

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).

2020 IL App (4th) 190702-U

NO. 4-19-0702

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

February 28, 2020
Carla Bender
4th District Appellate
Court, IL

<i>In re</i> TR. W. and TY. W., Minors)	Appeal from the
)	Circuit Court of
(The People of the State of Illinois,)	Champaign County
Petitioner-Appellee,)	Nos. 17JA23
v.)	
Travell W.,)	
Respondent-Appellant).)	Honorable
)	John R. Kennedy,
)	Judge Presiding.

JUSTICE CAVANAGH delivered the judgment of the court.
Justices Knecht and Holder White concurred in the judgment.

ORDER

- ¶ 1 *Held:* The appellate court affirmed the trial court’s order terminating wardship when respondent did not demonstrate prejudice from the lack of written findings in the order and the order was not against the manifest weight of the evidence.
- ¶ 2 Respondent, Travell W., is the father of Tr. W. (born on December 5, 2015) and Ty. W. (born on August 26, 2016). The minors’ mother, Tyesha McIntosh, is not a party to this appeal. In April 2017, the Department of Children and Family Services (DCFS) filed neglect proceedings based upon a domestic violence incident between the parents which had occurred in the presence of the minors. In October 2019, the trial court found Tyesha had been providing the minors a suitable home and no further services were needed. The court entered an order terminating wardship and closing the case. Respondent appeals, claiming the court’s order (1) failed to include the required written factual findings and (2) was not supported by the manifest weight of the

evidence. Because (1) respondent failed to object to the lack of written factual findings in the trial court, (2) respondent failed to demonstrate any prejudicial effect of not having written findings, and (3) the manifest weight of the evidence supports the court's oral findings, we affirm the court's judgment.

¶ 3

I. BACKGROUND

¶ 4

In April 2017, the State filed a petition for adjudication of wardship, alleging Tr. W. and Ty. W. were neglected minors in that their environment was injurious to their welfare when residing with respondents because they were exposed to domestic violence. Respondent and Tyesha admitted the allegation, and the trial court entered an adjudicatory order finding the minors neglected.

¶ 5

In September 2017, the trial court conducted a dispositional hearing and found (1) Tyesha was fit, able, and willing to exercise custody of the minors, and such placement or continuation of custody of the minors in her would not endanger the minors' health or safety and was in the minors' best interest, and (2) respondent, who was then incarcerated, was unfit and unable, for reasons other than financial circumstances alone, to care for, protect, train, or discipline the minors. The court further found it was in the minors' best interests that they be made wards of the court and adjudged neglected. The court placed guardianship of the minors with DCFS with Tyesha retaining custody.

¶ 6

Respondent was incarcerated for violating his probation after his arrest related to the domestic violence incident in April 2017. He was released from prison in July 2018. While in prison, he participated in available programs, including substance-abuse classes and Narcotics Anonymous and Alcoholics Anonymous. According to DCFS, respondent would still be required

to participate in domestic violence counseling and/or anger management—programs that were not available in prison.

¶ 7 Upon his release from prison in July 2018, respondent secured employment and a one-bedroom apartment. He participated in one hour of supervised visitation per week without issue. In August 2018, he began individual counseling to address anger management, domestic violence, and other relationship issues. He completed a substance abuse assessment and was not recommended for further treatment.

¶ 8 As of December 2018, respondent had successfully completed his parole. DCFS asked the trial court to close the case, as there were no concerns with respondent's visits. However, respondent was discharged from individual counseling due to a conflict of interest because Tyesha counseled there as well. He was placed on a waiting list at another agency. The trial court declined to close the case because respondent also needed to complete an intake for domestic violence and anger management services.

¶ 9 According to DCFS's permanency report in March 2019, respondent had not been in frequent contact with the caseworker and was reportedly unhappy with her services. He felt she was being "unprofessional" by requesting a home visit "now that he [was] working full time." Respondent was scheduled for an intake for his domestic violence and anger management services on March 5, 2019, but he failed to appear. Respondent requested he be allowed to visit with the minors on Sunday so they could attend church with him. DCFS initially allowed him to do so, but the caseworker was concerned respondent requested this church time so that he would not have to spend time interacting with the minors.

¶ 10 On October 2, 2019, the trial court conducted a permanency review hearing. Respondent testified regarding disputes he had with the caseworker and visitation aide regarding

DCFS discontinuing his Sunday visits. He admitted he had not visited with the minors since August 10, 2019.

¶ 11 At the close of the hearing, the trial court noted it had reviewed the CASA report dated September 25, 2019, and a status report from Cognition Works dated September 26, 2019. According to the status report, respondent had three absences since August 22, 2019. This was his second attempt at the program, as he was discharged for absences previously. He had two negative behavioral incidents. Once, he disrupted the group and, on another occasion, he lost his folder. As a result, he was assigned homework. He chose not to complete his homework and was temporarily removed from the group. He was asked to complete a commitment statement to address his choices. At that time, he asserted his willingness to comply with the group rules and requirements. The facilitator questioned respondent's victim mentality and "closed thinking regarding his ability to control his choices regardless of the actions of others on the situations he encounters in his life."

¶ 12 Based upon the evidence presented, the above-mentioned reports, and counsels' recommendations, the trial court questioned whether wardship should continue. The court stated the dispositional order was entered on September 28, 2017, two years ago. Tyesha "has continued to grow as a parent." The decision to allow her to maintain custody of the minors "was obviously appropriate," and the situation "has improved over that time in terms of her ability." The court noted that "at the same time, when this dispositional order was entered, [respondent] was incarcerated. He has been out of incarceration for a long period of time, and [Tyesha's] situation has continued without harm[.]" The court further stated:

"We have a fit, able, and willing parent who has expressed regularly appropriately to the court that she is able to handle this without court involvement.

That's her position today. That was her position before. It's a position that has got a lot of support in the record in the case.

And as to [respondent], I find that he's not a custodial parent. He has made reasonable efforts towards the goal of restoration of custody to him. He has not made reasonable and substantial progress. I do have to comment on the visitation situation, because I think part of the difficulty with this, there's a few things that added into this. [One, DCFS did not have the personnel or services to accommodate Sundays. Two, the third-party supervision approved in June had not been implemented.] That hasn't happened and I think it hasn't happened due to him. His lack of being cooperative at times, his lack of progress, being discharged from Cognition Works, reenrolling. *** [W]hen [Conrad Hays, a facilitator of the Change Program at Cognition Works,] has questions about someone's engagement in a program, that's not an iffy situation to the court. He has questions, [respondent], about whether you're engaged in this or not. If Conrad Hays asks questions about it, then I certainly have questions about it, because he knows what he's doing, a lot more than I do. He knows how to have programs where people make changes in their life, and he's not convinced that you're going to make changes in your life and that you're invested in the program. That means the court is certainly not convinced[.] *** So [respondent] has not made reasonable or substantial progress. He continues to be unfit and unable to exercise custody of his children.”

¶ 13 The trial court was “convinced” Tyesha was “able to handle this without the court being involved.” Her situation “has gotten better and better about her ability to be in charge of her kids and raise them appropriately without the court [*sic*] involvement.” The court stated it was “no

longer in the best interests of the children to remain wards of the court or subject to guardianship.”
The court vacated guardianship and wardship of the minors.

¶ 14 In a written permanency order, a preprinted form order, the trial court checked the boxes that respondent had made reasonable efforts but not reasonable progress. Guardianship of the minors was restored to Tyesha. The court handwrote the following: “[Respondent] continues to be unfit and unable to exercise custody and guardianship of the minors.”

¶ 15 This appeal followed.

¶ 16 II. ANALYSIS

¶ 17 Respondent argues the trial court did not comply with section 2-31(2) of the Juvenile Court Act of 1987 (705 ILCS 405/2-31(2) (West 2018)), which requires written findings in support of any order terminating a wardship and closing a case. He claims the lack of written findings requires the court’s order to be vacated and the cause remanded. We find respondent has forfeited the issue by failing to bring it to the trial court’s attention. *In re K.S.*, 317 Ill. App. 3d 830, 833 (2000). Further, respondent makes no assertion that any prejudice resulted from the lack of written factual findings.

¶ 18 In a similar case, the Second District addressed the issue of the lack of written findings as follows:

“Here, the trial court made explicit oral findings on the record. Respondent neither contends that the oral findings are inadequate nor claims prejudice from not having the findings in writing. Under these circumstances, we agree with the State that it would be a waste of judicial resources to remand this cause solely to allow the trial court to reiterate its findings in a written order.” *In re Z.Z.*, 312 Ill. App. 3d 800, 804 (2000).

¶ 19 We agree with this reasoning. Under the circumstances of this case, where the trial court cited its reasoning in detail during its oral pronouncement and no allegations of prejudice have been asserted, we will not vacate the judgment due to the lack of factual findings in the written order closing the case.

¶ 20 Respondent also claims the trial court's order is against the manifest weight of the evidence. We disagree.

¶ 21 The manifest weight of the evidence does not contradict the trial court's oral finding that it was "no longer in the best interests of the children to remain wards of the court or subject to guardianship." The minors had been well cared for by Tyasha for two years. The court found her to be a fit parent, who had demonstrated her ability to care for the minors without court involvement. On the other hand, the court found respondent to be an unfit parent, who was unable to exercise custody of the minors. Respondent does not contest the finding of unfitness. On this record, we find no error in the trial court's judgment. Respondent's parental rights have not been terminated and nothing prevents him from seeking custody in the future should he choose to do so.

¶ 22 Accordingly, we conclude the trial court's decision to terminate the wardship and close the neglect case was not against the manifest weight of the evidence.

¶ 23 III. CONCLUSION

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

¶ 25 Affirmed.