
IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

In Re MARIAH O. and LELA C., MINORS)	
)	
)	
(The People of the State of Illinois,)	
)	No. 15 JA 771-672
Petitioner-Appellee,)	
)	
v.)	
)	
ANNIE I.,)	
)	Honorable Peter Vilkelis
Respondent-Appellant).)	Judge Presiding

JUSTICE SIMON delivered the judgment of the court.
Presiding Justice Connors and Justice Mikva concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's findings that Mariah O. and Lela C. were abused and neglected were not against the manifest weight of the evidence.

¶ 2 Respondent Annie I. appeals an order of the circuit court of Cook County adjudicating her minor children Mariah O. and Lela C. abused and neglected. The sole issue on appeal is whether the circuit court's findings of abuse and neglect were against the manifest weight of the evidence. For the following reasons, we affirm the judgment of the circuit court.

¶ 3 **BACKGROUND**

¶ 4 Annie I. is Mariah and Lela's mother. On July 1, 2015, the State filed a petition for adjudication of wardship alleging that the minors Lela, born on March October 29, 2013, and Mariah, born on September 3, 2014, were neglected due to a lack of necessary care, neglected due to an injurious environment, and abused due to a substantial risk of physical injury. Annie I. has another child, Annette, born March 31, 2012.

¶ 5 On February 8, 2016, the circuit court held an adjudicatory hearing regarding the minors Mariah and Lela. Keila Cruz, an Illinois Department of Children and Family Services (DCFS) worker, testified to the following facts. In the fall of 2014 she was assigned to Annette's case. Annette's case came to the attention of DCFS because of domestic violence issues between Mr. R., Annette's father, and Annie I. Initially, the goal was for Annette to return home in 12 months. By the time Cruz was assigned to Annette's case in 2014, the case was two years old. During those two years, Annie I. completed parenting classes but still needed to complete domestic violence and individual therapy services. Cruz recommended a goal of termination of parental rights because ultimately Annie I. had failed to make substantial progress in her recommended therapy services. In addition, Cruz stated that Annie I. had not made herself available to DCFS for six months and that she was concerned about Annie I.'s ability to provide for Annette's basic needs. Cruz received a letter from the director of the day care program stating that when Annette came back from visitation with Annie I. her diaper was soiled and that she was "so hungry, that they were concerned that she would choke on her food because she was stuffing her face."

¶ 6 The court took judicial notice of Annette's adjudication order that was entered on November 15, 2012, finding that Annette was abused due to substantial risk of injury and neglected due to injurious environment. Annie I. and Mr. R. were named as the perpetrators.

The trial court also took judicial notice that on April 1, 2015, Annette's case was changed to substitute care pending court determination on termination of parental rights.

¶ 7 Cruz testified that Annie I.'s two other children, Mariah and Lela, were allowed to remain in her care. A safety plan was put in place that required Annie I. to provide DCFS with documentation for any medical care the children received while in her care. The safety plan also required Mr. O., the putative father of Mariah who was living with Annie I., to comply with DCFS recommendations and assessments, including receiving services for individual therapy and substance abuse treatment.

¶ 8 Annie I. did not provide documentation regarding Lela and Mariah's medical appointments although Cruz asked for documentation 3 to 5 times. Mr. O. participated in individual therapy and substance abuse treatment which included submitting to random urine drops. Mr. O. was compliant with the urine drops. Around April 2015, Cruz received documentation showing that Mr. O. tested positive for opiates, methadone and cannabis. Cruz testified that both Annie I. and Mr. O. minimized the safety risk the positive drops presented to the children and denied all substance abuse. Following Mr. O.'s test results for illegal substances a new safety plan was created requiring Mr. O. not to supervise the children alone.

¶ 9 Cruz testified that in April of 2015, she reviewed a Court Clinical report which stated that Annie I. was diagnosed with major depressive disorder and mild mental retardation. Cruz did not receive any reports indicating that Annie I. had taken the mental health treatment she needed. Cruz also observed that Annie I. exhibited some issues with decision making and her ability to provide basic needs for Annette who was visiting Annie I. in her home. Cruz stated that at the end of 2014, she visited Annie I.'s home and found that in the children's room there was a window with a draft making the room much colder than the rest of the residence. She talked to

Annie I. about it and she indicated she understood. At the end of December, Annie I. notified her that one of her children had gotten sick from staying in the room. Cruz also noted that when visiting the home, she saw that the children were sometimes dressed in summer clothes when weather conditions were not appropriate for it. Cruz advised Annie I. to put socks on the children. Cruz had to reiterate that the children needed socks and more clothes multiple times. Cruz testified that the house was clean, there was enough food for the children and that the home was safe and appropriate.

¶ 10 Cruz was also concerned about possible domestic violence between Annie I. and Mr. O. although she had never observed any incidents of violence between them although at one point in court she did hear Annie I. and Mr. O. outside of the courtroom shouting. The court took judicial notice that on that date Mr. O. was excluded from the courtroom, and was extremely upset about being excluded.

¶ 11 Fred Pennix, a former DCFS investigator testified that in April of 2015 he was assigned to Lela's and Mariah's case. At that time, Annette was in foster care but a safety plan was implemented allowing Lela and Mariah to remain in Annie I.'s care per her adherence to the terms of the safety plan. The case was brought to his attention due to an apparent violation of the safety plan. Pennix conducted a home visitation on April 2, 2015, and told Annie I. that the children were perceived to be at risk in her care and that they needed to implement a safety plan where the children lived outside of her home due to Mr. O.'s positive test results for illegal substances.

¶ 12 Annie I. disputed that she had done anything which posed a risk to her children but she agreed to a safety plan where the children would live with Melissa, Mr. O.'s sister. The children moved to Melissa's home that day. Pennix informed both Annie I. and Mr. O. that they could

only have supervised visits with the children in the presence of Melissa. On the same day, Annie I. gave Pennix documentation reflecting that the children were seen by her doctor on March 28, 2015. Annie I. interacted positively with the children, she was kind to them, and they bonded well.

¶ 13 Pennix visited Melissa's home on April 9 and on April 16 and both the children appeared to be well taken care of. On April 30, 2015, Pennix received a phone call from Annie I. stating that she had concerns about the children's safety in Melissa's home. Annie I. also made a hotline report stating that she believed there were "some drugs and some other aspects and concerns taking place in the home" and that she wanted to explore some other placement options. On April 30, 2015, Pennix made an unannounced home visit to assess the safety of the children. Melissa informed him that there was a dispute between her and Annie I. because Annie I. failed to arrive at Melissa's house at the specified time. The trial court allowed the substance of the dispute into evidence only to show the course of conduct of the worker.

¶ 14 Pennix arranged with Annie I. to have a visit with the minors at Melissa's home on May 2, 2015. Annie I. confirmed a dispute had taken place between her and Melissa but that she was not concerned with the safety of the minors. Annie I. told Pennix that she fabricated the information and made a hotline call as a result of the dispute between her and Melissa and not due to a legitimate concern over the safety of the minors. On May 3, 2015, Pennix and Annie I. visited the minors again. Pennix stated that there still appeared to be animosity between Annie I. and Melissa.

¶ 15 On May 13, 2015, Pennix visited Melissa's home to again assess the safety of the minors, but no one answered. Pennix went to Annie I.'s home on May 27, May 29 and June 1, but there was no response and no acknowledgement of the business cards that he previously left at her

home. Pennix never told Annie I. or Melissa that the safety plan was cancelled nor did he give Melissa permission to return the minors back to Annie I. or Mr. O.

¶ 16 On June 16, 2015, Pennix received a report alleging an indication of domestic violence with another address for Annie I. on South Hermitage Avenue. Annie I. never contacted Pennix to inform him that she had moved. On June 29, 2015, Pennix went to Annie I.'s new address and explained that he needed to see the children. Annie I. did not open the door or allow him to see the minors. Asking him how he found her new address, Annie I. refused to open the door unless he had a court order, stating that she thought he was there to take the children. Pennix then contacted the police. While waiting for the police, Mr. O. arrived at the residence and made threatening statements to Pennix and yelled profanities at him. Once the police arrived an hour later, Annie I. allowed Pennix access to the minors and he took custody of them. The minors were dirty and with soiled diapers. Pennix asked for bottles and clothing for the children but she did not provided them to him. Pennix and his coworkers spent \$60.00 buying new clothes for the children.

¶ 17 Pennix testified that he took custody of the children because Annie I. violated the safety plan when she moved from one address to another without providing this information to him, and when there was a related report expressing a concern about domestic violence occurring at the new address. He believed the minors were at risk of harm in Annie I.'s care because he perceived her to be a flight risk, especially when Anne I disappeared with the minors once before. On that day, he took the minors to St. Anthony Hospital to be examined and then to a foster home the following day.

¶ 18 The court then admitted People's Exhibit 1, Annie I.'s records from Pilsen Wellness Center, and the Public Guardian's Exhibit 1, hospital records from La Rabida Hospital showing the minors were treated for lice on June 30, 2015.

¶ 19 Annie I. testified on her behalf and denied that she had a conversation with the DCFS worker in May 2015. She stated that she did not take the minors from Melissa's home. Instead, the minors were with her on June 29, because Pennix had Mr. O.'s permission to take them. She stated that, in a phone conversation, Pennix gave Mr. O. permission to take the children, but was not sure of the date when the conversation took place. She and Mr. O. took the children to her house on Laflin Street but moved from that address on June 1 for the safety of the minors because the landlord took out some doors, there were cockroaches, and the bathroom and the windows were not fixed. She then moved to 4322 S. Hermitage. Annie I. stated that she told Pennix where they were moving in a phone call; she left him a message, left her number and asked him to call right back. Annie I. did not try to call Pennix again. She stated that Pennix never told her that the safety plan with the minors living at Melissa's home was ended.

¶ 20 Annie I. testified that she had some concerns about Melissa caring for her children which caused her to call the hotline saying Melissa was not taking care of her children appropriately. She denied telling Pennix that she fabricated her safety concern about Melissa taking care of the minors. She also stated that she agreed that the children could continue to remain with Melissa because Pennix told her that was the only place the children could live. Annie I. admitted that on June 29, 2016, Mariah and Lela were in her care unsupervised. She never asked Pennix how she learned her new address when he arrived. She never told Pennix that he could not see her children and only asked him to wait a few minutes so she could change her clothes, but he kept insisting on opening the door. She did not tell him she wouldn't open the door without a court

order. The police came to her home that day, and prior to their arrival she voluntarily brought the minors down to show Pennix they were alright. He took the children. She went upstairs having forgotten to give him formula and clothing.

¶ 21 After hearing and reviewing all of the evidence, the trial court found that both children were neglected due to lack of care and to an injurious environment, and that they were abused and in a substantial risk of physical injury. The trial court found that Annie I. perpetuated the abuse and neglect.

¶ 22 Subsequently, the trial court found that Annie I. was unable to care for, protect, or train her children. Lela and Mariah were adjudicated wards of the court. Given that Annie I. appeals and argues only the court's findings of abuse and neglect at the adjudication hearing, we need not discuss the evidence presented at the dispositional hearing. We do note, however, that after hearing the evidence presented at the dispositional hearing, the court adjudged the minors wards of the court and placed them in the custody and guardianship of the DCFS guardianship administrator.

¶ 23 ANALYSIS

¶ 24 On appeal, Annie I. argues that the trial court's findings of abuse and neglect of Lela and Mariah were against the manifest weight of the evidence. Annie I. contends that the trial court erroneously applied the doctrine of anticipatory neglect and that it improperly found that the minors were neglected when there was no evidence that they were not appropriately fed, underweight and malnourished in any way. Annie I. also claims that there was no evidence that they were subjected to any type of physical abuse or corporal punishment.

¶ 25 A “neglected minor” includes any minor under 18 years of age whose environment is injurious to his or her welfare. 705 ILCS 405/2-3(1)(b) (West 2004); *In re Arthur H.*, 212 Ill. 2d

441, 462 (2004). "Neglect is defined as the failure to exercise the care that circumstances justly demand and encompasses both willful and unintentional disregard of parental duty." *In re K.T.*, 361 Ill. App. 3d 187, 200 (2005). An injurious environment is an amorphous concept that cannot be defined with particularity, but has been interpreted to include the breach of a parents' duty to ensure a safe and nurturing shelter for their children. *Arthur H.*, 212 Ill. 2d at 463. Furthermore, parents have a duty to keep their children free from harm. *In re A.R.*, 359 Ill. App. 3d 1071, 1074 (2005).

¶ 26 An abused minor includes any minor under 18 years old whose parent 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 2004). Cases involving allegations of abuse and neglect are *sui generis* and must be decided on the basis of their unique facts. *Arthur H.*, 212 Ill. 2d at 463. The State has the burden of proving allegations of neglect and abuse by a preponderance of the evidence. *In re T.S-P.*, 362 Ill. App. 3d 243, 248 (2005). The same facts and evidence that supports a finding of neglect due to injurious environment may also support the finding of abuse due to a substantial risk of physical injury. *In re Tamesha T.*, 2014 IL App (1st) 132986, ¶ 44.

¶ 27 On review, a trial court's finding of neglect or abuse will not be reversed unless it is against the manifest weight of the evidence. *Arthur H.*, 212 Ill. 2d at 464. A trial court's finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident. *Id.*

¶ 28 In the instant case, the trial court's findings that the evidence showed that Lela and Mariah were abused and neglected and that their environment was injurious to their welfare were

not against the manifest weight of the evidence. Although the court expounded upon the doctrine of anticipatory neglect with regards to Lela and Mariah in its ruling, the court specifically referred to the current conditions of the home that placed both minors at risk of harm.

¶ 29 The record amply supports the court's findings. In 2014 a safety plan was created so that Lela and Mariah were allowed to remain in Annie I.'s care following allegations of abuse and neglect in Annette's case. The safety plan required Mr. O., who lived with Annie I. and the minors, to submit to a "paramour assessment" and recommended that he receive services for individual therapy and substance abuse treatment which included submitting to random urine drops.

¶ 30 Shortly thereafter, DCFS received documentation indicating that Mr. O. tested positive for opiates, methadone and cannabis. Annie I. and Mr. O. responded by minimizing the safety risk the positive drops presented to the children and denied all substance use. Because Mr. O. tested positive for illegal substances, he could no longer supervise the children alone.

Accordingly, a new safety plan was created where Lela and Mariah would live with Mr. O.'s sister Melissa. Annie I. violated the safety plan. Despite the fact that the plan required the minors to reside elsewhere, Annie I. and Mr. O. took them into their care and custody.

Moreover, Annie I. evaded DCFS when she failed to provide her new address to DCFS. DCFS received information that Annie I. was living at a new address following new allegations of domestic violence.

¶ 31 On June 29, 2015, Pennix, a DCFS investigator, went to Annie I.'s new address and explained that he needed to see the children. Annie I. refused to allow him to see the children and the police were called. While waiting for the police to arrive Annie I. shouted profanities at

Pennix. Similarly, Mr. O. made threatening statements and yelled profanity at him. After the police arrived, Pennix took custody of Lela and Mariah. The condition of the children upon being taken into custody was telling. Both minors were dirty with soiled diapers and were not wearing adequate clothing. Pennix asked for bottles and clothing for the minors but Annie I. did not give them to him.

¶ 32 Mr. O.'s positive testing for illegal substances, Annie I.'s false hotline call, the fact that Annie I. and Mr. O. took Lela and Mariah from Melissa's home in direct violation of the safety plan, the fact that Annie I. changed her address without informing DCFS, Annie I.'s and Mr. O.'s aggressive and volatile behavior displayed when Pennix arrived at their home, the condition of the minors when they were taken into custody are all evidence that supported the trial court's determination that Annie I. breached her duty to provide a safe and nurturing environment for Lela and Mariah. Accordingly, the court's findings that Lela and Mariah were abused due to substantial risk of physical injury, neglected due to injurious environment, and neglected due to a lack of care were not against the manifest weight of the evidence.

¶ 33 Moreover, to prove its allegations of abuse and neglect, the State was not required to show that each minor had already been harmed. Under the theory of anticipatory neglect, "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." *Arthur H.*, 212 Ill. 2d at 468. Under this theory, when faced with evidence of prior neglect by parents, the juvenile court should not be forced to refrain from acting until another child is injured. *Arthur H.*, 212 Ill. 2d at 477.

¶ 34 On November 15, 2012, a trial court found that Annie I.'s other child, Annette, was abused due to a substantial risk of injury and neglected due to an injurious environment. Annette's case came to the attention of DCFS because of domestic violence issues between Mr. R, Annette's father, and Annie I. Annette's original goal was return home in 12 months. Although Annie I. had participated in services, she stopped between 2013 and 2014. Annie I. gave birth to Lela and Mariah while engaged in services for Annette and a safety plan was created in 2014 allowing Lela and Mariah to remain in the care of Annie I. and Mr. O. While the neglect of one child does not conclusively show the neglect of another child, the neglect of one minor is admissible as evidence of the neglect of another minor under a parent's care. *T.S-P.*, 362 Ill. App. 3d at 248-49.

¶ 35 Here, the trial court properly admitted evidence of Annette's case of neglect in its determination of Lela's and Mariah's case since Annie I.'s failure to make substantial progress in individual therapy and domestic violence services, her inconsistency in engaging herself with the services recommended, and the fact that she had not made herself available for 6 months, also affected the welfare of the minors Lela and Mariah. Furthermore, Annie I.'s noncompliance with recommended services, her refusal to allow the caseworkers and the DCFS investigator to assess the safety of the home where the children lived constituted, evidence of abuse and neglect of all the minors. See *In re Tamesha T.*, 2014 IL App (1st) 132986, ¶¶ 41-44 (noting that mother's lack of participation and progress in services supported the trial court's abuse and neglect findings).

¶ 36 In sum, based on the totality of the circumstances, the trial court's findings that Lela and Mariah were abused due to substantial risk of physical injury, neglected due to injurious environment, and neglected due to a lack of care were not against the manifest weight of the evidence.

¶ 37

CONCLUSION

¶ 38 Based on the foregoing, we affirm.

¶ 39 Affirmed.