2017 IL App (1st) 162843-U

SECOND DIVISION
March 14, 2017

Nos. 1-16-2843 & 1-16-2844 (cons.)

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re Antoinette W. & Antoine W.,	)	Appeal from the
	)	Circuit Court of
Minors-Appellees	)	Cook County, Illinois,
	)	Child Protection Division.
(People of the State of Illinois,	)	
	)	Nos. 15 JA 1056,
Petitioner-Appellee,	)	15 JA 1057
v.	)	
	)	
Antoine W.,	)	Honorable
	)	Richard A. Stevens,
Respondent-Appellant).	)	Judge Presiding.

JUSTICE MASON delivered the judgment of the court.
Presiding Justice Hyman and Justice Pierce concurred in the judgment.

ORDER

¶ 1 *Held*: Trial court's finding that DCFS made reasonable efforts towards reuniting respondent with minor children was not against manifest weight of the evidence.

¶ 2 The State filed a petition for wardship over minor children Antoinette W. and Antoine W., after respondent-father was arrested for battery against them. At an adjudicatory hearing, the trial court found that the children were physically abused and neglected due to an injurious environment. The court then held a dispositional hearing, at which time it placed both minors

under the guardianship of the Department of Children and Family Services (DCFS) and entered a permanency order setting a goal for the children to return home pending a status hearing held nine to eleven months from the date of the order. Respondent appeals the trial court's findings underlying the dispositional order, contending that they are contrary to the manifest weight of the evidence. We affirm.

¶ 3 Respondent is the father of minor Antoinette W., born on May 23, 2000, and her brother, Antoine W., born on September 15, 2006, who share the same mother. Their half-sister, Danaria T., born on October 8, 2008, also has the same mother, but respondent is not her father. Respondent obtained custody of both Antoine and Antoinette in 2014 after their mother was indicated for domestic abuse of Antoinette in Iowa.[1] Beginning in July 2015, Danaria also lived with respondent and her half-siblings, but was in the custody of her maternal aunt.

¶ 4 On October 9, 2015, the State filed a petition for wardship over all three children. The affidavit supporting the petition indicated that DCFS received a report on September 22, 2015 that respondent choked Antoine, and another report on October 6, 2015 that respondent had been arrested for battery to all three children. At a temporary custody hearing, the trial court found probable cause that the children had been abused and neglected and removed them from their home into the custody of the DCFS Guardianship Administrator.

¶ 5 The court held an adjudication hearing beginning on August 9, 2016. Prior to the commencement of the hearing, the court confirmed with respondent, who was present and represented by counsel, that respondent was hard of hearing but could read lips. Respondent stated that he could hear if the court spoke loudly, and the court instructed anyone who addressed respondent to face him and speak "louder than normal." At the hearing, which was continued several times over the course of two months, evidence was introduced by stipulation that Danaria

[1] The children's mother participated in the circuit court proceedings but did not appeal the ruling.

witnessed respondent spanking Antoine and getting into an argument with Antoinette when she refused to go to her room. According to Danaria, respondent pushed Antoinette, who stumbled backward. As the fight between respondent and Antoinette continued, Antoine intervened by jumping on respondent and hitting him on the back of his head. Respondent reached back and flipped Antoine onto the floor, where Antoine fell on his face and suffered a nosebleed. At that point, Danaria's aunt arrived with the aunt's mother. Antoinette and Antoine confirmed the majority of these details, but Antoine denied that respondent spanked him.

¶ 6 At the continued adjudication hearing at the end of August, the court obtained an "assistant listening device" for respondent, who put it on and confirmed that he could hear the proceedings. The hearing was continued on that date so that a doctor who treated Danaria for injuries could testify.

¶ 7 The hearing concluded on October 5, 2016, with the doctor's testimony. In closing argument, the State sought a finding of abuse and neglect, while respondent asked the court to make no findings and return the children home. The court found neglect/injurious environment for all three minors and a finding of physical abuse of Antoine and Antoinette.

¶ 8 A dispositional hearing began immediately after the court entered its findings. At the hearing, the State introduced respondent's integrated assessment, for which he was interviewed on October 28, 2015, by La Rabida Children's Hospital Screener Carla Velasquez and Ada S. McKinley Permanency Worker Mary Flores. Respondent's cousin attended the interview to assist respondent as needed, though the record does not reflect the level of assistance, if any, he provided. Velasquez also sat close to respondent and spoke at a high volume, and with these accommodations, respondent reported no barriers to communication. During his interview, respondent explained that he suffered from permanent hearing loss after contracting mumps as a

child. He sporadically wore hearing aids, but lost them in 2013. He opted not to obtain replacements due to the fact that hearing aids picked up background noise, instead preferring to read lips.

¶ 9 The comprehensive, 100-page integrated assessment was completed in January 2016. With regard to respondent, the assessment recommended that he attend individual and family therapy, and that he receive a referral for domestic violence services. The assessment further recommended supervised visitation with Antoinette and Antoine when it was deemed safe and appropriate.

¶ 10 Jacqueline Grant, the supervisor on respondent's case from Ada S. McKinley, testified with regard to respondent's completion of the services recommended by the integrated assessment. Specifically, she stated that respondent was scheduled to participate in individual therapy with Jasmine[2] at Ada S. McKinley in February 2016. However, when Jasmine met respondent, she felt that due to his "learning issues," the therapy would be ineffective. She informed Grant that she was "screaming back and forth" to respondent in order for him to understand her.

¶ 11 A similar problem occurred when respondent attempted to complete a mental health assessment, also with Jasmine, who again said that due to respondent's "hearing issue," she did not believe they were communicating effectively. And respondent was also unable, through no fault of his own, to complete the domestic violence assessment due to his hearing impairment. Respondent did, however, complete parenting classes in April 2016 at the agency A Knock at Midnight. Grant testified that she did not know if A Knock at Midnight encountered problems in providing services to respondent.

[2] Jasmine's last name does not appear in the record.

¶ 12 Following the suspension of individual therapy, Ada S. McKinley contacted its DCFS deaf/hard of hearing liaison, who informed Grant, as well as respondent's caseworker at the time, Mary Flores, how respondent could obtain a hearing aid. According to the liaison, respondent needed to obtain a referral from his primary care physician for a hearing test and hearing aid and then fill out an application at Chicago Hearing Today, which would then determine whether respondent was eligible for a new or refurbished hearing aid at no cost. Flores conveyed this information to respondent, but respondent later informed Grant that he went to "the particular place" and someone told him that he could not get a hearing aid. Grant followed up with Chicago Hearing Today, who confirmed that they would assist respondent in obtaining a hearing aid regardless of his ability to pay. [3] Grant acknowledged that respondent may have gone to an incorrect location. The court queried whether Ada S. McKinley could provide respondent an assistant hearing device similar to that which was provided in court that day, and Grant agreed to look into that, but said the DCFS liaison had not previously mentioned it as an option.

¶ 13 With regard to visitation, respondent visited Antoine on Tuesdays, but Antoinette refused all visits with respondent despite Grant speaking with “the counselor” on a monthly basis to address that issue. Grant recommended a permanency goal of return home within 12 months.

¶ 14 In closing, the State argued that Antoine and Antoinette should be wards of the court in the custody of the DCFS administrator. The State further recommended that the court find respondent unable to parent the children and set a permanency goal for Antoine and Antoinette of return home in twelve months, given that respondent had made good-faith efforts to see his children and avail himself of the required services. The guardian *ad litem*, however, urged the court to set a goal of return home pending a status hearing arguing that respondent had not made

[3] The record is silent as to the date these conversations occurred, but as of April 2016, respondent had not secured a referral from his primary care physician, the first step in obtaining a hearing aid.

substantial progress in the services recommended by the integrated assessment. Respondent argued that DCFS and Ada S. McKinley failed to make reasonable efforts to allow him to complete the necessary services to reunite with Antoine and Antoinette. He conceded that he was "unable" to care for the children at this time, but asked the court to refrain from making findings as to progress. Respondent did not argue for or against a particular permanency goal.

¶ 15 With regard to disposition, the court held that respondent was unable, for reasons other than financial circumstance alone, to parent the children and adjudged the minors wards of the court, placing them in the custody of the DCFS Guardianship Administrator. The court acknowledged that "not everything that's been done that perhaps should have been done" by both the agency and respondent, but specifically held that the agency was making "reasonable efforts," given that it was "monitoring all three children in three separate homes" and had referred "all the parents to multiple services." In its written order, however, the court checked the box indicating that reasonable efforts have been made "to prevent or eliminate the need for removal of the minor from the home." The court refused to fault respondent for failing to obtain a hearing aid, and urged the agency to obtain an assistant listening device, and set a status date of January 13, 2017, when it would inquire as to the progress the agency made in acquiring this device.

¶ 16 The court then set a permanency goal of return home pending a status hearing to be held between nine and eleven months after the date of the hearing, finding that respondent had made "some progress" in completing parenting classes, and was discharged from individual therapy "not of his own accord." The court also made an oral and written finding, for purposes of the permanency order, that DCFS made reasonable efforts to achieve the permanency goal. This appeal follows.

¶ 17 Respondent's primary argument on appeal is that DCFS and its assignee, the Ada S. McKinley Center, failed to follow DCFS's own internal procedures for providing services to a hearing impaired person and also failed to comply with the Americans with Disabilities Act. According to respondent, this constituted a failure to make reasonable efforts towards reunification, and the court's finding to the contrary in its dispositional order was in error.[4]

¶ 18 At the outset, we note that in its written dispositional order, the court checked the box indicating that reasonable efforts were "made to prevent or eliminate the need for removal of the minor from the home" instead of the box immediately below, which indicated that reasonable efforts were "provided to make it possible for the minor to return to the parent, guardian or legal custodian." However, at the time of disposition, Antoinette and Antoine had already been removed from respondent's home. And the court's oral findings indicated that it was addressing DCFS's efforts at reunification, rather than its efforts to prevent removal. Given the conflict between the oral and written pronouncements, the oral finding controls. *In re William H.*, 407 Ill. App. 3d 858, 866 (2011).

¶ 19 Because the court's finding of reasonable efforts was made in the course of its disposition ruling, we review it under a manifest weight of the evidence standard. See *William H.*, 407 Ill. App. 3d at 866. In other words, we will not disturb the court's findings unless the record clearly demonstrates that the court should have reached the opposite result, or the court's determination is unreasonable, arbitrary, and not based on evidence. *In re D.W.*, 386 Ill. App. 3d 124, 139 (2008); *In re K.T.*, 361 Ill. App. 3d 187, 201 (2005). Such deference is warranted because the

[4] In his opening brief, respondent also challenged the permanency order, arguing "[t]he proper permanency goal was the one recommended by Ms. Grant; that is, return home within 12 months to allow father to engage in reunification services." However, in his reply, respondent expressly disavows any challenge to the permanency order, recognizing, as the public guardian points out, that we have no jurisdiction to review permanency orders, which are interlocutory and non-final. See *In re Curtis B.*, 203 Ill. 2d 53, 59-60 (2002).

trial court is in a much better position to observe the witnesses and assess their credibility. *In re T.B.*, 215 Ill. App. 3d 1059, 1062 (1991).

¶ 20 Respondent argues that the court's finding was against the manifest weight of the evidence because DCFS and Ada S. McKinley allegedly failed to comply with the ADA and DCFS's own internal procedures for providing services to the hearing impaired. In the first place, this argument is forfeited because respondent failed to raise it in the course of the dispositional hearing. See *Coghlan v. Beck*, 2013 IL App (1st) 120891, ¶ 31 (failure to raise issue before trial court forfeits that issue for review on appeal); see also *In re Jeanette L.*, 2017 IL App (1st) 161944, ¶ 16 (where respondent did not raise her claim that the reunification services she was required to complete were not accommodating of her disability in violation of the ADA in the trial court, claim was forfeited on appeal). To be sure, respondent generally contended at the close of the hearing that DCFS and Ada S. McKinley had not made reasonable efforts at reunification, but he at no point directed the court's attention to DCFS's procedures or the ADA as providing support for his contention.

¶ 21 Forfeiture aside, however, respondent's arguments are meritless. Respondent has provided no authority for the proposition that DCFS's failure to comply with its internal procedures violates the legal standard for "reasonable efforts" and we decline to adopt a *per se* rule to that effect. Similarly, while a violation of the ADA may provide respondent with a cause of action in the appropriate forum, there is no authority holding that such a violation bears on the issue of whether an agency undertook reasonable efforts at reunification.

¶ 22 Leaving aside the alleged violations of the ADA and DCFS's internal procedures, respondent's argument, at bottom, is that the agency's failure to address his hearing impairment

in a timely manner and provide him with appropriate services and service professionals constituted a lack of reasonable efforts at reunification.[5] We disagree.

¶ 23 Keeping in mind the highly deferential manifest weight of the evidence standard, we cannot say that the trial court's finding on this issue was unreasonable or not based on evidence. First, with regard to the time it took for the agency to make inquiries as to how it could accommodate respondent's disability, the public guardian correctly notes that while respondent was interviewed for an integrated assessment on October 28, 2015, the assessment itself was not completed until January 6, 2016. Prior to the time of the assessment's completion, the agency did not know what, if any, services respondent would require. Thus, it would have been premature for the agency to take steps within that three-month period to determine how it could accommodate respondent's hearing problem.

¶ 24 Significantly, when the agency was made aware in January 2016 that respondent would need services that its therapist could not provide, Ada S. McKinley immediately contacted DCFS's hard of hearing liaison who provided instructions on how respondent could obtain a hearing aid at no cost to him. While respondent experienced difficulty in following these instructions, there is no evidence that this was the fault of the agency. The record reflects that the necessary information was provided to respondent, but respondent was told by an unspecified person at an unspecified location that he could not obtain a hearing aid, although Chicago Hearing Today confirmed to Grant that it would provide respondent with a hearing aid regardless of his ability to pay. The record is silent as to the steps, if any, respondent or the agency took after receiving this confirmation. Because it is respondent's burden to provide a complete record to support his claims of error, we resolve all doubts against respondent regarding whether the

[5] The State agrees that the trial court erred in finding reasonable efforts on the part of the agency, while the public guardian and DCFS argue that the court's finding was not against the manifest weight of the evidence.

agency continued to take steps to assist respondent. See *Foutch v. O'Bryant*, 99 Ill. 2d 389, 392 (1984) (doubts arising from incompleteness of record will be resolved against appellant).

¶ 25 Respondent also faults the agency for failing to obtain an assistant listening device similar to what was provided to him in court during the adjudication and disposition hearings. But there is no evidence that respondent requested such a device or informed the agency that it was his preferred method of communication. While the court suggested that the agency look into obtaining this device for its hearing impaired clients, it does not follow that the agency's failure to do so previously amounted to a lack of reasonable effort.

¶ 26 Ultimately, given that DCFS was monitoring all three children, facilitating visitation between Antoine and respondent, had referred respondent to services, and had taken steps to accommodate respondent's hearing loss, we conclude the court's finding, that DCFS's efforts to reunite respondent with his children were reasonable, was not against the manifest weight of the evidence.

¶ 27 As a final matter, we note that respondent does not argue that the court's erroneous finding with regard to reasonable efforts mandates reversal of the dispositional order finding respondent unable to parent the children and making them wards of the court, nor could he. The Act provides that the court's ultimate determination of whether to subject a minor to wardship should turn on "the best interests of the minor and the public." 705 ILCS 405/2-22(1) (2014); see also *In re William H.*, 407 Ill. App. 3d at 869 (2011) ("issues regarding whether a minor should be adjudged a ward of the court are not related to issues regarding reasonable efforts on the part of DCFS toward reunification."). Thus, even assuming we agreed with respondent that the court's finding was against the manifest weight of the evidence, we could not provide respondent with any meaningful relief.

¶ 28 Affirmed.