

No. 1-12-0712

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

<i>In re</i> CARDELL R., a Minor)	Appeal from the
)	Circuit Court of
)	Cook County.
(The People of the State of Illinois,)	
Petitioner-Appellee,)	
)	
v.)	11 JA 00310
)	
)	
Tian V-R.,)	Honorable
Respondent-Appellant)	Nicholas Geanopoulos,
)	Judge Presiding.
(Robert F. Harris Public Guardian of Cook County)).)	

PRESIDING JUSTICE LAVIN delivered the judgment of the court.
Justices Fitzgerald Smith and Epstein concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's adjudicatory order finding respondent's child was abused and neglected was not against the manifest weight of the evidence because the evidence showed respondent was unable to parent without the aid of a coparent, which she did not have. We affirm the judgment of the circuit court.

¶ 2 Respondent, Tianna V-R., appeals the juvenile court order finding her minor son, Cardell R. (Cardell), neglected and abused and ultimately adjudicating him a ward of the court. On appeal, respondent argues the trial court's findings of neglect and abuse were against the manifest weight of the evidence. For the reasons to follow, we affirm.

¶ 3 Cardell was born November 10, 2010. Almost a year later, on May 4, 2011, the State

filed a petition for adjudication of wardship and a motion seeking temporary custody on behalf of Cardell, alleging that he was neglected, based on an injurious environment, and abused, based on a substantial risk of physical injury, under the respective subsections 2-3(1)(b) and 2-3(2)(ii) of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/2-3(1)(b), (2)(ii) (West 2010)). In support, the State alleged that respondent had three prior indicated reports for substance abuse with a substantial risk of "physical injury/environment injurious the health/welfare"¹ and that her three other minors had been in or continued to be in the custody of the Department of Children and Family Services (DCFS) following findings of abuse, neglect, and/or unfitness. The State alleged that respondent, after having been diagnosed with schizoaffective disorder, bipolar type, and mild mental retardation, was receiving ongoing psychiatric monitoring and individual therapy, although she had a history of noncompliance with psychotropic medication and recently had denied the existence of her psychiatric illness. The petition stated that, according to a parenting capacity assessment in January 2011, the respondent was unable to safely and effectively parent because she presented significant risk factors. The petition added that the father, Michael R., was currently incarcerated for failing to register as a sex offender and had been receiving and was still in need of psychiatric care. Michael R. also had another minor in DCFS custody following findings of neglect.

¶ 4 In May 2011, the trial court entered a "Temporary Custody Hearing Order" granting the State's petition after finding the allegations supported a finding of abuse and neglect with respect to Cardell. An adjudicatory hearing was commenced and continued on July 28, 2011, and ultimately concluded on January 27, 2012. The record reveals that the State submitted as exhibits prior certified court orders relating to respondent, a parenting assessment team

¹ Under the Abused and Neglected Child Reporting Act, an "indicated report" is made if an investigation determines that credible evidence of the alleged abuse or neglect exists. 325 ILCS 5/3 (West 2010).

evaluation of respondent, as well as of the father, Michael R. Also included in the record is the transcript from the hearing on January 27, 2012, although there is no transcript regarding any prior proceedings.

¶ 5 The State's exhibit 1 specifically consisted of juvenile court orders, spanning 1999 to 2010, associated with respondent's other children. These orders showed that respondent's rights to her sons Phillip and Zion were terminated following findings of abuse and neglect, where respondent stated she wanted to place Phillip "in a bag and throw it in the alley," was unwilling to care for him, and had attempted to cross her legs as the baby was crowning, and also where respondent admitted abusing drugs during her pregnancy with Zion, who tested positive for cocaine at birth. Phillip's adjudication order was entered in 1999 and Zion's in 2006.

Respondent voluntarily consented to the adoption of both children. The court entered another adjudication order in January 2010, finding respondent's son Michael neglected based on an injurious environment because respondent was not fully engaged in services when Michael was born. In April 2010, the court in a dispositional order placed Michael in the custody of DCFS.

¶ 6 The State's exhibit 2 consisted of the parenting assessment team evaluation of respondent, dated January 25, 2011, with assessment dates in October and December of 2010 in relation to respondent's DCFS involvement, parenting, mental health, and criminal history. The team, including a psychiatrist, two clinical psychologists, an assistant psychologist, and a licensed clinical social worker, evaluated respondent to determine custody regarding her son Michael. The evaluation revealed that respondent had mild mental retardation, with an IQ of 57, and a self-reported history of schizophrenia and depression with psychiatric treatment, as well as drug abuse. The psychiatric evaluation that was part of the parenting assessment confirmed respondent's diagnoses of schizoaffective disorder, bipolar type, in remission; cocaine dependence, in sustained full remission; and mild mental retardation. Respondent's criminal

history revealed she had 10 convictions for assault and 2 drug convictions. Although respondent had five children, respondent reported that she lived only with her husband and Cardell and received childcare help from her 18-year-old cousin and support from her sister-in-law who lived downstairs. Nevertheless, evaluations revealed respondent's frustration with childcare. The report, for example, stated that during the social history assessment, and while holding Cardell who was less than a month old, respondent questioned why her husband did not take the baby. The report noted respondent also had difficulty responding to the child's developmental cues. While Cardell was visibly exhausted and nodding off, respondent jostled him, placed him upright without supporting his head, and explained that she had to keep the baby awake so she could sleep at night. In response to the evaluator's statement that newborn babies sleep around the clock, respondent stated, "Oh not this baby" and called him a "bad baby." During another observation period, respondent threatened to "whoop" her nearly two-year-old son Michael when he placed a plastic orange on a prototype oven skillet.

¶ 7 Questionnaires thus revealed that respondent had difficulty identifying age-appropriate responsibilities and activities of children. She reported, for example, that it was acceptable to leave a young child on the toilet for over an hour after the child had an accident and also felt children could choose their own clothing for the weather and get themselves off to school. She reported that 8-to-10 year-olds could wash their own clothing, earn their own money for school supplies, and prepare their younger siblings for school; 13-year-olds should stay home to keep their parent company; and babies showed love by being well-behaved, but small infants had mean tempers.

¶ 8 In summary, the parenting assessment team found respondent was at a high risk for child maltreatment and the evaluators recommended a follow-up parenting assessment the next year. The team concluded that respondent's mild mental retardation had a significant impact on her

ability to safely and effectively parent her child independently without the aid of a coparent. The team cited respondent's difficulty understanding age-appropriate reactions and responsibilities of children and her self-reported history of conflict with others and managing her temper. During the assessment, respondent displayed irritability, anger, a short temper, and difficulty empathizing with her children. She placed her needs before that of the child, as evidenced by her attempts to keep her infant son awake so she could sleep at night, and reacted negatively to inaccurate expectations of her children. The team added that respondent historically had been noncompliant with treatment and had difficulty in maintaining stability in her life. Based on the foregoing, the team placed respondent in the "high risk" category for future maltreatment or neglect of her son Michael.

¶ 9 The State's third and final exhibit was the parenting team's assessment of the father, Michael R., also dated January 25, 2011. This evaluation revealed Michael R. was at moderate risk for future mistreatment or neglect of his son Michael and had an admitted history of aggressive behavior and mental illness. The father stated that he pleaded guilty to criminal sexual assault and was sentenced to five years' imprisonment. He was arrested in 2009 for failing to register as a sex offender and served prison time for this violation until March 2010. He also had a drug possession conviction and had been arrested nine times. In his interview, the father stated he was the primary caretaker for the children, that he did not leave respondent alone with the children or Cardell unless another adult was present and that he felt he needed to teach respondent about parenting and understanding DCFS. He acknowledged that respondent would not be able to care for the children without help and stated she would need someone there to help in his absence.

¶ 10 In addition to the above-stated exhibits, at the adjudicatory hearing held January 27, 2012, the State presented two witnesses. DeBorah Armand, a DCFS child protection specialist,

testified that she was assigned to Cardell's case on May 3, 2011, after Cardell had been removed from respondent's custody. When Armand told respondent that, according to the parenting assessment, respondent was mildly mentally retarded and could not parent absent her husband, respondent denied those allegations and also denied any mental health history. Respondent nonetheless admitted she was being medicated for depression and bipolar illnesses. Armand further testified that at some point she learned Cardell's natural father, respondent's husband, was required to register as a sex offender, but Armand did not speak with him because he already was incarcerated at that time. Armand confirmed that respondent had three prior indicated reports relating to other children.

¶ 11 On cross-examination, Armand admitted that she had not read the parenting assessment evaluation, but on redirect stated that she had reviewed the prior indicated reports and was aware of the facts and circumstances related to them. Armand also acknowledged on cross-examination that respondent had been compliant with therapy services and stated she took "good care of the child."

¶ 12 Michael Stevens testified next that he was the Lakeside Community Committee case manager assigned to the family in April 2009 and was then working on behalf of respondent's other children, Zion and Michael. Stevens testified that prior to Cardell's removal and as part of the recommended services relating to her other child Michael, respondent had been compliant with individual therapy, psychiatric and medication monitoring, and random urine tests. He testified that on receiving the results of the parenting assessment evaluation, he could not recommend respondent's unsupervised visits with Michael because of her limited parenting capacity, further noting that she had not parented any of her other children. Stevens testified that following Cardell's birth in November 2010 until May 2011, he visited the family weekly for two-hour supervised visits with their child, Michael. He explained that DCFS rules mandated

that his agency oversee the well-being of the siblings even if they themselves were not in the system. During this time, he was able to see the parents interact with Cardell and did not have concerns. He testified that during most of the visits, Cardell was sleeping. When Cardell was not, respondent's interaction with Cardell was "safe and appropriate," although several times Stevens had to inform respondent about the proper way to lift the newborn, as she would grab Cardell by the arms. In April 2011, respondent telephoned Stevens and informed him that her husband Michael R. had been taken back into the Department of Corrections custody for failing to register as a sex offender. Given the parenting assessment, Stevens testified that his agency developed concerns for respondent's caretaking of Cardell.

¶ 13 Stevens, however, acknowledged on cross-examination that prior to Michael R.'s incarceration, Stevens could not identify who was the primary caretaker and, during his visits, there was food in the home, which was clean, and there weren't any bruises on the child or signs of malnourishment. Stevens further acknowledged that he did not speak with respondent's in-home therapist who had treated her since September 2010 prior to making the determination regarding Cardell.

¶ 14 In addition to the witness testimony, the State read into the record for publication certain portions of the parenting assessment relating to respondent's care of Cardell. The State noted respondent's comments asking her husband why he did not take the baby, her actions in jostling the newborn to keep him awake, referring to Cardell as a "bad baby," and her general difficulties understanding Cardell's cues and developmental level. The State also read into the record respondent's mental health history as recorded in the parenting assessment. Following this evidence, the State rested its case.

¶ 15 Respondent called as a witness Angel Johnson, respondent's therapist. Johnson testified that she had been a therapist for two and a half years, had a Master's degree in social work, but

was not a licensed clinical social worker, although one oversaw Johnson's work with respondent. Respondent was Johnson's first client alleged to have abused and neglected her child, but since the commencement of therapy Johnson had been assigned other similar clients. Johnson testified that she had seen respondent weekly since September 2010 to address issues including depression, anxiety, and sobriety, and respondent had made progress in those areas. During the in-home counseling sessions, from November 2010 when Cardell was born to May 2011 when he was taken away, Cardell was always home. Michael R. was present on and off; when present, he would play with Cardell, but respondent was largely the one to hold, feed, and play with Cardell and also to change his diapers. Although Johnson never examined Cardell, she did not see any signs of neglect or abuse and did not have concerns about Cardell being in respondent's care. Johnson further testified that she had read the parenting assessment, but had not been consulted regarding her opinion with respect to respondent's ability to care for Cardell.

¶ 16 On cross-examination, Johnson acknowledged that she had not reviewed any DCFS documents relating to respondent, but had learned of respondent's involvement with DCFS through the counseling sessions and also through the parenting assessment evaluation, which respondent gave to her. Johnson further stated, consistent with a letter she wrote on behalf of respondent in May 2011, that she would not have diagnosed respondent as mildly mentally retarded, although Johnson acknowledged that such a diagnosis requires psychological testing, which she was not equipped to do. Johnson explained that as of May 2011, respondent was stable, had enrolled herself in school, worked part-time at a laundromat, received social security checks, and was able to maintain the home on her own. Johnson stated that, based on her observations and what respondent told her, Johnson did not see any reason why respondent could not parent Cardell independently. Johnson thus disagreed with the parenting assessment in that regard. In addition, Johnson stated that although it was her understanding respondent was

Cardell's primary caretaker prior to May 2011, she had not spoken with Michael R. about the matter, so her understanding was solely based on respondent's statements.

¶ 17 Respondent rested her case on this testimony. Following evidence and argument, the trial court entered an adjudication order finding Cardell neglected due to an injurious environment and abused due to a substantial risk of physical injury. In doing so, the trial judge stated he had considered the hearing testimony and all the documents admitted into evidence, including the parenting assessment and prior court orders entered against respondent's other children. He determined the parenting assessment was not too remote in time and although it was not written with the intent of applying to Cardell, the judge noted Cardell was mentioned in the report. The judge found persuasive that the report was prepared by a clinical coordinator, clinical psychologist, psychiatrist/clinical psychologist, and a licensed clinical social worker. The judge noted that the licensed clinical social worker would have had supervisory authority over respondent's witness Johnson and, in that sense, although Johnson was not concerned about respondent's interaction with Cardell, the judge could not discount the parenting assessment. Given respondent's history with DCFS, as well as the parenting assessment's statement that respondent could not parent without her husband, and the absence of her husband for his failure to register as a sex offender, the trial court concluded that the total evidence established anticipatory neglect and neglect based on an injurious environment. He further found the State had sustained its burden of establishing a substantial risk of injury based on respondent's DCFS history and the parenting assessment respecting both parents. The court declared that the parents would need to cooperate with DCFS, correct the conditions that brought Cardell into the system, or risk termination of their parental rights.

¶ 18 Following a dispositional hearing, on February 22, 2012, the court determined that both parents were unable for some reason other than financial circumstances alone to care for, protect,

train, or discipline Cardell. The court, accordingly, adjudged Cardel a ward of the court and appointed DCFS as his guardian. Based on the parties' stipulation and given that services were ongoing, the court entered a permanency order with the goal of returning Cardel home within 12 months, provided the parents engaged in services.

¶ 19

ANALYSIS

¶ 20 On appeal, respondent challenges only the trial court's findings underlying the adjudicatory order that Cardell was neglected, based on an injurious environment, and abused, based on a substantial risk of physical injury. See 705 ILCS 405/2-3(1)(b), 2-3(2)(ii) (West 2010). "Neglect" under the Act generally means the failure to exercise the care that circumstances justly demand and encompasses both wilful and unintentional disregard of parental duty. *In re S.R. and D.R.*, 349 Ill. App. 3d 1017, 1020 (2004). Whether a child has been neglected based on an injurious environment is an amorphous concept and must be determined on the particular facts surrounding each case; however, it has been interpreted to include the breach of a parent's duty to ensure a safe and nurturing shelter for her children. *In re John Paul J.*, 343 Ill. App. 3d 865, 879 (2003); *In re Edrika C.*, 276 Ill. App. 3d 18, 25-26 (1995). Abuse under the Act, on the other hand, occurs when the parent creates a substantial risk of physical injury to him that would likely cause "death, disfigurement, impairment of emotional health, or loss or impairment of any bodily function ***." 705 ILCS 405/2-3(2)(ii) (West 2010). Specific intent to hurt the child does not need to be established to prove abuse. *In re M.W.*, 386 Ill. App. 3d 186, 197 (2008). The State has the burden of proving allegations of neglect and abuse by a preponderance of the evidence, and each case must be decided on its own distinct set of facts. *Id.* A trial court's determination in those respects will not be disturbed unless it is against the manifest weight of the evidence. *In re Kamesha J.*, 364 Ill. App. 3d 785, 793 (2006).

¶ 21 Respondent argues that the trial court's neglect and abuse findings were against the

manifest weight of the evidence because the evidence was insufficient to establish "anticipatory neglect," *i.e.* that there was a probability Cardell would be subject to neglect or abuse based on the previous findings of abuse and neglect with respect to respondent's three other children. See *In re Arthur H.*, 212 Ill. 2d 441, 468 (2004). Respondent, for example, attacks the "nexus" between the conditions forming the basis of the prior indicated reports and Cardell's care, condition, and circumstances, arguing that the reports were too remote in time and citing a lack of evidence that the environment leading to the reports existed when Cardell was born. She adds that Cardell "never suffered any direct abuse or neglect" and "never witnessed any abuse or neglect" and that the trial testimony, rather than detracting from respondent's case, showed she was able to care for Cardell.

¶ 22 The theory of anticipatory neglect flows from the concept of an injurious environment, set forth in Act. *In re Arthur H.*, 212 Ill. 2d at 468. Although the neglect or abuse of one child does not conclusively show that of another, under the Act evidence of neglect and abuse of one child is admissible as evidence of neglect and abuse of another minor under the parents' care. *Id.* at 468; *In re T.S.-P.*, 362 Ill. App. 3d 243, 248-49 (2005); see also 705 ILCS 405/2-18 (3) (West 2008). Anticipatory neglect should be measured not only by the circumstances surrounding the previously neglected siblings, but also by the care and condition of the child named in the petition. *In re Arthur H.*, 212 Ill. 2d at 468. For the reasons to follow, we agree with the State that the evidence established both current and anticipatory neglect, as well as risk of abuse.

¶ 23 In this case, the parenting assessment evaluation, which was created several months after Cardell's birth by a psychiatrist, two clinical psychologists, an assistant psychologist, and a licensed clinical social worker, determined that respondent was in the "high risk" category for future maltreatment or neglect of her two-year-old son Michael based on her limited mental capacity and longstanding psychiatric illnesses. Following assessment periods in October and

December 2010, the psychiatrist diagnosed respondent with schizoaffective disorder, bipolar type, in remission; cocaine dependence, in sustained full remission; and mild mental retardation, after reviewing her mental health records. As the trial court stated, although the parenting assessment did not specifically relate to Cardell, there was sufficient evidence in the report of respondent's parenting difficulties with the child; for example, she was unable to hold the month-old infant properly, she attempted to keep him awake so she could sleep at night, and she called him a "bad baby." The report made clear that respondent, due to her own mental and psychological limitations, simply could not understand the developmental cues and cares of her children and thus concluded she could not parent alone absent the aid of a coparent. Yet, when respondent's husband Michael R. was incarcerated for failing to register as a sex offender, parenting alone is exactly what she would have been doing with Cardell. Given respondent's limitations, the previous findings of abuse and neglect against her other children, as well as her husband's incarceration, we conclude that the parents in this case exhibited the willful and unintentional disregard of duty toward their infant son Cardell and demonstrably failed to ensure a safe and nurturing environment for the child, leading to a risk of abuse. See *In re T.S-P.*, 362 Ill. App. 3d 243, 249 (2005); see also *See In re R.S.*, 382 Ill. App. 3d 453, 461-62 (2008) (noting the respondent's abuse/neglect case regarding another child was ongoing and the adjudication of *R.S.* was based on respondent's longstanding mental health issues, not specific occurrences as *In re Edrika C.*, 276 Ill. App. 3d 18 (1995)); *In re John Paul J.*, 343 Ill. App. 3d at 880 (upholding neglect finding, where evidence showed the respondent suffered from severe borderline personality disorder impairing her ability to parent and had been noncompliant with DCFS recommendations). The trial court was not required to refrain from acting until Cardell was injured. See *In re T.S-P.*, 362 Ill. App. 3d at 249.

¶ 24 We further note that although respondent was in compliance with the various

recommended therapies, including psychiatric, drug monitoring and DCFS services, the trial court appropriately found this compliance was not of a sufficient magnitude to overcome the competent evidence showing respondent simply was unable to parent alone due to her limited mental capacity. See *In re R.S.*, 382 Ill. App. 3d at 464. Similarly, although defense witness Johnson testified that she did not believe respondent was mildly mentally retarded and opined that respondent could parent independently, Johnson admitted she was not equipped to measure respondent's mental acuity in that regard, and the trial court credited the conclusions of the parenting assessment over those of Johnson. Indeed, it is the trial court that is in the superior position to observe the witnesses, assess their credibility, and weigh the evidence. *In re M.W.*, 386 Ill. App. 3d at 196. Under these circumstances, we cannot say the opposite conclusion from the trial court's ruling was clearly evident. We hold it was not against the manifest weight of the evidence for the trial court to adjudge Cardell to have been neglected and abused.

¶ 25 Finally, we note that in respondent's notice of appeal, she stated she was appealing both the court's dispositional order that she was unable to parent Cardell, as well as the adjudication order. According to respondent's reply brief, she has intentionally abandoned any challenge to the dispositional order at this stage, and therefore we need not address the issue.

¶ 26 CONCLUSION

¶ 27 We affirm the judgment of the Circuit Court of Cook County.

¶ 28 Affirmed.