2019

In re A.B.S., A.R.S., and I.W.S.,	)	Appeal from the Circuit Court
	)	of the 9th Judicial Circuit,
	)	Warren County, Illinois,
Minors	)	
	)	Appeal Nos. 3-18-0269
	)	3-18-0270
	)	3-18-0271
(The People of the State of Illinois,	)	
	)	Circuit Nos. 17-JA-17
	)	17-JA-18
Petitioner-Appellee,	)	17-JA-19
	)	
v.	)	
	)	
Jessica M.,	)	
	)	Honorable
	)	Patricia Walton,
Respondent-Appellant).	)	Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.
Justices Lytton and McDade concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's determination that the respondent was unfit was not against the manifest weight of the evidence. The respondent's appeal from the trial court's interlocutory order suspending her visitation rights is dismissed as moot.

¶ 2 The State filed a petition for adjudication of neglect alleging A.B.S., A.R.S., and I.W.S. were neglected minors subjected to an injurious environment. The petition was held proven following an adjudicatory hearing. Following the dispositional hearing conducted in accordance with article II of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/2-1 to 2-34 (West 2016)), the trial court entered a written order: 1) finding the respondent to be unfit to parent the minors; 2) adjudicating the minors as wards of the court; 3) granting guardianship to the Illinois Department of Children and Family Services (DCFS); and 4) ordering the respondent to comply with a client service plan, including *inter alia*, compliance with mental health treatment. The trial court subsequently entered an order suspending the respondent's visitation with the minors pending her completion of a psychological evaluation. The respondent appealed both the dispositional finding of unfitness and the subsequent order suspending visitation. Shortly after the notice of appeal was filed, the trial court was informed of the respondent's compliance with the psychological evaluation and vacated the order suspending the respondent's visitation rights.

¶ 3 FACTS

¶ 4 On November 6, 2017, a petition for adjudication of wardship of A.B.S. was filed. The petition alleged that A.B.S., on or about November 2, 2017, was found to have bruising all over her body caused by other than accidental means. The petition further alleged that, on the same date, A.B.S.'s sibling, A.R.S., was found to have bruising all over her body caused by other than accidental means. A temporary custody order was entered on November 7, 2017, and stated probable cause was found based on the bruising on the bodies of the minors not consistent with accidental causes. The order stated there was immediate and urgent necessity to remove the minors, including a third sibling, I.W.S., from the home due to the bruising on the minors and the respondent's uncooperative behavior in implementing a safety plan. The trial court ordered the

removal of all three minors from the home of the respondent. The order also stated that DCFS attempted to make a safety plan with the respondent, but the respondent was uncooperative and "immediately objected to the same person she suggested as a temporary caregiver." Visitation was ordered supervised and be at the discretion of DCFS. A DCFS family service plan was filed on December 19, 2017. The service plan stated the case was opened after the respondent refused to cooperate with a safety plan. A babysitter had been accused of causing bruises to A.R.S., but the babysitter reported that A.R.S. had "got into Meth" on October 29, 2017, so the injuries could have been created when the respondent spanked A.R.S. No information was discovered regarding the alleged Meth, and respondent did not cooperate with the investigation.

¶ 5 The minors were originally placed with a relative, however they were soon removed and placed into traditional foster care. The minors' father was incarcerated for domestic battery and violating an order of protection. The respondent's service plan required her to sign all releases of information that DCFS would need; inform the caseworker within three days of a move or change of address or phone number; meet with the caseworker on a monthly basis; obtain a mental health evaluation and follow all recommendations; refrain from substance abuse; attend and complete a parenting class and follow all recommendations from the instructor; and, attend and complete domestic violence classes.

¶ 6 On January 31, 2018, the trial court held an adjudicatory hearing. The respondent stipulated to the allegations in the complaints alleging that the minors were neglected. The State provided a factual basis statement indicating that the respondent noticed bruising on the body of A.R.S. after picking her up from the babysitter. A medical report established that the bruising was consistent with some form of child abuse. The State acknowledged that it was not known who caused the injuries. The trial court accepted the stipulation as to neglect and found the

minors to be adjudicated as neglected, and the matter was set for dispositional hearing. The written adjudicatory order was entered stating the minors were abused or neglected in that the minors were in an environment injurious to their welfare based on bruising of A.R.S. The order stated the abuse or neglect was inflicted by either the respondent or a babysitter to whom the respondent had entrusted the minors' care. The court reminded the respondent to cooperate with DCFS, comply with the terms of the service plan, and correct conditions that required the minor to be in care.

¶ 7 A dispositional hearing was held on March 7, 2018. The court acknowledged receipt into the record of a DCFS Dispositional Report dated February 16, 2018, a Supplemental Report dated February 23, 2018, an Integrated Assessment Report dated February 1, 2018, and the current Client Service Plan. The State indicated that it stood on the facts and recommendations contained in the reports and service plan. It asked the court to accept the recommendations contained in the documents, find the respondent unfit, and make the minors wards of the court.

¶ 8 The Integrated Report established that the respondent was unable to control the minors, and showed an inability or unwillingness to appropriately engage in parenting responsibilities. The report included documentation of suspicious bruising of the minors and a lack of plausible non-abusive reasons for the bruising. It further documented substantial evidence of domestic violence against the minors in the respondent's presence, as well as substance abuse and mental health issues involving the respondent and the minors' father. The report indicated that the respondent denied substance abuse but acknowledged that if she were subjected to a drug screen she would test positive for marijuana.

¶ 9 Also documented in the report were indications that A.B.S. and A.R.S. were suffering the physical and mental effects of trauma reactive conditioning. In addition, the report contained

factual recitations of inappropriate behavior by the respondent during supervised visitations and during a specific medical examination appointment regarding one of the minors. The report recommended that the minors be placed in care that would facilitate trauma therapy, developmental enrichment facilitation, and symptom observation. The report noted that I.W.S., being approximately one-year old at the time, did not exhibit manifestations of abuse. However, placement was appropriate to monitor development and trauma issues.

¶ 10 The Dispositional and Supplemental Reports indicated that the respondent was in compliance with some of the conditions established under the current service plan. It was noted, however, that certain treatment providers had concerns that the respondent lacked candor in some of her dealings with therapists. There were also indications of possible undiagnosed mental health issues, and the respondent's failure to execute medical records releases hindered further diagnosis and treatment. The record further indicated that, at the time of the hearing, the respondent had yet to complete parenting and domestic violence survival classes.

¶ 11 The report also addressed the respondent's manifestations of obsessive behavior toward the safety of the minors while in the custody of the foster parents. The report indicated that during visitation the respondent would strip search the minors checking for bruises and that on one occasion she filed a report with the Monmouth Police Department against the foster parents. The police found no evidence of injury and so informed DCFS. Following an investigation, DCFS determined that the respondent's report against the foster parents was unfounded.

¶ 12 The respondent testified at the dispositional hearing, denying that she had exhibited inappropriate behavior in the presence of the minors. She acknowledged that she used marijuana to cope with anxiety and depression, but she explained that she intended to secure a medical marijuana card. She further testified that she had not been shown the service plan or any of the

other documents presented to the court, yet she claimed that she had complied with the conditions in the client service plan.

¶ 13 Following the close of evidence, the trial court adopted the findings and recommendations of the reports, found the respondent to be dispositionally unfit, and made the minors wards of the court. The court again ordered the respondent to comply with the current client service plan, including the condition of cooperating with all mental health services. The court expressed concern that the respondent's "self-medicating" with marijuana was not in compliance with the service plan requirement and directed that she refrain illegal drug use and fully cooperate with mental health treatment parameters. Subsequently, the respondent filed a motion to reconsider the court's dispositional order.

¶ 14 On April 2, 2018, a hearing was held on the respondent's motion to reconsider the dispositional order. The respondent failed to appear. Her counsel reported no communication with the respondent. At the hearing, the State presented an addendum report regarding the respondent's belligerent behavior toward caseworkers during recent supervised visitation. The court on its own motion, expressing concern for the safety of the minors, ordered visitation suspended until such time as a psychological examination could alleviate concerns for the safety of the minors. The respondent appealed.

¶ 15 On June 6, 2018, at the scheduled permanency review hearing, the court vacated the order suspending visitation and ordered visitation to resume within the prior frequency and conditions. The order restoring visitation was entered approximately two months after the notice of appeal was filed.

¶ 16 ANALYSIS

¶ 17 I. Dispositional Fitness Determination

¶ 18 On appeal, the respondent first argues challenges the dispositional order finding her unfit to parent her children. The State argues the court's decision was proper.

¶ 19 Before addressing the merits of the appeal, it will be useful to address this court's jurisdiction over the dispositional order finding the respondent unfit. Under section 2-22(1) of the Act (705 ILCS 405/2-22(1) (West 2016)), the adjudication of wardship occurs at the dispositional hearing. *In re Barion S.*, 2012 IL App (1st) 113026, ¶ 36. In these cases, where the trial court maintains control of the wardship proceedings until parental rights are either restored or terminated, the dispositional order is regarded as the final and appealable as of right and is the proper vehicle to appeal a finding of abuse and neglect. *In re Leona W.*, 228 Ill. 2d 439, 456 (2008) (dispositional orders are regarded as final and appealable as a matter of right); *In re Janira T.*, 368 Ill. App. 3d 883, 891 (2006); Illinois Supreme Court Rule 303(a)(1) (eff. July 1, 2017). Here, the respondent's timely notice of appeal from the dispositional order adjudicating the minors as neglected and finding her unfit gives this court the jurisdiction over the dispositional order. We turn therefore to the merits of the respondent's appeal of the dispositional order.

¶ 20 After a minor is adjudicated abused, neglected, or dependent, the court must hold a dispositional hearing to determine whether it is in the child's best interests to be made a ward of the court and the proper disposition best serving the health, safety and interests of the minor and the public. 705 ILCS 405/2-21, 2-27 (West 2016); *In re Austin W.*, 214 Ill. 2d 31 (2005). A dispositional order will not be disturbed on appeal absent an abuse of discretion in selecting an inappropriate dispositional order or factual findings that are against the manifest weight of the evidence. *In re Taylor B.*, 359 Ill. App. 3d 647, 650 (2005). A trial court's finding of parental unfitness made pursuant to section 2-27 of the Act (705 ILCS 405/2-27 (West 2016)) will not be

reversed on appeal unless it is against the manifest weight of the evidence. *In re A.W.*, 231 Ill. 2d 92, 104 (2008). Because of the trial court's position as trier of fact, deference is given to the trial court's findings of fact in a juvenile neglect proceeding. *Id*.

¶ 21 A minor who has been adjudged a ward of the court may be placed with someone other than his or her parents if the trial court determines that the parents are either "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." 705 ILCS 405/2-27(1) (West 2016). The standard of proof for a trial court's section 2-27 finding of parental unfitness that does not result in a complete termination of all parental rights is by a preponderance of the evidence. *In re April C.*, 326 Ill. App. 3d 245, 257 (2001). In making that determination, all relevant and helpful evidence may be considered. 705 ILCS 405/2-22(1) (West 2016); *April C.*, 326 Ill. App. 3d at 261.

¶ 22 The respondent argues the trial court's finding of unfitness was against the manifest weight of the evidence because she had completed a mental health evaluation, attended counseling appointments, and signed a release for DCFS to contact her counselor. She further argues that the psychological evaluation ordered by the trial court was not ordered before the dispositional hearing and was contrary to the caseworker's observation that the respondent was "stabilizing." Additionally, she maintains that she substantially complied with other aspects of her service plan including steady housing and employment, completing online classes to pursue her career, attended visits with the minors, met with her caseworker consistently, and nearly completed parenting classes. She also takes issue with the trial court's concern over her obsessive behavior toward the foster parents.

¶ 23 The respondent's arguments do not establish reversible error. The mere fact the respondent engaged in services as delineated in a service plan does not equate with fitness. *In re An.W.*, 2014 IL App (3d) 130526, ¶ 51 (some progress with certain aspects of a service plan does not negate a trial court's finding of dispositional unfitness). In this case, while it is uncontested that the respondent had been engaged in services and visitation, other factors, such as the respondent's illegal use of marijuana to essentially self-medicate, the objective manifestations of untreated mental and psychological issues, her lack of candor and cooperation with mental health providers, and her behavior toward the foster family sufficiently supported the trial court's finding that she was not fit to resume her parenting responsibilities.

¶ 24 In sum, the trial court's finding that the respondent was unfit was not against the manifest weight of the evidence based on her admitted illegal drug use, admitted psychological issues, including PTSD, obsessive behavior regarding the foster family, and an objectively apparent need to continue receiving services. Therefore, this court affirms the finding that the minors were neglected and that the respondent was dispositionally unfit.

¶ 25 II. Visitation Order

¶ 26 The respondent next maintains that the trial court erred in suspending her visitation with the minors by order dated April 2, 2018. As a remedy from this court, she asks that we reverse the order suspending her visitation and restore her rights thereto. The State maintains that the issue is moot as visitation was restored on June 6, 2018, at the permanency review hearing. Again, before addressing the merits of the arguments of the parties, we must address the issue of appellate jurisdiction. *In re Alexis H.*, 335 Ill. App. 3d 1009, 1011 (2002) ("a reviewing court has a duty to consider *sua sponte* its jurisdiction and dismiss the appeal if it determines that jurisdiction is wanting").

¶ 27 On April 5, 2018, the respondent filed a notice of appeal stating she was appealing "from the March 7, 2018, Dispositional Order of the Circuit Court of Warren County granting guardianship and custody of her minor children to [DCFS] *** and also from the April 2, 2018, order denying *** suspending visitation with her children." Thus, the same notice of appeal covered two different orders of the trial court, the March 7, 2018, dispositional order and the April 2, 2018, order suspending visitation. As discussed above, appellate jurisdiction over the dispositional order is governed by Illinois Supreme Court Rule 303(a)(1) (eff. July 1, 2017). However, since the order suspending visitation was not part of the dispositional order, our jurisdiction to consider the respondent's appeal of the order suspending her visitation must be found elsewhere, if at all.

¶ 28 An order limiting or suspending visitation may be reviewed as an interlocutory order under Illinois Supreme Court Rule 306(a)(5) (eff. July 1, 2014). *In re Marriage of Betsey M.*, 2015 IL App (1st) 151358, ¶¶ 42-44. Rule 306(a)(5) provides as follows:

> "(a) Orders Appealable by Petition. A party may petition for leave to appeal to the Appellate Court from the following orders of the trial court:
>
> * * *
>
> (5) from interlocutory orders affecting the care and custody of or the allocation of parental responsibilities for unemancipated minors or the relocation (formerly known as removal) of unemancipated minors, if the appeal of such orders is not otherwise specifically provided for elsewhere in these rules[.]" Ill. S. Ct. R. 306(a)(5) (eff. Nov. 1, 2017).

¶ 29 We note that the notice of appeal in the instant matter was filed on April 5, 2018, which was three days after the April 2, 2018, order suspending visitation was entered. Illinois Supreme

Court Rule 306(b)(1) provides that petitions under Rule 306(a)(5) "shall be filed in the Appellate Court within 14 days of the entry or denial of the order from which review is being sought." Ill. S. Ct R. 306(b)(1) (eff. Nov. 1, 2017). Thus, even though the respondent has not invoked Rule 306(a)(5) in her notice of appeal, in our discretion, we may acquire jurisdiction by characterizing a notice or pleading as a petition for leave to appeal under Rule 306(a)(5). *In re Curtis B.*, 203 Ill. 2d 53, 63 (2002); *In re Marriage of Kostusik*, 361 Ill. App. 3d 103, 109 (2005). Here, in the interest of judicial economy, we will address the appeal of the trial court's order suspending her visitation as an appeal from an interlocutory order pursuant to Rule 306(a)(5).

¶ 30 Having found that this court has appellate jurisdiction over the appeal of the trial court's order suspending the respondent's visitation with the minors, we can now consider the State's mootness argument. Whether an issue is moot is a question of law subject to *de novo* review. *In re Rita P.*, 2014 IL 115798, ¶ 30. We agree with the State that the issue became moot when the trial court restored the respondent's visitation rights shortly after the notice of appeal was filed. *In re Christopher K.*, 217 Ill. 2d 348, 358-59 (2005) (an issue on appeal becomes moot where events occurring after the filing of the appeal render it impossible for the reviewing court to grant effectual relief to the complaining party).

¶ 31 Again, we must address the issue of jurisdiction. Specifically, did the trial court retain jurisdiction to enter the order granting the respondent the relief she requested in her appeal. Generally, the filing of a notice of appeal transfers jurisdiction from the trial court to the appellate court. *R.W. Dunteman Co. v. C/G Enterprises, Inc.*, 181 Ill. 2d 153, 162 (1998). However, under the Act, once a minor is found to be either abused, neglected, or dependant and placed in the custody of DCFS, the circuit court maintains jurisdiction over the case. *In re Shawn B.*, 218 Ill. App. 3d 374, 380 (1991). Moreover, once a minor has been made a ward of the court

pursuant to a finding of abuse, neglect, or dependence, the circuit court retains the jurisdiction to, at any time, vacate or modify the terms of the original order at any subsequent permanency review hearing. *In re M.G.*, 2018 IL App (3d) 170591, ¶ 13. An order of a court depriving a parent of custody or care of a minor is a continuing order that is only *res judicata* as to the facts that existed at the time the order was entered and the circuit court retains jurisdiction to change the custody or care of the minor until the court issues a final order terminating the parental rights. *In re S.J.K.*, 149 Ill. App. 3d 663, 673 (1986). Thus, the circuit court had jurisdiction to enter the order restoring the respondent's visitation rights at a subsequent permanency hearing.

¶ 32 Given our finding that the circuit court had jurisdiction to modify the visitation order, we are able to address the State's argument that the post-appeal order restoring the respondent's visitation rights rendered her appeal of the visitation restriction order moot. We agree with the State's argument. The trial court's order restoring the respondent's visitation put her in the position she occupied prior to the order from which she appealed to this court. Moreover, the trial court's order gave her the complete relief that she sought from this court in her appeal. In her brief, she argued that, "the trial court's decision to suspend visitation must be reversed." The trial court's order granted her the relief she requested, and it would be impossible for this court to grant more than the respondent received from the trial court. We also note that the respondent did not file a reply brief to argue against the State's mootness argument, and thus to the extent that there could be a counter-argument, it has been forfeited. *Walters v. Rodriguez*, 2011 IL App (1st) 103488, ¶ 5 (points not argued are forfeited).

¶ 33 We find that the appeal of the order suspending the respondent's visitation with the minor children has been rendered moot by subsequent actions of the trial court. We therefore dismiss that portion of her appeal as moot.

¶ 34 For the foregoing reasons, we affirm the trial court's fitness determination and dismiss, as moot, her appeal as it relates to the court's visitation order.

¶ 35 CONCLUSION

¶ 36 The judgment of the circuit court of Warren County is affirmed in part and dismissed in part.

¶ 37 Affirmed in part; dismissed in part.