2016 IL App (1st) 160678-U

THIRD DIVISION
August 3, 2016

No. 1-16-0678

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re M.P.,	)	
	)	Appeal from the
Minor-Respondent-Appellee	)	Circuit Court of
	)	Cook County, Illinois,
(People of the State of Illinois,	)	Child Protection Division.
	)	
Petitioner-Appellee,	)	No. 14 JA 01113
v.	)	
	)	Honorable
Rachel P.,	)	Andrea Buford
	)	Judge Presiding.
Respondent-Appellant).	)	

PRESIDING JUSTICE MASON delivered the judgment of the court.
Justices Fitzgerald Smith and Pucinski concurred in the judgment.

ORDER

¶ 1 *Held*: Trial court's finding that minor, who had sustained two skull fractures in two months while in his mother's care, was abused and neglected was not contrary to the manifest weight of the evidence.

¶ 2 The State filed a petition for wardship over 12-month-old M.P., following two incidents in which M.P. sustained skull fractures while in the care of Rachel P., his mother. After an adjudicatory hearing, the trial court found that M.P. was neglected due to lack of care, and an

injurious environment, and abused due to his parent or caregiver's creation of a substantial risk of physical injury. After a dispositional hearing, the court placed M.P. under the guardianship of the Department of Children and Family Services (DCFS). Rachel appeals the trial court's findings, contending that they are contrary to the manifest weight of the evidence. We disagree and affirm.

¶ 3 M.P. is a male minor born on September 21, 2013. On July 19, 2014, Rachel noticed a bump on her son's head. She also observed that her 10-month-old was sleepier than usual and was throwing up after he ate. On July 20, 2014, Rachel took M.P. to the emergency room at Advocate Trinity Hospital in Chicago where a CT scan was performed, which revealed a skull fracture.

¶ 4 While at Trinity and after the diagnosis of a skull fracture, Rachel spoke to a nurse with M.P. present. Rachel was allowing M.P. to climb on a sofa unattended and the nurse admonished her that she should sit close to M.P. and have him within arm's reach at all times, particularly since he had just been diagnosed with a skull fracture.

¶ 5 Personnel at Trinity advised Rachel that they planned to transfer M.P. to Advocate Christ Hospital in Oak Lawn, but when Rachel felt the transfer was not happening quickly enough, she decided to take M.P. there herself against medical advice. She returned an hour later to Trinity after hospital personnel contacted her by phone and told her the police and DCFS had been called. M.P. was later medically transferred to Advocate Christ.

¶ 6 M.P. was diagnosed with a right parietal skull fracture, a subdural hematoma and a larger scalp hematoma. Rachel described the cause of the injury as M.P. hitting his head on the underside of a coffee table while he was trying to move around the living room. Dr. Suzanne Dakil, then director of the child protection team at Advocate Christ, did not examine M.P. in July, but reviewed and discussed with her nurse practitioner the latter's diagnosis and together

they reviewed test results. Based on this information, Dr. Dakil described the effect of the injury—a skull fracture—as more than she would expect from an infant bumping his head while crawling, but believed it was "not impossible" that the injury occurred as Rachel described. In Dr. Dakil's words, "There was a history of trauma that seemed possible and plausible based on the child's development." Dr. Dakil preliminarily concluded that the July injury was accidental.

¶ 7 A scene investigation was necessary for M.P. to be released from the hospital in July and DCFS child protection investigator Rhonda Rodgers made arrangements to meet Rachel at Rachel's home on July 22. Rachel was an hour late, explaining that she had to drop off her boyfriend and had run out of gas. Rodgers recommended parenting and anger management services for Rachel. During the meeting, Rachel was combative and angry and responded that she did not need any of the recommended services. M.P. was later discharged to Rachel's care. DCFS's investigation into the matter remained open.

¶ 8 Two months later, on September 20, 2014, Rachel returned to Christ Advocate Hospital with M.P. On this occasion, M.P. was diagnosed with a fracture on the left side of his skull as well as a small subdural hematoma. Rachel provided no history of trauma, but merely suggested that M.P. might have bumped his head because he had started walking a month earlier. Rachel reported noticing the bump on M.P.'s head the day before she brought him in. M.P. was admitted to the hospital and remained there until September 29th.

¶ 9 Dr. Dakil examined M.P. and spoke to Rachel several days after M.P. was admitted in September. Upon hearing Rachel's explanation for the injury, Dr. Dakil became more concerned given the history of two head injuries two months apart and, in particular, found it significant that Rachel was unaware of the cause of the injury. With respect to the September injury, Dr.

Dakil opined that the injury, without a history of accident, was indicative of nonaccidental trauma or child abuse.

¶ 10 Upon the diagnosis of the second skull fracture, a call was made to the DCFS hotline. DCFS investigator Carlton Harris visited the hospital on September 21, 2014, and noticed that M.P. was not yet talking, but was active and sitting up in his crib. Rachel told Harris that she was unsure how M.P. sustained the injury. Rachel reported that only she and her mother cared for M.P.

¶ 11 On September 23, 2014, the case was transferred to a DCFS child protection investigator, Debra Robinson. Robinson also visited M.P. in the hospital and noticed that he had a "swollen knot" on his head. Rachel told Robinson that she "couldn't say for sure" what caused M.P.'s injury, but that he was a "very active" infant and thought maybe he had run into a wall. Rachel explained that she was the primary caregiver for M.P. At the close of her investigation, Robinson indicated Rachel for head injuries and medical neglect. The charge of medical neglect was based on Robinson's belief that Rachel had waited two days before bringing M.P. to the hospital in September, which turned out not to be the case.

¶ 12 The State's petition for adjudication of wardship was filed on September 26, 2014, prior to M.P.'s release from the hospital. The State alleged that (i) M.P. was neglected due to a lack of necessary parental care, (ii) his environment was injurious to his welfare and (iii) he was abused due to his parent or caregiver's creation of a substantial risk of physical injury.

¶ 13 After the adjudicatory hearing, the trial court found that the State had established the allegations of its petition by a preponderance of the evidence. The court did not make a finding that Rachel physically abused M.P. M.P. was placed temporarily with Rachel's aunt pending a dispositional hearing.

¶ 14 At the dispositional hearing, the court heard evidence that Rachel had completed parenting classes, and that family and individual therapy and substance abuse assessments were ongoing. Rachel had three, 1-2 hour visits with M.P. each week. DCFS recommended that the court appoint DCFS as M.P.'s legal guardian to allow Rachel to complete recommended services. At the conclusion of the hearing, the court found Rachel unable, but not unwilling to care for M.P. and that it was in M.P.'s best interest that he be removed from her custody, that M.P. be made a ward of the court and that the DCFS Guardianship Administrator be appointed M.P.'s guardian with the right to place M.P. The court set a goal of return home within 12 months. Rachel timely appealed.

¶ 15 Rachel contends here that the evidence failed to establish that she was guilty of abuse or neglect or that M.P.'s best interests required that he be removed from her care.

¶ 16 In assessing Rachel's claims, we are mindful that under the Juvenile Court Act, the State bears the burden of proving neglect and abuse by a preponderance of the evidence. *In re D.W.,* 386 Ill. App. 3d 124, 139 (2008); *In re K.T.*, 361 Ill. App. 3d 187, 200 (2005) (citing 705 ILCS 405/1-3(1), 2-21 (West 2002)). On appeal, we will not disturb the trial court's findings of neglect and abuse unless they are contrary to the manifest weight of the evidence, meaning that the record clearly demonstrates that the court should have reached the opposite result. *In re D.W.,* 386 Ill. App. 3d at 139; *In re K.T.,* 361 Ill. App. 3d at 201. Such deference is warranted because the trial court is in a much better position to observe the witnesses and assess their credibility. *In re T.B.*, 215 Ill. App. 3d 1059, 1062 (1991).

¶ 17 Dispositional hearings under the Act focus on "whether it is in the best interests of the minor and the public that [the minor] be made a ward of the court." 705 ILCS 405/2-22(1) (West 2012). In all dispositional hearings, "[t]he best interests of the child is the paramount

consideration to which no other takes precedence." *In re Austin W.*, 214 Ill. 2d 31, 46 (2005). Under section 2-27 of the Act, the court may commit a minor to, among other placements, a DCFS wardship, if the court finds that the parents "are unfit or are unable, for some reason other than financial circumstances alone, to care for, protect, train or discipline" the child 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). We review the trial court's decision regarding the proper disposition for an abuse of discretion. *In re P.P.*, 261 Ill. App. 3d 598, 605 (1994).

¶ 18 Rachel's claim that the manifest weight of the evidence does not support the trial court's findings of neglect and abuse is without merit. Rachel was given the benefit of the doubt when she claimed in July 2014 that her 10-month-old infant struck his head with such force on the underside of a coffee table as to cause a skull fracture. Although Dr. Dakil doubted that a non-ambulatory infant could generate the force necessary to cause such an injury, she concluded that Rachel's account of the injury was at least plausible.

¶ 19 But when Rachel returned to the hospital two months later after M.P. sustained his second skull fracture and was unable to explain the origin of the injury, DCFS rightly concluded that Rachel should be indicated for M.P.'s head injuries. And the evidence presented at the adjudicatory hearing was more than sufficient to demonstrate by a preponderance of the evidence that M.P. was abused due to his parent or caregiver's creation of a substantial risk of injury and neglected due to a lack of necessary parental care and an environment injurious to his welfare.

¶ 20 Rachel contends that the trial court's ruling makes every parent a guarantor that their child will be injury-free. Not to belabor the point, but a finding of abuse and neglect based on

two skull fractures to an infant in two months, one of which was of dubious origin and the other entirely unexplained, can hardly be characterized as placing the bar too high.

¶ 21 As Rachel raises no other issues regarding the trial court's findings or its dispositional order, we affirm the judgment of the circuit court.

¶ 22 Affirmed.