

NOTICE

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FILED

August 23, 2016
Carla Bender
4th District Appellate
Court, IL

2016 IL App (4th) 160209-U

NO. 4-16-0209

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: S.W. and N.P., Minors,)	Appeal from
CHAMPAIGN COUNTY COURT-APPOINTED)	Circuit Court of
SPECIAL ADVOCATES,)	Champaign County
Guardian <i>ad litem</i> -Appellant,)	No. 15JA54
v.)	
KATRISA PARKS, ROBERT WHITE, and)	Honorable
COURTNEY SMITH,)	Brett N. Olmstead,
Respondents-Appellees.)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice Knecht and Justice Holder White concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's determination that the minor children were not neglected was not against the manifest weight of the evidence.

¶ 2 The guardian *ad litem* (GAL) appeals the trial court's adjudicatory order finding the State failed to prove the minor children, S.W. (born June 17, 2010) and N.P. (born June 17, 2014) were neglected and the court's subsequent dismissal of the State's amended petition for adjudication of neglect. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On October 12, 2015, the State filed a petition for adjudication of neglect and shelter care, alleging S.W. and N.P. were neglected minors pursuant to section 2-3(1)(b) of the Juvenile Court Act of 1987 (705 ILCS 405/2-3(1)(b) (West 2014)) in that their environment was injurious to their welfare when they resided with respondent Katrissa Parks because the

environment exposed them to inadequate supervision (count I) and a risk of physical harm (count II). At a shelter-care hearing, Parks stipulated to the factual basis provided in a shelter-care report. The report indicated Parks was arrested for driving a stolen vehicle on the morning of October 12, 2015. During the traffic stop, Parks told the officer her minor children were at home with a friend. However, when a deputy sheriff went to her home, he found the children alone. The court found probable cause to believe the minors were neglected and placed temporary custody and guardianship of the minors with the Department of Children and Family Services (DCFS). On October 23, 2015, respondent fathers, Robert White (S.W.'s father) and Courtney Smith (N.P.'s father), also stipulated to the factual basis provided in the shelter-care report.

¶ 5 On December 22, 2015, the trial court held an adjudicatory hearing, during which the following testimony was presented. Jason Moore, a deputy sheriff with the Champaign County sheriff's department, testified that on October 12, 2015, he responded to a call regarding a stolen vehicle. At approximately 6:26 a.m., he observed a vehicle in Urbana, Illinois, that matched the description of the stolen vehicle provided by its owner, James Day. Moore initiated a traffic stop and found Parks to be the only occupant of the vehicle. According to Moore, Parks told him she had been given permission to drive the vehicle by Jason Day, James Day's son. She also told Moore she had two children at home who were being watched by Jason. Moore stated he then spoke to Jason and James on the telephone and their statements contradicted Parks' story. Moore then arrested Parks for possession of a stolen vehicle. Moore further testified that the distance between Parks' residence and the location of the traffic stop was 20 to 25 miles.

¶ 6 Brandon Reifsteck, a deputy sheriff with the Champaign County sheriff's department, testified that at approximately 7 a.m. on October 12, 2015, he was dispatched to two addresses in Longview, Illinois. Reifsteck first went to the Day residence and spoke with Jason

and James Day. He noted Jason was wearing an orange cap and a yellow sweatshirt. He then proceeded to Parks' home, which was 3/4 of a block away from the Days' residence. Upon arriving at Parks' residence, Reifsteck found the front door "slightly ajar." When he knocked, the door opened and a four- to five-year-old child, whom he identified as S.W., came to the door. Reifsteck stated S.W. was crying and asked him "if I knew where his mom was." Reifsteck then walked into the living room and noticed an infant, N.P., lying on the couch. Reifsteck stated he asked S.W. if anyone was watching him and S.W. responded that "a man was there that told him to stay on the couch and got him a soda or something like that." According to Reifsteck, S.W. stated he did not know the man, but S.W. described the man's clothing, which matched the clothing Reifsteck observed Jason to be wearing. After determining no one else was in the house, Reifsteck took the children into protective custody.

¶ 7 Marcus Truss, a DCFS investigator, testified that on October 12, 2015, he received information that the sheriff's office had taken protective custody of Parks' two minor children. Truss went to the sheriff's office to interview the children. Truss spoke to S.W., who told him that when he woke up, his mother was not home. According to Truss, S.W. also told him, "someone came to the house, told him to sit down, and then [S.W.] left out of the home and was looking for his mom, and then [S.W.] came back in the home." S.W. also told Truss that the man who came to the house later left. Truss did not see any marks or bruises on either child.

¶ 8 Arnold Black, a DCFS investigator, testified that on October 12, 2015, he was assigned to investigate a report that Parks' children had been left home alone. Black went to the Champaign County jail to speak with Parks while other investigators were assigned to the children. According to Black, Parks told him she had permission from Jason Day to borrow his father's truck that morning. Parks told him that Jason had "cared for her children" a couple times

in the past and that Jason had agreed to watch her children that morning. Parks did not realize Jason was no longer watching her children until she was informed by the police. Black testified Parks admitted to being a heroin user and that she last used heroin in September 2015. She denied using drugs in front of her children. Parks also told Black that her mother or sister usually babysat her children.

¶ 9 Katrisa Parks testified she was 28 years old. According to Parks, at approximately 5 a.m. on the morning of October 12, 2015, Jason Day came to her house and asked her to drive to Urbana and purchase beer, cigarettes, and crack cocaine for him. She agreed to do so, but because she did not have gas in her vehicle, Jason let her drive his father's truck. According to Parks, Jason also agreed to stay at her house and watch her children, who were still asleep, while she was gone. Parks expected her children would sleep until 7:30 or 8 a.m., and she anticipated she would only be gone an hour to an hour and a half. Parks could not recall Jason having babysat for her children before, but she testified he had "watch[ed] them for a few minutes" on occasion.

¶ 10 Parks further testified she had known Jason for 23 years. She had been best friends with Jason's sister from grade school through high school. Jason had children of his own and "has always been good with the kids." Parks stated that Jason's children were now grown, the youngest being 19 or 20 years of age, but that he now had his five-year-old grandson "all the time." She trusted him and "honestly [did not] think that he would ever leave [her] children." Parks first learned that Jason was no longer at her house with her children that morning when she was informed by a deputy. According to Parks, if she had an inkling that Jason would leave her children unattended, she would have asked her mother, sister, or best friend to watch them.

¶ 11 Parks further stated she had never used drugs with Jason and never allowed anyone to use drugs in her home. Parks did not know how often Jason used drugs, but she testified he showed no signs of being under the influence on the morning of October 12, 2015. She further maintained that she would not have left her children with Jason if he had been under the influence. According to Parks, she had been clean since September and no longer had contact with her ex-boyfriend, with whom she had started using heroin.

¶ 12 Thereafter, the trial court dismissed the State's petition, finding the State failed to prove by a preponderance of the evidence that the children were neglected. In concluding the State failed to prove neglect, the court noted Parks made a poor decision when she agreed to purchase drugs for Jason Day; however, it found that poor decision "should[] n[ot] bog down the fundamental issue here," which is whether "she had reason to believe she is leaving her children with someone who cannot provide adequate supervision." The court found the fact that Jason was a drug user did not "mean he [could not] provide adequate supervision" for Parks' children, especially considering he showed no signs of being under the influence of drugs that morning.

¶ 13 On January 11, 2016, the GAL filed a posttrial motion requesting that the trial court vacate its adjudicatory order finding that the minor children were not neglected. Following a February 12, 2016, hearing on the matter, the court denied the GAL's motion.

¶ 14 On March 11, 2016, the State filed its notice of appeal and on March 21, 2016, the GAL filed its notice joining the State's appeal. In May 2016, this court allowed the State to withdraw as a party to this appeal.

¶ 15 **II. ANALYSIS**

¶ 16 On appeal, the GAL asserts the trial court erred in finding that the State failed to prove by a preponderance of the evidence that the minors were neglected.

¶ 17 Pursuant to the Juvenile Court Act of 1987 (Act) (705 ILCS 405/1-1 to 405/7-1 (West 2014)), a trial court must employ a two-step process to determine whether a minor should be made a ward of the court. *In re A.P.*, 2012 IL 113875, ¶ 18, 981 N.E.2d 336. The first step, which is at issue here, is the adjudicatory hearing, during which the court must determine whether the minor is abused, neglected, or dependent. *Id.* ¶ 19 (citing 705 ILCS 405/2-18(1) (West 2014)). 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 2014). Only if the court determines the minor is abused, neglected, or dependent does it proceed to the second step, which is the dispositional hearing. *A.P.*, 2012 IL 113875, ¶ 21, 981 N.E.2d 336.

¶ 18 "It is the State's burden to prove allegations of neglect by a preponderance of the evidence." *Id.* ¶ 17. "In other words, the State must establish that the allegations of neglect are more probably true than not." *Id.* "[T]he paramount consideration is the best interests of the child." *Id.* ¶ 18. "On review, a trial court's finding of neglect will not be reversed unless it is against the manifest weight of the evidence," which means "only if the opposite conclusion is clearly evident." *Id.* ¶ 17. "If the State fails to prove the allegations of abuse, neglect, or dependence by a preponderance of the evidence, the court must dismiss the petition." *Id.*

¶ 19 "[C]ases involving allegations of neglect and adjudication of wardship are *sui generis* and must be decided on the basis of their unique circumstances." *In re Arthur H.*, 212 Ill. 2d 441, 463, 819 N.E.2d 734, 747 (2004). "This analytical principle underscores the 'fact-driven nature of neglect and injurious environment rulings.'" *Id.* (quoting *In re N.B.*, 191 Ill. 2d 338, 346, 730 N.E.2d 1086, 1090 (2000)).

"Generally, "neglect" is defined as the "failure to exercise the care that circumstances justly demand." ' *** [Citations.] This does

not mean, however, that the term neglect is limited to a narrow definition. [Citation.] As this court has long held, neglect encompasses 'wilful as well as unintentional disregard of duty. It is not a term of fixed and measured meaning. It takes its content always from specific circumstances, and its meaning varies as the context of surrounding circumstances changes.' *** [Citations.] 'Similarly, the term "injurious environment" has been recognized by our courts as an amorphous concept that cannot be defined with particularity.' [Citation.] Generally, however, 'the term "injurious environment" has been interpreted to include "the breach of a parent's duty to ensure a 'safe and nurturing shelter' for his or her children." ' [Citations.]" A.P., 2012 IL 113875, ¶ 22, 981 N.E.2d 336.

When a neglect determination depends on the conduct of a caretaker, the State must show that the respondent knew or should have known the caretaker was unsuitable. *Id.* ¶ 25.

¶ 20 Here, the GAL argues the trial court's finding that the State failed to establish neglect was error because there was "overwhelming cause for concern" with Jason as a caregiver for the minor children. Specifically, the GAL asserts Parks had "little, if any, information with which to assess [Jason's] ability or appropriateness to provide proper supervision and care to her children." In support of its argument, the GAL points to the age difference between Jason and Parks, noting that Parks "was very young when [Jason] was rearing his children and would not have been informed as to his parenting practices or ability." The GAL attaches little significance to Jason's care of his five-year-old grandson because the evidence fails to show he "exercised

sole responsibility for the care of his grandson." The GAL further argues the fact that Parks knew Jason was a drug user and agreed to purchase drugs for him is evidence of the impropriety of her decision to leave her children in his care. In other words, the GAL argues that Jason's history of drug use, combined with his request that Parks purchase crack cocaine on his behalf, made him an unsuitable caregiver. For the reasons that follow, we find the court's finding of no neglect was not against the manifest weight of the evidence.

¶ 21 First, the GAL claims that due to the significant age difference between Parks and Jason (Parks testified she was 28 years old and Jason's youngest child was 19 or 20 years old), Parks would not have been able to assess Jason's supervision of his own children. However, Parks testified she had known Jason most of her life and had always known him to be "good with the kids." Further, although he had not previously babysat her children at her home, he had "watch[ed] them for a few minutes" on other occasions. No evidence was presented that Jason was not capable of supervising children or had previously endangered children. Based on her familiarity and prior experience with Jason, Parks trusted him to watch her children on that particular morning. The children were asleep when Parks left and she did not expect them to wake up until she had returned from the errand. Parks testified she had no inkling that Jason would leave them unattended in her absence. In fact, Parks testified she had family members and a best friend who would have watched the children if she had any concerns with leaving them in Jason's care. The above evidence supports the trial court's finding that Parks would not have suspected Jason was an unsuitable caregiver under the circumstances. See *id.* ("[I]n order to support the trial court's neglect findings in this case, there had to be some indication that respondent knew or should have known that [respondent] was an unsuitable caregiver.")

¶ 22 Next, we note that the GAL does not claim Jason was under the influence of drugs at the time Parks requested he watch her children. In fact, the only evidence regarding Jason's drug use was Parks' testimony that he had used drugs in the past and requested Parks buy crack cocaine that morning. No evidence was presented regarding the frequency or extent of Jason's drug use, or the last time he had used drugs. Jason did not testify at the hearing. The GAL cites no authority, nor does our research reveal any, to support the proposition that one's past use of illicit drugs, no matter how casual, is a *per se* disqualification as a suitable caregiver to children. Here, the evidence shows Jason was sober when he arrived at Parks' residence and at the time he agreed to babysit Parks' sleeping children. Thus, we reject the GAL's contention that the limited evidence bearing on Jason's past drug use requires a finding that he was an unsuitable caregiver for Parks' children that morning.

¶ 23 Based on our review of the record, it is apparent the trial judge struggled with his decision. It is also apparent the trial judge considered the applicable law, carefully weighed the evidence, and concluded the State had failed to prove neglect. In denying the GAL's posttrial motion, he stated, in part, as follows:

"I think, in this circumstance, given the hour, the children were asleep at the beginning, it's expected to be of a short duration, Ms. Parks has reason to believe that he is sober, not on any substances based on her personal observation and the fact that she's the one being sent out to obtain drugs, all of that combines to indicate that, in this situation, on this particular morning, for this particular errand, Ms. Parks did not have reason to believe that Mr. Day was an unsuitable caregiver under the law.

*** I believe that I have discretion, but I have to apply the law the way I read it, and the way I read the law and the definition of neglect, and specifically the definition of unsuitable caregiver given to me in *A.P.* under the specific factual findings I have made, I find that they do not establish neglect as alleged by the petition by a preponderance of the evidence."

¶ 24 Our supreme court instructs us as follows:

"Under a manifest weight of the evidence standard, we give deference to the trial court as the finder of fact because it is in the best position to observe the conduct and demeanor of the parties and the witnesses and has a degree of familiarity with the evidence that a reviewing court cannot possibly obtain. A reviewing court, therefore, must not substitute its judgment for that of the trial court regarding the credibility of witnesses, the weight to be given to the evidence, or the inferences to be drawn." *In re D.F.*, 201 Ill. 2d 476, 498-99, 777 N.E.2d 930, 943 (2002).

In light of the deference owed the trial court's judgment here, we will not disturb its finding of no neglect.

¶ 25 In sum, the record supports the trial court's finding that S.W. and N.P. were not neglected minors as argued by the GAL, and an opposite conclusion is not clearly apparent. Therefore, the court's adjudicatory order finding that the minors were not neglected was not against the manifest weight of the evidence.

¶ 26 III. CONCLUSION

¶ 27 For the reasons stated, we affirm the trial court's judgment.

¶ 28 Affirmed.