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2019 IL App (3d) 180415-U

Order filed August 23, 2019

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

2019

<i>In re</i> D.S.,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
a Minor	)	Peoria County, Illinois.
	)	
(The People of the State of Illinois,	)	
	)	
Petitioner-Appellee,	)	Appeal No. 3-18-0415
	)	Circuit No. 18-JA-75
v.	)	
	)	
D’Va S.,	)	Honorable
	)	David A. Brown,
Respondent-Appellant).	)	Judge, Presiding.

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JUSTICE LYTTON delivered the judgment of the court.  
Justices Carter and Wright concurred in the judgment.

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**ORDER**

- ¶ 1 *Held:* (1) Trial court’s finding of unfitness following a dispositional hearing was not against the manifest weight of the evidence.
- ¶ 2 Following a dispositional hearing, the trial court found that respondent, D’Va. S. was unfit and that it was in her child’s best interest that he be made a ward of the court and placed in

the custody of the Department of Children and Family Services. Respondent appeals the court's unfitness finding. We affirm.

¶ 3

### BACKGROUND

¶ 4

In February 2018, the State filed a petition for adjudication of wardship of respondent's son, D.S. (age 20 months), claiming he was neglected based on an injurious environment. The petition alleged that D.S. was taken to the hospital on February 17, 2018, with a fever. He was lethargic and pale, and he was vomiting. Doctors diagnosed him with congestive heart failure due to low hemoglobin and acute respiratory failure. The petition alleged that D.S.'s condition would have been apparent for a length of time prior to February 17 and that he had been in the custody of respondent three days per week. The petition also alleged that respondent was previously indicated by DCFS on December 5, 2017, for inadequate supervision of D.S.'s older sibling.

¶ 5

Respondent filed an answer admitting to the allegations in the petition. However, she claimed that she had taken the minor to well-child checkups and that his condition was not apparent when he was in her custody. She also stated that there was a child custody proceeding involving D.S. in Du Page County and that she currently shared custody of him with his father.

¶ 6

A family service plan was filed on March 27, 2018. The plan stated that the father claimed he had full custody of the minor. He and his fiancé took D.S. to the hospital emergency room at Unity Point Health (Methodist) on February 17, 2018, because he was pale and lethargic and he was running a fever and vomiting. The father told the hospital that D.S.'s diet consisted solely of cow's milk and French fries. The treating physicians diagnosed D.S. with "severe iron deficiency anemia secondary to inadequate dietary iron intake and hypocalcaemia." D.S. was transferred to OSF Children's Memorial Hospital (OSF Hospital) and admitted to the pediatric

intensive care unit (ICU) because he was experiencing congestive heart failure. The doctors believed that all of D.S.'s medical issues were caused by poor diet. The plan further stated that the father told the hospital that respondent could not have any contact with D.S. When respondent arrived at the hospital, the staff informed her that she could not see D.S., and she became combative and had to be escorted from the emergency room.

¶ 7 The plan set forth various requirements as part of respondent's services, including: (1) completion of random drug drops; (2) completion of a mental health assessment and participation in weekly therapy sessions; (3) participation in weekly visits with D.S.; (4) notification of any changes in address, phone number, or household composition; and (5) completion of an approved parenting class.

¶ 8 The court conducted an adjudicatory hearing on April 25, 2018. The State offered D.S.'s medical records from OSF Hospital and Methodist, which were admitted without objection. Those records indicated that D.S., 20 months of age, arrived at the emergency room at Methodist with a temperature of 101.7. He was "pale sallow" appearing, weak, crying, and lethargic. The father's fiancé said that D.S. had been "this pale" since she first met him about four months earlier. She was concerned because he was "very pale" and lethargic and that was unusual. Following blood tests, it was revealed that his hemoglobin level was 1.9, with a normal range of 10.5 to 13.5. The treating physician noted clinical impressions of anemia, influenza, and lethargy and stated that D.S. had a high risk of complications, morbidity, and mortality. D.S. was then transferred to OSF Hospital.

¶ 9 Once admitted to the pediatric ICU at OSF, he was treated as a critically ill patient with "acute vital organ impairment, including congestive heart failure and acute respiratory failure." He was at high risk of "imminent, life threatening deterioration." During the intake interview,

the father's fiancé indicated that D.S. drank more than 40 ounces of milk a day, and ate fries, potato chips, turkey and meat. The physician's notes stated that D.S.'s lab results were consistent with iron deficiency anemia, most likely from a "milk diet." Records from treating physicians and dieticians stated that D.S. suffered complications from a poor diet for a prolonged period of time. Physicians at OSF Hospital administered four blood transfusions. Discharge notes indicated that after the blood transfusions, D.S. was doing well.

¶ 10 Evidence also revealed an indicated DCFS report against respondent from December 2017 for inadequate supervision of D.S.'s older sibling. Respondent testified that the DCFS report from December 2017 involved her older son, D.J., and a custody exchange with that child's father in a Wal-Mart parking lot. She stated that she was not found unfit in that case.

¶ 11 At the adjudicatory hearing, respondent stated that she took D.S. to well-child checkups and that doctors never indicated that his hemoglobin levels were below normal. According to her, nothing was wrong with D.S. until after his father had him for several days in February. When D.S. was in her care, respondent fed him apples, roast beef, chicken, and vegetables. She also fed him "toddler puffs," cookies and popcorn. Respondent denied that D.S. only consumed milk and french fries.

¶ 12 On cross-examination, respondent said that she had D.S. for four days out of the first two weeks in February before he was hospitalized. D.S.'s father picked him up on Valentine's Day. She also testified that when she took D.S. to the pediatrician, the doctor did not ask her what she fed D.S. or make any recommendations about the toddler's diet. During cross-examination by the guardian *ad litem* (GAL), respondent admitted that she had custody of D.S. for 8 out of the first 13 days in February.

¶ 13 Both the State and the GAL argued that D.S. suffered life threatening injuries as a result of respondent's care. They claimed that D.S. had been fed an inadequate diet for a long time and asserted that respondent failed to pay attention to the child's nutritional needs. The trial court found the State had proven by a preponderance of the evidence that D.S. was neglected and that his environment was injurious to his health and welfare. The court stated that, in this case, D.S.'s poor diet had negatively affected his health "to the point of being almost catastrophic."

¶ 14 Caseworker Jacob Martin completed a dispositional report for the court on May 17, 2018. The report stated that respondent lived in Joliet with her mother and her older son. Respondent told Martin that she was employed as a home health worker, but she failed to provide him with any proof of employment. The report noted that respondent began receiving services on November 30, 2017, following an indicated DCFS report that she left her five-year-old son, D.J., unattended in a Walmart parking lot.

¶ 15 According to Martin's report, his supervisor, Jeff Heckman, met with respondent on March 7, 2018, to discuss services with her. Following that meeting, Martin provided respondent with contact information for therapy services at the Will County Health Department. Respondent told him that she called the number to schedule services and was placed on a wait list. When Martin called the health department to verify respondent's place on the list, he was informed that she did not call for services. Respondent was also given drug-drop information but had not completed any drug drops. She said her work schedule prevented her from completing the drug test requirements. In addition, Martin referred respondent to parenting classes in Joliet. Respondent told Martin that she was scheduled to attend the first session of that class on May 7, 2018. As of the date of the report, Martin did not know if she attended the session or not.

¶ 16 The report further stated that D.S. was placed in a licensed foster home on February 19, 2018. Respondent was scheduled for weekly two-hour visits with D.S. at the agency office in Peoria. Her first scheduled visit was on April 4, 2018. Respondent failed to attend, and Martin's numerous attempts to contact her were unsuccessful. She showed up two days later, on April 6, 2018, and said that she had the wrong date on her calendar. On April 13, 2018, she called and said that her car broke down and she needed to reschedule. Her rescheduled visit was set for May 2, 2018. On that day, she contacted Martin and said one of her home health clients died. The visit was moved to the following day, but that day she called and said her car broke down again. On the days respondent did attend the scheduled visitation, she interacted well with D.S. She showed him pictures of family members, played with him, and brought him snacks.

¶ 17 Martin also reviewed D.S.'s medical records. They indicated that D.S. was seen by a physician's assistant on August 1, 1997, for a well-child visit. D.S.'s aunt and his great-grandmother took him to the appointment, and no abnormal findings were reported. On November 13, 2017, respondent and D.S.'s paternal grandmother took him to the doctor's office for strep throat.

¶ 18 During respondent's integrated assessment on April 26, 2018, she reported that she had taken D.S. to the emergency room at Silver Cross Hospital in Joliet in January 2018 due to flu-like symptoms. Silver Cross had no record of D.S.'s treatment. Respondent also stated during the assessment that D.S. had been hospitalized at Central Du Page Hospital for the flu in October 2017. Records obtained from that hospital showed that D.S. was taken to the emergency room on March 5, 2017, and April 2, 2017, due to a cough and rash. There were no other records of emergency room treatment or hospitalization at that facility.

¶ 19 Martin reported that both parents had not been fully cooperative and had minimized their responsibility for the events that led to D.S.’s removal. They both had a history of substance abuse; therefore, screening for substance abuse was appropriate. Martin noted that they would also benefit from parenting classes and individual therapy to address the issue of neglect. Due to respondent’s inaccurate statements, he also recommended a psychological evaluation to assess her mental health and awareness.

¶ 20 The integrated assessment, filed on May 30, 2018, stated that respondent was open and engaged, but she was “somewhat angry” that she was involved in services for D.S. She made negative comments about the father’s fiancé. Respondent reported that she had no arrests as an adult, except failing to maintain automobile insurance. However, her background check indicated four convictions: one for drug use and three for traffic offenses.

¶ 21 Respondent reported she spent six months in substance abuse treatment in 2008 following an arrest for possession of marijuana. During the assessment, she denied that her behavior contributed in any way to DCFS involvement and D.S.’s placement in foster care. She also made comments that were “odd, incongruent, or simply false.” Respondent’s psychological assessment indicated that she had difficulties in social relationships. Her elevated assessment scores indicated that she perceived others as the cause of her problems and had difficulty taking personal responsibility for her actions. The assessment stated that respondent had a pattern of unstable and intense interpersonal relationships, an unstable self-image, and inappropriate anger. It noted that persons with such personality traits may experience difficulty in parenting and that treatment required a strong commitment to participating in psychotherapy.

¶ 22 The assessment also noted the discrepancies in the information respondent reported as compared with objective records. The assessment reported that respondent made up the Silver

Cross Hospital visit “in an attempt to discredit the medical professionals who treated D.S. in February when [D.S.] was so ill that he might not have survived had he not received treatment.” The assessment further stated that “[respondent’s] rather erratic behavior, far-fetched stories, and apparent failure to tell the truth all point to significant concerns regarding parenting and her ability to provide a safe, nurturing environment for her son.” The assessment recommended individual psychotherapy, random toxicology screens, parenting education focusing on child development, and visitation. The prognosis for reunification was noted as “guarded.”

¶ 23 At the dispositional hearing on May 30, 2018, respondent testified that she was employed as a home care nurse but stated that she was “looking for another job as of tomorrow” and had an interview for another position. She stated that she signed up for therapy in Will County but was unable to provide the name of the agency she contacted. She also testified that she was enrolled in parenting classes and produced a letter from a program stating that she was participating in classes.

¶ 24 Respondent stated that she had been complying with drug drops. She claimed that she failed to do some drops because her job would not allow her to leave to complete them. She admitted missing a drop in April but stated it was because she could not make it to Joliet because she was going to get fired from her new job. She claimed the last time she used a controlled substance was in 2010.

¶ 25 Respondent testified that she missed three visits with D.S. because her car broke down. She stated that she made every rescheduled visit and brought food for D.S. to the visits. She said that the last time she took D.S. to a well-child visit was in January.

¶ 26 On cross-examination, she stated that she went to Unity Point Methodist and then OSF Hospital to see D.S. on February 17, 2018. When OSF Hospital turned her away, she told the



administrative personnel that she was going to call police and put out an AMBER alert for D.S. She believed it made sense to threaten police action because D.S.'s father had lied about the child's whereabouts.

¶ 27 The State presented caseworker Martin as a witness. His testimony reflected his statements in the dispositional report. D.S.'s medical records from both Unity Point Methodist and OSF Hospital were also admitted for the court's consideration.

¶ 28 At the conclusion of the hearing, the State requested that D.S. be made a ward of the court, that DCFS be appointed guardian, and that both parents be found unfit, and the GAL agreed. Following their arguments, the trial court found that it was in D.S.'s best interest that he be made a ward of the court. The court found both parents unfit based on the contents of the petition, the dispositional report, and the integrated assessment attached to the report. The dispositional order also noted that D.S. had a "life-threatening illness due to poor nutrition" and that respondent's behavior during and after D.S.'s hospitalization showed a lack of ability to meet minimal parenting standards. The court ordered respondent to participate in services recommended by DCFS, as well as those listed in the integrated assessment, and to complete anger management counseling.

¶ 29 ANALYSIS

¶ 30 Respondent contends that the trial court's finding of unfitness in the dispositional order was against the manifest weight of the evidence.

¶ 31 Under section 2-21(2) of the Juvenile Court Act of 1987, after a minor is adjudicated abused, neglected, or dependent, the trial court must hold a dispositional hearing. 705 ILCS 405/2-21(2) (West 2018). At the dispositional hearing, the court determines whether the parents of the minor 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.” *Id.* § 2-27(1). The standard of proof in a section 2-27 finding of unfitness for dispositional purposes is a preponderance of the evidence. *In re April C.*, 326 Ill. App. 3d 245, 257 (2001).

¶ 32 On appeal, a trial court’s dispositional fitness determination will be reversed only if its finding is against the manifest weight of the evidence or if the court abused its discretion by selecting an inappropriate dispositional order. *In re Jennifer W.*, 2014 IL App (1st) 140984, ¶ 44. A court’s finding is against the manifest weight of the evidence if, from the record, the opposite conclusion is clearly evident or the determination is unreasonable, arbitrary, or not based on the evidence presented. *In re K.B.*, 2012 IL App (3d) 110655, ¶ 15.

¶ 33 Here, the evidence at the dispositional hearing established that respondent was unfit. The dispositional report and the integrated assessment revealed respondent was repeatedly dishonest with the caseworker and failed to provide accurate information in the assessment. Respondent failed to enroll in or complete numerous services implemented in her family service plan. She did not enroll in therapy and neglected to complete any drug drops. She also failed to attend several visits with D.S., and refused to accept responsibility for her role in D.S.’s poor nutritional condition. Further, her assessment scores revealed that she had difficulty accepting responsibility, was reluctant to acknowledge problems, and had trouble controlling her emotions. Considering respondent’s lack of truthfulness, her failure to engage in services, and her unwillingness to accept responsibility for D.S.’s condition, it was not against the manifest weight of the evidence to find her unfit.

¶ 34 We also reject respondent's argument that there is no evidence that she is responsible for the poor nutrition that caused D.S. to experience a life-threatening illness. The record demonstrates that D.S. was in respondent's care for 8 days prior to his hospitalization in February. He was returned to his father's care on February 14. Three days later, he arrived at the emergency room in critical condition. He was pale and lethargic and malnourished. As a result of his prolonged state of malnutrition, his vital organs were severely impaired. He was suffering from congestive heart failure and acute respiratory failure. As noted in D.S.'s medical records, he was experiencing acute organ failure and his condition did not develop over the course of a few days. Respondent was unable to care for D.S.'s nutritional needs and failed to recognize when those needs were not being met. As the trial court properly found, these circumstances demonstrate that respondent is unfit and that the health, safety, and best interest of D.S. will be jeopardized if he remains in respondent's custody. We therefore affirm the trial court's order finding respondent dispositionally unfit.

¶ 35 CONCLUSION

¶ 36 The judgment of the circuit court of Peoria County is affirmed.

¶ 37 Affirmed.