2016 IL App (3d) 160351-U
Consolidated with 160352-U and 160353-U

Order filed November 4, 2016

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2016

In re D.H., D.H., and D.J.,	)	Appeal from the Circuit Court
	)	of the 9th Judicial Circuit,
Minors	)	McDonough County, Illinois.
	)	
(The People of the State of Illinois,	)	Appeal Nos. 3-16-0351
	)	3-16-0352
Petitioner-Appellee,	)	3-16-0353
	)	Circuit Nos. 15-JA-21
v.	)	15-JA-22
	)	15-JA-23
A.H.,	)	
	)	Honorable Heidi A. Benson,
Respondent-Appellant).	)	Judge, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court.
Justices Carter and Lytton concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's finding of neglect based on an injurious environment was not against the manifest weight of the evidence.

¶ 2 Respondent, A.H., has three children, D.H. (born October 19, 2007), Da.H. (born February 19, 2009), and D.J. (born November 20, 2014). She resides with her boyfriend, E.J., the father of D.J. The State filed separate petitions for adjudication of wardship for the minors,

alleging they were neglected pursuant to section 2-3(1)(b) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(1)(b) (West 2014)). Respondent denied the allegations. The trial court granted the State's petitions. Respondent appeals, arguing the trial court's finding of neglect was not supported by a preponderance of the evidence. We affirm.

¶ 3 BACKGROUND

¶ 4 In November 2015, the State filed petitions for adjudication of wardship, alleging that D.H., Da.H., and D.J. were neglected pursuant to section 2-3 of the Juvenile Court Act (705 ILCS 405/2-3(1)(b) (West 2014)). The State simultaneously petitioned for the Illinois Department of Children and Family Services (DCFS) to take temporary custody. The State's petitions were based on three consecutive findings of abuse by DCFS, indicating respondent and E.J. as the offenders.

¶ 5 In April 2015, respondent stated that E.J. whipped Da.H.—who was six years old at the time—with two belts, leaving bruises on his butt, lower back, and hip. Respondent also had a black eye and stated that E.J. hit her. DCFS investigated, found marks on Da.H., and indicated E.J. in the offense. In September of 2015, Da.H. reported that he was hit with a belt again. He had a mark approximately one inch wide and three to four inches long on the back of his neck. Da.H. stated that the injury was from his mother hitting him with a belt for misbehaving at school. DCFS investigated and respondent was indicated for the offense. DCFS started services with respondent and E.J. the week of November 16, 2015. They were both told to stop inflicting corporal punishment on the children.

¶ 6 On November 23, 2015, D.H. told her second grade teacher, Anna Mercer, that she had been abused recently and was afraid to go home. Mercer observed a scab on D.H.'s neck, which D.H. said was from being hit with a belt. Mercer reported the incident to DCFS.

¶ 7 DCFS investigator, Jay Neal, responded to the report. He also observed the scab on D.H.'s neck. D.H. told Neal the scab was from respondent hitting her with a belt the week prior. Neal photographed D.H.'s injury. D.H. further told Neal that respondent hits her regularly with a belt on the arm and instructed her to wear a long sleeve shirt to conceal marks during a scheduled visit by a caseworker. D.H. reiterated that she was afraid to go home.

¶ 8 In addition, D.H. said she was recently hit for coming downstairs to get a drink of water while respondent was intoxicated and drinking alcohol with friends. She said respondent told her she was supposed to be watching her one-year-old brother, D.J. D.H. claimed respondent threatened that if she told anyone about the abuse, she would be hit so badly she would never be able to sit again. D.H. said respondent also hit Da.H. in the nose hard enough to make him bleed "all over." She also stated D.J. was spanked and hit with a belt for not going to sleep the day before—she did not specify who hit him. D.H. said E.J. also hit her with a belt and that E.J. and respondent were not hitting Da.H. any longer because "they" were watching him for injuries.

¶ 9 Neal reviewed the prior DCFS findings of abuse of Da.H. and took protective custody of the minors. That same night, emergency room staff examined all three children for the purpose of obtaining a medical clearance. No visible signs of abuse—including D.H.'s scab—were documented in the paperwork generated from the visit.

¶ 10 At the shelter care hearing the next day, the trial court found there was probable cause to believe the children were being abused and awarded temporary custody of the minors to DCFS. DCFS placed the children with respondent's sister and allowed her to supervise visitations.

¶ 11 Initially, respondent denied the allegations in the State's adjudication of wardship petition. In January 2016, respondent and the State stipulated to an adjudicatory order finding the minors were in an environment injurious to their welfare. The trial court also ordered

respondent to undergo a psychological evaluation. Respondent later had a falling out with her appointed counsel and sought to vacate her stipulation.

¶ 12 The trial court waited for respondent to complete the psychological exam, then allowed her to vacate the stipulation while represented by another appointed attorney. At the ensuing adjudicatory hearing in May 2016, the State presented its case. Brooke Baldwin testified that she was the director of forensic interviewing for the Advocacy Network for Children. She conducted a child forensic interview on Da.H. in April 2016. Da.H. told Baldwin that he was hit frequently with hands and a belt by respondent and E.J. He described some of the belts in detail and even told Baldwin that one of the belts was wet, making it more painful than the others. Da.H. indicated that his sister, D.H., was also abused by respondent and E.J. in a similar manner.

¶ 13 Neal testified to the course of his investigation on November 23, 2015. The trial court admitted his pictures of D.H.'s injury into evidence. Neal also put his investigation into context, explaining that E.J. and respondent had recently been indicated in prior DCFS reports and had already started services as a result of the most recent one. Mercer testified to her encounter with D.H. in her classroom, which led to her reporting the allegation to DCFS.

¶ 14 Respondent called no witnesses. She did have the trial court admit into evidence pictures of the children and each of the minors' medical records from their emergency room visit on November 23. The trial court granted the State's petitions for neglect. The court found that the State met its burden by a preponderance of the evidence, proving that the minors had been neglected and that their environment was injurious to their welfare. At a subsequent dispositional hearing, respondent was found unfit.

¶ 15 Respondent appeals.

¶ 16 ANALYSIS

¶ 17 On appeal, respondent argues that the trial court's finding of abuse and neglect was not supported by a preponderance of the evidence. Specifically, respondent asserts that: (1) the medical evidence did not support the trial court's findings and, in fact, contradicts D.H.'s and Da.H.'s claims; (2) no credible evidence established that the minors were physically disciplined after she was indicated for abusing the children in September of 2015; and (3) if any corporal punishment was inflicted on the minors, it was not excessive.

¶ 18 It is the State's burden to prove neglect by a preponderance of the evidence. *In re J.S.*, 2013 IL App (3d) 120744, ¶ 12. The trial court's finding will not be disturbed on review unless it is against the manifest weight of the evidence. *Id*. "A determination is against the manifest weight of the evidence only if the opposite conclusion is clearly evident, or if the determination is unreasonable, arbitrary, or not based on the evidence presented. [Citation.]" *Id*.

¶ 19 In the context of adjudication of wardship (705 ILCS 405/2-21 (West 2014)), neglect is a "failure to exercise the care that circumstances justly demand." (Internal quotation marks omitted.) *In re Arthur H.*, 212 Ill. 2d 441, 463 (2004) (quoting *In re N.B.*, 191 Ill. 2d 338, 346 (2000), quoting *People ex rel. Wallace v. Labrenz*, 411 Ill. 618, 624 (1952)). Neglect does not have a limited narrow definition, and includes, *inter alia*, willful and unintentional disregard of one's duty to minors. *Id*. The evidence the State presented at the adjudicatory hearing confirmed by a preponderance of the evidence that the minors were neglected.

¶ 20 First, respondent argues the medical records from the minors' visit to the emergency room after DCFS took protective custody fails to support the trial court's finding and contradicts the minors' statements. We have no idea why the emergency room staff did not note—at least—D.H.'s injury, which was photographed by Neal hours before. Regardless, the absence of documented injuries on the minors in one medical record does not automatically outweigh the

testimony of Baldwin, Mercer, and Neal. Their testimony reinforces the statements made by D.H. and Da.H., describing the abuse inflicted upon them by respondent and E.J. The medical records conflict with their testimony, insofar as they do not note a scab on D.H.'s neck. The trial court, however, found the witness testimony more credible than the records. We must give deference to the trial court's finding and cannot reweigh witness credibility or the value it assigned to particular evidence. *In re An.W.*, 2014 IL App (3d) 130526, ¶ 55. Accordingly, respondent's medical record argument fails.

¶ 21 Respondent also asserts there is no credible evidence of the minors being abused after September 2015. This questions the veracity of D.H.'s statements to Mercer and Neal. Again, we cannot reweigh evidence or reassess witness credibility, unless we find the trial court's ruling was against the manifest weight of the evidence. *Id.*; *In re J.S.*, 2013 IL App (3d) 120744, ¶ 12. The trial court's ruling was not against the manifest weight of the evidence.

¶ 22 Here, there was credible evidence admitted showing the minors were physically disciplined after September 2015. Respondent is the only party claiming the minors were not subject to corporal punishment after September 2015. She is also the only one claiming D.H. is untruthful. In stark contrast to respondent's claim are: (1) the statements of her own child; (2) the firsthand observation of a recent injury on the child by Mercer and Neal; and (3) photographs of the injury. Aside from respondent's self-serving claim, nothing suggests D.H.'s explanation for the injury is a fabrication. Respondent's assertions are insufficient to support her argument. The trial court's ruling was based on a preponderance of the evidence.

¶ 23 Lastly, respondent claims that if she subjected the minors to corporal punishment, it was not excessive. In support of this, respondent highlights that all alleged punishments, by the minors' own admissions, were in response to "negative behavior." This argument has no merit.

¶ 24 Corporal punishment is not, *per se*, neglect or abuse. *In re S.M.*, 309 Ill. App. 3d 702, 706 (2000) ("There is a difference between vengeance corporal punishment and concerned, caring corporal punishment."); see also 705 ILCS 405/2-18(2) (West 2014). The factors we consider in determining whether corporal punishment is excessive, elevating it to the point of abuse, are whether: (1) an injury occurred; (2) the punishment was imposed for no reason; (3) the punishment was excessive in light of the circumstances; and (4) any medical or expert testimony was presented. *In re S.M.*, 309 Ill. App. 3d at 706.

¶ 25 The evidence in this case demonstrates respondent and E.J. inflicted excessive corporal punishment on the minors. Baldwin and Neal testified to their extensive experience working with abused children. Much of their testimony about the abuse was documented, further supporting the State's allegation that the minors were injured multiple times by respondent and E.J. While the minors' injuries were all inflicted for an alleged disciplinary reason, the punishments were patently excessive in light of the circumstances. None of the "negative behavior" discussed in the record justified corporal punishment capable of causing injury.

¶ 26 The record before this court establishes that the trial court had ample evidence to conclude that the minors were in an environment injurious to their welfare. The trial court's finding was not against the manifest weight of the evidence.

¶ 27 CONCLUSION

¶ 28 For the foregoing reasons, we affirm the judgment of the circuit court of McDonough County.

¶ 29 Affirmed.