

NOTICE
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2024 IL App (5th) 240659

NO. 5-24-0659

IN THE
APPELLATE COURT OF ILLINOIS
FIFTH DISTRICT

<i>In re</i> GUARDIANSHIP OF S.C. and)	Appeal from the
L.C., Minors)	Circuit Court of
)	Vermilion County.
(Michelle S. and Wilford S.,)	
)	
Petitioners-Appellees,)	
v.)	No. 23-GR-1
)	
Karlee G.,)	Honorable
)	Charles C. Hall,
Respondent-Appellant).)	Judge, presiding.

JUSTICE WELCH delivered the judgment of the court, with opinion.
Justices Moore and McHaney concurred in the judgment and opinion.

OPINION

¶ 1 In January 2023, the petitioners, Michelle S. and Wilford S., filed a petition for temporary guardianship of S.C. (born 2018) and L.C. (born 2019). The petitioners were the children’s paternal grandparents. On February 17, 2023, the trial court entered an order appointing the petitioners as the children’s temporary guardians. Thereafter, the respondent, Karlee G., the children’s biological mother, filed a motion to dismiss the temporary guardianship for lack of standing and a motion to strike the false statements made in the petitioners’ petition. In response, the petitioners filed an amended petition for temporary guardianship. After an evidentiary hearing on the issue of standing, in May 2024, the trial court found the petitioners had standing to proceed on their amended guardianship petition.

¶ 2 On appeal, the respondent argues that (1) the trial court did not have jurisdiction to enter a temporary order of guardianship under the Probate Act of 1975 (Probate Act) (755 ILCS 5/1-1 *et seq.* (West 2022)) and (2) the petitioners did not have standing to bring their guardianship petitions. For the reasons that follow, we reverse.

¶ 3 I. BACKGROUND

¶ 4 On January 3, 2023, the petitioners filed a petition for temporary guardianship of S.C. and L.C., which alleged that S.C. and L.C. had been in their care off and on since birth and continuously since March 2022. The petition also alleged that, at this time, the respondent and Ryan C., the children’s biological father,¹ were unable and unwilling to provide for the minor children’s necessary day-to-day needs.

¶ 5 On February 16, 2023, the trial court held a hearing on the temporary petition, and the respondent appeared *pro se*. At the hearing, Michelle testified that, since March 2022, the children had lived in her home because the respondent and Ryan both had opioid addiction issues. During this time, the respondent had them for overnights when she was able, and she provided some financial assistance for them. The respondent initially agreed to this arrangement, but on January 25, the respondent took the children back. Michelle did not know where they were currently living.

¶ 6 Michelle had significant concerns with the respondent being able to properly care for the children because the respondent had struggled with overcoming her opioid addiction. Michelle explained that the respondent had “tried over and over again to beat the addiction but ha[d] relapsed over and over again.” She noted that the majority of time when the respondent had the children overnight, she called Michelle about problems she was having with them and wanted Michelle to get them.

¹Ryan is not a party in this appeal.

¶ 7 After Michelle's testimony, the respondent indicated that she did not feel comfortable continuing without an attorney, and she asked for more time to hire one. She acknowledged asking for the petitioners' help with the children while she addressed her substance abuse issues. However, since then, she had successfully completed a rehabilitation program. Although she had relapsed after returning home, she was currently in outpatient treatment and was on medication to help with her opioid addiction. The respondent took the children back because Michelle had said that she was not returning them. The respondent did not agree with the petitioners having temporary guardianship, and she believed that she provided the children with a stable, healthy, and safe environment.

¶ 8 The trial court then indicated that it would grant the respondent's request to continue the hearing if she returned the children to the petitioners' care. The court explained that guardianship was not a permanent situation; it existed until the conditions under which it was granted no longer existed. The court also explained that the guardianship proceeding would formalize the arrangement that the respondent had with the petitioners in March 2022, so that she had an opportunity to address her addiction issue, and then she could request that her children be returned into her care once she was sober. The court then noted that the children needed stability, the respondent had created the situation where they were living with the petitioners, and it was not prepared to alter that arrangement. Thus, the court indicated that it would maintain the status quo that the respondent and Ryan established until evidence on the guardianship petition could be heard. Thereafter, on February 17, 2023, the trial court entered a written order, awarding temporary guardianship of the children to the petitioners.

¶ 9 On December 19, 2023, the respondent filed a motion to dismiss the temporary guardianship for lack of standing, in which she argued that the trial court did not have jurisdiction

to appoint a guardian for the children under section 11-5(b) of the Probate Act (755 ILCS 5/11-5(b) (West 2022)), where the petitioners had not overcome the presumption that the respondent, as the children's parent, was willing and able to care for the children. Specifically, the respondent argued that she never consented to the guardianship, she never voluntarily relinquished custody of the children, her parental rights were never terminated, and no evidence concerning her unwillingness or inability to care for the children had been heard or weighed by the trial court.

¶ 10 Also, on January 16, 2024, the respondent filed a motion to strike false statements from the guardianship petition. In the motion, she contended that the petitioners' petition for guardianship falsely stated that neither party had been convicted of a felony when, in fact, Wilford had been previously convicted of felony possession of a controlled substance (Vermilion County case No. 01-CF-288). Because Wilford had been convicted of a felony, the respondent argued that he was not eligible to be a guardian under section 11-3(a)(5) of the Probate Act (*id.* § 11-3(a)(5)) until there was a hearing on the children's best interests.

¶ 11 On January 19, 2024, the petitioners filed a response to the respondent's motion to dismiss, in which they argued, *inter alia*, that the rebuttable presumption that the respondent was willing and able to care for her children was overcome when Michelle and the respondent both testified that the respondent voluntarily relinquished physical custody of the children to the petitioners from March 2022 through January 25, 2023. The petitioners noted that the respondent had admitted that she had relapsed, she was in outpatient treatment for her addiction issues, and she had made no effort to have the children returned to her care before receiving the summons in this case.

¶ 12 On January 24, 2024, the respondent filed a response, arguing, *inter alia*, that the temporary guardianship order was illegal and outside the trial court's jurisdiction because the petitioners lacked standing, and the Probate Act's provisions for guardianship did not provide for temporary

relief. She argued that the children were in her custody at the time of the order, and she had not voluntarily relinquished custody of them. She also argued that the court's illegal order resulted in the petitioners entirely withholding the children from her from May 27, 2023, through December 17, 2023.

¶ 13 Attached to the response was a January 23, 2024, affidavit from the respondent, in which she stated that her parental rights had never been terminated; she had never been indicated for child abuse or child neglect by the Illinois Department of Children and Family Services (DCFS) or other state child welfare agency; and she never consented to guardianship of her children, either temporary or permanent. She also stated that, from May 27, 2023, through December 17, 2023, her repeated requests for visits were denied by the petitioners; the first time she had seen her children in over seven months was on December 18, 2023; and thereafter, she only received two additional visits with the children before Michelle claimed that they were too busy for visits.

¶ 14 On February 22, 2024, the petitioners filed an amended petition for guardianship, in which they corrected the statement that neither one had been convicted of a felony. In the amended petition, the petitioners indicated that Wilford had a drug-related felony conviction from over 20 years ago and had no felony convictions since that time. They noted that he was rehabilitated, had been a mail carrier for the United States Postal Service since 2020, and, before that, was employed at Viscofan for six years until it shut down.

¶ 15 On March 11, 2024, the trial court held a hearing on the issue of whether the petitioners had standing to proceed on their amended guardianship petition. At the hearing, the respondent testified that she had lived at her current address since late November 2023, and she lived alone. When she was served with the guardianship petition in January 2023, she was living with a friend;

she had lived there from July 2022 until February 2023. In February 2023, she moved in with Ryan, and she stayed there until November 2023 before moving into her own residence.

¶ 16 The respondent became addicted to opioids around May 2021. At that time, she was in a relationship with Ryan, and they lived together. He was also addicted to opioids. There were times when the children would stay with the petitioners for a 24-hour period. In August 2021, the respondent asked the petitioners for help with her addiction. She stayed sober until February 2022 when she relapsed. She again asked the petitioners for their help. In April 2022, Michelle asked the respondent if she could keep the children for a longer period of time while the respondent addressed her addiction issues, and the respondent agreed. Thus, at that point, the children began residing with the petitioners on a daily basis. However, the respondent indicated that she still saw and talked to them, and she was not consenting to the petitioners having guardianship over them.

¶ 17 At the end of April or beginning of May, the respondent went to a substance abuse treatment center, but she left after two days because there was no medical staff, she was very sick, and it was not a good environment. She next attempted to address her addiction issues on her own, but it was a struggle. She ultimately went to an inpatient treatment center in August 2022 for 28 days. However, she again relapsed in December 2022. During this time, the petitioners were primarily caring for the children, although the respondent maintained that she helped.

¶ 18 After the latest relapse, the respondent started treatment at Carle Addiction Recovery in February 2023. Since then, she had been compliant with the treatment plan, attended counseling, and had passed all of her drug tests. She was currently taking Suboxone, which was a prescription drug that made her sick if she took any opioids. Her doctor told her that the medication was safe to be on long-term but that, at a minimum, she should take it for one year. Her next doctor's

appointment was in April, and she was going to talk to the doctor about weaning her off the medication at that time. The last time that she took a nonprescribed opiate was in December 2022.

¶ 19 The respondent indicated that, before the guardianship petition was filed, the plan was that her children would be returned to her by the end of January 2023, after she obtained a vehicle and a residence. She was upset when she was served with the petition because she was not expecting it.

¶ 20 The respondent acknowledged that Ryan was indicated by DCFS for sexual molestation of S.C. When DCFS interviewed her in July 2023 about the allegations, she claimed that they were not true, and she had never observed Ryan hurt or abuse the children. She acknowledged that, even after the indicated finding, she continued to live with him until November 2023 because she had nowhere else to go, and she needed time to find another residence and to save money for moving expenses, a down payment, and to hire a new attorney. She wanted to obtain a house in her own name only to show stability. Ryan had not spent the night at her home. Their romantic relationship ended prior to November 2023; she believed it ended in July 2023. However, she continued to spend time with him and gave him rides to work through Christmas that year. After that, she let him use her vehicle so he could get to work.

¶ 21 The respondent explained that she initially did not believe the allegations against Ryan because Michelle had manipulated and lied about things in the past. However, after reading the DCFS reports and speaking to S.C. as well as S.C.'s psychiatrist, she believed S.C. She explained that, had she been permitted to speak with S.C. and not been kept in the dark, circumstances would have been different. She acknowledged that S.C. was genuinely fearful of being around Ryan. The respondent was never investigated or indicated by DCFS for child abuse or child neglect for either child.

¶ 22 From approximately May 2023 until December 2023, the respondent did not see or talk to the children. In late May 2023, after the allegations were made against Ryan, Michelle sent her a message saying that she would no longer be allowed contact with the children. Although she requested to see them in places other than the home she still lived in with Ryan, she was not allowed any contact with them until December 18, 2023, which included phone contact. This was the longest time she went without any contact with them; she talked to them every day while she was in treatment. She was sober during this entire period. Although she sent several Facebook messages to Michelle to request visits with or communication about the children, Michelle did not respond to the majority of the messages.

¶ 23 The respondent acknowledged that her ability to care for her children was impacted when she tried to get sober because she would get severely sick. When she was asked whether the children's safety was impacted when she was using, she responded, "To an extent I would say so, yes." However, she was currently sober and willing and able to care for them. She was willing and able to take them to the various medical and therapy appointments that were necessary to address their developmental delays. She was currently employed, she had reliable transportation, and she structured her work schedule around the appointments so she could attend. Since the amended guardianship petition was filed in February 2024, she did not know of any reason why she was unable or unwilling to provide for her children. She acknowledged that, when the initial petition was filed in January 2023, she had been less than 30 days sober, and she had numerous relapses before that.

¶ 24 The respondent acknowledged that, on January 26, 2023, she received a ticket for driving on a suspended license; she was unaware that her license had been suspended. The children were in the vehicle at that time.

¶ 25 On December 18, 2023, the respondent received her first visit with the children in about seven months. During the visit, S.C. seemed confused because she asked whether the respondent was her mother and said that they were not allowed to talk about her or Ryan anymore.

¶ 26 Michelle testified that S.C. and L.C. had been residing with her and her husband since the end of March 2022. Michelle explained that, in August 2021, the respondent contacted her for help because the respondent was struggling with an opioid addiction. After that, the children were always at her house; she took them off and on for overnights and sometimes two nights in a row. Michelle explained that the respondent would attempt to get sober on her own, she would call when she was sick from detoxing, and Michelle would take the children until she felt better and could take them back. In March 2022, after the children had been going back and forth for some time, Michelle asked the respondent and Ryan if they wanted the children to stay at her house so they could focus on their recovery. Michelle could see that the respondent wanted to get better, but the respondent was struggling. The respondent agreed, and the children had been at her house since then.

¶ 27 Michelle explained that she and her husband's entire lives had been put on hold watching the children while the respondent got sober, the respondent's visits with the children were sporadic, and when the respondent did have the children, she was constantly calling about issues with them. Although the respondent claimed that, after leaving the inpatient treatment center, she only relapsed once in December 2022, Michelle could tell that she had also relapsed in October based on her behaviors. At that time, Michelle asked the respondent if she had relapsed, and she admitted that she had. Then, the respondent started talking about taking the children back by the first of the year, but she relapsed again in December. Thus, Michelle explained that she felt like she had no choice but to file the guardianship petition. At the time that she filed the initial guardianship

petition, she felt that the respondent did not have the ability to take care of the children's daily needs, and she suspected that the respondent was still taking opioids. However, she did not have any firsthand knowledge of the respondent doing any drugs since the guardianship petitions were filed.

¶ 28 After the respondent was served with the petition in January 2023, she agreed not to contest the guardianship. However, she ultimately changed her mind and took the children back from the petitioners. The children were in the respondent's care until February 2023, when the trial court ordered them to be returned to the petitioners. Michelle explained that the status quo was the children living with her and the respondent getting random, sporadic visits based on the respondent's schedule.

¶ 29 In May 2023, S.C. made the sexual abuse allegations against Ryan. Since S.C. was already in therapy at that time, Michelle asked the therapist to talk to S.C. about the allegations. S.C. then told the therapist and her primary doctor about the assault, and it was reported to DCFS. During the DCFS investigation, the respondent and Ryan were still living together, and the respondent thought Michelle was making up the allegations.

¶ 30 Michelle acknowledged that she did not allow the respondent visits with the children from May 2023 through December 2023, even though DCFS had never told her to keep the children away from the respondent. The DCFS investigator told Michelle that, since she was the temporary guardian, she should do what was in the children's best interests. She and her husband decided that the respondent could resume contact with the children once the respondent moved out of Ryan's house and no longer had contact with him. They did not allow her visits even outside Ryan's presence.

¶ 31 Michelle had approximately four text messages from the respondent during that time. She claimed that she did not see any Facebook messages from the respondent because she had logged out of Facebook and removed it from her phone. Although she acknowledged that the respondent communicated with her through that platform, she removed herself from Facebook for her own mental clarity because the respondent was making posts on the respondent's account about her. However, she noted that the respondent was not blocked on her phone, which was another means that the respondent used to contact her. In December 2023, Michelle learned that the respondent was no longer living with Ryan and had promised to keep him away from the children. The respondent's visits then resumed, but there had been some regressions in the children's behavior.

¶ 32 Michelle expressed a willingness for the respondent to be involved with the children and to work toward the children returning to the respondent. However, Michelle noted that the children were relinquished to her care in or around April 2022, and she and her husband had been their caregivers since then. She noted that the children had developmental delays that required therapy and other services several times a week, but she never discussed the children's special needs with the respondent because they were not on speaking terms. She drove from Danville to Champaign for these services.

¶ 33 Michelle explained that, when she and her husband filed the initial guardianship petition that stated neither one had ever been convicted of a felony, she believed that the petition was stating that neither one had been convicted of a felony for child abuse. She acknowledged that her husband was previously convicted of felony possession of a controlled substance. In the amended guardianship petition, she alleged that the respondent was unwilling or unable to provide for the day-to-day care of the minor children because, as far as she knew, the respondent still had an opioid addiction problem, and the respondent was still in a relationship with Ryan. She noted that the

respondent and Ryan were seen together in January 2024. She acknowledged that she did not have any evidence that the respondent was still struggling with her addiction in February 2024 because they were not in communication. She also acknowledged that she had not taken any steps to determine whether the respondent was still using opioids.

¶ 34 Dr. Elizabeth Tingley, a psychologist, testified that she evaluated L.C. on September 8, 2023, and diagnosed him with global developmental delay, mixed expressive language delay, fine motor delay, cognitive delay, trauma and stressor related disorder, sensory processing difficulty, sickle cell trait, and chronic diarrhea. As a result of these diagnoses, he needed speech therapy, occupational therapy, psychotherapy, and a high-quality preschool environment. She believed that these patterns of diagnoses and his developmental delays were the result of neglect. She had a developmental pediatrician review his medical records, and the pediatrician believed that he was born with opioids in his system due to his symptoms after birth.

¶ 35 During his evaluation, L.C. showed that he missed the respondent by pretending to call her on a toy phone. Dr. Tingley noted that L.C. did not want Michelle to see what he was doing. Although Dr. Tingley discussed the fact that L.C. missed the respondent with Michelle, she did not ask for the respondent's contact information. She expressed regret over not reaching out to the respondent. She agreed that there were ways in which the children could have had limited contact with the respondent, but it was not clear whether it was the right time since the children were just beginning to feel safe and comfortable in the petitioners' home. She was afraid of disrupting their sense of safety, which was tenuous, and their newly established routine.

¶ 36 Dr. Tingley was S.C.'s treating psychologist; she first met with S.C. on April 4, 2023. After completing the intake, Dr. Tingley agreed that S.C. needed psychotherapy because she was very angry and emotionally out of control. S.C. was diagnosed with serious cognitive delays, serious

speech-language delays, anxiety disorder, trauma and stressor related disorder, mixed fine motor delays, sensory modulation dysfunction, and a parent-child relationship problem. She required the following services to address those issues: speech therapy, occupational therapy, and psychotherapy. She also needed to be enrolled in preschool because her current intelligence scores were more than two standard deviations below the mean, which indicated she was behind cognitively. Dr. Tingley believed that it was imperative to S.C.'s future success to have these services on a weekly basis, and it would be detrimental to stop services. The petitioners were consistent in making sure that S.C. attended services, which were three or five times per week.

¶ 37 During the therapy sessions, S.C. made some concerning statements about her father. Specifically, in a May 2023 session, S.C. said that, "Daddy hurt my pee pee." She also made other comments indicating that she feared her father and did not want to see him. Dr. Tingley then reported the allegations to DCFS. From May 2023 until the present, Dr. Tingley continued to see S.C., and during the sessions, S.C. had indicated that she did not miss and did not want to see the respondent. However, Dr. Tingley admitted that, at the initial visit, S.C. expressed that she missed her mother. S.C. also expressed suicidal ideations and thoughts, which Dr. Tingley noted was unusual for a child of her age. Once visits were reinitiated with the respondent, S.C. regressed in her development; she was more emotional, angry, and dysregulated. She expressed anger because she could not talk to the respondent about Ryan.

¶ 38 On February 15, 2023, Dr. Tingley met with the respondent for a session. Based on that meeting, Dr. Tingley believed that the respondent sincerely and honestly wanted her children returned to her care. Dr. Tingley described the respondent as a fragile young woman who was emotionally distraught and was having a hard time coming to terms with her children's difficulties. Dr. Tingley acknowledged that the respondent seemed intelligent enough to follow medical

instructions relating to her children. Dr. Tingley did not sense any insecurity in the respondent regarding loving her children and wanting to do right by them. During the session, the respondent indicated that, after she read the DCFS report, she believed S.C.'s allegations against Ryan. She expressed willingness to attend a session with S.C. to talk about what S.C. experienced. Although Dr. Tingley indicated that her ultimate goal was for S.C. to have a robust relationship with the respondent, she believed that S.C. did not yet feel safe with the respondent. Dr. Tingley asked the respondent whether she noticed S.C.'s speech delays when S.C. was in her care, and although the respondent indicated that she had pushed for S.C. to be in speech therapy, she did not follow through because she did not have reliable transportation.

¶ 39 Dr. Tingley agreed that seven months would typically be too long for children to not be around their parents. Although she never told the petitioners that the respondent should not have contact with them, she was cautious of the respondent having contact with them while the respondent was still living with Ryan, which was one of the reasons why she did not push for any contact. She believed that reestablishing contact needed to be thought out, very carefully planned, and needed to happen in a reliable and predictable way. She had concerns about the respondent having extended or unsupervised visits at this point, noting that S.C.'s developmental delays were typical of children who had been neglected. She was concerned about S.C. returning to an environment where S.C. was not getting enough input and stimulation. Dr. Tingley did not take any steps to determine whether the respondent had maintained her sobriety.

¶ 40 In December 2023, the petitioners told Dr. Tingley that the respondent was no longer living with Ryan and asked for suggestions on how to reestablish contact with her. On December 30, 2023, Dr. Tingley wrote a letter, indicating that contact should be welcomed, but S.C. had reacted

emotionally and had become distraught after visits. Thus, she noted that it was important that contact be spaced out, so that S.C. could slowly integrate her mother back into her life.

¶ 41 Wilford testified that, when he signed the initial guardianship petition, he was not trying to hide the fact that he had a felony conviction; he thought the petition was referring to a child-related felony conviction. His felony conviction was for a drug-related offense, and at that time, he had a substance abuse issue. However, the last time he did illegal drugs was in 2005. He did not feel like his previous conviction had any impact on his current ability to care for the children. He had been financially and emotionally caring for them for the last two years.

¶ 42 Wilford testified that the respondent had not taken care of the children for two years and had made no effort to get into contact with him and his wife before December 2023. However, he acknowledged that she had asked for visits between May and December 2023 but noted that was during the time of the DCFS investigation and when she was living with Ryan. Although he believed that the respondent was still in a relationship with Ryan because she was seen driving his vehicle, he acknowledged that he had not personally seen her with Ryan since July 2023. He also had not observed her to be under the influence of drugs in January or February 2023. He acknowledged that the respondent dropped off birthday presents for the children at his house.

¶ 43 Sarah Sieberns, the DCFS investigator who was assigned to Ryan's case, testified that there were no concerns raised relating to the respondent, and no evidence that the respondent was aware of Ryan's bad conduct. She did not tell the petitioners that the respondent should have no contact with the children. When informed about the allegations against Ryan, the respondent said that she did not believe that was something Ryan would do. After the investigation had concluded, Michelle asked Sieberns about whether she should give the respondent visitation, and Sieberns responded that Michelle should do what was in the children's best interests.

¶ 44 On May 3, 2024, the trial court entered a written order, in which it found that the respondent voluntarily relinquished physical custody of the children to the petitioners in March or April 2022 when she agreed that the children would reside with them on a daily basis. The court noted that, even before that time, the petitioners had the children for a significant period of time. The court then found that, from April 2022 through January 25, 2023, the petitioners had full physical custody of the children.

¶ 45 As for whether the petitioners rebutted the presumption that the respondent, as the children's mother, was willing and able to take care of the children's daily needs, the trial court noted that both children suffered from developmental and cognitive issues that were typical of children who had been neglected. Dr. Tingley testified that, because of these issues, it was important for the children to engage in certain services as not engaging in these services could be detrimental to them. The court noted that, although the respondent had noticed S.C.'s speech delay while S.C. was in her care, she did not follow through with addressing this issue. Dr. Tingley expressed concern about returning S.C. to the petitioner's care and believed that reestablishing contact with the respondent should be done slowly to prevent further trauma. Dr. Tingley also noted that S.C. had regressed in her development when visits were reestablished.

¶ 46 Also, the trial court noted that, on July 28, 2023, Ryan was indicated for sexual abuse by DCFS against S.C., which occurred at the home that he was sharing with the respondent. Although the respondent learned of the indicated finding in July 2023, she continued to live with him through November 2023.

¶ 47 Consequently, the trial court found that the petitioners had rebutted, by a preponderance of the evidence, the presumption that the respondent was willing and able to make and carry out the day-to-day care decisions concerning the children. Thus, the court found that the petitioners had

standing to proceed on their amended petition for guardianship. The respondent appeals the order entered on February 17, 2023, appointing the petitioners as temporary guardians and the order entered May 3, 2024, on standing.

¶ 48

II. ANALYSIS

¶ 49

A. Temporary Guardianship Order

¶ 50 Initially, we note that the respondent contends that the February 17, 2023, temporary guardianship order is a void order because (1) the trial court lacked jurisdiction to enter an order on temporary guardianship without making the requisite findings for standing and (2) there was no provision allowing for temporary guardianship in the Probate Act. However, since we ultimately find that the petitioners do not have standing to proceed on their amended guardianship petition as explained in further detail below, we need not address the respondent's arguments relating to this temporary order that was meant to preserve the status quo during the guardianship proceedings.

¶ 51

B. Standing

¶ 52 Section 11-5 of the Probate Act (755 ILCS 5/11-5 (West 2022)) governs the appointment of a guardian of a minor. To grant a petition for guardianship of a minor under section 11-5, a court must make two evidentiary findings. *In re Guardianship of A.G.G.*, 406 Ill. App. 3d 389, 393 (2011). First, where a guardianship petition is filed by a nonparent, a petitioner must first establish standing. *In re A.W.*, 2013 IL App (5th) 130104, ¶¶ 12-14; 755 ILCS 5/11-5(b) (West 2022). Section 11-5(b) was intended to prevent the trial court from exercising jurisdiction when a petitioner lacks standing. *In re R.L.S.*, 218 Ill. 2d 428, 436 (2006). Thus, standing is the threshold statutory requirement that must be met before the court can proceed to a decision on the merits. *Id.* Section 11-5(b) instructs as follows:

“The court lacks jurisdiction to proceed on a petition for the appointment of a guardian of a minor if it finds that (i) the minor has a living parent, adoptive parent or adjudicated parent, whose parental rights have not been terminated, whose whereabouts are known, and who is willing and able to make and carry out day-to-day child care decisions concerning the minor, unless: (1) the parent or parents voluntarily relinquished physical custody of the minor; (2) after receiving notice of the hearing under Section 11-10.1, the parent or parents fail to object to the appointment at the hearing on the petition; (3) the parent or parents consent to the appointment as evidenced by a written document that has been notarized and dated, or by a personal appearance and consent in open court; or (4) the parent or parents, due to an administrative separation, are unable to give consent to the appointment in person or by a notarized, written document as evidenced by a sworn affidavit submitted by the petitioner describing the parent’s or parents’ inability to receive notice or give consent; or (ii) there is a guardian for the minor appointed by a court of competent jurisdiction. There shall be a rebuttable presumption that a parent of a minor is willing and able to make and carry out day-to-day child care decisions concerning the minor, but the presumption may be rebutted by a preponderance of the evidence.” 755 ILCS 5/11-5(b) (West 2022).

¶ 53 By allowing a guardianship petition to proceed to a hearing on the merits over the wishes of a parent only when petitioner has shown that the parent is unwilling or unable to carry out day-to-day child care decisions, section 11-5(b) respects the superior rights of parents while also protecting the health, safety, and welfare of the children. *In re R.L.S.*, 218 Ill. 2d at 441. If a nonparent fails to meet the threshold requirement, she lacks standing, and the trial court lacks jurisdiction to proceed on the petition. See 755 ILCS 5/11-5(b) (West 2022); *In re R.L.S.*, 218 Ill.

2d at 448. This standing requirement protects the parents' superior rights and ensures that guardianship proceedings pass constitutional muster. *In re Guardianship of A.G.G.*, 406 Ill. App. 3d at 394.

¶ 54 If the trial court finds that the nonparent has standing to proceed on the guardianship petition, then the trial court is required to consider the best interests of the child. *In re Estate of H.B.*, 2012 IL App (3d) 120475, ¶ 41. Section 11-5(a) of the Probate Act provides that, upon the filing of a petition, the court may appoint a guardian as “the court finds to be in the best interest of the minor.” 755 ILCS 5/11-5(a) (West 2022). “The standards of the best interests of the minor, in paragraph (a), and a parent who is ‘willing and able,’ in paragraph (b), are separate questions of fact.” *In re Guardianship of A.G.G.*, 406 Ill. App. 3d at 393.

¶ 55 In this case, the trial court's May 3, 2024, order made findings relating to standing only. Thus, our decision is limited to whether the petitioners had standing to proceed on the amended guardianship petition. The question of standing is typically subject to *de novo* review. *In re Guardianship of K.R.J.*, 405 Ill. App. 3d 527, 535 (2010). However, generally, the determination of whether a nonparent has standing requires an evidentiary hearing. See *In re A.W.*, 2013 IL App (5th) 130104, ¶ 15. Thus, where, as here, the trial court makes factual findings, those factual findings are reviewed under the manifest-weight-of-the-evidence standard. *In re Guardianship of K.R.J.*, 405 Ill. App. 3d at 535. “Consequently, this court will review the trial court's factual findings under the manifest-weight-of-the-evidence standard and apply those facts *de novo* to the question of whether petitioners have standing,” *i.e.*, whether they have rebutted the presumption that respondent was willing and able to make and carry out day-to-day child care decisions. *Id.* A trial court's ruling is against the manifest weight of the evidence only if it is unreasonable,

arbitrary, and not based on the evidence, or when the opposite conclusion is clearly evident from the record. *In re Guardianship Estate of Tatyanna T.*, 2012 IL App (1st) 112957, ¶ 19.

¶ 56 Here, the trial court found that the respondent voluntarily relinquished physical custody of the children to the petitioners in March or April 2022 when she agreed that the children would reside with them on a daily basis. “Voluntary relinquishment” has been defined as the affirmative act of waiving or abandoning a known right. *Id.* ¶ 29. A determination of physical custody turns not on possession; instead, it requires that the parent somehow has voluntarily and indefinitely relinquished custody of the child. *Id.* ¶ 31. The following factors are relevant when determining whether a parent has voluntarily relinquished custody, as not every voluntary turnover of a child will deprive the parent of physical custody: (1) who was responsible for the care and welfare of the child prior to the initiation of custody proceedings, (2) the manner in which physical possession of a child was acquired, and (3) the nature and duration of the possession. *In re A.W.J.*, 316 Ill. App. 3d 91, 96 (2000); *In re Guardianship Estate of Tatyanna T.*, 2012 IL App (1st) 112957, ¶ 31.

¶ 57 After carefully reviewing the record in the present case, we find that the evidence presented did not support the trial court’s finding that the respondent voluntarily relinquished custody of the children to the petitioners. In late March or early April 2022, the respondent agreed to allow the children to live with the petitioners so that she could focus on her substance abuse treatment. Before that, the children frequently stayed with the petitioners while the respondent struggled with substance abuse. There was never any formal designation of the petitioners as guardians, nor were the respondent’s parental rights ever terminated. Instead, this was intended to be a temporary arrangement to give the respondent time to address her opioid addiction. This was supported by Michelle’s testimony, in which she stated that the agreement was meant to be a “six-week thing” to give the respondent time to become sober. Also, the respondent testified that, by entering into

this arrangement, she did not intend for the petitioners to be guardians of the children. She indicated that the plan was for the children to come back into her care in January 2023. Between March or April 2022 and January 2023, she remained in contact with the children and had visits.

¶ 58 In January 2023, the respondent attempted to assert her physical custody over the children by removing them from the petitioners' care. The children had been in the petitioners' care for less than one year at this point. However, less than one month later, the trial court ordered her to return the children to the petitioners in February 2023. Thus, any relinquishment of the children in February 2023 was involuntary. Then, from May 2023 until December 2023, the petitioners prohibited her from having any contact with the children, despite her repeated requests. Although the petitioners explained that their decision was, in part, due to the respondent remaining in contact with Ryan, the respondent was willing to meet with the children at a public location or at the petitioners' home. Thus, the evidence demonstrates that any relinquishment of the children at this point was also involuntary. Consequently, based on the above evidence, we conclude that the record does not support a finding that the respondent voluntarily and indefinitely relinquished custody of the children to the petitioners.

¶ 59 The respondent also contends that the petitioners here have failed to rebut the statutory presumption that she was willing and able to make and carry out day-to-day child care decisions concerning the minor children. The respondent struggled with an opioid addiction, which began around May 2021. During various periods from August 2021 until March or April 2022, she attempted to get sober and requested help from the petitioners, which included assistance with the children. Then, in March or April 2022, she allowed the children to live with the petitioners so she could focus on substance abuse treatment, and the children began living with the petitioners on a daily basis. She then attended inpatient treatment for 28 days in August 2022. However, she

admitted to relapsing in December 2022. She claimed that this was her only relapse after completing inpatient treatment, but Michelle believed that she had also relapsed in October based on her behavior and her own admission. Subsequently, the respondent again started treatment in February 2023 and has maintained her sobriety since then.

¶ 60 To support her claim that she remained sober, the respondent presented a letter from Addiction Recovery, which indicated that she was compliant with her treatment program and had passed all her drug tests. Although Michelle and Wilford expressed concern about the respondent still struggling with her opioid addiction, they both admitted that they had no personal knowledge that she had taken unprescribed opioids after they filed their initial guardianship petition in January 2023. Also, Dr. Tingley testified that, when she met with the respondent in February 2023, she did not observe the respondent to be under the influence of any illegal substances.

¶ 61 Regarding the DCFS investigation, the evidence demonstrated that there were no concerns raised about the respondent, and there was no evidence that she had known about Ryan's conduct. Also, the testimony indicated that neither Dr. Tingley nor the DCFS investigator told the petitioners that the respondent should not have any further contact with the children following the indicated finding against Ryan. Although the evidence did show that she had continued to live with Ryan after the indicated finding, she testified that she was no longer in a relationship with him, she had been living alone since November 2023, and she was willing to use the information from DCFS about the safety of the children and do what was in their best interests. Dr. Tingley indicated that she did not sense any insecurity in the respondent regarding loving her children and wanting to do right by them. The petitioners believed that she was still in a relationship with Ryan, but they presented no evidence to support these beliefs. Moreover, even though the respondent was not permitted any contact with the children from May 2023 through December 2023, she

repeatedly requested visits with and communication about the children, which included visits away from Ryan, and she dropped off presents for them.

¶ 62 As for the children's developmental and cognitive delays, Michelle acknowledged that she had not talked about the children's developmental issues with the respondent. However, the respondent testified that, once she learned about the children's diagnoses and various medical and therapy appointments, she structured her work schedule around the appointments, so she was able to attend. She also testified that she was willing and able to take the children to the appointments that were imperative to address their developmental delays. Further, Dr. Tingley acknowledged that the respondent seemed intelligent enough to follow medical instructions relating to her children. Dr. Tingley did express concern about returning the children to the respondent's care, but this does not demonstrate that the respondent was unwilling or unable to care for the minor children, especially where Dr. Tingley only met with the respondent on one occasion.

¶ 63 After a comprehensive review of all the evidence, and the trial court's factual findings, we conclude that the petitioners have failed to rebut the statutory presumption that the respondent, as the children's parent, was willing and able to make and carry out day-to-day child care decisions concerning the minor children. In making this decision, we are mindful of the trauma and the developmental and cognitive delays that the children experienced, and continue to experience, because the respondent struggled with an opioid addiction. However, as we noted above, the threshold standing requirement protects a parent's superior rights, and without further evidence showing that the respondent was still taking nonprescribed opioids or was otherwise unwilling or unable to take care of the children, we cannot say that the statutory presumption in favor of the respondent's rights as the children's biological mother was rebutted. Accordingly, we find that the petitioners have no standing to proceed on their guardianship petition.

¶ 64

III. CONCLUSION

¶ 65 For the foregoing reasons, the judgment of the circuit court of Vermilion County is reversed.

¶ 66 Reversed.

In re Guardianship of S.C., 2024 IL App (5th) 240659

Decision Under Review: Appeal from the Circuit Court of Vermilion County, No. 23-GR-1; the Hon. Charles C. Hall, Judge, presiding.

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