2016 IL App (4th) 160059-U

NOS. 4-16-0059, 4-16-0060 cons.

FILED
June 1, 2016
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: X.H., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Vermilion County
v. (No. 4-16-0059)	)	No. 15JA56
ALEX HULL,	)	
Respondent-Appellant.	)	Honorable
	)	Claudia S. Anderson,
	)	Judge Presiding.

In re: A.H., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Vermilion County
v. (No. 4-16-0060)	)	No. 15JA55
ALEX HULL,	)	
Respondent-Appellant.	)	Honorable
	)	Claudia S. Anderson,
	)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Justices Harris and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not make a finding that was against the manifest weight of the evidence when finding that the children were neglected.

¶ 2 These two appeals, which we have consolidated, pertain to X.H. and A.H., born on June 21, 2013. Respondent, Alex Hull, is their father, and he appeals dispositional orders adjudicating them to be neglected and making them wards of the court. Specifically, he challenges the trial court's finding that they were neglected. Because we are unable to say that

the finding of neglect is against the manifest weight of the evidence, we affirm the trial court's judgment.

¶ 3 I. BACKGROUND

¶ 4 There was a petition to adjudicate X.H. a ward of the court, and in another case, there was a petition to adjudicate A.H. a ward of the court. Both petitions, filed on June 15, 2015, had three counts, and the allegations of neglect were the same in the two petitions.

¶ 5 Count I alleged the child was "neglected" within the meaning of section 2-3(1)(b) of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/2-3(1)(b) (West 2014)) "in that his environment [was] injurious to his welfare due to failure to make progress in [an] intact case." Count II alleged the child was "neglected" within the meaning of section 2-3(1)(a) of the Act (705 ILCS 405/2-3(1)(a) (West 2014)) "in that the minor's custodial parent *** fail[ed] to provide the proper and necessary support, education, and other remedial care required for the minor's welfare." Count III alleged the child was "neglected" within the meaning of section 2-3(1)(b) "in that his environment [was] injurious to his welfare due to [an] unstable home environment."

¶ 6 On November 18, 2015, the trial court held an adjudicatory hearing on the petitions. The evidence tended to show the following.

¶ 7 In December 2013, respondent, the mother, and their four children (including X.H. and A.H.) were evicted from a residence on Harvey Street, in Danville.

¶ 8 The family then moved to a residence on Collett Street. At the time, The Center for Youth and Family Solutions (Family Solutions) was monitoring the home because respondent had been "indicated" for cuts, welts, and bruises on a nine-year-old brother of X.H. and A.H and because the mother drank excessively (a problem that, by all indications, she has since

overcome). By November 2014, there "was an issue with environmental neglect," to quote the testimony of a caseworker, Luanne Smalley: the family had "several pets," and Family Solutions had "many, many discussions" with the parents "about the conditions of the home and about cleaning" and even had provided them with cleaning supplies, diapers, and food. The family was evicted from Collett Street on March 31, 2015.

¶ 9 The family then moved in with the children's maternal grandmother, Audeen Equils. That house also had environmental problems. The grandmother was "a hoarder," to quote the testimony of Tracy Vincent, a child protective investigator with DCFS; "they had paths to walk through with the kids." Not only that, but as Vincent had learned from talking with the children, "anywhere from seven to nine dogs" stayed in the house, and these dogs "mess[ed] upstairs," where X.H. and A.H. had their playpen. There was some evidence that X.H. and A.H. were left in their playpen too much.

¶ 10 While the family was living with the grandmother, one of the four children, A.B., stopped attending eighth grade. The mother testified she allowed him to stop going to school because she believed he was being bullied. Her plan was to allow him to take online courses at home, but that plan fell through because the website was inaccessible on the grandmother's computer. So, 14-year-old A.B. stayed at home with his grandmother, doing little or nothing. The guardian *ad litem*, Liya Hussmann Rogers, asked the mother:

> "Q. Now with—with your son and being pulled out of school you would agree that you basically let him miss a half a year of school?
>
> A. Yes.

Q. And you knew during that entire time he wasn't really getting any education at that time, correct?

A. Not when I was working I did not know he wasn't getting it.

Q. For at least March through June you knew he was not getting an education, correct, of 2015?

A. Yes."

¶ 11 On June 5, 2015, the family moved out of the grandmother's residence after she obtained an order of protection against the mother. The four children then moved in with their maternal aunt, Jessica Morris, and respondent and the mother took up residence elsewhere, on Perrysville Road, with some friends.

¶ 12 On June 11, 2015, the aunt telephoned the Department of Children and Family Services (DCFS). According to Vincent, the aunt "was at [her] wit[']s end because [the mother] would not tell her where she was residing, *** she [had] little contact with them, and she was concerned because [A.H.] had an ear infection and she was not able to seek medical treatment." (As it turned out, A.H. had no ear infection.)

¶ 13 Vincent had the mother's cell phone number and was able to reach her. The mother was unwilling to tell Vincent the specific address on Perrysville Road where she and respondent lived, but she agreed to Vincent's proposal that she and Vincent meet in person. On June 12, 2015, the two of them met at Godfather's Pizza, and, according to Vincent's testimony, they had the following discussion:

"I discussed making a temporary plan for the children where they wrote a safety plan that we're giving her sister temporary

> guardianship of the children which would include medical[,] and [the mother] didn't want to do that because she would lose her food stamps and housing voucher and did not want to do that, and I basically—my job as an investigator is to assess the children and the safety of the parent's home, and being that I didn't know where she was staying and she wouldn't give me any information[,] I told her I was taking protective custody based upon not being able to assess her home environment and the many services that had already been provided for the last two years, year and a half."

¶ 14 A DCFS case originally was opened on the family in December 2013 because respondent allegedly had kicked a nine-year-old brother of X.H. and A.H. in the back. The investigative report was, as we said, "indicated on [respondent] for cuts, welts, [and] bruises." DCFS required him to undergo individual counseling, which he completed, and DCFS also required the mother to undergo treatment for alcoholism, which she completed. Afterward, the mother had no further problem with alcohol, but as of the date the State filed its petitions for adjudication of wardship, she and respondent had not obtained stable housing. Also, Family Solutions still had concerns about respondent's mental health because in November 2014, after he completed the individual counseling, he went to Burger King, where the mother was working at the time, and displayed a gun. After the Burger King incident, Smalley repeatedly urged him to undergo a new mental-health examination, but he refused to do so.

¶ 15 Smalley recalled that, in February 2015, the mother told her she was thinking of leaving respondent. She had to leave him to obtain subsidized housing. Smalley testified: "I've always wanted [the mother] to get involved with the subsidized housing, but if she had

[respondent] in her life he could not reside there because he had felony convictions." Smalley even "contacted [the] Danville Housing Authority and got a zero income application for her and took it to her and made her fill it out and turned it back in for her." The mother, however, failed to follow through. She skipped an appointment with a representative of the housing authority.

¶ 16 By the time of the adjudicatory hearing, however, the mother had obtained subsidized housing, where she lived with her newborn baby. (The trial court had put the other four children in protective custody on June 15, 2015.) She testified she had been short on money because, during her pregnancy, she had suffered extreme, dehydrating morning sickness and the doctor had forbidden her to work. The doctor still had not released her to return to work.

¶ 17 II. ANALYSIS

¶ 18 The State had the burden of proving, by a preponderance of the evidence, that X.H. and A.H. were neglected as alleged in count I, II, or III of the petitions for adjudication of wardship. See *In re N.B.*, 191 Ill. 2d 338, 343 (2000). We will reverse a finding of neglect only if it is against the manifest weight of the evidence. *Id.* at 346. A finding is against the manifest weight of the evidence only if the facts "clearly demonstrate" that the State failed to prove neglect. *Id*. at 346-47.

¶ 19 One of the allegations of neglect was that the children were in an environment injurious to their welfare. See 705 ILCS 405/2-3(1)(b) (West 2014). The supreme court has said that "an '[i]njurious environment' is an amorphous concept which cannot be defined with particularity." (Internal quotation marks omitted.) *N.B.*, 191 Ill. 2d at 346. "Generally, however, our courts have interpreted 'injurious environment' to include the breach of a parent's duty to ensure a safe and nurturing shelter for his or her children." (Internal quotation marks omitted.) *Id.*

¶ 20 Given all the evidence, we cannot say it is "clearly evident" that the State failed to prove the lack of a safe and nurturing shelter. *In re D.S.*, 217 Ill. 2d 306, 322 (2005). Children need stability, and unstable, unpredictable living arrangements are not nurturing. Also, it appears that both the residence on Collett Street and the grandmother's residence were dirty enough to pose an "environmental" concern, or to be unsafe to inhabit.

¶ 21 Granted, for all that appears in the record, there was nothing wrong with the aunt's residence, but even with her, the children's living arrangements were unstable, as evidenced by her call to DCFS. Understandably, she was at her wit's end. She could hardly be expected to continue watching the children if she was unable to locate their parents and if she lacked authority to arrange for medical care and schooling. We do not mean to suggest that leaving the children in the care of a responsible adult relative was, in itself, an act of neglect (see 705 ILCS 405/2-3(1)(a) (West 2014)), but failing to give the aunt any contact information or to authorize her to meet the children's medical and educational needs arguably was neglectful. No one was taking charge of these children. They were in limbo, like A.D., who was allowed to miss school for half a year (see 705 ILCS 405/2-18(a)(3) (West 2014) ("In any hearing under this Act, proof of the *** neglect *** 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.")).

¶ 22 We understand the parents were under great financial pressure—respondent lives on supplemental security income (for Tourette's syndrome), and the mother was unable to work because of a high-risk pregnancy—but they could have at least told the aunt where they could be found. More to the point, "parents are not adjudicated neglectful at the adjudicatory stage of the proceedings under the Act; rather, minors are adjudicated neglected." (Internal quotation marks omitted.) *In re Arthur H.*, 212 Ill. 2d 441, 467 (2004).

¶ 23 III. CONCLUSION

¶ 24 For the foregoing reasons, we affirm the trial court's judgment in the two cases.

¶ 25 Affirmed.