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2020 IL App (3d) 190510-U

Order filed August 26, 2020

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2020

<i>In re P.C.,</i>)	Appeal from the Circuit Court
)	of the Tenth Judicial Circuit,
a Minor)	Tazewell County, Illinois.
)	
(The People of the State of Illinois,)	
)	
Petitioner-Appellee,)	Appeal No. 3-19-0510
)	Circuit No. 18-JA-200
v.)	
)	
Timothy C.,)	
)	The Honorable
Respondent-Appellant).)	Timothy Cusack,
)	Judge, presiding.

JUSTICE McDADE delivered the judgment of the court.

Justice Holdridge concurs in the judgment.

Justice Schmidt dissents.

ORDER

¶ 1 *Held:* The circuit court’s finding that respondent was unfit is reversed because the evidence did not clearly and convincingly show that he was unable or unwilling to refrain from the use of drugs where frequent indulgence has caused a habitual craving, manifested by an ongoing pattern of drug use.

¶ 2 The circuit court found respondent, Timothy C., to be an unfit parent to P.C., the minor child in this case, because he has a “substance abuse problem.” On appeal, respondent argues that the court’s finding was against the manifest weight of the evidence. Finding no clear and convincing evidence that respondent was unable or unwilling to refrain from the use of drugs where frequent indulgence has caused a habitual craving, manifested by an ongoing pattern of drug use, we reverse the court’s finding.

¶ 3 **FACTS**

¶ 4 On November 15, 2018, the Department of Children and Family Services (“DCFS”) placed the minor into protective custody. On the same day, his mother’s “paramour” removed the minor from the physical placement without DCFS’ permission. The police had to retrieve the minor from his mother and her paramour. Subsequently, the State filed a petition for adjudication of neglect, arguing that the minor’s environment was injurious. The petition alleged that the paramour tested positive for cocaine used and the minor’s mother admitted that, if tested, she would also be positive for cocaine. It also alleged that respondent, the minor’s father, had a 2012 conviction for unlawful possession of a controlled substance for which he was on probation and with which he was not in compliance.

¶ 5 Respondent was not present at a temporary custody hearing held on November 20, 2018. The State noted that respondent could not be reached in time for the hearing. It asked for a rehearing within two weeks to secure respondent’s presence. The circuit court entered a temporary custody order, finding the petition was consistent with the health, safety, and best interest of the minor. The case was continued to a November 29, 2018, hearing where respondent appeared, and the State filed an amended petition raising the same allegation. After a further continuance, respondent filed an answer. He denied (1) that the minor was neglected, (2) any

knowledge of the allegation against the mother and her paramour, and (3) that he was not in compliance with his probation.

¶ 6 On February 28, 2019, DCFS filed an integrated assessment. It alleged that respondent was interviewed on February 4, 2019, after failing to participate in two prior interviews. Respondent indicated that he was a roofing sub-contractor, earning a monthly income of \$1,800. He had three minor children, including the minor in this case. Respondent reported some notable adverse and traumatic experiences during his youth, some mood disturbance in adulthood, and admitted to patterns of substance abuse. He reported he began smoking cannabis daily when he was fifteen or sixteen years old and continued to do so until he entered the Army at nineteen years old. He abused ecstasy for a span of six months in 2012. He also stated he began abusing cocaine and later “crack” cocaine in 2017, with his most recent abuse of the latter occurring in July 2018.

¶ 7 Respondent had four convictions for possession of a controlled substance and was placed on probation for four years in 2012 or 2013. He admitted that he failed to comply with the terms of his probation and was, at the time of his interview, serving a 24-month term of probation. The conditions of probation included maintaining employment, completing drug screens, and completing substance abuse outpatient treatment. Respondent also reported that had been diagnosed with Post-Traumatic Stress Disorder (PTSD) in his youth and again from his military service. Respondent reported he had previously been prescribed psychotropic medication, but he voluntarily stopped taking the medication because he did not like the side effects. He hoped to obtain a medical marijuana card.

¶ 8 The assessment indicated that respondent appeared committed to completing the terms of his probation. It noted respondent made a great effort to see the minor as frequently as possible.

Respondent's home was clean and organized and met or exceeded minimum parenting standards. The assessment stated that, moving forward, it was critical respondent recognize engaging in substance abuse was inconsistent with healthy parenting. It also stated there was no question respondent wanted to resume an active parenting role in his son's life. The assessment stated that the "prognosis for reunification between [respondent] and his son, [the minor], is FAIR." The assessment later stated that if respondent continued to engage in recommended services that "the prognosis for reunification will continue to improve."

¶ 9 A family service plan was also filed on February 28, 2019. The plan recommended that respondent (1) complete a substance abuse treatment program and engage in random drug screens, (2) engage in individual psychotherapy, (3) complete a psychiatric consultation assessment, (4) develop a comprehensive system of social and emotional support, (5) maintain stable income and housing, and (6) continue with visitation.

¶ 10 On April 10, Children's Home filed a dispositional hearing report. The caseworker asked respondent to participate in three random drug screens a month and respondent responded that he would not do so because he already had one monthly drug screen for probation and a random drug screen for treatment. While the report indicated respondent and the minor had a good relationship, the worker had concerns regarding respondent's willingness to participate in services and regular drug screens. He reported that respondent failed to appear for drug screens on March 15 and March 25. The report recommended that respondent: cooperate with DCFS and its designees and sign all releases; provide the caseworker with information for any individual who will be in direct contact with the minor; provide notification of address or telephone number changes; successfully complete a drug and alcohol treatment program; participate in individual counseling and follow recommendations from an assessment through the Department of

Veteran's Affairs (VA); submit to three random drug screens per month; successfully complete a parenting course; and, successfully complete a domestic violence course. On May 28, 2019, an addendum to the dispositional report stated that respondent was not currently employed.

¶ 11 Respondent completed an assessment through the VA and was diagnosed with anxiety and PTSD. The evaluation recommended medication, but respondent refused to take the medication. Respondent reported he had not started any of the other referred services. He also reported that he had relapsed on marijuana. On April 22, respondent participated in an assessment to get into residential substance abuse treatment, which the VA recommended. His probation officer reported that respondent had missed two probation meetings. Respondent subsequently reported to the officer he had relapsed on marijuana and cocaine and that he was getting into a residential drug treatment program. Respondent was admitted to a four-to-six-week residential treatment program on May 15, 2019. On May 31, 2019, respondent filed a certificate of completion for his parenting course; a letter from the VA, reporting his completion of the residential treatment program; and, a negative drug test report from March 2019.

¶ 12 On July 23, an addendum to the dispositional hearing report was filed. The report indicated respondent was not currently employed. Respondent was scheduled to see a psychiatrist through the VA. He reported he was taking the recommended medication for sleep, but he refused to take the recommended medication for anxiety. Respondent stated he attended the Peoria Treatment Center where he received a prescription for additional medication and saw a counselor. The report indicated respondent failed to appear for scheduled drug drops on July 2 and July 11. Respondent's probation officer called respondent on July 12 and asked him to complete a drug screen. Although completed, the testing specialist told respondent that

something was wrong with the testing equipment. He asked respondent to return on July 17; respondent rescheduled the meeting for July 19.

¶ 13 On July 30, the circuit court held an adjudicatory hearing, at which the parties waived the factual basis for the initial hearing. Upon the State’s request, and without objection, the circuit court found the petition proven by a preponderance of the evidence and issued a written order. The matter then proceeded to a dispositional hearing. The State presented evidence “that around the 12th of July [respondent] had a positive drug screen for cocaine.” Respondent testified on his own behalf, denying the positive drug screen for cocaine. He submitted two “rapid drug screen collection sheet[s].” The first screen, for a test taken on July 19, showed a negative drug test for both marijuana and cocaine. The second screen also showed negative results for a sample taken on July 24. Respondent also submitted certificate of completion for the “Substance Abuse Residential Rehabilitation Treatment Program” at the Jesse Brown VA Medical Center dated June 14. Finally, he submitted a certificate of completion for a parenting class dated from May 30.

¶ 14 At the close of the arguments, the circuit court stated:

“* * * I think there are reasons for [respondent] to be found unfit even though he wasn’t a subject of the original petition. I went back through it, but his admittance into the residential substance abuse treatment in May of this year and his prior felony, although it’s somewhat dated, 2012, seem to indicate that he does have substance abuse problem, That needs to be taken care of.

While he did successfully complete that program, there is still, as with anybody that suffers from addiction, there’s still a period of time that you need to get through to be able to – I don’t know whether you ever successfully

handle it, but to handle it better, and that's the reason I'm finding him unfit today.

I think he is making strides toward getting it taken care of, and I understand his objection to the positive drops. If that continues to occur with the negative drops, then I'll definitely continue to take that into consideration and that will be reflected in the future rulings of the Court."

¶ 15 The circuit court found respondent unfit "for reasons other than financial circumstances alone." The court adjudicated the minor as neglected and ordered that he be "made a ward of the Court." Respondent now appeals this decision.

¶ 16 ANALYSIS

¶ 17 Under the Juvenile Court Act of 1987, a child is neglected if the child's environment is injurious to his or her welfare. 705 ILCS 405/2-3(1)(b) (2019). Under section 2-21(2) of the Act, after a minor is adjudicated abused, neglected, or dependent, the circuit court must hold a dispositional hearing. 705 ILCS 405/2-21(2) (2019). At such hearing, the court determines whether the parents of a 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." 705 ILCS 405/2-27(1) (2019).

¶ 18 A circuit court's finding of parental unfitness will not be disturbed unless it is against the manifest weight of the evidence. *In re K.E.-K.*, 2018 IL App (3d) 180026, ¶ 18. "A circuit court's finding is against the manifest weight of the evidence if 'the opposite conclusion is clearly evident * * * or the determination is unreasonable, arbitrary, or not based on the evidence presented.'" *Id.* at ¶ 13 (quoting *In re D.F.*, 201 Ill. 2d 476, 498 (2002)). However, "[a]t the trial

court, the State must prove parental unfitness by clear and convincing evidence.” *In re Precious W.*, 333 Ill. App. 3d 893, 898 (2002).

¶ 19 A circuit court’s finding of parental unfitness may be based on the parent’s habitual drunkenness or addiction to drugs for at least one year prior to the unfitness proceeding. 750 ILCS 50/1(D)(k); *see also* 750 ILCS 50/2.1 (requiring the Adoption “Act be construed in concert with the Juvenile Court Act of 1987”). “Addiction to drugs” under the Adoption Act means “the inability or unwillingness to refrain from the use of drugs where frequent indulgence has caused a habitual craving, manifested by an ongoing pattern of drug use.” *In re Precious W.*, 333 Ill. App 3d 893, 899 (2002). “Evidence of indulgence without intermission is not necessary to prove drug addiction. It is sufficient to show that a person has demonstrated an inability to control his or her habitual craving.” *Id.*

¶ 20 The evidence in the record before this Court does not establish that respondent indulged in an ongoing pattern of drug use within the one-year period prior to the dispositional hearing. Rather the evidence only showed that in March respondent suffered a relapse in his use of marijuana and cocaine, which he immediately reported and after which he successfully completed a residential treatment. The July 12, 2019, positive drug results for marijuana and cocaine were obtained using flawed testing equipment. Respondent submitted, without objection or challenge, two drug screens from July 19 and July 24, showing negative results for both substances.

¶ 21 Additionally, the record before the circuit court failed to establish respondent’s inability or unwillingness to refrain from the use of drugs. As part of the service plan in this case, respondent was required to submit additional drug drops not related to his probation. Respondent failed to appear for two drug drops on March 15 and March 25, 2019. Following these failed

appearances, respondent reported to his probational officer that he had relapsed. He subsequently attended a four-to-six-week residential treatment program on May 15, which he successfully completed on June 14. Respondent's conduct demonstrated a clear understanding of what was required of him and an acute desire to resolve any problem that he may have had with substance abuse. The circuit court noted as much, stating that "he [was] making strides." In fact, after completing his treatment, respondent twice tested negative for marijuana and cocaine.

¶ 22 And finally, the evidence in the record before this court does not confirm that respondent has a "habitual craving" for drugs either caused by or leading to an ongoing pattern of drug use. The evidence showed that respondent, as a veteran, had struggled with PTSD and was diagnosed with anxiety, for which he was prescribed medication from the VA hospital. Respondent voluntarily stopped taking the medication because he did not like the side effects, and he hoped to obtain a medical marijuana card.

¶ 23 We conclude that the circuit court's finding that respondent currently had a "substance abuse problem" was against the manifest weight of the evidence. The evidence presented here does not clearly and convincingly establish that respondent was unable or unwilling to refrain from the use of drugs where frequent indulgence has caused a habitual craving, manifested by an ongoing pattern of drug use. Without clear and convincing evidence establishing active addiction to drugs for at least one year prior to the unfitness proceeding, the court's finding is against its manifest weight.

¶ 24 **CONCLUSION**

¶ 25 The judgment of the circuit court of Tazewell County is reversed.

¶ 26 Reversed.

¶ 27 JUSTICE SCHMIDT, dissenting:

¶ 28 One need only read the majority’s statement of facts to conclude that the trial court’s ruling was not against the manifest weight of the evidence. Even assuming that reasonable people could disagree with the finding, the court’s ruling finds ample support in the evidence.

¶ 27 I would affirm.