FOURTH DIVISION
December 22, 2016

No. 1-16-2211

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re C.J., M.J., and A.J.,	)	Appeal from the
	)	Circuit Court of
Minors-Respondents-Appellees,	)	Cook County.
	)	
	)	Nos. 15 JA 1083
	)	15 JA 1084
	)	15 JA 1085
(People of the State of Illinois, Petitioner-Appellee v.	)	
Lindsey T., Respondent-Appellant).	)	Honorable
	)	Robert Balanoff,
	)	Judge Presiding.

PRESIDING JUSTICE ELLIS delivered the judgment of the court.
Justices McBride and Howse concurred in the judgment.

ORDER

¶ 1 *Held*: Vacated and remanded. Juvenile court's order requiring mother to file adjudication order in all future legal filings involving current or future children was abuse of discretion.

¶ 2 Respondent Lindsey T. appeals from an order adjudicating her three children, minor-respondents C.J., M.J., and A.J., abused and neglected. Lindsey's sole argument on appeal is that the juvenile court erred when it ordered her to file a copy of the adjudication order with any other filings she made in relation to her children or any children she may have in the future. Lindsey argues that this order is unnecessarily burdensome and humiliating.

¶ 3 We vacate the trial court's order and remand this cause. The trial court had a sound basis for trying to ensure that any future judge, including an out-of-state judge, be able to readily access the trial court's findings of abuse and neglect. But the order was overbroad in the actions it covered and in its coverage of future children Lindsey may have.

¶ 4 I. BACKGROUND

¶ 5 Because of the limited nature of Lindsey's appeal, we need not recount all of the proceedings in the juvenile court in detail. We summarize those proceedings only to the extent necessary to resolve this claim.

¶ 6 Lindsey and Jeffrey J., the minors' father, were married in 2002 and divorced in 2005. C.J. was born on November 11, 2001, M.J. was born on May 22, 2003, and A.J. was born on July 11, 2004. After her divorce from Jeffrey, Lindsey married five more times. At the time the minors were referred to the juvenile court in 2015, Lindsey was married to Michael T. Currently, Lindsey lives in Illinois and Jeffrey lives in Texas.

¶ 7 In September 2011, Lindsey was found guilty of domestic battery in case number 11 DV 5074801 based on her biting C.J. on the left bicep and striking him with a belt. Lindsey was sentenced to one year of conditional discharge and required to register as a violent offender against youth. See 730 ILCS 154/5(b), 40 (West 2010) (individual convicted of domestic battery causing bodily harm must register as violent offender against youth).

¶ 8 On October 16, 2015, the State filed petitions for adjudications of wardship for each of the three minors. The petitions alleged that the minors said that they were afraid to live with Lindsey and that Lindsey whipped C.J. with a studded belt in May 2015.

¶ 9 After a temporary custody hearing, the juvenile court found that probable cause existed that the minors had been abused and neglected, awarded temporary custody of the children to

DCFS, and granted supervised day visits to Lindsey and Jeffrey. The court appointed the Cook County public guardian to serve as the attorney and guardian *ad litem* for the minors.

¶ 10 At the adjudicatory hearing, the parties stipulated to the testimony of several witnesses. Donna Morrison, a DCFS investigator, would testify that, on October 5, 2015, M.J. told Morrison that Lindsey beat her with a belt. Specifically, M.J. said that Lindsey beat her with a studded belt in May 2015 and hit her with her hand in September 2015. M.J. also said that Michael, her stepfather, "yanked her by her hair." M.J. told Morrison that she was afraid to go home.

¶ 11 Morrison also spoke to C.J., who told her that "he is disciplined with spankings" that leave bruises. He told her there was "arguing and fighting in the home" and that he is afraid of his mother and stepfather.

¶ 12 Morrison spoke with Lindsey, who denied using corporal punishment on the children. Lindsey admitted to biting C.J. in 2011 but denied "having domestic violence or mental health issues."

¶ 13 Walter Henry, another DCFS investigator, spoke to the children on October 5, 2015 at the Berwyn police station. M.J. told Henry that she was afraid to go home because Lindsey hit her. C.J. told Henry that he had not seen Lindsey hit M.J. or A.J. A.J. denied being hit.

¶ 14 Elizabeth Lipke, a seventh-grade teacher at Heritage Middle School in Berwyn, spoke to M.J. on October 4, 2015. M.J. said that she was afraid of Lindsey and that Lindsey "hurts her and her sister."

¶ 15 Michelle G., M.J.'s 13-year-old friend, would testify that, in May 2015, she was at M.J.'s home. Michelle saw Lindsey take M.J. into another room and "heard [Lindsey] hit [M.J.] with a

belt." Michelle heard M.J. cry out, "saw the belt had spikes on it," and "saw marks from the belt on [M.J.]"

¶ 16 Glen Ross, the neighbor living below Lindsey and the children, had known them for a year and a half before August 2015. Ross had not noticed any signs of domestic violence but he had not been inside their home.

¶ 17 The parties stipulated to Lindsey's 2011 domestic violence conviction and to records from Presence Behavioral Health Center that indicated that Lindsey had "some mental health issues *** based on her mood fluctuations."

¶ 18 The State introduced Lindsey's medical records from MacNeal Memorial Hospital. Those records showed that, throughout 2014 and 2015, Lindsey went to the hospital complaining of pain in various areas of her body. In some circumstances, she linked the pain to injuries sustained she during incidents of domestic violence. For example, on January 20, 2014, she said she had rib pain after being hit by the door to her apartment. She said that the "man who lives in [the] apartment was trying to close [the] door to keep her out" and that he was intoxicated. On September 8, 2014, Lindsey went to the hospital complaining of neck pain. She said that her husband "tried to choke her [two] days ago" but that she did not want to press charges. On March 11, 2015, she again went to the hospital with neck pain after " 'assault by her ex-boyfriend.' " On other occasions, she complained of various falls and accidents, including falling off of a curb, bumping into a dresser, falling in the shower, and hitting her back on her bed frame.

¶ 19 The State also introduced records from the Texas Department of Family and Protective Services. Those records showed that the Texas Department of Family and Protective Services

investigated Lindsey for possible abuse but that it was unable to determine if any abuse had actually occurred.

¶ 20 Jeffrey introduced a certified copy of Lindsey's conviction for filing a false police report against him in Texas. Lindsey pleaded *nolo contendere* to the charge.

¶ 21 The juvenile court found all three children to be "abused" under section 2-3(2)(ii) of the Juvenile Court Act of 1987 (the Act) (705 ILCS 405/2-3(2)(ii) (West 2014)), which states that a minor is considered abused when the child's parent, or any person residing in the same home as the minor, "creates a substantial risk of physical injury to [the] minor *** which would be likely to cause death, disfigurement, impairment of emotional health, or loss or impairment of any bodily function." The court also found all three children to be "neglected" under section 2-3(1)(b) of the Act (705 ILCS 405/2-3(1)(b) (West 2014)), which states that a minor is considered neglected when his or her "environment is injurious to his or her welfare." Finally, the court found that C.J., but not M.J. or A.J., was "abused" under section 2-3(2)(i) of the Act (705 ILCS 405/2-3(2)(ii) (West 2014)), which states that a minor is abused when a parent "inflicts, causes to be inflicted, or allows to be inflicted upon such minor physical injury, by other than accidental means, which causes death, disfigurement, impairment of emotional health, or loss or impairment of any bodily function." The court found Lindsey to be the perpetrator of the physical injury against C.J., based on the facts of her 2011 conviction.

¶ 22 The factual basis for the court's findings was written into the adjudication order. It said that the children were abused and neglected:

> "because [Lindsey] bit [C.J.] and hit him with a belt, she pled guilty to domestic battery in regards [*sic*] to the incident, [Lindsey] needs mental health treatment, [Lindsey] hit the

> minor [M.J.] with a belt and used corporal punishment on the children. The minors were in fear of returning home to [Lindsey]. There was domestic violence in the home."

¶ 23 The court added an additional passage to the adjudication order that read:

> "Natural mother must include a copy of the adjudication order(s) with any legal papers she files in relation to these children or any other children the mother has or had, including, but not limited to[,] custody, child support, and visitation."

The court offered the following explanation for including that language in the order:

> "I want *** to include it because, honestly, I want any other Judge who hears this case or sees this case to understand the history of this case. It took me a while for me to understand it and digest it all. I want to make sure whoever or if anybody ever hears this again, they will have a better understanding of what has happened to these children, all right?"

Lindsey's counsel objected to the additional language of the order.

¶ 24 The court immediately conducted the dispositional hearing. See 705 ILCS 405/2-22(1) (West 2014) (at dispositional hearing, court determines if being made ward of court is in best interests of minor and proper disposition). A caseworker for Texas Child Protective Services testified that the children were living with Jeffrey and that she had no concerns about the children living with Jeffrey. The Illinois caseworker assigned to the minors said that they had told him they wanted to stay with Jeffrey in Texas.

¶ 25 The court adjudged the minors wards of the court and awarded custody to Jeffrey.

¶ 26 Lindsey filed this appeal.

¶ 27 II. ANALYSIS

¶ 28 Lindsey does not contest the juvenile court's findings that C.J., M.J., and A.J. were abused and neglected, or that living with their father was in their best interests. Nor does she raise any challenges to the conduct of, or evidence heard during, the adjudication or dispositional hearings. Her sole claim is that the trial court erred in requiring her to file a copy of the adjudication order along with any other filings she makes relating to the custody of her children.

¶ 29 The parties both contend that our standard of review in this case is whether the trial court abused its discretion. The case law they cite is not directly on point. To be sure, there is no challenge here to the factual findings of abuse or neglect, which would be reviewed under the manifest-weight standard. See *In re A.P.*, 2012 IL 113875, ¶ 17 (finding of abuse or neglect "will not be reversed unless it is against the manifest weight of the evidence"). Nor does Lindsey appear to claim that the trial court exceeded its authority under the Act, which would trigger *de novo* review. See *In re L.O.*, 2016 IL App (1st) 150083, ¶ 17 ("[T]o the extent that we are called upon in this case *** to determine whether the trial court exceeded its authority under the Act, *** we will apply a *de novo* standard of review ***."). Because the challenged portion of the trial court's order did not involve a legal interpretation, and was not a factual finding, but instead was an inherently discretionary judgment call to further the best interests of the children, it would seem that the parties are correct that the proper standard of review is abuse of discretion. See *Seymour v. Collins*, 2015 IL 118432, ¶ 41 (quoting *Highmark Inc. v. Allcare Health Management System, Inc.*, 572 U.S. ___, ___, 134 S.Ct. 1744, 1748) ("Traditionally, *** decisions on matters of discretion are reviewable for abuse of discretion." (Internal quotation marks omitted.)).

¶ 30 We emphasize, however, that we need not decide the appropriate standard of review, as our result would be the same under any standard of review.

¶ 31 It is clear from the record that the trial court was rightly concerned with Lindsey's behavior and the well-being of the children, and the trial court recognized that the children would now be living in Texas, leading to the real possibility that future litigation regarding the care, custody, and visitation of the children could take place in Texas, not Illinois. The court expressed its concern that "any other Judge who hears this case" have a proper "understanding of what has happened to these children." The trial court's concern that a judge in Texas might not have ready access to its findings of abuse and neglect was a valid one, and we commend the trial court for its vigilance in keeping the children's best interests paramount.

¶ 32 That said, we share Lindsey's concern with the breadth of the trial court's order. First, the order covers "any legal papers" Lindsey would file in relation to the children, expressly *not* limited to custody, care, or visitation. Second, it applies to legal papers not only in relation to Lindsey's current children, but also to any future children she may have.

¶ 33 On the first issue, as we understand the trial court's intent, the court was focusing on court filings regarding the children, ensuring that any future judge would have access to these findings of abuse. But the phrase employed was "legal papers," a vague term which could be reasonably interpreted to include any number of things unrelated to court proceedings. An application for a duplicate birth certificate, to choose one example, could be a "legal paper" filed in relation to her children, but we can think of no sound reason to require Lindsey to disclose her findings of abuse to a municipal clerk engaged in a ministerial transaction that has nothing to do with the well-being of the children. Nor was that the trial court's intention. More targeted language could clarify that the trial court was focusing on *court* filings regarding the care, custody, or visitation of Lindsey's children.

¶ 34 As to the second issue, the Act contemplates proceedings "concerning boys and girls who are abused, neglected or dependent, as defined in Section 2-3 or 2-4" of the Act. 705 ILCS 405/2-1 (West 2014). Those cited provisions refer to minors and even newborn children, but we see no indication that they were intended to apply, or logically could apply, to children who may not be born for some years down the road. See 705 ILCS 405/2-3, 2-4 (West 2014). It is true that living children can be declared abused or neglected based on abuse that predated their birth (see, *e.g.*, *In re Aniylah B.*, 2016 IL App (1st) 153662, ¶¶ 40-46), but that finding is not made before they are born; it is made after they are born and subject to the Act. In any event, as written, this order covers children who might be born at any time in the future, no matter how far down the road, and regardless of the circumstances present at that time. We think it was an abuse of discretion to apply this order to any children who have not yet been born.

¶ 35 We vacate the trial court's order and remand to the trial court. Should the court again choose to enter an order such as the one under review, that order should be limited to children currently born to Lindsey, and it should be limited to court filings regarding the care, custody, or visitation of those children.

¶ 36 Vacated and remanded.