

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2014 IL App (4th) 140459-U

NO. 4-14-0459

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

October 2, 2014

Carla Bender

4th District Appellate

Court, IL

In re: H.H., a Minor,)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
Petitioner-Appellee,)	Adams County
v.)	No. 13JA45
ERIN STARKS,)	
Respondent-Appellant.)	Honorable
)	John C. Wooleyhan,
)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Justices Pope and Knecht concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's finding the minor was neglected based on an anticipatory neglect theory was not against the manifest weight of the evidence where, *inter alia*, respondent still had difficulty implementing parenting skills after receiving services and her live-in boyfriend was on mandatory supervised release and had a significant criminal history.

¶ 2 In September 2013, the State filed a petition for adjudication of wardship as to H.H. (born in 2013), the child of respondent, Erin Starks. In November 2013, respondent filed a motion to transfer the cause to Hancock County, which the Adams County circuit court denied. After a March 2014 adjudicatory hearing, the court found the minor child was abused and/or neglected. In May 2014, the court made the minor child a ward of the court and appointed the Department of Children and Family Services (DCFS) as her guardian.

¶ 3 Respondent appeals, contending the trial court erred by (1) denying her motion to transfer the case to Hancock County and (2) finding H.H. abused and/or neglected. We affirm.

¶ 4

I. BACKGROUND

¶ 5 The September 2013 petition for adjudication of wardship alleged H.H. was neglected and/or abused as her environment was injurious to her health and well-being. It noted the following: (1) H.H. was a newborn; (2) her two older siblings, B.S. and P.S., were in DCFS care (In re B.S., No. 12-JA-2 (Cir. Ct. Hancock Co.); In re P.S., No. 12-JA-3 (Cir. Ct. Hancock Co.)); (3) her parents had failed to make progress with their services in regard to the other siblings, and due to that, DCFS has requested the termination of parental rights in the other cases; and (4) respondent's current boyfriend had a criminal record, including aggravated battery and driving under the influence (DUI) with a child in the car. We presume the petition was alleging neglect of H.H. pursuant to section 2-3(1)(b) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(1)(b) (West 2012)), which defines a neglected minor as "any minor under 18 years of age whose environment is injurious to his or her welfare." While respondent's estranged husband, Paul Starks, was listed as H.H.'s father in the petition, the reports in the record indicate respondent has stated another man is the biological father of H.H. At the time of H.H.'s birth, respondent was living with her boyfriend, Art Huston, at the home of his father, Dewey Huston. The record does not indicate Art is the biological father of H.H.

¶ 6 In her November 2013 motion to transfer, respondent asserted the cause should be in Hancock County under the doctrine of *forum non conveniens* and the venue statute, which is section 2-2 of the Juvenile Court Act (705 ILCS 405/2-2 (West 2012)). At the hearing on the motion to transfer, Jenna Miller, a child-welfare specialist with DCFS, testified she had been working with respondent since June 2012. Protective custody of respondent's two older children, B.S. and P.S., occurred in Hancock County, and the petitions for adjudication of their wardship were filed in Hancock County. At the time of the hearing, one of the children was in a foster

home in Adams County, and one was in a home in Hancock County. Miller further testified H.H. was born in Hancock County, and she was taken into protective custody on September 5, 2013, in Hancock County. DCFS placed H.H. in a foster home in Adams County. The Hancock County State's Attorney refused to file a petition regarding H.H., and thus DCFS took protective custody a second time of H.H. on September 9, 2013, in Adams County. A temporary custody hearing was held in Adams County on September 11, 2013.

¶ 7 Miller also explained Hancock County is located directly north of Adams County. Hancock County's county seat is Carthage, which is about a 30-minute drive from Quincy in Adams County.

¶ 8 Respondent testified she was living in Hancock County when H.H. was born, which was two days before DCFS took protective custody of H.H.

¶ 9 After hearing the parties' arguments, the trial court denied respondent's motion to transfer. It explained section 2-2 of the Juvenile Court Act provides venue lies where the child resides or is found and the evidence showed H.H. had been in Adams County since shortly after her birth.

¶ 10 On March 13, 2014, the trial court held the adjudicatory hearing. The State again presented the testimony of Miller as well as Mark Foley, a DCFS investigator. Additionally, the State presented copies of the following: (1) the wardship petitions, the adjudicatory orders, and the dispositional orders in the juvenile cases involving B.S. and P.S. (State's exhibit No. 1); (2) several documents from Art's Hancock County criminal case No. 09-CF-31 (State's exhibit No. 2); (3) the Illinois Department of Corrections (DOC) website inmate search page for Art (State's exhibit No. 3); and (4) DCFS's September 9, 2013, service plan for this family (State's exhibit No. 4). The information for Art's aggravated DUI conviction stated it was his third violation of

the statute and listed, as the violated section, section 11-501(d)(1)(A) of the Illinois Vehicle Code (Code) (625 ILCS 5/11-501(d)(1)(A) (West 2008)), which addresses third violations. The information did not mention a child and did not list section 11-501(d)(2)(B) of the Code (625 ILCS 5/11-501(d)(2)(B) (West 2008)), which addresses third violations and transporting a child under 16. Art was originally sentenced to probation in case No. 09-CF-31, but the Hancock County circuit court later revoked the probation because Art admitted committing three criminal offenses while on probation. The court resentenced Art to DOC. The DOC website listed Art's DUI offense as "AGG DUI 3rd + DUI W/CHILD PASS." Respondent testified on her own behalf. The relevant testimony from the adjudicatory hearing is set forth below.

¶ 11 Miller testified she began working on the case when B.S. and P.S. were taken into custody in June 2012. In her opinion, the parents have not made progress since the children had been taken into custody. Miller explained that, in the September 9, 2013, service plan respondent received an unsatisfactory rating for parenting because, while she had completed a parenting class, respondent had trouble displaying or demonstrating parenting during visitation. Respondent was rated satisfactory for mental-health and cooperation because she was participating in mental-health services and cooperating with DCFS. Last, respondent received an unsatisfactory rating for housing because the home she was living in was not adequate for three children and she had not obtained employment. Miller recommended the goal in B.S.'s and P.S.'s cases be changed to substitute care pending a court determination of parental fitness because the children had been in foster care for 1 1/2 years and the parents were not making progress. Miller also testified she talked with Foley on September 4, 2013, and recommended H.H. needed to be in care because respondent was still struggling with services. Last, Miller testified B.S. and P.S. had been brought into custody because Paul inflicted excessive corporal

punishment on B.S., respondent and Paul had a domestic-violence incident in front of B.S. and P.S., and Paul and respondent's home was unsanitary.

¶ 12 As to parenting, Miller explained respondent could not parent both B.S. and P.S. at the same time. During visits at the library, one of the children would run off, and respondent would have no idea where that child was. Miller also stated respondent had a list of nutritional snacks the children liked but would instead bring Pop-Tarts. Respondent also failed to regularly bring age-appropriate activities for the children when visits were at the DCFS visiting room.

¶ 13 Foley testified he took protective custody of H.H. because he received a report that indicated (1) the family had a history of abuse and neglect, (2) respondent had demonstrated a lack of progress and cooperation with services, and (3) concerns existed about a "psychological [*sic*] that had been done."

¶ 14 Respondent testified she had been living with Art at Dewey's home since April 2013. The home was clean, and she had a crib for H.H. in her bedroom. Respondent also had clothes, diapers, and bottles for H.H. She acknowledged Art had an aggravated DUI conviction involving a child passenger. Respondent also testified that, in January 2014, the Hancock County circuit court had found she had made substantial progress.

¶ 15 After a May 20, 2014, dispositional hearing, the trial court made H.H. a ward of the court, found respondent was unfit or unable to care for H.H., and appointed DCFS as H.H.'s guardian.

¶ 16 On May 22, 2014, respondent filed a timely notice of appeal in sufficient compliance with Illinois Supreme Court Rule 303 (eff. May 30, 2008). See Ill. S. Ct. R. 660(b) (eff. Oct. 1, 2001) (providing the rules governing civil cases govern appeals from final judgments in all proceedings under the Juvenile Court Act, except for delinquency cases). On

June 13, 2014, respondent filed a timely amended notice of appeal with this court, appealing the denial of the transfer motion, the adjudicatory order, and the dispositional order. See Ill. S. Ct. R. 303(b)(5) (eff. May 30, 2008). Thus, this court has jurisdiction of the denial of the transfer motion and the adjudicatory order under Illinois Supreme Court Rule 304(b)(1) (eff. Feb. 26, 2010). See *In re Austin W.*, 214 Ill. 2d 31, 43-44, 823 N.E.2d 572, 580 (2005) (noting "dispositional orders are generally considered 'final' for the purposes of appeal").

¶ 17

II. ANALYSIS

¶ 18

A. Motion To Transfer

¶ 19

Respondent asserts the trial court abused its discretion by denying her motion to transfer the cause to Hancock County based on *forum non conveniens*. She does not argue venue was improper under section 2-2 of the Juvenile Court Act (705 ILCS 405/2-2 (West 2012)). The State asserts respondent cannot raise this issue on appeal because she did not appeal the order immediately under Illinois Supreme Court Rule 306(a)(2) (eff. Feb. 16, 2011). We note respondent cites no authority the equitable doctrine of *forum non conveniens* applies to proceedings under the Juvenile Court Act.

¶ 20

Section 2-2 of the Juvenile Court Act (705 ILCS 405/2-2 (West 2012)) provides the following:

"(1) Venue under this Article lies in the county where the minor resides or is found.

(2) If proceedings are commenced in any county other than that of the minor's residence, the court in which the proceedings were initiated may at any time before or after adjudication of wardship transfer the case to the county of the minor's residence by

transmitting to the court in that county an authenticated copy of the court record, including all documents, petitions and orders filed therein, and the minute orders and docket entries of the court.

Transfer in like manner may be made in the event of a change of residence from one county to another of a minor concerning whom proceedings are pending."

Thus, the statute addresses where venue lies and when and how a cause may be transferred. It is consistent with the purpose and policy of the Juvenile Court Act, under which the best interests of the minor child is the paramount consideration (see *In re R.G.*, 2012 IL App (1st) 120193, ¶ 31, 977 N.E.2d 869). Clearly, venue under the Juvenile Court Act is focused on the child's residence and location. None of the cases that respondent cites on *forum non conveniens* were under the Juvenile Court Act. Further, respondent fails to argue why a doctrine, whose purpose is to ensure a convenient trial (*Dawdy v. Union Pacific R.R. Co.*, 207 Ill. 2d 167, 173-74, 797 N.E.2d 687, 694 (2003)), would apply to juvenile court proceedings, where the focus is on the child and the venue provision is consistent with that purpose. Accordingly, we find respondent has failed to show the doctrine would apply to proceedings under the Juvenile Court Act.

¶ 21 Moreover, we note this is not a case where DCFS's placement of the child was to find a "friendly forum" or to inconvenience respondent. The evidence at the transfer hearing indicates H.H. was placed in a foster home in Adams County before DCFS learned the Hancock County State's Attorney would not act in this case. Also, one of H.H.'s siblings was in an Adams County foster home. Additionally, the county seats of Hancock and Adams Counties were only a 30-minute drive from each other.

¶ 22 B. Neglect Finding

¶ 23 Cases involving dependency and neglect allegations and the adjudication of wardship are *sui generis*, and thus courts must decide them based on their unique circumstances. *In re A.P.*, 2012 IL 113875, ¶ 17, 981 N.E.2d 336. Moreover, in any proceeding brought under the Juvenile Court Act, including an adjudication of wardship, the paramount consideration is the child's best interests. *A.P.*, 2012 IL 113875, ¶ 18, 981 N.E.2d 336.

¶ 24 The Juvenile Court Act provides a two-step process the trial court must utilize to decide whether a minor should become a ward of the court. *A.P.*, 2012 IL 113875, ¶ 18, 981 N.E.2d 336. Step one of the process is the adjudicatory hearing, at which the court considers only whether the minor is abused, neglected, or dependent. See 705 ILCS 405/2-18(1) (West 2012); *A.P.*, 2012 IL 113875, ¶ 19, 981 N.E.2d 336. If a trial court determines the minor is abused, neglected, or dependent at the adjudicatory hearing, then the court holds a dispositional hearing, where the court determines whether it is consistent with the health, safety, and best interests of the minor and the public the minor be made a ward of the court. *A.P.*, 2012 IL 113875, ¶ 21, 981 N.E.2d 336.

¶ 25 Here, respondent challenges only the first step, the trial court's neglect finding. The State bears the burden of proving a neglect allegation by a preponderance of the evidence, which means it must show the allegations are more probably true than not. See *A.P.*, 2012 IL 113875, ¶ 17, 981 N.E.2d 336. On review, this court will not reverse a trial court's neglect finding unless it is against the manifest weight of the evidence. See *A.P.*, 2012 IL 113875, ¶ 17, 981 N.E.2d 336. "A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident." *A.P.*, 2012 IL 113875, ¶ 17, 981 N.E.2d 336.

¶ 26 In this case, the neglect finding is premised upon an anticipatory neglect theory. Under that theory, "the State seeks to protect not only children who are the direct victims of

neglect or abuse, but also those who have a probability to be subject to neglect or abuse because they reside, or in the future may reside, with an individual who has been found to have neglected or abused another child." *In re Arthur H.*, 212 Ill. 2d 441, 468, 819 N.E.2d 734, 749 (2004).

The theory flows from the concept of an "injurious environment" set forth in the Juvenile Court Act. *Arthur H.*, 212 Ill. 2d at 468, 819 N.E.2d at 749.

¶ 27 Our supreme court has explained the proper analysis of an anticipatory neglect theory as follows:

"Although our appellate court has recognized the theory of anticipatory neglect for some time ([citation]), our courts have also held that there is no *per se* rule that the neglect of one child conclusively establishes the neglect of another child in the same household. [Citations.] Rather, such neglect should be measured not only by the circumstances surrounding the sibling, but also by the care and condition of the child in question. [Citations.]

Although section 2-18(3) of the [Juvenile Court] Act (705 ILCS 405/2-18(3) (West 2000)) provides that the proof of neglect of one minor shall be admissible evidence on the issue of the neglect of any other minor for whom the parent is responsible ([citation]), we emphasize that the mere admissibility of evidence does not constitute conclusive proof of the neglect of another minor. Each case concerning the adjudication of minors, including those cases pursued under a theory of anticipatory neglect based upon the neglect of a child's sibling, must be reviewed according to its own

facts." (Internal quotation marks omitted.) *Arthur H.*, 212 Ill. 2d at 468-69, 819 N.E.2d at 749-50.

¶ 28 The facts at the adjudicatory hearing showed DCFS opened an intact family case in October 2011, and in May 2012, the Hancock County circuit court found B.S. and P.S. were neglected based on an environment that was injurious to their welfare. In June 2012, that court made the minor children wards of the court and granted custody of them to DCFS. In September 2013, Miller's service plan for respondent had a proposed goal of substitute care pending termination of parental rights as to B.S. and P.S. and noted DCFS was in the process of filing the petition for termination of parental rights. Respondent notes B.S. and P.S. went into DCFS care due to their father's excessive corporal punishment of B.S., domestic violence, and unsanitary living conditions, and those situations had been rectified. While respondent's current residence is clean, the home belongs to her boyfriend's father, Dewey, and has only three bedrooms. Her boyfriend has two children of his own, and Dewey lives in the home. Thus, the size of the home was definitely an issue. Moreover, while Paul was no longer in the picture, Art had admitted the State's allegations in a January 2012 petition to revoke his probation, which included an allegation he committed the offense of domestic battery against Dewey. Respondent also testified she was aware defendant had committed a DUI with a child in his car. Additionally, the petition to revoke probation and the other charges in the 2009 criminal case indicate Art has a history of physical altercations with police officers. According to State's exhibit No. 3, Art was to be discharged from mandatory supervised release in January 2015.

¶ 29 Additionally, respondent had been rated unsatisfactory in September 2013 as to parenting and housing. Despite completing a parenting class, respondent continued to struggle with displaying or demonstrating parenting during visitation. Miller described the visits as

