



**In the
Missouri Court of Appeals
Western District**

IN THE INTEREST OF: B.K.F, II	)	
AND D.J.F.;	)	
	)	WD84019 Consolidated with
D.Q., Respondent,	)	WD84020, WD84042 and WD84043
and	)	
JUVENILE OFFICER,	)	OPINION FILED: May 11, 2021
	)	
Respondent,	)	
	)	
v.	)	
	)	
M.K.F.,	)	
	)	
Appellant.	)	

Appeal from the Circuit Court of Cole County, Missouri
The Honorable Jon E. Beetem, Judge

Before Division Three: Thomas H. Newton, Presiding Judge, Gary D. Witt, Judge and
W. Douglas Thomson, Judge

In this consolidated appeal, M.K.F. ("Mother") appeals from the judgment of the Circuit Court of Cole County, Missouri ("trial court"), closing two juvenile cases and appointing the paternal grandmother as guardian for two of Mother's children, B.K.F. and

D.J.F. ("the Children").¹ On appeal, Mother argues that the trial court's judgments were against the weight of the evidence.² We affirm.

Factual and Procedural Background

B.K.F. (DOB December 20, 2011), D.J.F. (DOB April. 22, 2013), and their two older brothers, were previously in foster care for two-and-a-half years. They had been previously removed from Mother's care due to unsanitary living conditions. Mother had not been working the "permanency plan,"³ and the case was proceeding toward termination of parental rights, but then Mother became pregnant again, and that child's father encouraged her to work her permanency plan. The Children were returned to Mother's care on November 7, 2017.⁴ The Children were only in Mother's care for a few weeks when a family friend who was taking care of the Children noticed bruising on D.J.F. The friend reported suspected abuse, and the four children not already in foster care were again removed from Mother's home, which was determined to be without electricity. Mother's then-boyfriend was charged with abuse of D.J.F., but Mother did not want him to leave the home. B.K.F. and D.J.F. were eventually placed with their paternal grandmother, Donna Quenga ("Grandmother"), who petitioned to be named their legal guardian. Grandmother had the Children in her care for approximately two-and-a-half years at the time of the permanency and guardianship hearing, which took place on June 29, 2020.

¹ This court has consolidated four appeals: two juvenile court appeals, each concerning one of the two children, WD84042 and WD84043, and two probate court appeals, each concerning one of the two children, WD84019 and WD84020. All are ruled on in this opinion as consolidated under the WD84019.

² The Juvenile Officer did not file a brief or participate in this appeal.

³ The term "permanency plan" is not specifically defined in the juvenile code; however, it is described as a plan for "the child's immediate and long-term placement goals[.]" Section 210.564.3(5) RSMo (2016).

⁴ The oldest child chose to remain in foster care and was not returned to Mother.

At the hearing, the Children's Division caseworker, LaTroya Jamison ("Jamison"), testified that in the year that she had been the caseworker for the Children, Mother had lived in Ohio, and at the time of the hearing, she was living in Illinois. Mother had seen the Children twice during that time, in September of 2019 and in March of 2020. Additional visits could have been scheduled, but Mother had missed most of the monthly Family Support Team meetings ("FSTs") during the year that Jamison was the Children's caseworker. Although Mother claims that she was not notified of all of the FST meetings, the Juvenile Officer testified that the Children's Division notifies the parents and their attorneys of all FST meetings. After the COVID-19 restrictions took effect, Mother scheduled a single ZOOM visit with the Children, but she failed to log on for the visit. Mother further failed to maintain phone contact with the Children.

At the time of the hearing, Mother lived in a mobile home in Illinois with her youngest child, a female friend, and the friend's two children. Mother testified that if the Children were returned to her, they could stay in the bedroom she was in, and she would sleep in the living room. Mother admitted that she had not always notified her caseworker of her address changes as required by the permanency plan. Also, despite a history of mental illness, Mother testified that she is "fine," and she does not take the prescribed medication to treat that illness.

At the hearing, all witnesses except Mother testified that it would be in the Children's best interests for the guardianship to be granted. In its judgment, the trial court granted the guardianship and terminated the juvenile cases, finding that Mother was unable and unwilling to assume the duties of caring for the Children based on the evidence

presented. The court found that Mother had not provided her addresses to the caseworker as required by the permanency plan. The judgment also found that Jamison had been unable to verify whether Mother's housing situation was appropriate. The judgment noted that Mother had represented that she suffered from a disability, but that she had not provided any proof of treatment. Mother testified that she received social security disability benefits of \$703 per month, but she had not provided any proof of that to her caseworker as of the date of the hearing. The judgment also found that Mother did not have transportation, but could get rides from a former boyfriend. Finally, the judgment noted that Mother had missed several of her FST meetings and that she had not called to speak with the Children nor had she seen the Children on a regular basis.

Mother filed a notice of appeal, but did not include the filing fee, as she was determined to be indigent. The circuit clerk did not accept the submissions for filing that day. Mother's counsel paid the docketing fees, but the clerk marked them as filed on the day the fees were processed, not the date they were electronically submitted. If the notice of appeal was untimely this court would lack the authority to decide the issues presented. Section 512.050.⁵

Standard of Review

"The trial court's judgment in guardianship proceedings is to be affirmed unless it is unsupported by substantial evidence, is against the weight of the evidence, or erroneously declares or applies the law." *In re L.M.*, 488 S.W.3d 210, 213-14 (Mo. App. E.D. 2016).

⁵ All statutory citations are to RSMo 2016 as updated through the most recent cumulative supplement, unless otherwise indicated.

"A claim that there is no substantial evidence to support the judgment or that the judgment is against the weight of the evidence necessarily involves review of the trial court's factual determinations, and a court will only overturn a judgment under these fact-based standards of review when the court has a firm belief that the judgment is wrong." *Id.* at 214. We give the trial court due regard with respect to judging the credibility of witnesses. *Id.* We review questions of law *de novo*. *Pearson v. Koster*, 367 S.W.3d 36, 43 (Mo. banc 2012).

Discussion

Mother's first point on appeal is that her failure to pay the docketing fees at the time she electronically submitted her notices of appeal of the juvenile court orders for filing did not render the notices untimely because a docketing fee does not affect the validity of the notice of appeal since the Missouri legislature amended section 512.050 in 1997 to eliminate the requirement of a docket filing fee. The Missouri Supreme Court affirmed this very principle in *Goldsby v. Lombardi*, 559 S.W.3d 878, 881-82 (Mo. banc 2018). *Goldsby* held that the Supreme Court, "lost the authority to impose a jurisdictional docket fee prerequisite when the legislature removed the docket fee language from section 512.050 in 1997." *Id.* at 884. *Goldsby* goes on to say that although the Rules may still "impose additional requirements for prosecuting an appeal, those requirements cannot affect 'the validity of the appeal.'" *Id.* at 883. Under Rule 84.08, Mother was entitled to notice of the defect of failing to pay the docket fees and up to fifteen days to remedy the defect before her appeals could be dismissed. *See id.* at 885. This Court did not issue Mother a Rule 84.08 notice, and her counsel paid her docketing fee nine days after submitting the notices

of appeal. Accordingly, Mother's appeals are timely and we have the authority to reach the issues presented. Point I is granted.

Mother's substantive second point on appeal is that the trial court's judgment finding her unwilling or unable to assume the duties of guardianship is against the weight of the evidence because Mother testified at the hearing that she had given notice of some of her changes of address to her caseworker, because she testified that she did receive disability benefits, and because "Mother had custody and control of her three-year-old child[,] yet no one thought she was unfit, unwilling, or unable to be that child's natural guardian." We disagree that the judgment was against the weight of the evidence.

We first note that in her brief, Mother has failed to perform the required analysis for an against the weight of the evidence challenge. *Ivie v. Smith*, 439 S.W.3d 189 (Mo. banc 2014).

Appellate courts act with caution in exercising the power to set aside a decree or judgment on the ground that it is against the weight of the evidence. *JAS Apartments, Inc. v. Naji*, 354 S.W.3d 175, 182 (Mo. banc 2011). "[A] claim that the judgment is against the weight of the evidence presupposes that there is sufficient evidence to support the judgment." *In re J.A.R.[v. D.G.R.]*, 426 S.W.3d [624, 630 (Mo. banc 2014). In other words, "weight of the evidence" denotes an appellate test of how much persuasive value evidence has, not just whether sufficient evidence exists that tends to prove a necessary fact. See *White v. Dir. of Revenue*, 321 S.W.3d 298, 309 (Mo. banc 2010) (stating that "weight" denotes probative value, not the quantity of the evidence). The against-the-weight-of-the-evidence standard serves only as a check on a circuit court's potential abuse of power in weighing the evidence, and an appellate court will reverse only in rare cases, when it has a firm belief that the decree or judgment is wrong. See *JAS Apartments, Inc.*, 354 S.W.3d at 182.

Id. at 206-207.

A party raising an against the weight of the evidence challenge must follow the four-step analytical sequence for raising such a challenge as set forth in *Houston v. Crider*, 317 S.W.3d 178, 187 (Mo. App. S.D. 2010):

- (1) identify a challenged factual proposition, the existence of which is necessary to sustain the judgment;
- (2) identify all the favorable evidence in the record supporting the existence of that proposition;
- (3) identify the evidence in the record contrary to the belief of that proposition, resolving all conflicts in testimony in accordance with the trial court's credibility determinations, whether explicit or implicit; and,
- (4) demonstrate why the favorable evidence, along with the reasonable inferences drawn from that evidence, is so lacking in probative value, when considered in the context of the totality of the evidence, that it fails to induce belief in that proposition.

Meseberg v. Meseberg, 580 S.W.3d 59, 66 (Mo. App. W.D. 2019).

In her brief, Mother fails to even attempt to follow the four-step analysis set forth above, but instead attempts to reargue the facts in the light most favorable to her position. Although Mother identifies the challenged proposition--the finding that the juvenile actions should be terminated and guardianships should be granted to Grandmother--she fails to identify the favorable evidence in the record that supports the trial court's judgment or explain why that evidence and its reasonable inferences require the conclusion that the trial court could not reasonably decide that it was in the Children's best interests that a guardianship should be granted in a person other than Mother. "Without any of this analysis, [Mother's] argument lacks any analytical or persuasive value." *J.A.R. v. D.G.R.*, 426 S.W.3d 624, 631 n.12 (Mo. banc 2014). A review of the record and the trial court's

judgment establishes the grant of the guardianships in this matter was proper and supported by credible evidence.

A court should not appoint a guardian for a minor child if there is a parent "available, willing, and able to care and provide for the child." *In re L.M.*, 488 S.W.3d at 215. There is a rebuttable presumption that a parent is the appropriate custodian for his or her child. *Id.* "That presumption can be overcome, however, if there is sufficient evidence presented that the parent is unfit, unwilling, or unable to take charge of the child." *Id.*

Mother contends that her current custody of her youngest son establishes that she is fit, willing, and able to care for B.K.F. and D.J.F. Although Mother's youngest child may have been returned to her care at some point, all of her children were removed from her home on two prior occasions. The Children at issue in this appeal had been in foster care for two-and-a-half years before being returned to Mother's care in November of 2017 for a matter of weeks before they were removed a second time for an additional two-and-a-half years, during which time Mother was mostly out of state and failed to make reasonable efforts to see the Children. And of Mother's five children, only the youngest one has been returned to her care.

Moreover, Mother has failed to establish any reasonable visitation with the Children for almost the entire past five years. The trial court found that Mother failed to participate in several FST meetings, even by telephone, so that visits with the Children could be scheduled, and that Mother failed to visit or telephone the Children frequently. And Grandmother testified that Mother failed to participate in a virtual visit with the Children, scheduled over Zoom, during the period during which in-person visits were prohibited due

to COVID-19. Although Mother testified that she did not receive notice of the FST meetings, testimony at the hearing reflected that both Mother and her counsel were notified of all of the meetings. Mother also did not testify that she ever took the initiative to inquire about when the meetings were being held if she did not in fact receive notice. The trial court's finding that Mother was unwilling or unable to assume the duties of guardianship over the Children is not against the weight of the evidence. The judgment of the trial court is affirmed.



Gary D. Witt, Judge

All concur