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2014 IL App (4th) 140555-U  
NOS. 4-14-0555, 4-14-0556 cons.  
IN THE APPELLATE COURT

**FILED**  
October 15, 2014  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

OF ILLINOIS

FOURTH DISTRICT

In re: D.H., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Macon County
v.            (No. 4-14-0555)	)	No. 13JA125
ASHLEEY HALE,	)	
Respondent-Appellant.	)	
_____	)	
In re: D.H., a Minor,	)	
THE PEOPLE OF THE STATE OF ILLINOIS,	)	
Petitioner-Appellee,	)	
v.            (No. 4-14-0556)	)	Honorable
ALLEN HALE,	)	Timothy J. Steadman,
Respondent-Appellant.	)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.  
Presiding Justice Appleton and Justice Harris concurred in the judgment.

**ORDER**

¶ 1 *Held:* The appellate court affirmed the trial court's judgment, which adjudicated the respondents' child a (1) neglected minor and (2) ward of the court.

¶ 2 In August 2013, the State filed a petition for adjudication of wardship, alleging, in pertinent part, that D.H. (born July 17, 2013) was a neglected minor under section 2-3(1)(a) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(1)(a) (West 2012)). Following a May 2014 hearing, the trial court adjudicated D.H. a neglected minor based on an uncontroverted "failure to thrive" medical diagnosis. In June 2014, the court entered a dispositional order, adjudicating D.H. a ward of the court and appointing the Department of Children and Family Services (DCFS) as D.H.'s guardian.

¶ 3 Respondents appeal, arguing that the trial court's findings that (1) D.H. was a neglected minor and (2) it was in D.H.'s best interest to be made a ward of the court and to appoint DCFS as his guardian were against the manifest weight of the evidence. We disagree and affirm.

¶ 4 I. BACKGROUND

¶ 5 In August 2013, the State filed a petition for adjudication of wardship, which was based solely on D.H. gaining only nine ounces during the first six weeks of his life without a medical reason for that condition. In particular, the State alleged that D.H. was a neglected minor under the Juvenile Court Act in that he was (1) not receiving the proper or necessary support as required by law for his well-being (705 ILCS 405/2-3(1)(a) (West 2012)) (count I) and (2) living in an environment that was injurious to his welfare (705 ILCS 405/2-3(1)(b) (West 2012)) (count II). The State's petition also alleged that D.H. was an abused minor in that respondents (1) inflicted, caused to be inflicted, or allowed to be inflicted upon D.H. physical injury other than by accidental means (705 ILCS 405/2-3(2)(i) (West 2012)) (count III) and (2) created a substantial risk of physical injury to D.H. (705 ILCS 405/2-3(2)(ii) (West 2012)) (count IV).

¶ 6 A. The Evidence Presented at the Adjudicatory Hearing

¶ 7 1. *The State's Evidence*

¶ 8 At the May 2014 adjudicatory hearing, Dr. Lauren Fore, a family-medicine resident, testified that on August 21, 2013, D.H., who was then six weeks old, was admitted to Decatur Memorial Hospital for a failure-to-thrive evaluation. Fore explained that "failure to thrive is when a child's weight or their rate of weight gain is significantly below other children of a similar age and gender." At birth, D.H. weighed seven pounds, six ounces. (The record shows that D.H. weighed 7 pounds, 15 ounces when he was admitted to the hospital.) Fore noted that medical or environmental reasons can cause failure to thrive, but in D.H.'s case, a physical exam,

blood test, and computed tomography scan of D.H.'s brain ruled out any such "organic" causes. Although D.H. was under the care of a cardiologist for a possible heart condition, Fore opined that D.H.'s low weight was unrelated to that issue.

¶ 9 During D.H.'s hospitalization, Fore spoke to respondent mother, who Fore characterized "as a bit detached." Fore informed respondent mother that she should (1) breast-feed D.H. every two to three hours and (2) ensure that D.H. consumes between two to three ounces at each feeding. Fore noted that respondent mother had to be reminded often to breast-feed D.H.

¶ 10 On August 23, 2013, Fore discharged D.H. from the hospital with a failure-to-thrive diagnosis. During his two-day hospital stay, D.H. had "a significant weight gain." (The record shows that D.H. weighed 8 pounds, 12 ounces upon his discharge from the hospital.) Fore confirmed that no medical evaluation or assessment provided any other indication for D.H.'s failure to gain weight other than inadequate nourishment.

¶ 11 Fore acknowledged that growing medical research favored breast milk over manufactured formula, adding that in some instances, formula is recommended. In this regard, Fore stated that upon D.H.'s discharge, Fore's supervising physician recommended that respondent mother breast-feed D.H. and, as required, supplement his diet with 20 calories of formula.

¶ 12 The day after D.H.'s admission to the hospital, Sherea James, a DCFS investigator, met with respondents. Respondent mother informed James that she and respondent father were from Peoria but moved to Decatur because Peoria could not accommodate them in its homeless shelters. Respondent mother informed James that the Decatur shelter staff would not let her breast-feed D.H. properly. Respondent father concurred with respondent mother's account. Respondents stated that residing with their respective families was not an option because of the abusive nature of that situation. Thereafter, James took D.H. into protective custody, con-

cluding that respondents were not able to safely care for D.H. due to their circumstances.

¶ 13 Ardena Hunter, a full-time volunteer administrator at the God's Shelter of Love homeless shelter, testified that respondents arrived at the shelter two days after D.H. was born. Hunter explained that residents do not pay to stay at the shelter but are required to obey the "house rules," which include (1) performing a daily chore that takes no more than 30 minutes to complete, (2) maintaining their living area, and (3) performing basic hygiene.

¶ 14 While at the shelter, respondent father refused to take a bath, brush his teeth, or comb his hair. Respondent father also did not allow respondent mother to provide formula to D.H. because "he wasn't going to put any of that poison into his baby." Despite the efforts of the shelter staff to educate respondent mother about breast-feeding, she listened only to respondent father. Hunter felt that respondent mother did not want to breast-feed D.H., noting that when she went upstairs to her bedroom to do so, she would return in 5 to 10 minutes. Hunter disputed respondents' claim that shelter staff prevented respondent mother from breast-feeding, stating that respondent mother "could go upstairs all day long and feed [D.H.]" without interruption.

¶ 15 Beverly Burgett, the supervisor at God's Shelter of Love, testified consistently with Hunter's account regarding the operation of the center and the duties required of its residents. Burgett opined that the major issue was respondents' inability to parent D.H. Respondents (1) refused the shelter's offer to provide lactation classes, (2) would not supplement D.H.'s diet with formula, (3) did not provide information regarding D.H.'s weight, and (4) kept D.H. covered so as not to reveal his body. Burgett noted that when she spoke to respondents, respondent father always answered for respondent mother.

¶ 16 During one evening, Burgett heard D.H. "crying for a good length of time." When the crying continued, Burgett knocked on the door and let herself into the room, where she

found respondents "involved with themselves." Burgett took D.H. and instructed respondents to get dressed and meet her downstairs. Burgett attempted to sooth D.H. for about 15 minutes before respondents appeared. Burgett then instructed respondent mother to breast-feed D.H. until he stopped nursing because he was extremely hungry. Burgett explained that respondents could no longer live at the shelter because of the verbally abusive behavior respondent father exhibited toward her when she visited the hospital to check on D.H.

¶ 17

## *2. Respondents' Evidence*

¶ 18 Sandra Yockey, a pediatrician at the Decatur Community Health Improvement Center, testified that on July 20, 2013—three days after D.H.'s birth—he weighed 6 pounds, 11.2 ounces. From July 22, 2013, when D.H. was five days old, until July 31, 2013, when D.H. was 14 days old, Yockey examined D.H. on three separate occasions. In each instance, Yockey documented that although D.H. was below his birth weight, he was "still nourished and well developed." At an August 2, 2013, medical evaluation, Yockey documented that D.H. had an "inadequate weight gain." Yockey recommended to respondent mother that she should supplement her breast-feeding with formula, but respondents rejected Yockey's advice.

¶ 19

At an August 6, 2013, evaluation, D.H. had surpassed his birth weight, and an August 9, 2013, evaluation revealed that D.H. had gained four ounces in three days, which Yockey noted was "a good weight gain." However, an August 19, 2013, examination revealed that D.H. had only gained 3 ounces over 10 days, which caused Yockey to become concerned. Two days later, Yockey admitted D.H. to Decatur Memorial Hospital, documenting that D.H. weighed 7 pounds, 14.1 ounces. In response to the trial court's inquiry, Yockey confirmed that she admitted D.H. to the hospital to ascertain why D.H. was not gaining weight.

¶ 20

### 3. *The Trial Court's Judgment*

¶ 21 After considering the evidence presented and counsels' arguments, the trial court found that D.H. was a neglected minor as the State alleged in count I of its August 2013 petition for adjudication of warship. Specifically, the court noted the following:

"[T]he court's ruling \*\*\* has very little, if anything, to do with the personality conflicts and the animosity that obviously existed at the shelter hearing between \*\*\* respondent parents and some of the [staff] who worked there. The primary focus of the court \*\*\* is the child and nothing else. With regard to the uncontradicted evidence, the court has heard that there was a substantial alarming weight loss that happened and once [D.H.] was admitted to the hospital, there was a rather dramatic increase in his body weight. You couple that with the fact that there is really an uncontradicted medical opinion here from \*\*\* Fore \*\*\* that [D.H.] did suffer from failure to thrive syndrome for nonorganic reasons. That is uncontradicted. \*\*\* Yockey simply didn't have enough information. [The court is] sure that's part of the reason \*\*\* Yockey referred [D.H.] for admission to the hospital. These opinions have not been rebutted. [The court] also think[s] the evidence is uncontradicted that for whatever reason, there is a failure on respondents' part to follow medical and nonmedical advice to supplement the breast[-]feeding with formula."

The court also found that the State had not met its burden of proving counts II, III, or IV as al-

leged in its August 2013 petition for adjudication of wardship.

¶ 22 B. The Evidence Presented at the Dispositional Hearing

¶ 23 1. *The State's Evidence*

¶ 24 At a June 2014 dispositional hearing, Angela Lograsso, D.H.'s court-appointed special advocate (CASA), testified that she observed two-hour visitations between D.H. and respondents on two separate occasions. Lograsso described respondents' home as dirty, in disarray, and, despite having a crib for D.H., sparsely furnished. Lograsso recounted that during her most recent visit, respondent mother tripped over a diaper bag and fell into the sofa while holding D.H. Lograsso noted that respondents care about [D.H.] but are very awkward when handling him. Lograsso taught respondents how to comfort, feed, and dress D.H. Respondents were unemployed and had unrealistic goals regarding how they would provide for D.H. Lograsso opined that it would not be safe to return D.H. to respondents' care.

¶ 25 Laura Salefski, a family advocate employed to provide respondents support, testified that she observed inappropriate behavior in that (1) respondent father bit D.H.'s head and (2) respondents held D.H. improperly, which could result in injury. Initially, Salefski secured housing for respondents and attempted to teach them life skills, such as how to care for themselves and D.H. Because of respondents' unwillingness to engage in parenting classes, however, family-advocacy services were discontinued.

¶ 26 Jessica Jenner, respondents' caseworker, confirmed that in November 2013, respondents stopped attending parenting classes. Jenner also had concerns about respondents' hygiene in that respondents wore the same clothes and did not bathe. In April and May 2014, Jenner attempted to perform a house visit but respondents refused her entry. Jenner did not consider it safe to return D.H. to respondents' care.

¶ 27 Respondents did not present any evidence.

¶ 28 *2. The Trial Court's Judgment*

¶ 29 After considering the evidence presented and counsels' arguments, the trial court entered a dispositional order, adjudicating D.H. a ward of the court and maintaining DCFS as D.H.'s guardian. In so finding, the court specifically noted that (1) respondents were not fully complying with the terms of their respective client-service plans, (2) respondents' residence was not "conducive to having the presence of an infant," and (3) respondents still had difficulties providing basic infant care.

¶ 30 This appeal followed.

¶ 31 **II. ANALYSIS**

¶ 32 **A. The Trial Court's Adjudicatory Finding**

¶ 33 Respondents argue the trial court's finding that D.H. was a neglected minor was against the manifest weight of the evidence. We disagree.

¶ 34 A wardship proceeding constitutes a significant intrusion into the sanctity of the family and should not be undertaken lightly. *In re A.P.*, 2012 IL 113875, ¶ 18, 981 N.E.2d 336. The primary consideration at an adjudicatory hearing is whether the minor is neglected as alleged by the State and not who might be responsible for the neglect. *Id.* ¶ 19, 981 N.E.2d 336. On appeal, a reviewing court will not reverse a trial court's determination of abuse or neglect unless it is against the manifest weight of the evidence. *In re An.W.*, 2014 IL App (3d) 130526, ¶ 55, \_\_\_ N.E.3d \_\_\_. "A finding is against the manifest weight of the evidence only if it is clearly apparent from the record that the trial court should have reached the opposite conclusion." *Id.*

¶ 35 In support of their argument, respondents direct our attention to the evidence presented at the May 2014 adjudicatory hearing, showing that (1) D.H. had steadily gained weight



prior to his August 2013 hospitalization, (2) D.H.'s steady weight gain attested to respondent mother's willingness to breast-feed, and (3) D.H. was receiving the proper care in that respondents ensured D.H.'s arrival at each appointment with Yockey. We are not persuaded.

¶ 36 In this case, the trial court adjudicated D.H. a neglected minor because he had been diagnosed with failure to thrive—that is, his weight and his rate of weight gain was significantly below other children of a similar age and gender. A summary of the pertinent evidence revealed that over a 10-day period immediately prior to his August 2013 admission to the hospital, D.H. gained only 3 ounces, and over the six-week period spanning his entire life, D.H. weighed approximately nine ounces more than his birth weight. In addition, testing prompted by medical concerns over D.H.'s low weight revealed no other cause for D.H.'s failure to thrive than inadequate nourishment. As the court correctly noted, this evidence—which formed the basis of the court's neglect adjudication—was uncontroverted. We note that in their brief to this court, respondents do not mention the aforementioned evidence.

¶ 37 Accordingly, reviewing the evidence under the appropriate standard of review, we conclude that the trial court's decision adjudicating D.H. a neglected minor was not against the manifest weight of the evidence.

¶ 38 B. The Trial Court's Dispositional Findings

¶ 39 Respondents argue the trial court's findings that it was in D.H.'s best interest to be made a ward of the court and to appoint DCFS as his guardian were against the manifest weight of the evidence. We disagree.

¶ 40 Section 2-22(1) of the Juvenile Court Act provides as follows:

"At the dispositional hearing, the court shall determine whether it is in the best interests of the minor and the public that he be made a

ward of the court, and, if he is to be made a ward of the court, the court shall determine the proper disposition best serving the health, safety and interests of the minor and the public. The court also shall consider the permanency goal set for the minor, the nature of the service plan for the minor and the services delivered and to be delivered under the plan. All evidence helpful in determining these questions, including oral and written reports, may be admitted and may be relied upon to the extent of its probative value, even though not competent for the purposes of the adjudicatory hearing." 705 ILCS 405/2-22(1) (West 2012).

¶ 41 Under section 2-27 of the Juvenile Court Act, the trial court may appoint DCFS as guardian of the minor if it determines that the parents are unfit or unable, for reasons other than financial circumstances alone, "to care for, protect, train or discipline the minor or are unwilling to do so, and that the health, safety, and best interest of the minor will be jeopardized if the minor remains in the custody of his or her parents." 705 ILCS 405/2-27(1) (West 2012). The trial court's dispositional determination will be reversed only if the factual findings are against the manifest weight of the evidence or if the court abused its discretion by selecting an inappropriate dispositional order. *In re Juan M.*, 2012 IL App (1st) 113096, ¶ 68, 968 N.E.2d 1184.

¶ 42 The record in this case shows that the trial court's determination at the dispositional hearing adjudicating D.H. a ward of the court and appointing DCFS as D.H.'s guardian was not against the manifest weight of the evidence. In particular, testimony provided by Lograsso, the CASA representative, and Jenner, respondents' caseworker, showed that respondents were neither in a position to reacquire custody of D.H. nor provide for D.H.'s welfare. We

also agree with the court's findings, which called into question respondents' ability to successfully parent D.H.

¶ 43 Accordingly, we conclude that the factual findings underlying the trial court's dispositional order are not against the manifest weight of the evidence and the court did not abuse its discretion by appointing DCFS as D.H.'s guardian.

¶ 44 III. CONCLUSION

¶ 45 For the reasons stated, we affirm the trial court's judgment.

¶ 46 Affirmed.