

FOURTH DIVISION
August 18, 2016

No. 1-16-1013

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

<i>In re</i> Rajeem T. and Mygee B., Minors)	Appeal from the
)	Circuit Court of
(THE PEOPLE OF THE STATE OF ILLINOIS,)	Cook County.
)	
Petitioner-Appellee,)	
)	Nos. 14 JA 1500
v.)	14 JA 1501
)	
EZETTE B.,)	Honorable
)	Marilyn Johnson,
Mother-Respondent-Appellant).)	Judge Presiding.

JUSTICE HOWSE delivered the judgment of the court.
Presiding Justice McBride and Justice Cobbs concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's finding that R.T. and M.B. were neglected and abused minors is not against the manifest weight of evidence where the record contained evidence that: following a fire, the mother left R.T. and M.B. in another section of the building with a friend without visiting the minors or providing them with any resources, such as food, clothing and shoes; the minors had not been attending school for at least four weeks; and, after the fire, the mother was living in hotels

and other places with her paramour and there was evidence that both the mother and her paramour used illicit substances.

¶ 2 The State filed a petition for adjudication of wardship for minors R.T. and M.B. after a truancy officer found M.B. wandering the streets when he should have been in school.

Following an adjudication hearing, the trial court found that R.T. and M.B. were abused and neglected. The mother now appeals the trial court's adjudication order finding R.T. and M.B. neglected and abused.

¶ 3 **Background**

¶ 4 On December 22, 2014, the State filed petitions for adjudication of wardship alleging that R.T., born on December 10, 1999, and M.T., born on September 12, 2002, were neglected due to lack of necessary care and injurious environment, and abused due to a substantial risk of physical injury.

¶ 5 On November 13, 2015, the trial court held an adjudicatory hearing, and following that hearing, the court found that R.T. and M.B. were neglected due to a lack of necessary care and an injurious environment and abused due to substantial risk of physical injury. The following evidence was solicited at that hearing and is relevant to this appeal.

¶ 6 Avril Riley, a DCFS investigator, testified that she was assigned to R.T. and M.B.'s cases in October 2014 for the purpose of investigating allegations of inadequate living and neglect. On October 30, 2014, DCFS received a hotline call from a mandated reporter who had concerns about M.B., who had been found wandering in Chicago when he should have been at school. Upon being found wandering the streets, M.B. was taken to the hospital. Riley spoke with the mother later that day and informed her that M.B. had been taken to the hospital, that a care plan had been created, and that R.T. and M.B. had been placed with their maternal grandmother. The mother responded that she was out of town, that she had tried to get someone to get the children,

and that she left the children with a friend when she left town. The mother indicated that she was in favor of the children living at their maternal grandmother's house because she needed to find an alternative living arrangement. She stated that she had been living in a motel since she left the "temporary arrangement" in the older part of the building.

¶ 7 On November 10, 2014, Riley met with the minors' maternal grandmother. R.T. and M.B. were also present on that day and were interviewed separately. The mother was supposed to be at this meeting, but she did not show up.

¶ 8 R.T. told Riley that he was living in an apartment building that had caught on fire. He stated that the Red Cross had given his mother \$400 after the fire. His mother then gave him \$20 and left. R.T. did not see his mother again. R.T. stated that he was not in school because he did not have any shoes. He stated that his mother and her boyfriend had a history of smoking "weed." He stated that his mother was receiving \$600 per month from Social Security on his behalf but that his mother did not provide him with the things he needed, like money for food, clothing or shoes. He stated that he would be "hustling" in the street and that his younger brother would mimic him. He said sometimes there was no food in the house. After his mother left him and M.B. at a friend's house, his mother did not come to see him or send him anything he might need.

¶ 9 M.B. told Riley that his mother's paramour, Ike, had used "crack" about 30 days ago. M.B. stated that he had been picked up by a "school officer" while he was "wandering around for food." While he was staying with his mother's friend, his mother never came to see him.

¶ 10 Both children told Riley that they had been living in an abandoned building, were not attending school, did not have the appropriate shoes to attend school, their mother had not bought them any clothes, they were not provided food on a consistent basis, and, although their

mother had been receiving money from the government in their names, they did not receive any of those funds.

¶ 11 Riley was never able to see the condition of the apartment building where the children had been staying with the mother's friend because she was not able to access the interior of the building. She did not speak with anyone from the building management.

¶ 12 Riley testified that on various occasions she attempted to reach the mother to apprise her of what was going on with the case by calling her, texting her and leaving her messages. The mother would sometimes respond by calling or texting. Never having met the mother, Riley and her supervisor decided that the case should be open for Intact Family Services. Intact is a division of DCFS that provides services to parents of children in an effort to keep the family together.

¶ 13 The mother was twice scheduled for a "transactional visit" where services were to be set up and additional information and history of the case was to be obtained prior to proceeding with a service plan, but the mother never attended any of her scheduled appointments and she did not call with any reasons as to why she was not attending the appointments. On November 20, 2014, the "transactional visit" occurred at the maternal grandmother's house with Don Johnson from "LSSI," Riley, R.T., M.B., and the mother, who was a few hours late. The mother stated she was late because she was coming from Burbank on a train.

¶ 14 Riley explained to the mother that there were two pending investigations, gave her a brochure which acted as a notification of suspected child abuse or neglect, and began to interview her about the investigation. The mother admitted to Riley that she had been living with Ike in a hotel and "different places," but she refused to provide Ike's last name. The mother also admitted that she was receiving a Social Security check for herself and one for her son who

had emotional issues. The mother informed Riley that there had been a fire in her apartment building and that she had been moved to an older area of the building that was unaffected by the fire.

¶ 15 The mother told Riley that she had been diagnosed with depression related to the death of her daughter, was not on any medication but she smoked "weed." It was recommended that the mother participate in substance abuse services and counseling. The mother was in agreement with the services. The case was transferred over to "Intact" but only remained there for a few weeks.

¶ 16 In December 2014, Riley received a phone call from the mother and someone who claimed to be her attorney. The mother was upset and stated that she was not going to cooperate with Intact Services and would only participate in counseling services. The mother then hung up on Riley.

¶ 17 On December 18, 2014, Riley took protective custody of R.T. and M.B. because the mother was not cooperating with services, the children were living with the maternal grandmother, the children reportedly did not have contact with the mother, the mother was not providing a stable home for the children, the children had been living in an abandoned building, they did not have food, and they had missed four weeks of school. Riley stated that, based on those factors, urgent and immediate necessity was found to take protective custody of the children and place them with the maternal grandmother.

¶ 18 The trial court took judicial notice that in October 2014, R.T. was 14 years old and M.B. was 12 years old.

¶ 19 The mother then testified on her own behalf. She stated that prior to October 2014, she and her children were living in an apartment at 1446 West 81st Street in Chicago. On October 7,

2014, there was a fire in the building. They were then placed in another unit in the building. She testified that she believed she had the permission of management to be in the new location.

¶ 20 The mother testified that Carl Johnson lived across the hall with his girlfriend Wanda.

The mother had lived in the apartment for the entire month of October, never staying anywhere else during that month. She testified that the children would leave the apartment and go to school.

¶ 21 On October 30, 2014, the mother received a call and learned that M.B. had been taken to the hospital. Upon receiving that call, the mother stated that she made arrangements to have the maternal grandmother pick M.B. up from the hospital and to have M.B. and R.T. stay with her.

The mother told the maternal grandmother that she was "scared of the officer" because he sent M.B. to the hospital. She further testified that she told the grandmother that because she had not had contact with Riley for two weeks, she did not know what was going on and needed the children to be safe. The mother stated that she did not hear from Riley at all on the day the children went to the maternal grandmother's house.

¶ 22 The mother testified that she spoke with Riley on November 20, 2014, but she denied telling Riley that she used illegal substances. The mother stated that when the fire occurred, the children were in school. M.B. was enrolled at John W. Cook and R.T. was enrolled at Harper High School. When the children left home, she believed they were going to school.

¶ 23 The mother testified that she did not recall Riley offering her any services. Riley only offered to help her with a deposit for an apartment and the mother stated she would accept that service. She did not recall receiving any voicemails from Riley during October or November but Riley did text her about the November 20th meeting. She testified that she also received two other text messages from Riley during that two-month period. The mother stated that Riley only

set up one meeting, the November 20th meeting, and that she asked to meet with Riley so that Riley could "show [her] the allegations" but that she never heard back from Riley. The mother stated that she reached out to Riley again and Riley stated that she was going to help the mother because she understood that the allegations were not true.

¶ 24 The mother testified that in 2014 she received a monthly disability stipend for her son, which she used to secure the apartment prior to the fire. She also used the money to purchase clothing and shoes for her children for school. She stated that the children lied when they said she did not buy them shoes or clothes. Between January and December of 2014, she received \$4,110.12.

¶ 25 After hearing all the evidence, the trial court found that R.T. and M.B. were neglected and abused. The trial court judge stated that the "trigger point" was that M.B. was found by a truancy officer wandering the streets looking for food. While the judge understood that the family had been displaced by a fire that was not attributable to the mother, the judge nonetheless could not ignore that both R.T. and M.B. provided "remarkably similar" reports to Riley indicating "that they had not seen their mother for a period of time, that they had been left with a third party, that no resources were sent to the third party for their care[,] R.T. did not have appropriate shoes for school, and R.T. reported that the mother and the mother's paramour smoked weed. The judge went on to note that although the mother received \$600 a month from Social Security, she gave \$20 to R.T. and then left the children, ultimately leaving them without appropriate resources. The trial court judge also indicated on the record that "[t]here is nothing in my observation of [the mother's] demeanor that leads me to think she's totally truthful. I don't think she is being totally truthful in terms of my assessment of her credibility. And I believe the appropriate findings here are neglect/lack of necessary care; and abuse/substantial risk of injury."

¶ 26 On March 1, 2016, the trial court commenced a dispositional hearing and found that it was in R.T. and M.B.'s best interests to be placed in the guardianship of DCFS. The mother was found unwilling and unable to care for, protect, train or discipline the children.

¶ 27 On March 31, 2016, the mother timely filed her notice of appeal. In the appeal, the mother only challenges the finding at the adjudicatory hearing that R.T. and M.B. were neglected and abused. For the reasons that follow, we affirm the trial court's ruling.

¶ 28 Analysis

¶ 29 The step-by-step process used to decide whether a child should be removed from his or her parents and made a ward of the court is set forth in the Juvenile Court Act of 1987. 705 ILCS 405/1-1 *et seq.* (West 2012). Following placement of a child in temporary custody, the circuit court must make a finding of abuse, neglect or dependence before it conducts an adjudication of wardship. 705 ILCS 405/2-21 (West 2012); *In re N.B.*, 191 Ill. 2d 338, 343 (2000). Section 2-3(1)(b) of the Act (705 ILCS 405/2-3(1)(b) (West 2012)) defines a “neglected minor” to include “any minor under 18 years of age whose environment is injurious to his or her welfare.” Section 2-3(1)(d) of the Act (705 ILCS 405/2-3(1)(d) (West 2012)) also provides that a “neglected minor” is “any minor under the age of 14 years whose parent or other person responsible for the minor's welfare leaves the minor without supervision for an unreasonable period of time without regard for the mental or physical health, safety, or welfare of that minor.” Generally, “neglect” is defined as the “ ‘failure to exercise the care that circumstances justly demand.’ ” *In re N.B.*, 191 Ill. 2d at 346 (quoting *People ex rel. Wallace v. Labrenz*, 411 Ill. 618, 624 (1952)). However, this does not mean that the term “neglect” is limited to a narrow definition; to the contrary, “neglect,” by necessity, has a fluid meaning. As this court has previously explained, “ [Neglect] embraces wilful as well as unintentional disregard of duty. It

is not a term of fixed and measured meaning. It takes its content always from specific circumstances, and its meaning varies as the context of surrounding circumstances changes.’ ” *In re N.B.*, 191 Ill. 2d at 346 (quoting *Labrenz*, 411 Ill. at 624).

¶ 30 Similarly, the term “injurious environment” has been recognized by our courts as an amorphous concept that cannot be defined with particularity. *In re N.B.*, 191 Ill. 2d at 346. In general, however, the term “injurious environment” has been interpreted to include “the breach of a parent’s duty to ensure a ‘safe and nurturing shelter’ for his or her children.” *Id.*

¶ 31 An abused minor is “any minor under 18 years of age whose parent or immediate family member, or any person responsible for the minor’s welfare, or any person who is in the same family or household as the minor, or any individual residing in the same home as the minor, or a paramour of the minor’s parent: *** (ii) creates a substantial risk of physical injury to such minor by other than accidental means which would be likely to cause death, disfigurement, impairment of emotional health, or loss or impairment of any bodily function[.]” 705 ILCS 405/2-3(2)(ii) (West 2012). Evidence that supports a finding of neglect due to an injurious environment may also form the basis of a finding of abuse due to a substantial risk of injury. *In re Tamesha T.*, 2014 IL App (1st) 132986, ¶ 44.

¶ 32 Cases involving allegations of neglect and adjudication of wardship are *sui generis*, and must be decided on the basis of their unique circumstances. *In re N.B.*, 191 Ill. 2d at 346; *In re Christina M.*, 333 Ill. App. 3d 1030, 1034 (2002). This analytical principle underscores the “fact-driven nature of neglect and injurious environment rulings.” *In re N.B.*, 191 Ill. 2d at 346.

¶ 33 It is the burden of the State to prove allegations of neglect or abuse by a preponderance of the evidence. *In re Christina M.*, 333 Ill. App. 3d at 1034. In other words, the State must establish that the allegations of neglect or abuse are more probably true than not. *In re N.B.*, 191

Ill. 2d at 343. On review, a trial court's ruling of neglect will not be reversed unless it is against the manifest weight of the evidence. *In re M.Z.*, 294 Ill. App. 3d 581, 592 (1998). A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident. *In re Edward T.*, 343 Ill. App. 3d 778, 794 (2003). If the State fails to prove the allegations of abuse, neglect or dependence by a preponderance of the evidence, however, the court must dismiss the petition. 705 ILCS 405/2-21(1) (West 2012); *In re N.B.*, 191 Ill. 2d at 343.

¶ 34 In this case, the mother challenges the trial court's ruling at the adjudication hearing, which found that R.T and M.B. were neglected and abused minors. Specifically, the mother first argues that there was insufficient evidence of neglect in that the children lacked food or clothing where: (1) it was not unusual for families receiving social security to not have a fully stocked kitchen at the end of the month, (2) there was no evidence that either child was underweight or malnourished, and (3) there was no evidence that R.T. was barefoot or that the children actually lacked clothing. Second, the mother argues that there was insufficient evidence of an injurious environment where: (1) the fire caused the displacement from their home, (2) the mother made arrangements for the children to stay with a friend and then their maternal grandmother, and (3) there was no proof that the children actually missed several weeks of school, by way of school documents, and no evidence that the children were struggling in school. Last, the mother argues that there was insufficient evidence of abuse because there was no evidence presented to establish that anything was done by the mother to create a substantial risk of physical injury to the children other than by accidental means.

¶ 35 While the mother's arguments focus on what evidence was not in the record, we believe that the evidence that was in the record is sufficient to demonstrate that the trial court's ruling that R.T. and M.B. were neglected and abused was not against the manifest weight of the

evidence such that the opposite finding is clearly evident. *In re Edward T.*, 343 Ill. App. 3d at 794 (A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident.). The record contained evidence that a truancy officer found M.B. wandering the streets looking for food when he should have been in school; both R.T. and M.B. reported to Riley that they were: living in an abandoned building; their mother did not provide them with food, clothing or shoes despite receiving a \$600 check from Social Security each month; their mother never gave them any of the money she received from Social Security; they were not attending school; and their mother left them with a friend after the fire and never visited them or sent them any resources thereafter; and there was evidence that after the mother left the children she had been living with a paramour in hotels and other places, the mother reported that she smoked weed to Riley, and both children reported that their mother and her paramour used illicit substances. We find these facts are sufficient to affirm the trial court's ruling that the children were neglected due to an injurious environment and abused due to a substantial risk of physical harm. See 705 ILCS 405/2-3(1)(b), (d) (West 2012); see also 705 ILCS 405/2-3(2)(ii) (West 2012). Although we note that the mother disputed many of the above-listed facts, the trial court judge found the mother's testimony was not totally truthful and we must defer to the trial court's findings. *In re A.W.*, 231 Ill. 2d 92, 104 (2008) ("We give deference to the trial court as the finder of fact, and will not substitute our judgment for that of the trial court on the credibility of witnesses, the weight given the evidence, or inferences drawn from the evidence."). As such, we affirm the trial court's ruling that R.T. and M.B. were abused and neglected minors.

¶ 36

Conclusion

¶ 37 For the above reasons, we affirm the trial court's adjudicatory ruling finding R.T. and M.B. abused and neglected minors.

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¶ 38 Affirmed.