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2012 IL App (3d) 110083-U

Order filed March 2, 2012

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2012

<i>In re</i> L.W.,)	Appeal from the Circuit Court
)	of the 10th Judicial Circuit,
a Minor)	Peoria County, Illinois,
)	
(The People of the State of Illinois,)	
)	
Petitioner-Appellee,)	Appeal No. 3-11-0083
)	Circuit No. 10-JA-0305
v.)	
)	
Christina F.,)	
)	Honorable
Respondent-Appellant).)	Mark E. Gilles,
)	Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Justices Holdridge and McDade concurred in the judgment.

ORDER

¶ 1 *Held:* (1) Section 2-13(1) of the Juvenile Court Act, allowing any person to file a neglect petition, does not violate respondent's constitutional rights; (2) the evidence was sufficient to prove that L.W. was neglected due to an injurious environment; and (3) the trial court's finding of unfitness under section 2-27 of the Juvenile Court Act was not against the manifest weight of the evidence.

¶ 2 The trial court found respondent, Christina F., dispositionally unfit under section 2-27 of the Juvenile Court Act (705 ILCS 405/2-27 (West 2008)) and ordered her to complete several tasks before the minor could be returned home. On appeal, respondent argues that (1) section 2-13(1) of the Juvenile Court Act (705 ILCS 405/2-13(1) (West 2008)) is unconstitutional, (2) the State failed to prove by a preponderance of the evidence that L.W. was neglected due to an injurious environment, (3) the trial court's finding that respondent was dispositionally unfit was against the manifest weight of the evidence, and (4) the court's finding of unfitness was a denial of her constitutional rights because she was the "non-offending parent." We affirm.

¶ 3 On August 5, 2010, respondent gave birth to a daughter, L.W.; Terrance W. is L.W.'s biological father. On October 19, 2010, Lenny Bruns, a Department of Children and Family Services (DCFS) child abuse investigator, signed and filed a petition in the circuit court alleging that L.W. was a neglected minor in that her environment was injurious to her welfare. Specifically, the petition stated:

"(A) On September 15, 2010, the mother and father argued when the father came home drunk, he hit the mother in the mouth; pushed her to the floor and choked her, he then grabbed the minor and while holding her sprayed disinfectant around the kitchen and said that it was flammable and he would burn down the house with the minor, he then picked up a knife and threatened the mother with the knife and set a curtain in the kitchen on fire which the mother had to put out and the father then said he would kill himself and the minor and the mother was able to take the minor and run from the home and police observed injuries to the mother; and

(B) Following the September 15, 2010, incident, DCFS was involved and the mother signed a safety plan wherein she was to live with her parents, that the father would only have supervised contact and that the minor would not be involved in contact that the mother had with the father and that she would take out an order of protection and the mother failed to take out an order of protection, the mother left her parents [sic] home with the minor on occasion and went to the father's home and the mother and minor finally moved back in with the father on or before October 18, 2010; and

(C) The father has a criminal history which includes: '95 aggravated criminal sexual abuse (delinquency) of a 6 year old child when he was 14 years old; '01 unlawful use of weapons [sic]; '03 DUI."

¶ 4 In her answer, respondent admitted that the parties argued and that the situation deteriorated "in some of the ways" alleged in paragraph A. She also admitted that she signed a safety plan. However, she denied that she failed to obtain an order of protection. She claimed that on October 15, 2010, she obtained an agreed order of paternity in family case No. 10-F-864, in which Terrance W. agreed not to harass or physically abuse respondent or neglect the minor child.

¶ 5 At the adjudicatory hearing, respondent denied the allegations in paragraph (A) of the petition and stated that she and respondent simply had an argument. She testified that she received a cut on her lip because Terrance W. accidentally elbowed her in the mouth. Respondent was then asked to read her statement given to police on September 15, 2010. She read the following to the court:

"He pushed me off the bed and I started falling on the wall. He then began yelling at me while I was on the floor and punched me in my mouth.

* * *

He then began throwing glass bottles and other items at me off the dresser and tried to throw a dresser drawer at me, threatened to kill me. When I stood up he leaned me backwards over the dresser and choked me. He hit me in my side and let me go and snatched the baby out of her crib.

* * *

We went into the kitchen and he continued to threaten me with the knife and the glass bottles. Said he was going to set the house on fire and started spraying cleaner on things. He said that we were all going to die and lit a curtain on fire. I put it out and he said I could leave but I couldn't take the baby because him and his daughter were going to die together, and said that he was going to call for his other kids so they could die with him, too. He kept going on and on and then said if it wasn't his baby I could take her and get out. So I said, okay, she's not yours. And I went outside to the car and called the police."

Respondent identified her signature at the bottom of the report, and the report was admitted into evidence. The State also admitted exhibits 6 and 7, which were pictures of respondent taken on the day in question showing the injuries to her lip and mouth.

¶ 6 Officer Mark Lamb testified when he arrived at Terrance W.'s residence on Griswold Street, the respondent was not there. She had called the station from another location and was on her way back to the apartment. When she arrived, respondent told Lamb that

Terrance W. came home drunk and they argued. She said that during the argument, Terrance W. hit her and grabbed the baby and started spraying disinfectant around the house. He threatened to burn the house down. He also threatened to kill respondent and the baby. Respondent also told Lamb that Terrance W. struck her and split her lip. Respondent gave a written statement of the incident as documented in the police report.

¶ 7 Officer Lamb further testified that Terrance W. let him into the home when he arrived at the scene and that he was cooperative and calm. On cross-examination by father's counsel, Lamb stated that he did not see anything that would indicate a struggle, nor did he smell anything unusual, such as aerosol or something burning. Officer Lamb did notice scorch marks on the curtain hanging in the kitchen, but Terrance W. told him that the marks were old.

¶ 8 Bruns testified that he was a child abuse investigator for DCFS. Bruns went to respondent's home on September 20, 2010, after receiving an abuse hotline tip of neglect based on the domestic violence incident between respondent and Terrance W. on September 15. Terrance W. answered the door and called for respondent. Bruns asked to speak with respondent, and she agreed. At first, respondent denied that the man who answered the door was L.W.'s father. She then admitted to Bruns that Terrance W. was L.W.'s father and that the baby was in the house. Bruns also spoke with respondent about the allegations contained in the police report. She told him that the report was essentially true, except that Terrance W. never threatened to hurt L.W.

¶ 9 On September 27, 2010, Bruns met with respondent and her support group for a "team" meeting. At the meeting, the group drafted a safety plan, which recommended that

respondent (1) obtain an order of protection against Terrance W., (2) move into her parent's home with L.W., and (3) refrain from involving L.W. in any contact between respondent and Terrance W. The safety plan permitted supervised contact between Terrance W. and L.W.¹

¶ 10 On the weekend of October 16, 2010, Bruns received another hotline report that respondent had moved back to the apartment on Griswold Street. Bruns went to respondent's parent's house, but respondent and L.W. were not there. When Bruns arrived at the Griswold residence, he found respondent and L.W. inside. Terrance W. was not there. The following Monday, Bruns filed a neglect petition in the circuit court.

¶ 11 Devan Ross, a court advocate at the Center for Prevention of Abuse, testified that respondent came to him seeking assistance in filing an order of protection. Respondent informed him that DCFS instructed her to file an order of protection against the father. He then told respondent that "it did seem more of a family case, and that she could go and file an F case in the circuit clerk's office, but I still told her she could come back at 2:30." Ross then gave respondent the forms to fill out and told her that if she came back at 2:30, they could go before the judge at 3 o'clock. Respondent never returned and never obtained an order of protection in domestic violence court.

¶ 12 The trial court found that the State proved the domestic violence allegations in paragraph A of the petition, as well as the allegation in paragraph B that the respondent failed to obtain an order of protection. However, the court held that the State failed to establish that respondent violated the portion of the safety plan that required her to live with her parents.

¹ Although the safety plan was admitted as respondent's exhibit 1 at the hearing, it has not been included as part of the record on appeal.

The written adjudication order stated that the trial court found the minor neglect based on "count A in entirety" and "count C in entirety" and "count B proven because [respondent] did not get an OP under Center of Prevention of Abuse."

¶ 13 A dispositional hearing was held on January 24, 2011, at which the court considered the dispositional hearing report authored by Melissa Borders, a child welfare specialist assigned to the case. In her report, Borders noted that respondent had signed a safety plan agreeing that she would (1) live with her parents, (2) only allow supervised visits between L.W. and Terrance W., and (3) seek an order of protection against Terrance W. Borders reported that respondent had left her parents' home with L.W. and had moved back in with Terrance W. Respondent failed to recognize any wrongdoing and lacked accountability. She refused to recognize that, even though she was not the parent directly responsible for the allegation of neglect, she and Terrance W. were putting L.W. at risk by engaging in domestic violence.

¶ 14 The report stated that respondent needed to accept accountability for putting her daughter at risk and needed to make the necessary changes to be able to provide a safe home for herself and her daughter. Borders further noted that respondent needed to be honest with the caseworkers and the court about her ongoing relationship with Terrance W. Borders reported that, according to respondent's Facebook page, respondent was expecting another child and that Terrance W. was the father. Borders opined that respondent would not succeed in any services provided if she continued to believe that she did nothing wrong and did not need to make changes in her life. Borders recommended that respondent be found unfit and that she continue to seek counseling and attend the domestic violence classes

recommended by DCFS.

¶ 15 The trial court found respondent dispositionally unfit and ordered that L.W. be made a ward of the court. The court awarded guardianship of L.W. to DCFS, and the agency placed the minor in the care of respondent's uncle.

¶ 16 I

¶ 17 Respondent first argues that the trial court lacked jurisdiction to hear the case because section 2-13(1) of the Juvenile Court Act, authorizing any adult to file a neglect petition, is unconstitutional.

¶ 18 Section 2-13(1) of the Juvenile Act provides:

“(1) Any adult person, any agency or association by its representative may file, or the court on its own motion, consistent with the health, safety and best interests of the minor may direct the filing through the State's Attorney of a petition in respect of a minor under this Act.” 705 ILCS 405/2-13(1) (West 2008).

All statutes are presumed to be constitutional, and thus, the party challenging the constitutionality of the statute bears the burden of rebutting the presumption. *In re Adoption of K.L.P.*, 198 Ill. 2d 448 (2002).

¶ 19 In *Goldstein v. Spears*, 536 F. Supp. 606 (N.D. Ill. 1982), a police officer filed a petition of wardship under that statute that is now section 2-13(1) alleging that the minor was delinquent. The court held that any adult was allowed to file a petition under the statute. In reaching its conclusion, the court noted that:

“[s]uch a filing does not, however, automatically make the minor named a ward of the court; it merely initiates the process by which such minor may be adjudicated a

ward. *** There is simply nothing unconstitutional about [an officer's] filing of a petition, especially since it was filed because of the minor's action in handling and firing a gun." *Goldstein*, 536 F. Supp. at 609.

¶ 20 In *People v. Piccolo*, 275 Ill. 453 (1916), the Illinois Supreme Court held that any reputable person who was a resident of the county could file a petition alleging that a minor was neglected or delinquent. In that case, a lay person (a neighbor) signed the petition alleging that the minor was neglected. The supreme court held that: “[t]he filing of such petition does not make the petitioner a party to the suit. This is simply a method provided whereby the people and the court may be informed of the situation which the petition alleges exists. Upon the filing of the petition the people become the real party complainant and must prosecute the proceeding.” *Piccolo*, 275 Ill. at 455.

¶ 21 We agree with the analysis in *Goldstein* and *Piccolo* and find that section 2-13 is constitutional. The statute permits any adult to file a neglect petition; it does not allow any adult to prosecute the petition on behalf of the minor. See *County of Cook ex rel. Rifkin v. Bear Stearns & Co., Inc.*, 215 Ill. 2d 466 (2005) (State's Attorney and Attorney General are only two officers who can constitutionally prosecute a case on behalf of the people). In this case, Bruns signed the petition and filed it in his capacity as a DCFS investigator. Bruns's act of filing the petition merely brought the cause to the State's attention. The State then prosecuted the neglect proceeding in the interest of L.W. Thus, the trial court had jurisdiction to hear the case under section 2-13(1). See *Piccolo*, 275 Ill. at 455.

¶ 22

II

¶ 23 Respondent argues that the trial court's finding of neglect was against the manifest weight of the evidence.

¶ 24 The trial court's determination in a neglect case will not be disturbed unless it is against the manifest weight of the evidence. *In re Arthur H.*, 212 Ill. 2d 441 (2004). A determination is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or the determination is unreasonable, arbitrary, or not based on the evidence presented. *In re D.F.*, 201 Ill. 2d 476 (2002).

¶ 25 Under the Juvenile Court Act, a child is neglected if the child's environment is injurious to his or her welfare. 705 ILCS 405/2-3(1)(a), (b) (West 2008). The State must prove an allegation of neglect by a preponderance of the evidence. *In re Arthur H.*, 212 Ill. 2d at 463-64. Neglect based on an injurious environment may be found where a parent has breached her duty to ensure a safe and nurturing shelter for the child. *In re N.B.*, 191 Ill. 2d 338 (2000). At the adjudicatory hearing, the relevant determination is whether the child is neglected, not whether the parents are neglectful. *In re Arthur H.*, 212 Ill. 2d at 467. Only after the trial court has adjudicated the child neglected is the trial court to consider the actions of the parents. *Id.* at 466.

¶ 26 Respondent argues that the State failed to prove neglect based on her failure to obtain an order of protection. We agree.

¶ 27 In this case, the safety plan required respondent to file an order of protection against Terrance W. DCFS referred respondent to the Center for Prevention of Abuse. At the center, respondent spoke to Ross, who informed her that she could also obtain injunctive relief against the father by filing a family case. Based on this advice, respondent filed a

family case and entered an agreed protective order with Terrance W. The evidence demonstrates that the safety plan did not specify where or how a "protective" order should be obtained. We cannot fault the respondent for following the advice of Ross, to whom she was referred by DCFS. Thus, the State failed to prove that L.W. was neglected based on respondent's failure to file a protective order in compliance with the safety plan as alleged in paragraph B.

¶ 28 Nevertheless, the evidence presented by the State was sufficient to prove the allegations of domestic violence contained in paragraph A and Terrance W.'s criminal history as alleged in paragraph C.

¶ 29 The State proved by a preponderance of the evidence that Terrance W. threatened to harm L.W. and physically abused respondent on the evening of September 15, 2010. Although respondent testified that she and Terrance W. merely had an argument, the police report respondent signed on the night in question describes a violent exchange in which Terrance W. pushed her and punched her in the mouth. The report also states that, while holding L.W., Terrance W. picked up a knife and threatened to kill himself and the baby and that he threatened to burn down the apartment. Officer Lamb also testified that respondent told him that Terrance W. hit her and threatened to harm L.W. This evidence is sufficient to establish neglect.

¶ 30 In addition, the State presented sufficient evidence to prove paragraph C. Certified copies of Terrance W.'s prior convictions were admitted into evidence. Those documents demonstrated that Terrance W. had a history of abusive and violent behavior. Thus, the trial court's finding of neglect was not against the manifest weight of the evidence.

¶ 31 Respondent argues that the evidence failed to demonstrate an injurious environment at the time the petition was filed, citing *In re R.W.*, 401 Ill. App. 3d 1100 (2010). In *In re R.W.*, the allegations of injurious environment were based on the disarray and uncleanness of the home. Those conditions had been remedied, for the most part, by the time the petition was filed. The appellate court reversed the finding of neglect. *In re R.W.*, 401 Ill. App. 3d at 1104. In this case, L.W. was removed because the father threatened to harm the minor and respondent. The neglect petition was filed four weeks after the safety plan was implemented. Nothing in the record indicates that at the time the petition was filed Terrance W. was no longer dangerous.

¶ 32 Respondent's claim that she was not the responsible party does not impact the trial court's decision that L.W. was neglected. The father physically battered respondent in L.W.'s presence and threatened to harm L.W. while he was holding the child in his arms. Respondent elected not to obtain an order of protection against Terrance W., and her reckless actions continued to allow Terrance W. to have contact with the minor. The trial court's finding of neglect was not arbitrary or unreasonable; it was based on the evidence presented.

¶ 33 III

¶ 34 Respondent claims that the trial court's finding of unfitness under section 2-27 was against the manifest weight of the evidence.

¶ 35 If the State meets its burden at the adjudicatory stage, the trial court must proceed to a second statutory stage in which the court determines whether "it is consistent with the health, safety, and best interest of the minor and the public that the minor be made a ward of the court." *In re N.B.*, 191 Ill. 2d at 343; 705 ILCS 405/2-21(2) (West 2008). Pursuant

to section 2-27 of the Juvenile Court Act, a minor may be adjudged a ward of the court and custody taken away from the parents where it is determined that the parents are either unfit or unable, for some reason other than financial circumstances alone, to care for, protect, train or discipline a minor or are unwilling to do so. 705 ILCS 405/2-27(1) (West 2008). The standard of proof in a court's section 2-27 finding of unfitness that does not result in termination of all parental rights is a preponderance of the evidence. *In re April C.*, 326 Ill. App. 3d 245 (2001).

¶ 36 On appeal, the trial court's dispositional determination will be reversed only if the findings of fact are against the manifest weight of the evidence or the trial court committed an abuse of discretion by selecting an inappropriate dispositional order. *In re April C.*, 326 Ill. App. 3d at 257. A finding is against the manifest weight of the evidence where a review of the record clearly shows that the result opposite to one reached by the trial court was the proper result. *In re T.B.*, 215 Ill. App. 3d 1059 (1991).

¶ 37 Here, the dispositional report stated that respondent signed the safety plan and agreed to abide by its recommendations in September of 2010. However, the report indicated that on October 18, 2010, respondent had left her parents' home and gone back to Terrance W.'s apartment with L.W. The report also indicated that respondent refused to take responsibility for her actions. She did not understand how her actions were harmful to her child. She did not recognize that by permitting domestic violence she was putting herself and L.W. at risk. She did not see the need to make any changes in her life and continued to foster a violent relationship between herself and Terrance W. Although respondent had agreed to the terms of the safety plan, she denied that an incident of domestic violence had occurred and

continued to allow Terrance W. unsupervised access to L.W. The evidence demonstrates that respondent was unable to protect herself or her child from further incidents of domestic violence. Accordingly, the trial court's determination that respondent was unfit based on her continuous neglect of L.W. was not against the manifest weight of the evidence.

¶ 38

IV

¶ 39

Respondent's remaining claim is that the court's finding of unfitness violated her constitutional right to custody of her child because she was the "non-offending parent."

¶ 40

As noted in the dispositional report, respondent fails to recognize that her actions contributed to L.W.'s neglect. Although Terrance W. physically abused respondent and threatened to harm L.W., respondent continued to place L.W. in an injurious environment by allowing contact with the violent and abusive parent. Thus, we reject respondent's claim that she is a "non-offending" party.

¶ 41

V

¶ 42

The judgment of the circuit court of Peoria County is affirmed.

¶ 43

Affirmed.