

NOTICE
Decision filed 09/19/19. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2019 IL App (5th) 180527-U

NO. 5-18-0527

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

<i>In re</i> OWEN K., a Minor)	Appeal from the
)	Circuit Court of
(The People of the State of Illinois,)	Madison County.
)	
Petitioner-Appellee,)	
)	
v.)	No. 18-JA-52
)	
Douglas K.,)	Honorable
)	Martin J. Mengarelli,
Respondent-Appellant).)	Judge, presiding.

JUSTICE CATES delivered the judgment of the court.
Justices Barberis and Boie concurred in the judgment.

ORDER

- ¶ 1 *Held*: Circuit court erred in finding father to be unfit without first making the minor child a ward of the court.
- ¶ 2 Douglas K., respondent-appellant (father), appeals the decision of the circuit court of Madison County finding his minor son, Owen K. (minor), to be neglected and finding father to be unfit without first making the minor a ward of the court. We affirm in part and reverse and remand in part.
- ¶ 3 On January 29, 2018, the State filed a petition pursuant to the Juvenile Court Act of 1987 (705 ILCS 405/1-1 *et seq.* (West 2016)) against father and the minor’s mother

alleging that the minor was neglected because of an environment injurious to his welfare (705 ILCS 405/2-3(1)(b) (West 2016)). Specifically, the petition alleged that the minor's parents failed to take reasonable steps to protect the minor from domestic violence, in that the parents had engaged in domestic violence in the presence of the minor. A temporary custody order was entered March 1, 2018, granting custody of the minor to mother, with supervised visitation to father. On September 27, 2018, an adjudicatory order was entered finding the minor neglected by his parents. Subsequently, a dispositional order was entered on October 25, 2018, finding father unfit. Mother was found to be fit, and the minor was placed in her custody and guardianship. Father's parental rights were not terminated, and the minor was not made a ward of the court at any time during these proceedings. Father now appeals the decision of the circuit court, contending that the court erred in finding the minor to be neglected, and further erred in finding father to be unfit. Mother is not a party to this appeal.

¶ 4 Mother and father were together from 2009 to 2015. Over time, their relationship deteriorated to the point where their arguments turned to domestic violence, and mother had to obtain an order of protection against father. Father initially engaged in domestic violence counseling, but he had to restart treatment because he engaged in additional acts of domestic violence while in treatment. The domestic violence counseling facilitator specifically opined that she did not think father was engaged enough to not reoffend in the future. Another counselor believed father was not addressing his anger issues in a manner that would suggest he had the ability to parent the minor. Because father did not believe in the classes, and did not feel like he needed counseling, his cooperativeness and

compliance were sporadic, at best. Attempted visitations had failed. Father further refused to cooperate with requested random drug screenings. Father testified he did not use drugs, even though his mental health assessment revealed that he was using cocaine, and had been arrested for possession of marijuana in Kansas during the pendency of these proceedings. Father asserted he had only used cocaine before the minor was born, and marijuana was legal in Illinois. Father also testified that domestic violence was not a problem in his life, he had completed domestic violence classes, and had taken measures to change his life in order to live a nonviolent life. The court concluded that the minor was neglected because of an environment injurious to his welfare. The court specifically noted that father had created an environment injurious to the minor, as evidenced by father's domestic battery convictions, his failure to successfully complete probation, and the fact that the minor and his half-sibling were present during some of the domestic violence incidents. Mother stipulated to the neglect allegations in the petition, and the court found that mother failed to protect her children from domestic violence.

¶ 5 Father first argues on appeal that the court erred in finding the minor to be neglected. In proceeding on an allegation of neglect at the adjudicatory stage, the State must establish, by a preponderance of the evidence, that the allegations of the juvenile petition are more probably true than not. 705 ILCS 405/1-3(1) (West 2016). See also *In re Arthur H.*, 212 Ill. 2d 441, 464 (2004); *In re N.B.*, 191 Ill. 2d 338, 343 (2000). On review, the trial court's finding of neglect will not be reversed unless it is against the manifest weight of the evidence. *In re M.Z.*, 294 Ill. App. 3d 581, 592 (1998). A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly

evident. *In re Edward T.*, 343 Ill. App. 3d 778, 794 (2003). Here, the opposite conclusion is not clearly evident. Accordingly, the trial court did not err in determining the minor child was neglected. See *In re M.Z.*, 294 Ill. App. 3d at 592; *In re Z.R.*, 274 Ill. App. 3d 422, 427 (1995).

¶ 6 Neglect is defined as the failure to exercise the care that the circumstances justly demand. *In re Arthur H.*, 212 Ill. 2d at 463. The minor came into care because of domestic violence. Several incidents of domestic violence arose between father and mother and, on at least one occasion, the minor was present. The minor reported he felt unsafe when his parents were fighting. Mother had contacted the police at least four times over domestic violence incidents, and told the police she was afraid of father, and had obtained an order of protection against him. Father initially engaged in domestic violence counseling, but left treatment because he did not feel that the classes were working out for him, and he did not need them. Given that the evidence revealed that father had unresolved domestic violence issues, clearly, father created an environment injurious to the minor. The court, therefore, properly concluded that the minor was neglected.

¶ 7 After an adjudicatory hearing is held to determine whether the preponderance of the evidence demonstrates that the minor is abused, neglected or dependent (705 ILCS 405/1-3(1), 2-21(1) (West 2016)), the trial court must then conduct a dispositional hearing to determine whether it is in the minor's best interest to be made a ward of the court, and, if so, to hear evidence regarding what disposition will best serve "the health, safety and interests of the minor and the public." 705 ILCS 405/2-22(1) (West 2016); *In re G.F.H.*, 315 Ill. App. 3d 711, 715 (2000).

¶ 8 Father argues on appeal that the dispositional order entered by the trial court is void and must be vacated. Father believes the dispositional order should not have been entered without first making the minor a ward of the court. While it is true that the dispositional order should not have been entered in this instance, this does not mean the trial court’s judgment is void. A judgment is not void when the court has both subject matter and personal jurisdiction over the matter. See *People v. Price*, 2016 IL 118613, ¶ 31. The initial phases of neglect or abuse proceedings are governed by the Juvenile Court Act of 1987, which gives the trial court subject matter jurisdiction over the proceeding. *In re K.E.S.*, 2018 IL App (2d) 170907, ¶ 49. Jurisdiction over the person is acquired when the individual appears personally before the court. See *People v. Kleiss*, 90 Ill. App. 3d 53, 55 (1980). In this instance, father appeared personally before the court, and his appearance served to waive any possible alleged deficiencies in the service of summons. See 705 ILCS 405/2-15(7) (West 2016). A judgment is voidable, however, when the judgment is entered erroneously by a court having jurisdiction. See *People v. Castleberry*, 2015 IL 116916, ¶ 11. Such is the case here. In this instance, the trial court’s finding of father’s unfitness was premature, as it occurred prior to finding that it was in the best interest of the minor that he be made a ward of the court. “That a court acts beyond its statutory *authority* in a particular case does not mean that the court lacks *jurisdiction* over the type of proceeding involved.” (Emphases in original.) *In re G.F.H.*, 315 Ill. App. 3d at 716.

¶ 9 Having determined that there was jurisdiction, and the court’s order was not void, we turn to the question of whether the order was voidable. We find that it is, and

therefore, we must reverse the trial court's decision in part. The trial court conducted a full, contested, evidentiary hearing concerning placement, custody, and fitness of the minor's parents, without first making the minor a ward of the court, and then closed the case. Under section 2-18 of the Juvenile Court Act, at the adjudicatory hearing, the court is to consider only the question as to whether the minor is abused, neglected or dependent. 705 ILCS 405/2-18 (West 2016). Under section 2-21 of the Act, it is at the dispositional hearing that the court is to 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. 705 ILCS 405/2-22 (West 2016). See also *In re Barion S.*, 2012 IL App (1st) 113026, ¶¶ 38-39. Under subsection (5), the court may terminate the parental rights of a parent at the initial dispositional hearing if the court determines, in accordance with the rules of evidence for dispositional proceedings, that it is in the best interest of the minor and the public that the child be made a ward of the court. 705 ILCS 405/2-21(5)(iv) (West 2016). See also 705 ILCS 405/2-22(1) (West 2016). Here the court never made the determination that it was in the best interest of the minor to be made a ward of the court before terminating father's rights. This was error. See *In re G.F.H.*, 315 Ill. App. 3d 711. A dispositional hearing, and a ruling on whether to make a minor a ward of the court, give the parents fair notice of what they must do to retain their rights to their child. *In re G.F.H.*, 315 Ill. App. 3d at 715. And, given the importance of a dispositional hearing to the fairness of any future termination proceedings, we cannot say that the legislature intended to allow a court that has found a child abused, neglected, or dependent to omit

this vital stage of the process by which parental rights may be terminated. *In re G.F.H.*, 315 Ill. App. 3d at 715-16.

¶ 10 The State has conceded the issue and agrees that there should be a limited remand for the purpose of complying with the statute. Accordingly, we conclude that the trial court failed to comply with the statute by entering a disposition and closing the case, without first making the minor a ward of the court. See generally *In re Aaron R.*, 387 Ill. App. 3d 1130, 1138-39 (2009).

¶ 11 For the forgoing reasons, we affirm the judgment in part and reverse and remand the judgment in part.

¶ 12 Affirmed in part; reversed and remanded in part.