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2019 IL App (3d) 180401-U

Order filed June 26, 2019

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2019

<i>In re</i> I.C., J.S., & C.L.,	)	Appeal from the Circuit Court
	)	of the 14th Judicial Circuit,
Minors	)	Rock Island County, Illinois.
)	
(The People of the State of Illinois,	)	Appeal Nos. 3-18-0401
	)	3-18-0410
Petitioner-Appellee,	)	3-18-0411
	)	Circuit Nos. 18-JA-14
v.	)	18-JA-15
	)	18-JA-16
J.S.,)	
	)	Honorable Theodore G. Kutsunis,
Respondent-Appellant).	)	Judge, Presiding.

PRESIDING JUSTICE SCHMIDT delivered the judgment of the court.
Justices McDade and O'Brien concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not err in its finding that respondent (1) neglected the minor child due to an injurious environment and (2) was an unfit parent after considering evidence properly within the record.

¶ 2 The State filed petitions alleging respondent, J.S., neglected her minor children, I.C., J.S., and C.L., due to an environment that was injurious to their welfare. After holding a dispositional hearing, the court found respondent neglected I.C. It made I.C. a ward of the court, appointing

the Illinois Department of Children and Family Services (DCFS) as his guardian after finding respondent unfit. The court issued an order of continuance under supervision for respondent's two younger sons, J.S. and C.L. Respondent appeals the court's dispositional findings as to I.C., arguing they were against the manifest weight of the evidence. We affirm.

¶ 3

BACKGROUND

¶ 4

In February 2018, the State filed petitions for adjudication of wardship and temporary custody for I.C., J.S., and C.L. These petitions followed two reports DCFS received on January 25, 2018, that alleged respondent's substance abuse and domestic violence presented "Substantial Risk of Physical Injury/Environment Injurious to Health and Welfare by Neglect" to I.C. and his brothers. The petition brought forth the following findings.

¶ 5

I.C. reported that he had verbal and physical altercations with respondent, including an incident in January 2018 where respondent pushed him down, sat on him, restricted his breathing, and punched him in the face. Additionally, respondent's family reported that she was abusing methamphetamines and marijuana.

¶ 6

The other report addressed I.C.'s younger brother, J.S., who expressed suicidal ideation and was submitted to inpatient treatment for nearly a week. Respondent could not be reached to consent to the minor's treatment. The DCFS investigator contacted the father and gained consent. When questioned by the investigator as to why she did not respond to attempts to reach her, respondent told the investigator that she was an adult and had the right to go on a walk. Respondent never signed consents for treatment in the week that J.S. was admitted.

¶ 7

Previous to those events, in January 2017, DCFS implemented a safety plan that allowed the children to stay with their maternal grandparents, as they had been, and required respondent to move out. DCFS informed respondent that this plan could be terminated if she cooperated

with DCFS, which would include taking random drug tests. She has since refused to cooperate and has not taken any drug tests or maintained contact with DCFS.

¶ 8 On March 6, 2017, DCFS indicated respondent provided inadequate supervision. She failed to pick up I.C.'s little brother, C.L., from an after-school program. Respondent also failed to pick up the minor child from the Moline Police Department despite being in contact with officers. Later that night, police arrested respondent and charged her with resisting a peace officer and possession of drug paraphernalia. The DCFS investigator also learned that respondent had prior police contacts involving drugs. Furthermore, Glenview Middle School banned respondent for her "volatile behavior."

¶ 9 On February 14, 2018, during the first hearing on this matter, the court took judicial notice of the findings described above. Respondent was not present.

¶ 10 On June 14, 2018, the court held an adjudicatory hearing. Respondent was present and represented by counsel. At the start of the hearing, the court noted that it was a dispositional hearing and mentioned the report as the one filed on June 6, 2018. This was the only report filed on that date. The report and the petition contained the record set forth above. The trial court asked if all involved had an opportunity to review the report. All parties, including respondent, answered in the affirmative. The court asked respondent if she wished to call any witnesses for the hearing. She refused. The fathers of each of the children stipulated to the State's petitions.

¶ 11 The trial court issued a written dispositional order adjudicating I.C. neglected, finding the respondent unfit. It additionally determined it would be in I.C.'s best interest to be made a ward of the court. The court also issued an order of continuance under supervision for respondent's other sons, J.S. and C.L.

¶ 12

ANALYSIS

¶ 13 Respondent argues that the trial court’s order was against the manifest weight of the evidence because there was no valid evidence on which to decide the case. Respondent claims that because the State did not admit the dispositional hearing report into evidence, the report cannot be relied upon in coming to a decision.

¶ 14 The actual issue in this case is whether the report was properly admitted as evidence for the trial court’s consideration. Respondent attempts to recast this issue as an argument challenging the sufficiency of the evidence in order to avoid forfeiture. Under this theory, the sufficiency of the evidence used to support a trial court’s decision could be reviewed even though a respondent took no formal action to preserve the issue for review. Ill. S. Ct. R. 366(b)(3)(i) (eff. Feb. 1, 1994).

¶ 15 However, respondent’s right to review on the true issue of the case—whether the report was properly admitted for the trial court’s consideration—has been forfeited. It is widely held in the appellate courts of Illinois that to ensure review of an alleged error, a party must object at trial or submit a posttrial motion. *In re P.J.*, 2018 IL App (3d) 170539, ¶ 10; see also *In re William H.*, 407 Ill. App. 3d 858, 869-70 (2011); *In re C.J.*, 2011 IL App (4th) 110476, ¶ 22. An issue not raised in the trial cannot be argued for the first time on appeal. *In re P.J.*, 2018 IL App (3d) 170539, ¶ 10.

¶ 16 Respondent argues that a challenge could not be made at trial because she did not have an opportunity to object, and it was not clear to which report the trial court was referring. The record indicates otherwise.

¶ 17 On February 14, 2018, the court took judicial notice of the DCFS evidentiary report after summarizing the findings in the petition. The facts contained in the petition are the same as those in the evidentiary report. The court, again, recited the findings in the petition on March 16, 2018.

Respondent did not object. On May 10, 2018, during the pretrial conference, the court asked the State, “[s]o the factual basis will be the petition itself, Mr. McKinley?” He responded in the affirmative; respondent made no objections. At the dispositional hearing on June 14, 2018, the court asked all parties present, including respondent and her attorney, if they had an opportunity to review the report. All parties responded affirmatively. Again, respondent had the opportunity to object but failed to do so. The June 6 report contained the same exact information as the petition.

¶ 18 Respondent had every opportunity to object to the evidence the court continuously referred to and relied on during the proceedings. Respondent never made such an objection. Respondent forfeited the issue regarding admissibility of the report upon which the trial court relied.

¶ 19 CONCLUSION

¶ 20 For the foregoing reasons, we affirm the judgment of the circuit court of Rock Island County.

¶ 21 Affirmed.