

NOTICE

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2019 IL App (4th) 180833-U

NOS. 4-18-0833, 4-18-0834, 4-18-0835 cons.

FILED
April 16, 2019
Carla Bender
4th District Appellate
Court, IL

**IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT**

<i>In re</i> B.H., a Minor)	Appeal from the
)	Circuit Court of
(The People of the State of Illinois,)	Macon County
Petitioner-Appellee,)	Nos. 18JA34
v. (No. 4-18-0833))	
Heather M.,)	
Respondent-Appellant).)	
_____)	
<i>In re</i> D.H., a Minor)	18JA35
)	
(The People of the State of Illinois,)	
Petitioner-Appellee,)	
v. (No. 4-18-0834))	
Heather M.,)	
Respondent-Appellant).)	
_____)	
<i>In re</i> S.H., a Minor)	18JA36
)	
(The People of the State of Illinois,)	
Petitioner-Appellee,)	
v. (No. 4-18-0835))	Honorable
Heather M.,)	Thomas E. Little,
Respondent-Appellant).)	Judge Presiding.

JUSTICE DeARMOND delivered the judgment of the court.
Justices Steigmann and Harris concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed, finding the trial court did not err in making the minors wards of the court and granting guardianship to the Department of Children and Family Services.

¶ 2 In February 2018, the State filed petitions for adjudication of wardship with respect to B.H., D.H., and S.H., the minor children of R.H. and respondent, Heather M. In December 2018, the trial court made the minors wards of the court and placed guardianship with the Department of Children and Family Services (DCFS).

¶ 3 On appeal, respondent argues the trial court’s decision to make the minors wards of the court and grant guardianship to DCFS was against the manifest weight of the evidence. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In February 2018, the State filed petitions for adjudication of wardship with respect to respondent’s children, B.H., born in July 2014; D.H., born in July 2015; and S.H., born in January 2013. The petitions alleged the minors were neglected pursuant to section 2-3(1)(b) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(1)(b) (West 2016)) (count I) because their environment was injurious to their welfare in that the family had been uncooperative with intact services following the December 2017 death of three-month-old A.H. while in the care of her father, R.H. The petitions claimed the police investigation remained open “but indications are that substance abuse by the father may have been a contributing factor, as well as inadequate, unsafe sleeping arrangements—*i.e.*, sleeping in recliners and on sofas as opposed to beds/crib, and adults co-sleeping with children.”

¶ 6 The State’s petitions also alleged the minors were abused pursuant to section 2-3(2)(ii) of the Juvenile Court Act (705 ILCS 405/2-3(2)(ii) (West 2016)) (count II) because their parent and/or others created a substantial risk of physical injury to the minors by other than accidental means which would be likely to cause death, disfigurement, impairment of physical or

emotional health, or loss or impairment of any bodily function, in that the family had been uncooperative with services following A.H.'s death.

¶ 7 In April 2018, the State amended count I to remove mention of the possible substance abuse of R.H. as a contributing factor. The State noted the cause of A.H.'s death was due to suffocation by sleeping on a recliner. Respondent stipulated to amended count I, and count II was dismissed. The trial court continued the case under court supervision with the children to remain in respondent's home.

¶ 8 At the July 2018 shelter-care hearing, the trial court found probable cause to establish the minors were neglected but did not find an immediate and urgent necessity existed to remove the minors from respondent.

¶ 9 Also in July 2018, the State filed supplemental petitions to revoke supervision. In the lone count, the State alleged the minors were neglected pursuant to section 2-3(1)(b) of the Juvenile Court Act (705 ILCS 405/2-3(1)(b) (West 2016)) because their environment was injurious to their welfare in that the family had previously been placed on court supervision and intact services had been offered, the police responded to an incident of domestic violence on July 7, 2018, between respondent, R.H., and R.H.'s paramour, and respondent was arrested. The State also alleged R.H. had not been compliant with the service agency in that he had not been engaging in services in accordance with his service plan goals.

¶ 10 At the October 2018 adjudicatory hearing, the State amended the supplemental petitions to strike the last sentence regarding R.H.'s noncompliance with his service plan goals. Respondent stipulated to the allegations contained in the amended count. The court found the minors were neglected due to an injurious environment and set the matter for a dispositional hearing.

¶ 11 In December 2018, the trial court conducted the dispositional hearing. Lindsey Miller, a caseworker at the Youth Advocate Program (Youth Advocate), testified she had worked on the minors' cases since August 2018. Youth Advocate became involved in January 2018 after A.H.'s death. Miller stated the family has been "up and down" since then. In July 2018, a hotline call was made after respondent went over to R.H.'s house and had an altercation with R.H.'s paramour. The children were present and one of the minors "got a split lip as a result of the altercation." R.H.'s paramour was also injured. Respondent was criminally charged for that incident. As a result of the incident, respondent's service plan was modified to add services for domestic violence and anger management and for her to obtain assessments for substance abuse and mental health. Miller stated respondent completed these goals.

¶ 12 Miller testified Youth Advocate received information in November 2018 that respondent and R.H., along with R.H.'s paramour and the minors, were having contact despite there being a no-contact order in place. Due to the minor's injury and the violation of the no-contact order, Miller recommended the minors be made wards of the court and DCFS granted guardianship with the right to place the minors.

¶ 13 On cross-examination, Miller testified the contact between respondent and R.H. occurred at a Narcotics Anonymous meeting and the minors were not present. On redirect examination, Miller stated a safety plan had to be implemented in August 2018 after respondent "tested positive for K2 and alcohol." Upon hearing she tested positive, respondent "became irate" and was angry and swearing while her oldest child was in the car. Miller later stated the safety plan was ended after respondent tested negative.

¶ 14 Sandra Puhlman, an intact supervisor at Youth Advocate, testified she had been involved with the minors' cases since they were opened. In the beginning, respondent was not

required “to do anything” because the agency was focused on R.H. following the infant’s death. During a visit to respondent’s home in July 2018, respondent stated “she was going to go over to [R.H.’s] home and assault his paramour because she was tired of her shit.” Puhlman stated respondent followed through with her threat and entered R.H.’s home without permission. The children observed the ensuing altercation and D.H. “was knocked over by [respondent] and her lip was split.”

¶ 15 Puhlman stated a no-contact order between the parents was put in place, but she learned that contact was being made. After learning this information, Puhlman visited the site of the Narcotics Anonymous meeting in December 2018. She observed respondent’s vehicle and later saw respondent and R.H. walk out of the meeting. Puhlman confronted respondent with her observations, and respondent admitted they had been violating the no-contact order, including taking the minors to R.H.’s home.

¶ 16 Puhlman recommended the minors be made wards of the court and that DCFS be granted guardianship because “we don’t have really good valid information about the services and whether they’re being effective, whether or not the parents are applying what they’re learning.” Puhlman stated respondent “has been hostile, rude, and swearing at [Puhlman’s] counselors,” with and without the minors being present, and “it’s going to take time” for respondent to put what she has learned into effect.

¶ 17 On cross-examination, Puhlman testified respondent had “an altercation” with a service provider after she tested positive for K2. Seven days later, respondent tested negative after testing “positive twice for K2.” Respondent had a minor with her “while she was having that fit of rage with that service provider.”

¶ 18 Puhlman stated the minors have been in respondent's care, with the exception of "about a week," since the start of the case. B.H. has specialized medical needs and respondent has been the one primarily responsible for those needs.

¶ 19 R.H. testified about the Narcotics Anonymous meeting in December 2018. The location of the meeting was not R.H.'s usual meeting place, as he was asked to open a meeting because his sponsor was running late. He did not go with respondent, although she did arrive later. R.H. stated respondent said one word to him that night and they did not leave together. He denied having regular contact with respondent during the exchange of the minors.

¶ 20 Following arguments, the trial judge noted the minors were all less than six years old. After finding Miller credible and Puhlman "especially credible," the judge stated, in part, as follows:

"I can't imagine being a kid this age growing up in this kind of a household when I see my mother act in this way—arguments with the father's paramour resulting in a split lip, mother's hostility and anger with the children present. I mean, it's time to grow up and be an adult, period. I think both of you have the capacity to be good parents. You both recognized that—that we all recognize. I mean, it's just almost a fact of life. If you get along, it's going to be better for these kids. But with all due respect to counsel and your arguments, I don't even find this to be a close case."

The judge's written order found respondent unfit and unable to care for, protect, train, educate, supervise, or discipline the minors and placement with her would be contrary to their health,

safety, and best interests because of domestic violence in their presence, possible mental-health issues, and violation of the no-contact order. The judge found it in the minors' best interests that they be made wards of the court and placed guardianship with the power to place and consent to medical treatment with DCFS. Respondent appealed, and this court consolidated the cases.

¶ 21

II. ANALYSIS

¶ 22 Respondent argues the trial court's decision making the minors wards of the court and granting guardianship to DCFS was against the manifest weight of the evidence. We disagree.

¶ 23 The Juvenile Court Act provides a two-step process the trial court must utilize to decide whether a minor child should be made a ward of the court. *In re A.P.*, 2012 IL 113875, ¶ 18, 981 N.E.2d 336. The first step involves the adjudicatory hearing, where the court considers whether the minor is abused, neglected, or dependent. See 705 ILCS 405/2-18(1) (West 2016); *A.P.*, 2012 IL 113875, ¶ 19, 981 N.E.2d 336. If the court determines the minor is abused, neglected, or dependent, then the court conducts a dispositional hearing, where the court determines whether it is consistent with the health, safety, and best interests of the minor and the public for the minor to be made a ward of the court. *A.P.*, 2012 IL 113875, ¶ 21, 981 N.E.2d 336.

¶ 24 The trial court may appoint DCFS as guardian when the parents are unfit if it determines "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). "A minor's best interest stands independent of all other considerations, even that of a parent's right to custody." *In re B.D.*, 321 Ill. App. 3d 161, 164, 746 N.E.2d 822, 825 (2001); see also *A.P.*,

2012 IL 113875, ¶ 18, 981 N.E.2d 336 (noting that in proceedings brought under the Juvenile Court Act, “the paramount consideration is the best interests of the child”).

¶ 25 On appeal, “a trial court’s decision ‘will be reversed only if the findings of fact are against the manifest weight of the evidence or the court committed an abuse of discretion by selecting an inappropriate dispositional order.’ ” *In re Al. S.*, 2017 IL App (4th) 160737, ¶ 41, 73 N.E.3d 1178 (quoting *In re J.W.*, 386 Ill. App. 3d 847, 856, 898 N.E.2d 803, 811 (2008)). “A court’s factual finding is against the manifest weight of the evidence where the opposite conclusion is clearly evident or where its finding is unreasonable, arbitrary, or not based on the evidence presented.” *Al. S.*, 2017 IL App (4th) 160737, ¶ 41, 73 N.E.3d 1178.

¶ 26 In the case *sub judice*, respondent stipulated to her neglect. The evidence indicated respondent engaged in illegal behavior by entering R.H.’s home without permission and then assaulting his paramour, the act of violence leading to physical injury to one of the minors. Respondent was criminally charged as a result of the incident and those charges remained pending at the time of the dispositional hearing. Along with her acts of home invasion, domestic battery with bodily harm, and electronic harassment, respondent has shown a pattern of anger and hostility to caseworkers, both with and without the children present. One of those angry outbursts occurred after she had tested positive for K2. She has also shown her disrespect for the law by violating the no-contact order, which stemmed from her violent criminal acts, by attending the Narcotics Anonymous meeting and dropping off the children for visitation.

¶ 27 Respondent argues Puhlman was only concerned about her “foul mouth” and suggests it is “appalling” that Puhlman “staked out” the Narcotics Anonymous meeting and “set[] up a sting” operation to catch her and R.H. “in the act.” Respondent laments that “the caseworker does all she can to get them in trouble” and “is not really wanting this family unit to

stay together.”

¶ 28 Respondent’s attempt to place blame on her caseworker indicates her lack of understanding of the juvenile court process and puts her own interests above the health, safety, and best interests of the minors. Respondent all but ignores her criminal acts, her positive drug test, and her anger issues. Moreover, her violation of the no-contact order went beyond a “fluke meeting” at the Narcotics Anonymous meeting and occurred during the exchanges of the minors for visitation when she had alternatives available to facilitate those exchanges. Such blatant disregard of the process and the no-contact order puts the minors at risk. We find the trial court’s decision to make the minors wards of the court and granting guardianship to DCFS with the power to place and consent to medical treatment was not against the manifest weight of the evidence or an abuse of discretion.

¶ 29

III. CONCLUSION

¶ 30 For the reasons stated, we affirm the trial court’s judgment.

¶ 31 Affirmed.