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2016 IL App (3d) 160055-U

Order filed October 28, 2016

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2016

<i>In re</i> T.R.,)	Appeal from the Circuit Court
)	of the 10th Judicial Circuit,
a Minor)	Peoria County, Illinois,
)	
(The People of the State of Illinois,)	
)	
Petitioner-Appellee,)	Appeal No. 3-16-0055
)	Circuit No. 15-JA-216
v.)	
)	
Tierra T.,)	Honorable
)	Albert L. Purham, Jr.,
Respondent-Appellant).)	Judge, Presiding.

JUSTICE WRIGHT delivered the judgment of the court.
Justice Lytton and Presiding Justice O'Brien concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court's findings of neglect and parental unfitness were not against the manifest weight of the evidence.
- ¶ 2 On August 13, 2015, the State filed a petition alleging T.R. was neglected because of an environment injurious to her welfare. On December 16, 2015, the trial court adjudicated T.R.

neglected. Subsequently, on January 20, 2016, the trial court found mother an unfit parent. Mother appeals the trial court's findings of neglect and parental unfitness. We affirm.

¶ 3

FACTS

¶ 4

On August 13, 2015, the State filed a petition alleging that Tierra T. (mother) neglected her daughter, T.R., born on July 1, 2015. The petition alleged T.R. lived in an environment injurious to her welfare as set forth in 705 ILCS 405/2-3 (West 2014). Specifically, the petition alleged the trial court previously found mother to be an unfit parent in Peoria County case Nos. 11-JA-255, 11-JA-256, and 14-JA-148, and mother's fitness was not restored. The petition further alleged mother had not completed court ordered tasks, and that putative father, who has numerous prior criminal convictions, currently resides with mother.

¶ 5

On December 16, 2015, the trial court conducted an adjudicatory hearing. The State began the hearing by introducing certified copies of Peoria County case Nos. 11-JA-255, 11-JA-256, and 14-JA-148 concerning the court's prior findings of mother's unfitness with respect to her other children.¹ The dispositional order in case Nos. 11-JA-255 and 11-JA-256 indicated that mother was found unfit based on: cannabis usage, domestic violence, failure to cooperate, not providing drug drops, positive drug drops, not being honest with caseworkers, not being credible, and immunization delay.

¶ 6

Subsequently, the dispositional order in 14-JA-148 indicated that mother remained unfit based on: prior bases not corrected and continued drug and alcohol usage until late in her pregnancy. The court's dispositional order required mother to provide her caseworker with information regarding any change in members of mother's household within three days.

¹Mother voluntarily acknowledges the court's previous findings of her parental unfitness.

¶ 7 After the State’s introduction of the records concerning the court’s previous findings of mother’s unfitness, the State called Alyssa Hoerr, a child protection investigator for the Department of Children and Family Services (DCFS), as their first witness. Hoerr testified that mother and putative father reported they lived together at 2425 West Malone St., Peoria, IL.

¶ 8 Next, the State called Elizabeth Hensold. Hensold testified she was employed by Family Core and was mother’s current caseworker. Hensold explained that in June of 2015, mother completed a 28-day inpatient drug treatment program while pregnant with T.R. After mother successfully completed the program, mother failed to maintain contact with Hensold. Mother gave birth to T.R. on July 1, 2015. Hensold did not become aware of T.R.’s birth until August 12, 2015. Hensold testified that mother failed to be engaged in counseling, aftercare, and drug drops from the time mother left inpatient treatment in June until after T.R. was taken from mother’s custody on August 13, 2015.

¶ 9 On cross-examination, Hensold conceded that mother had provided clean drug drops subsequent to T.R.’s removal from mother’s custody on August 13, 2015. Mother also completed a psychological evaluation, attended counseling, completed a parenting class, completed a domestic violence class, and had some visits with her other child, although they were not regular. When asked if there were any safety hazards inside mother’s home, Hensold commented that she had not done a thorough investigation of the home, but there was a marijuana plant in the backyard, which concerned her.

¶ 10 Following Hensold’s testimony, the State rested. During argument before the court, the State pointed out that the trial court found mother to be an unfit parent in case Nos. 11-JA-255 and 11-JA-256. In case No. 14-JA-148, the court found mother remained unfit. The State argued that on February 4, 2015, the court found mother “has done parenting class and domestic

violence and is in drug treatment but is still testing positive for cannabis.” On May 6, 2015, the court found mother “completed domestic violence program but missed some drug tests and counseling.” On September 15, 2015, the court found mother “has completed in-patient treatment but prior chronic use of cannabis and subsequent to in-patient, late counseling, and has not started NA yet.” The State argued the petition should be granted based on the court’s prior findings and Hensold’s testimony regarding mother’s continued unfitness.

¶ 11 Defense counsel argued, among other things, that the primary concern regarding mother’s previous findings of unfitness was that mother had a cannabis problem. Defense counsel emphasized that mother addressed this problem, was providing clean drug drops, and had completed many other services.

¶ 12 The trial court found that father did not contribute to T.R.’s injurious environment as alleged in the State’s petition. The court made this determination by looking at the nature of the offenses committed by the father and the proximity to when T.R. was born or living. The court also acknowledged mother’s completion of many of the services prescribed to her. However, the court emphasized that during the time period immediately preceding the birth of T.R., mother was involved in drug treatment. Further, the court found mother failed to be engaged in counseling and failed to provide drug drops for a time after the birth of T.R. Therefore, the court found T.R. was neglected because of an environment injurious to her welfare.

¶ 13 On January 20, 2016, the trial court conducted a fitness hearing. Hensold prepared the dispositional report for the court’s consideration. In response to questions from the attorneys and the court, Hensold indicated that mother recently tested positive for a cocaine metabolite on December 16, 2015. Hensold agreed that mother demonstrated appropriate parenting skills and stated mother’s home would be suitable for T.R. to live in after some repairs. However, Hensold

recommended further counseling for mother with goals of addressing mother's history of substance abuse and the ongoing need to build healthy personal relationships.

¶ 14 Mother testified on her own behalf and denied any cocaine usage. She explained that she had not been attending counseling since December of 2015 because of scheduling conflicts. Mother testified that she benefited from prior counseling because she does not currently smoke marijuana.

¶ 15 The court found mother remained unfit as she failed to correct conditions which were the basis of her previous findings of unfitness, failed to engage in services for a time, and recently tested positive for cocaine.

¶ 16 On January 22, 2016, mother filed a timely notice of appeal.

¶ 17 ANALYSIS

¶ 18 On appeal, mother contends the trial court's finding that T.R. was neglected by reason of an injurious environment was against the manifest weight of the evidence. Mother also contends that the trial court's finding that mother is an unfit parent was against the manifest weight of the evidence.

¶ 19 The State contends the trial court's findings that T.R. was neglected by reason of an injurious environment and that mother was unfit were not against the manifest weight of the evidence.

¶ 20 I. Neglect

¶ 21 Under 705 ILCS 405/2-3(1)(b) (West 2014) of the Juvenile Court Act of 1987, a child is neglected if the child's environment is injurious to his or her welfare. Neglect may be defined as "the failure to exercise the care that the circumstances justly demand." *People ex rel. Wallace v. Labrenz*, 411 Ill. 618, 624 (1952). Neglect based on an injurious environment may be found

where a parent has failed to provide a safe and nurturing shelter for the child based on the surrounding circumstances. *In re N.B.*, 191 Ill. 2d 338, 346 (2000); *In re Arthur H.*, 212 Ill. 2d 441, 463 (2004).

¶ 22 In any hearing under the Juvenile Court Act of 1987, “proof of the abuse, neglect or dependency of one minor shall be admissible evidence on the issue of the abuse, neglect or dependency of any other minor for whom the respondent is responsible.” 705 ILCS 405/2-18(3) (West 2014). The neglect of one child does not conclusively establish the neglect of another. *In re Arthur H.*, 212 Ill. 2d at 468. The trial court should always take into account the circumstances of the previously neglected child, together with the circumstances of the care and condition of another child named in a subsequent petition against the same parent. *Id.* at 468-69.

¶ 23 At an adjudicatory hearing, the State must prove an allegation of neglect by a preponderance of the evidence. *Id.* at 463-64. A trial court’s finding of neglect will not be disturbed unless their finding is against the manifest weight of the evidence. *Id.* at 464. A trial court’s finding will be found to be against the manifest weight of the evidence only if “the opposite conclusion is clearly evident or the determination is unreasonable, arbitrary, or not based on the evidence presented.” *In re D.F.*, 201 Ill. 2d 476, 498 (2002).

¶ 24 At the adjudicatory hearing, the State submitted certified copies of Peoria County case Nos. 11-JA-255, 11-JA-256, and 14-JA-148 for the court’s consideration. In these cases, the trial court found mother unfit due to: a history of cannabis usage, domestic violence, failure to cooperate, failure to provide drug drops, positive drug drops, dishonesty, immunization delay, prior bases not corrected, and drug and alcohol use late into her pregnancy. Mother was subsequently ordered to perform tasks such as, but not limited to, random drug drops and substance abuse counseling.

¶ 25 In the instant case, similar to the previous cases, mother struggled with the completion of court ordered treatment and requirements for ongoing abstinence from the use of illegal substances. Even though mother has made great progress by completing parenting and domestic violence classes, obtaining adequate housing, and exhibiting appropriate parenting skills, her substance abuse treatment has not been completed. Mother appears to have left 28-day, inpatient drug treatment, mere days before giving birth to T.R. Further, after T.R.'s birth, mother failed to resume counseling services and failed to submit to drug drops until the agency took the drastic action of removing T.R. from mother's care and custody approximately six weeks later. Based on this record, the trial court's finding of neglect based on an injurious environment was not against the manifest weight of the evidence.

¶ 26 II. Parental Unfitness

¶ 27 After the trial judge adjudicates a child neglected, all considerations focus on the actions of the parents. *In re Arthur H.*, 212 Ill. 2d at 466. On appeal, we review the trial court's finding of parental unfitness based on the manifest weight of the evidence standard. *In re A.S.B.*, 293 Ill. App. 3d 836, 843 (1997).

¶ 28 In the instant case, the court received testimony from Hensold that mother successfully completed an inpatient drug program in June of 2015, while pregnant with T.R. However, upon completion of the program, mother failed to inform Hensold of T.R.'s birth as required, and did not resume aftercare services, counseling, or drug drops until T.R. was taken from her custody approximately six weeks later. Further, mother tested positive for the presence of cocaine on December 16, 2015.

¶ 29 Based on this record, we conclude the trial court's finding of parental unfitness was not against the manifest weight of the evidence.

¶ 30

CONCLUSION

¶ 31

The judgment of the circuit court of Peoria County is affirmed.

¶ 32

Affirmed.