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2019 IL App (4th) 190176-U

NO. 4-19-0176

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
August 19, 2019
Carla Bender
4th District Appellate
Court, IL

<i>In re</i> J.G., A.G., and C.G., Minors,)	Appeal from the
(THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
Petitioner-Appellee,)	Logan County
v.)	Nos. 17JA39
SAMANTHA G.,)	17JA40
Respondent-Appellant).)	17JA41
)	
)	Honorable
)	William G. Workman,
)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justices Steigmann and Cavanagh concurred in the judgment.

ORDER

¶ 1 *Held:* (1) Respondent mother’s claim the trial court erroneously granted temporary custody of her children to the Department of Children and Family Services (DCFS) after the shelter-care hearing is moot in light of the adjudication of neglect and the dispositional order making the children wards of the court and placing custody and guardianship with DCFS.

(2) Under the rule of invited error, respondent may not challenge the trial court’s dispositional order placing custody and guardianship with DCFS as she expressly agreed, at the close of the dispositional hearing, to the goal of return home within 12 months.

¶ 2 In February 2019, the trial court entered a dispositional order placing custody and guardianship of respondent mother Samantha G.’s three children, C.G. (born September 10,

2014), A.G. (born September 17, 2015), and J.G. (born October 26, 2016), with DCFS and setting a goal of return home within 12 months. Samantha appeals, arguing (1) the trial court erroneously concluded at the shelter-care hearing immediate and urgent necessity existed to remove the children from her custody, and (2) the court erred in granting DCFS custody and guardianship after the dispositional hearing. We affirm.

¶ 3

I. BACKGROUND

¶ 4 In December 2017, the State filed a petition for adjudication of wardship on behalf of the children. According to the State, the minors were neglected under section 2-3(1)(b) of the Juvenile Court Act of 1987 (705 ILCS 405/2-3(1)(b) (West 2016)) in that they resided in an environment injurious to their welfare as evidenced by unsafe and filthy conditions in their home. When the petitions were filed, the children resided with Samantha and their father, Michael G. Samantha and Michael were married. Michael is not a party to this appeal.

¶ 5 At a February 2018 status hearing, the parties announced they “agreed to continue this case under an order of continuance under supervision with the understanding that the case would be continued approximately every four to six weeks for status to make sure they are complying with the service plans.” The State asserted the following as the factual basis for the parents’ admission of neglect:

“DCFS workers would testify *** that on December 9, 2016, there was a report of a one-month-old child being left in a vehicle for 10 to 15 minutes at a time while the other children were being taken into the [Head Start] Center. The parents would bring the children into the [Head Start] Center without having their diapers changed

and having an odor to the children and were often in a dirty state.”

The court concluded the parents knowingly and voluntarily admitted neglect and the factual basis supported that admission. The court found, however, it would not make an adjudication but would continue the case “generally under supervision.”

¶ 6 In March 2018, another status hearing was held. For that hearing, Betty Hayes, a case manager with the Center for Youth and Family Solutions (CYFS) prepared a report. According to the report, the parties had been involved with DCFS since October 2014. At that time, a report was made alleging Samantha was seen shaking C.G. in her baby carrier and was heard saying the baby cried a lot and she felt like strangling her. A second report was made alleging C.G. was dressed inappropriately for the temperature and had “bad diaper rash.” When the case was opened, the caseworker noted problems with the parents’ ability to organize and maintain the home. In August 2015, a psychological examination was performed on Samantha by Dr. Joel Eckert. After Samantha made progress in understanding the requirements for providing safety for her children and demonstrated progress in organization, the case was approved for successful closure in April 2016.

¶ 7 At the same hearing, the State indicated Samantha had made some progress in the home, but stated there was a long way to go. The State pointed to the status report as showing psychological evaluations of the parents had been completed and the evaluations shone light on the obstacles facing the family. The State observed Samantha was “doing some very good things,” making an effort to keep the home clean, but indicated she needed help in that area. The State reported it was waiting on Samantha to engage in mental health services. The State asked the court to encourage the father to help with homemaking, as the father was refusing to do so.

The court did so.

¶ 8 At the May 17, 2018, status hearing, the State, pointing to the May 2018 status report, indicated the case was progressing “very, very slowly.” The parties agreed DCFS and CYFS were doing what they could do to help the parents.

¶ 9 On July 19, 2018, the State reported “some positive things” about Samantha during the reporting period. The State emphasized she had been bathing the children better and getting them to bed. The State reported the mother was a little more involved in homemaker services but stated she needed to be more involved. The State asked that the parents be encouraged to attend their mental health appointments. The State reported the mental health goal had not been addressed. The State also reported the children, due to excessive use of the bottle, had developed “milk rot” of their teeth and the parents were thinking about getting a puppy. The State asked the court to enter an order prohibiting the introduction of new pets into the household while the case was monitored by the court. The court admonished the parents to keep up with services and to potty train the children and wean them from the bottle. The court ordered no new pets during the supervisory period. Samantha reported C.G. and A.G. were potty trained, but J.G. was not yet as she was told by the caseworker to wait. Samantha reported not knowing what to do in that circumstance. The court indicated it was going from the report.

¶ 10 On September 26, 2018, the State filed a petition to revoke the continuance under supervision and a motion for a shelter-care hearing. The State alleged Samantha violated the terms of continuance under supervision because she failed to implement homemaker services, the home remained unclean, and she failed to engage in mental health treatment.

¶ 11 At the September 27, 2018, status hearing, the trial court asked the parties if they

were prepared to proceed on the shelter-care motion. After the parties agreed they were, the court heard evidence.

¶ 12 Hayes testified she had been the caseworker for the family “for approximately three years off and on, four years total.” Hayes testified, before A.G. and J.G. were born, a report was made to DCFS regarding C.G. A bystander at a Wendy’s restaurant reported hearing Samantha threatening to choke C.G. as she would not stop crying. Since that time, DCFS had been working with the family. After A.G. was born, DCFS received another report from a social worker at the Neonatal Intensive Care Unit. The social worker was concerned about Samantha’s ability to care for her children. The family remained intact at that time. When J.G. was a couple of months old, there was another report J.G. was left, multiple times, alone in a vehicle for 15 to 20 minutes in December while the parents took C.G. and A.G. into daycare.

¶ 13 According to Hayes, services had been in place to help the family. The family was put in touch with the Head Start program to provide parenting instruction. The parents were connected to Lincoln Parents’ Center and an employee from the center was in the home “no less than twice a month” to work on developmental activities with the children and parenting instruction with the adults. CYFS put into place homemaker services to help with housekeeping chores and instruction on how to keep the children clean. Hayes testified the same services were provided when the case was placed on continuance under supervision. The parents had not, however, made any greater progress in those areas.

¶ 14 Hayes reported having concerns with the parents’ ability to monitor the children’s activities, to ensure the safety of the children in the home, to provide nutritious food, and to bathe the children and provide clean clothing. Hayes reported she had seen, almost weekly,

clothing articles and soft flammable articles piled on or around the dryer, creating an unsafe condition. Articles were left on the stairway. A litter box for a kitten and cat food were on the floor in the kitchen, accessible to the two-year-old. The floors were dirty and the children were crawling and playing on them. On the Monday before Hayes's testimony, she saw J.G. at Head Start. Employees were bathing him because J.G. arrived "very dirty with a ring of dirt around his neck." The soles of his feet were black. Hayes believed there was an immediate and urgent necessity to remove the children from the home because of her continued concerns for the children's safety and the parents' inability to care for them.

¶ 15 Hayes referenced a domestic-battery incident that occurred on September 23, 2018. Hayes was not present during the incident. Hayes was present when the father was interviewed by DCFS. The father reported being sorry and stated he did not mean to push J.G. to the ground.

¶ 16 On cross-examination, Hayes testified the incident of J.G.'s being left in the car occurred in 2016, two years before her testimony. Samantha cooperated with the Parents' Center. Hayes testified there were no records indicating the children were malnourished. Samantha had a washer and dryer. Hayes did not know if Samantha washed the clothes, but she had seen clothes that had been washed. Hayes noted there were generally piles of laundry to be done. The flammable items near the dryer to which Hayes was referring included clothing. Hayes did not know if the dryer was properly vented. There was no open flame on the dryer. Despite the clutter on the stairwell, it remained passable. Hayes agreed many people had litter boxes in their homes. While Hayes had seen J.G. near the litter box, she had not seen him in it.

¶ 17 Regarding the incident of domestic violence, Hayes testified the event occurred

outside the home. Hayes acknowledged Samantha and Michael had separated. Samantha was not present when the incident occurred. Hayes agreed she had the authority to make a phone call to have custody of the children taken from the parents. Hayes conducted a home visit after the incident but did not make such a call. The DCFS investigator Hayes was with did not take custody of J.G. Hayes testified the recommended psychological workup regarding both parents had been scheduled.

¶ 18 The State asked the trial court to take notice of the status report for the hearing, authored by Hayes, as well the domestic-battery case. The report stated all three children resided with Samantha and Michael. C.G. and J.G. were enrolled in Head Start. A.G. was on the waiting list. No child had medical, developmental, or behavioral issues. As to Samantha’s progress, the report noted in the reporting period, all three children had been weaned from the bottle. Both C.G. and A.G. had been toilet trained. J.G. was 23 months old. Regarding homemaker services, Samantha reportedly struggled with maintaining cleanliness but continued to work on folding and putting away laundry and the “cleanliness of the floors.” Regarding mental health services, Samantha had been referred for counseling. Samantha missed three of five scheduled appointments. According to the report, Michael moved out of the home and into his own apartment on September 5, 2018. Samantha and the father were in the process of divorce. Hayes reported she “continue[d] to have concerns regarding the parent[s]’ capability to make life decisions for themselves, their children, and their home.”

¶ 19 Regarding the battery charge, the State informed the trial court Lincoln police officers were dispatched to check on a two-year-old boy. The State reported the following:

“[The officers] met with the witness who told [them] that she was

at the home of the children with Michael [], that Samantha became ill and was taken to the hospital, to the emergency room. [Michael] did not want to stay with the children; that he went to leave the residence; that the two-year-old, [J.G.]—almost two-year-old, [J.G.]—went to get attention from the father; that the father picked him up and threw him to the ground.”

Michael reported to the officers he suffered a mental illness, which caused him to be more frustrated.

¶ 20 At the close of the hearing, the trial court observed orders of protection had been sought and issued to protect the children and Samantha from further physical violence by Michael. The court concluded those orders, however, did not remove the immediate and urgent necessity for the children’s welfare. The court observed Samantha was unable to keep the home clean since Michael was no longer there. The court observed the daycare center had to clean the children. The court found probable cause existed and it was a matter of immediate and urgent necessity to remove the children from the home. The court awarded DCFS temporary custody of the three children.

¶ 21 On January 31, 2019, the trial court held a hearing on the petition to revoke supervision hearing proceedings. At the hearing, the trial court found Michael’s commission of domestic battery against J.G. occurred within the supervision period and violated the terms of the continuance under supervision. The court agreed and revoked the continuance under supervision. The court set a dispositional hearing for February 28.

¶ 22 At the dispositional hearing, the State relied on the contents of the dispositional

report for its case-in-chief. The State, pointing to the psychological assessment, had concerns regarding Samantha's capacity to care for her children. The State emphasized Samantha would have difficulty placing the needs of the children before her wants. The State maintained until that was corrected, Samantha was unfit. The State asked the goal be return home within 12 months.

¶ 23 According to the dispositional report, Samantha had developed more mature patterns of parenting in the past five months. Samantha interacted with the children in an age-appropriate manner yet still struggled with accepting constructive criticism. Samantha's coping skills had improved. The goal was rated unsuccessful and would remain so until substantial improvements were made. Samantha participated in a parenting assessment, but the report from that assessment had not been completed.

¶ 24 The dispositional report indicated Samantha resided in a three-bedroom apartment. Samantha "maintained her home and it [met] minimum parenting standards." Samantha continued to work toward maintaining her daily routine so she could balance care for the children and maintaining a clean home. Samantha received SSDI benefits and was employed at McDonald's on the weekends. Samantha attended each offered visitation with her children. They met for one hour each week. Visits occurred at the agency office. Samantha was appropriate with the children. Samantha attended all offered counseling.

¶ 25 A psychological evaluation by Dr. Joel Eckert, PsyD, occurred in November 2018. Dr. Eckert's report of this assessment is lengthy. Dr. Eckert's evaluation included an assessment of Samantha's cognitive abilities, academic achievement skills, and personality structure and functioning. Dr. Eckert noted he performed a comprehensive psychological evaluation on Samantha in September 2015 as well. During that evaluation, he "obtained the

following IG's: Full Scale = 65; Verbal IQ = 76; Perceptual Reasoning = 67; Working Memory = 69; processing Speed = 71." Dr. Eckert noted IQs in the range of 85 to 115 were considered average.

¶ 26 During interviews, Samantha reported she had not maintained contact with Michael because she had acquired an order of protection against him. Samantha reported, "I wanted him to leave and not to come back until everything cooled off—and by law we're still married." Samantha reported her social support system was inadequate, consisting only of approximately three people. Samantha was not involved in clubs, organizations, or church.

¶ 27 Samantha reported meeting with a counselor. She believed she was taking Sertraline, an antidepressant, but she did not know the dosage. She was taking the medication for her anxiety. Samantha and Michael had two marital counseling sessions, but the counselor quit as Michael was laughing through the entire session. Samantha reported having children badly damaged her marriage as her husband refused to help.

¶ 28 Dr. Eckert asked Samantha to complete the Symptom Checklist 90 test, in which Samantha rated her difficulties. The inventory consisted of 90 items rated on a 4-point scale. A rating of 4 represented an extreme level of difficulty. Samantha endorsed only one item at a level of 2, which was a moderate level of difficulty. All other endorsements were under 2 on the 4-point scale. Dr. Eckert opined, given his 35-year experience with this inventory on clients with similar backgrounds, Samantha's results demonstrated "a significant underestimate of the quality and quantity of difficulties with which she is almost surely currently dealing."

¶ 29 Dr. Eckert also administered 10 subtests of the Wechsler Adult Intelligence Scale to ascertain Samantha's general intellectual ability. The results of this testing demonstrate

Samantha’s “general cognitive ability [wa]s within the extremely low range of intellectual functioning[.]” Samantha’s “overall thinking and reasoning abilities exceed those of only approximately 1% of individuals her age.”

¶ 30 Dr. Eckert observed “Samantha’s ability to sustain attention, concentrate, and exert mental control is in the extremely low range.” Her performance on the index was better than approximately 1% of her peers. Samantha’s ability to read and comprehend material was assessed pursuant to the Gray Silent Reading Test. The results of the test indicated Samantha was at the beginning fifth-grade level. Her receptive language skills were the equivalent of the age of 14.25 years.

¶ 31 As part of his evaluation, Dr. Eckert asked Samantha to complete four personality-assessment inventories. On the Personality Assessment Inventory, Samantha completed all but one question. The responses were inconsistent, indicating a tendency to present herself in an unusually favorable light. Dr. Eckert opined this suggested Samantha would be reluctant to admit minor faults. Samantha described experiencing unusual perceptual or sensory events that may have involved delusional beliefs. She endorsed three inventory items as “mainly true.” These included the following: “sometimes it seems that my thoughts are broadcast so that others can hear them; I’ve heard voices that no one else could hear; I’ve been troubled by memories of a bad experience for a long time.”

¶ 32 In his comments and recommendations, Dr. Eckert stated the following:
“I will begin this section [of] the report by reminding the reader that DCFS has apparently been involved in Samantha and her husband’s life continuously for nearly 4 years, reportedly without

any significant documented success/improvement. Her marriage appears to be quite conflicted and by Samantha's report is headed for a divorce. I'm extremely concerned that if Samantha's children are returned to her care, significant conflict will occur. Due to the fact that this couple appears to have demonstrated an inability to cooperate and[,] as [a] result[,] will experience great difficulty demonstrating cooperative parenting. This will place their three children at risk for experiencing emotional and physical harm. Current test results suggest that Samantha will experience significant difficulty placing her children's needs ahead of Samantha's wants. In such cases[,] my clinical experience has taught me to appreciate the fact that past behavior has invariably proven to be an accurate indicator of future behavior."

¶ 33 In argument, Samantha's counsel noted for the record Samantha had cooperated with the agency and she attended the visits and was doing what she could "with her mental capacities." Counsel then asserted the following: "The goal set forth in the report is return home within 12 months. I believe at this time that's an appropriate goal, and we would concur with that."

¶ 34 The trial court ordered the children be made wards of the court. The court granted DCFS guardianship of the children. The court further found Samantha unfit to care for, protect, train, educate, supervise, or discipline the children and placement with her was contrary to the children's health, safety, and best interests because Samantha lacked capacity to care for the

children and had not completed services. The court ordered Samantha cooperate with DCFS and CYFS with the goal of returning home within 12 months.

¶ 35 This appeal followed.

¶ 36 II. ANALYSIS

¶ 37 A. Shelter-Care Order

¶ 38 Samantha first argues the trial court erred in determining there was an immediate and urgent necessity to remove her children from the home. Samantha maintains the actions of DCFS and CYFS in leaving the children in her care and custody since 2014 belie any concern an immediate and urgent necessity existed. Samantha emphasizes she engaged in the services asked of her and she was making progress. In the area of maintaining the cleanliness of her home, Samantha points to the fact Hayes was the caseworker for four years and at no time did Hayes contact DCFS to have the children removed. Samantha further emphasizes no request for protective custody was made on September 23, 2018, when Michael battered J.G.

¶ 39 The State responds by first arguing Samantha's contention is moot. We agree with the State.

¶ 40 The main purpose of a shelter-care hearing is to determine whether there is probable cause to believe the minor or minors are abused, neglected, or dependent. See 705 ILCS 405/2-10(1), (2) (West 2016); see also *In re J.W.*, 386 Ill. App. 3d 847, 851, 898 N.E.2d 803, 807 (2008). If probable cause is found, the trial court must determine whether the child may be placed with a parent or whether it should prescribe shelter care. 705 ILCS 405/2-10(2). Shelter care involves placement of the child "in a suitable place designated by the court or in a shelter care facility designated by [DCFS] ***." *Id.* In this case, before the trial court could properly

prescribe shelter care, it must have found “it is a matter of immediate and urgent necessity for the safety and protection of the minor *** that the minor be placed in a shelter[-]care facility *** and *** that reasonable efforts have been made *** to prevent or eliminate the necessity of removal of the minor from his or her home.” *Id.*

¶ 41 An appeal to this court, however, is moot when it presents no actual controversy or where the issues involved in the trial court cease to exist due to intervening events that rendered it impossible for this court to grant effectual relief to the appealing party. *In re J.W.*, 386 Ill. App. 3d at 852. In general, an appeal of findings made in a temporary custody hearing, such as a shelter-care hearing, is moot when a later adjudication of wardship occurred and the adjudication was supported by sufficient evidence. *Id.*

¶ 42 This court, in *J.W.*, found claims alleging error in the shelter-care order were moot and not justiciable after the trial court adjudicated the child neglected and ordered placement and custody of the child with DCFS. *Id.* at 851-52. The parents in *J.W.* challenged the trial court’s ultimate placement decision by arguing the court failed to consider alternatives to placing their child in shelter care. *Id.* at 851. In finding the issue moot, we reasoned ample evidence supported the trial court’s findings at the adjudicatory and dispositional stages that followed the shelter-care hearing and the parents’ arguments “were subsumed into the ultimate judgment before this court—namely, the best interest of [the minor].” *Id.* at 852.

¶ 43 Here, like the parents’ claims in *J.W.*, Samantha’s contention the children should not have been placed in shelter care is not justiciable. First, the question of temporary custody was subsumed into the ultimate judgment entered by the trial court—the best interest of the children. Second, the trial court’s findings are supported by the record. At the dispositional stage,

Samantha agreed to the placement of the children in the custody and guardianship of DCFS when she agreed to the goal of return home within 12 months. Even if we were to address Samantha's challenge to the order of temporary custody, DCFS would maintain custody and guardianship of the children as a result of the later dispositional hearing. Relief is not possible.

¶ 44

B. The Dispositional Order

¶ 45

After a trial court adjudicates a minor neglected, as was adjudicated here, a dispositional hearing will be held. 705 ILCS 405/2-21(2) (West 2016). At this hearing, the trial court must “determine whether it is consistent with the health, safety and best interests of the minor and the public that [the minor] be made a ward of the court.” *Id.* Once a child is made a ward of the court, the trial court must determine where to place the child. See 705 ILCS 405/2-27(1) (West 2016). Custody and guardianship may be removed from a parent only if the court finds the parent is “unfit or [is] unable, for some reason other than financial circumstances alone, to care for, protect, train or discipline the minor or [is] unwilling to do so” and “the health, safety, and best interest of the minor will be jeopardized if the minor remains in the custody of his or her parents ***.” *Id.*

¶ 46

On appeal, Samantha challenges the trial court's decision to remove her children from her custody upon finding her unfit. Samantha emphasizes the only evidence entered at the dispositional hearing, a dispositional report, contradicts the court's finding she is unfit because she lacked capacity to care for her children and had not completed services. Samantha points to the report's statements showing her home was maintained and she met minimum parenting standards, she attended all visits and acted appropriately with the children, and she attended all counseling since the shelter-care hearing. Samantha further contends, without explaining why the

act applies to her, a lack of capacity is not a ground of unfitness under the Adoption Act (750 ILCS 50/1(D) (West 2016)).

¶ 47 The State argues Samantha cannot raise this argument on appeal as she, at the dispositional hearing, agreed custody and guardianship be placed with DCFS. We agree with the State.

¶ 48 “The rule of invited error or acquiescence is a procedural default sometimes described as estoppel.” *In re Detention of Swope*, 213 Ill. 2d 210, 217, 821 N.E.2d 283, 287 (2004). According to this rule, a party may not complain of error the party induced the court to make or to which the party consented. *Id.*; see also *In re William H.*, 407 Ill. App. 3d 858, 870, 945 N.E.2d 81, 91 (2011) (holding a party is estopped from taking a position on appeal contrary to a position the party asserted below).

¶ 49 Here, Samantha’s counsel, after noting Samantha’s cooperation with DCFS and her efforts to do what she could “with her mental capacities,” stated the following: “The goal set forth in the report is return home within 12 months. I believe at this time that’s an appropriate goal, and we would concur with that.” Samantha expressly agreed to the placement of the children with DCFS, which required a finding of unfitness, inability, or unwillingness. Under the rule of invited error, she may not now argue the opposite.

¶ 50 III. CONCLUSION

¶ 51 We affirm the trial court’s judgment.

¶ 52 Affirmed.