2016 IL App (4th) 160425-U

NOS. 4-16-0425, 4-16-0426 cons.

FILED
November 3, 2016
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: K.D., I.D., Su. D., and Si. D., Minors,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Champaign County
v. (No. 4-16-0425)	)	No. 16JA6
OLUFEMI DAVIS,	)	
Respondent-Appellant.	)	
	)	
	)	
In re: K.D., a Minor;	)	
THE PEOPLE OF THE STATE OF ILLINOIS	)	
Petitioner-Appellee,	)	
v. (No. 4-16-0426)	)	
JARVIS REYES,	)	Honorable
Defendant-Appellant.	)	Brett N. Olmstead,
	)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Justice Harris concurred in the judgment.
Justice Appleton dissented.

ORDER

¶ 1 *Held*: The appellate court affirmed the trial court's judgment, which adjudicated respondents' children (1) neglected minors and (2) wards of the court.

¶ 2 In February 2016, the State filed a petition for adjudication of wardship, alleging that K.D. (born February 19, 2005), I.D. (born October 14, 2006), Su. D. (born August 22, 2013), and Si. D. (born August 13, 2015) were neglected pursuant to section 2-3(1)(b) of the Juvenile Court Act of 1987 (705 ILCS 405/2-3(1)(b) (West Supp. 2015)). Following hearings in April and May 2016, the trial court adjudicated all four minors neglected. Later in May 2016, the court entered a dispositional order, adjudicating all four children wards of the court and appointing the

Department of Children and Family Services (DCFS) as the minors' guardian.

¶ 3 Respondent Olufemi Davis (mother to K.D., I.D., Su. D., and Si. D.), appeals as to all four minors, and respondent Jarvis Reyes (father of K.D.), appeals as to K.D. Both parties argue that the trial court's findings that (1) the minors were neglected and (2) it was in the minors' best interest to be made wards of the court were against the manifest weight of the evidence. We disagree and affirm.

¶ 4 I. BACKGROUND

¶ 5 A. The Petition for Adjudication of Wardship

¶ 6 On February 1, 2016, the State filed a petition for adjudication of wardship. The petition alleged that the minor children—K.D.; I.D.; Su. D.; and Si. D.—were neglected because their environment was injurious pursuant to section 2-3(1)(b) of the Act (705 ILCS 405/2-3(1)(b) (West Supp. 2015)). Specifically, the State's petition alleged that residing with Olufemi and Alexander Johnson exposed the minors to the following conditions: (1) domestic violence and (2) risk of physical harm.

¶ 7 B. The First Shelter-Care Hearing

¶ 8 That same day, the trial court conducted a shelter-care hearing. See 705 ILCS 405/2-10 (West 2014) (defining the nature of the hearing). After the hearing, the court found probable cause to believe that all four minors were neglected because they lived with Olufemi and Johnson, who had engaged in at least one act of domestic violence in front of the children. However, after considering the factors listed in section 1-3(4.05) of the Act (705 ILCS 405/1-3(4.05) (West Supp. 2015)), the court found further that (1) it was consistent with the health, safety, and best interest of the minors to release them from State custody; and (2) that the State's request for temporary custody be denied. The minors were returned to the custody of Olufemi.

The court ordered Johnson to have no contact with Olufemi or the minors until further order of the court.

¶ 9 C. The Warrants of Apprehension

¶ 10 In March 2016, the trial court issued warrants of apprehension for each of the four minors. The warrants ordered any peace officer to take protective custody of the minors and turn them over to DCFS.

¶ 11 Later that month, Olufemi filed a motion to quash the warrants of apprehension. The motion to quash alleged that Olufemi had moved to Georgia with the children to avoid further contact with Johnson. The motion noted that the trial court's prior order prohibiting contact between the minors and Johnson did not prohibit Olufemi and the minors from moving out of state. In the motion, Olufemi argued that requiring the minors to return to Illinois would be "traumatic" because they were already enrolled in school and other activities and had significant family connections in Georgia.

¶ 12 D. The First Adjudicatory Hearing

¶ 13 1. *The Evidence Presented at the Adjudicatory Hearing*

¶ 14 In April 2016, the trial court began conducting an adjudicatory hearing. Neither Olufemi nor the minor children were present at the hearing, despite the court's ordering them all to appear.

¶ 15 Champaign County deputy sheriff Michael Wertz testified that in January 2016, he responded to a domestic violence report at Olufemi’s residence. When Wertz arrived, Johnson was sleeping in the living room and Olufemi was sleeping in the bedroom. Olufemi told Wertz that she was legally separated from Johnson but was nonetheless allowing him to stay at her residence. Olufemi explained that earlier that day, she and Johnson argued about who should take

care of Si. D. During the argument, Johnson tackled Olufemi onto the bed. Olufemi attempted to call 9-1-1, but Johnson "slapped" the phone out of her hand. Olufemi later successfully called 9-1-1 and reported Johnson's attack. In response, Johnson shoulder-checked Olufemi, again knocking her onto the bed. Johnson then took Olufemi's car keys and drove off in her car.

¶ 16 Wertz testified further that Olufemi told him that, during the confrontation, Si. D. was in his playpen in the bedroom. Wertz noted that, in addition to Si. D., two or three other children were in the residence during the attack.

¶ 17 Champaign County sheriff's sergeant William Davis testified that on the day of the attack, he conducted a traffic stop of a vehicle driven by Johnson. Johnson told Davis that he was staying at Olufemi's home. As to the reported domestic battery, Johnson stated that he and Olufemi were arguing when Olufemi stood up and pushed Johnson. Johnson responded by walking away. Olufemi then grabbed a knife. Johnson took the knife away from her, grabbed the car keys, and left.

¶ 18 DCFS caseworker Robin Strauss testified that she was assigned to Olufemi's case. Strauss stated further that she was the caseworker on a previous DCFS case involving Olufemi, K.D., I.D., and Su. D. (Si. D. was not yet born.) Strauss testified that Olufemi did not inform DCFS when Si. D. was born. Olufemi told Strauss that Olufemi did not have face-to-face contact with Johnson during the pendency of the previous case and communicated with him through Facebook only. Olufemi successfully completed all of her required "services" while that case was pending. In addition, Johnson successfully completed all of his required domestic violence classes. The previous case was closed in January 2016.

¶ 19 As to this case, Strauss testified that she visited Olufemi's residence the night of the January 2016 incident. According to Strauss, Olufemi said that the altercation with Johnson

was not "that much of a fight," as Johnson merely "kind of pushed" Olufemi onto the bed and then took her phone. Strauss also spoke with K.D., who told Strauss that she heard a "verbal argument" in Olufemi and Johnson's bedroom and called 9-1-1. Both K.D. and I.D. told Strauss that they heard yelling and cursing coming from the bedroom that night.

¶ 20 Olufemi's sister, Jamala McFadden, testified that Olufemi told her the following: that she and Johnson had an argument, that Olufemi called the police, and that Johnson pushed Olufemi onto the bed and took her car keys. Olufemi told McFadden that she called police before the argument with Johnson turned physical. Olufemi denied to McFadden that a knife was involved in any way. McFadden testified that since Olufemi and the minors moved to Georgia, McFadden—who also lived in Georgia—had not seen Johnson during her visits with Olufemi and the minors, which occurred weekly.

¶ 21 McFadden testified further that McFadden's and Olufemi's mother moved to Georgia in September 2015. Olufemi had planned to move to Georgia with the kids "at some point," but accelerated her plans and moved down shortly after the January 2016 incident with Johnson. McFadden testified that at the time of the hearing, Johnson was living in North Carolina. McFadden stated that she lived 20 to 25 minutes away from Olufemi and paid for some of the minors' extracurricular activities.

¶ 22 Reyes appeared at the adjudicatory hearing but did not present evidence.

¶ 23 No further evidence was presented on the issue of adjudication.

¶ 24 2. *Service on K.D. and I.D.*

¶ 25 After the close of evidence at the adjudicatory hearing, the trial court determined that K.D. and I.D. had not been properly served. Their summonses had been sent to DCFS, despite the fact that DCFS was not awarded temporary custody after the shelter-care hearing.

Therefore, the court concluded, the court lacked personal jurisdiction over them, and the adjudicatory hearing was premature. The court continued the adjudicatory hearing to allow the State to perfect service upon K.D. and I.D.

¶ 26 3. *The Hearing on the Warrants of Apprehension*

¶ 27 After continuing the adjudicatory hearing, the trial court conducted a hearing on Olufemi's motion to quash the warrants of apprehension. McFadden testified that the minors were "surrounded by loving and supportive family" in Georgia, where they lived in a suburb of Atlanta. K.D. and I.D. were enrolled in elementary school, while Su. D. and Si. D. were cared for in the home because they were not yet school-aged. Olufemi was unemployed but looking for work, which allowed her to care for the two younger children full-time. When Olufemi had job interviews, McFadden or her mother took care of the children.

¶ 28 At the close of testimony, the trial court denied Olufemi's motion to quash the warrants of apprehension. The court explained: "[Olufemi] thinks moving to Georgia has solved the problem and that she shouldn't have to come here and that she can ignore the court and it'll go away." The court noted further that "[Olufemi's] not the only involved parent for [I.D., whose] dad is here and wants to see his son." The court concluded, "[I]f [Olufemi] wants to make the case that the move to Georgia was in the children's best interest, she's going to have to do it here [in Illinois]."

¶ 29 E. The Second Shelter-Care Hearing

¶ 30 In April 2016, the trial court conducted a second shelter-care hearing, at which Olufemi was present. After the close of evidence, the court found that the evidence established probable cause to believe that the minors were neglected. The court found further that "it's a matter of immediate and urgent necessity for the safety and protection of the minors that they be

placed in shelter care." In support of that finding, the court explained, "I think that the children's imminent safety is endangered because [Olufemi] didn't learn from the domestic violence treatment in the previous case." Instead, the court noted, after the first DCFS case, Olufemi "almost immediately " let Johnson back into her home. The court reasoned that, even if Johnson were no longer involved in Olufemi's and the minors' lives, "the fact is Mr. Johnsons are everywhere."

¶ 31 The trial court ordered that "[t]emporary custody of the all the children [be] placed in the guardianship administrator of [DCFS]."

¶ 32 F. The Continued Adjudicatory Hearing

¶ 33 In May 2016, the trial court resumed the adjudicatory hearing. Olufemi testified that in January 2016, she and Johnson had a domestic violence incident in her home while the children were present. Olufemi testified further that after the January 2016 incident, she obtained an order of protection against Johnson. Olufemi stated that she moved to Georgia to "get away from" Johnson.

¶ 34 The trial court found that by inviting Johnson back into her home, Olufemi "expose[d] the children to a threat, a threat of domestic violence, which was realized in short order." The court found further that the January 2016 incident of domestic violence occurred while K.D. was in the same room and while the other three children were in the home. As to Olufemi's decision to take the children to Georgia, the court explained, "Mr. Johnson is the father of two of these children. You're not going to be able to hide them from him. You have to be able to take appropriate steps to protect the children." The court concluded that the State had met its burden to prove that all four children were neglected pursuant to both counts of the State's petition for adjudication of wardship.

¶ 35 G. The Dispositional Hearing

¶ 36 That same day, immediately after the adjudicatory hearing, the trial court conducted a dispositional hearing. The court relied on the State's 2016 dispositional order in addition to testimony to reach its decision.

¶ 37 At the dispositional hearing, Strauss testified that she had recently spoken with K.D., who told Strauss that she was happy living with Olufemi in Georgia. Strauss testified further that Reyes did not have a significant relationship with K.D. and had been uncooperative during the prior DCFS investigation involving K.D.

¶ 38 Josica Reed testified as a witness for Reyes. Reed stated that Reyes was the father to three children with Reed. Reed claimed that Reyes was an excellent father, who cared for their children several times a week. Reed testified further that Reyes enjoyed a "great" relationship with K.D. before K.D. moved to Georgia with Olufemi.

¶ 39 The State introduced a police report showing that Reyes was arrested for driving under the influence of alcohol in March 2016 with a breath-alcohol content of 0.195.

¶ 40 After the close of evidence, the trial court made oral rulings that Olufemi and Reyes were unfit and unable to care for and protect their children. The court noted that Olufemi was not cooperative with DCFS and that she had a "defensive response to any sort of attempt to engage her in services." In addition, the court described Olufemi as having a "negative attitude" and partaking in "deceptive behavior" with DCFS. The court found further that Olufemi was not a credible witness. The court found that Olufemi did not appreciate the danger of domestic violence. The court explained that it believed Olufemi might become a better mother in the future, but that at the time of the dispositional hearing, she was unfit and unable to parent.

¶ 41 As to Reyes, the trial court noted that he had not established a relationship with K.D. and that any relationship he did have with him had "withered." The court found further that

Reyes struggled with alcohol. In addition, the court expressed concerns with Reyes' parenting skills in general. The court relied on the contents of the dispositional report showing that Reyes willfully chose not to participate in the previous DCFS case involving K.D. The court found that, like Olufemi, Reyes was not currently able to parent but might be able to do so in the future. As a result, the court found that Reyes was unfit and unable to parent.

¶ 42 Later that month, the trial court entered a written dispositional order confirming its findings that both Olufemi and Reyes were unfit and unable to parent. In addition, the written order placed custody of the four children with DCFS.

¶ 43 These two appeals followed, which we have consolidated.

¶ 44 II. ANALYSIS

¶ 45 On appeal, Olufemi argues that (1) the evidence was insufficient to prove that the four children were neglected and (2) the trial court's finding after the dispositional hearing that Olufemi was "unfit" was against the manifest weight of the evidence. Reyes argues that (1) the evidence was insufficient to prove that K.D. was neglected and (2) the trial court's finding that Reyes was unfit was against the manifest weight of the evidence. We disagree with all the parties' contentions.

¶ 46 A. The Trial Court's Findings of Neglect

¶ 47 Because Olufemi and Reyes both allege that the evidence was insufficient to prove that K.D. was neglected, we will dispose of both parties' arguments on that issue together.

¶ 48 1. *The Applicable Substantive Law and the Standard of Review*

¶ 49 The State has the burden to prove allegations of neglect by a preponderance of the evidence. *In re Arthur H.*, 212 Ill. 2d 441, 463-64, 819 N.E.2d 734, 747 (2004). A trial court's finding of neglect will not be reversed unless it is against the manifest weight of the evidence. *Id.*

at 464, 819 N.E.2d 734.

¶ 50 In this case, the State alleged that the minors were neglected pursuant to section 2-3(1)(b) of the Act (705 ILCS 405/2-3(1)(b) (West Supp. 2015)) because their environment was "injurious to [their] welfare," based on their exposure to the following conditions in Olufemi's residence: (1) domestic violence and (2) a risk of physical harm. An injurious environment is "an amorphous concept which cannot be defined with particularity." (Internal quotations omitted.) *In re N.B.*, 191 Ill. 2d 338, 346, 730 N.E.2d 1086, 1090 (2000). However, generally, an injurious environment occurs when a parent breaches his or her duty to ensure a "safe and nurturing shelter" for their children. (Internal quotations omitted.) *Id.*

¶ 51 The trial court determined that the State met its burden on both counts to prove that the children were neglected because of an injurious environment. We conclude that the court's determinations were not against the manifest weight of the evidence.

¶ 52 The evidence supported the trial court's determinations. The court found that an act of domestic violence occurred between Olufemi and Johnson while K.D. was in the same room and while the other three children were in the residence. That finding was supported by the testimony and was not against the manifest weight of the evidence, as Olufemi testified to those facts at the continued adjudicatory hearing. The presence of domestic violence in the children's home is sufficient to support a finding of neglect because of an injurious environment.

¶ 53 Olufemi argues that she made a rational decision to allow Johnson back in the home because he had successfully completed domestic-violence classes. Along the same lines, Reyes argues that he had no role in the domestic violence involving Olufemi and Johnson.

¶ 54 Both parties' arguments are misplaced. The appropriate focus of a neglect inquiry is not the culpability of the parent but, instead, the objective reality of the child's environment.

See *Arthur*, 212 Ill. 2d at 467, 819 N.E.2d at 749 ("[P]arents are not adjudicated neglectful at the adjudicatory stage of the proceedings under this Act; rather, minors are adjudicated neglected."). In this case, Olufemi and Reyes do not dispute that the evidence established all four children's exposure to domestic violence in January 2016 after Olufemi and Johnson had previously engaged in a separate incident of domestic violence. That exposure to domestic violence created an injurious environment constituting neglect. Therefore, the court's finding of neglect was not against the manifest weight of the evidence.

¶ 55 B. The Trial Court's Findings That Olufemi and Reyes Were "Unfit"

¶ 56 Olufemi and Reyes both argue that the trial court's respective findings that both respondents were unfit were against the manifest weight of the evidence. After explaining the applicable law, we will address the parties' arguments in turn.

¶ 57 1. *Statutory Language and the Standard of Review*

¶ 58 After a dispositional hearing, the trial court may commit the minor to the custody of DCFS if the court finds that the parents are "unfit or are unable, for some reason other than financial circumstances alone, to care for, protect, train or discipline the minor or are unwilling to do so, and that the health, safety, and best interest of the minor will be jeopardized if the minor remains in the custody of his or her parents." 705 ILCS 405/2-27(1) (West 2014). A trial court's decision after a dispositional hearing will be reversed on appeal only if the findings of fact are against the manifest weight of the evidence. *In re J.W.*, 386 Ill. App. 3d 847, 898 N.E.2d 803, 811 (2008).

¶ 59 2. *The Trial Court's Finding as to Olufemi*

¶ 60 The trial court found that Olufemi was unfit and unable because she failed to recognize the risk posed by domestic violence, was uncooperative with DCFS, and lacked credibil-

ity. Those factual findings by the court were not against the manifest weight of the evidence. Olufemi herself admitted that in January 2016, domestic violence occurred in her residence while her children were home. Strauss testified that Olufemi was uncooperative and deceptive during the DCFS investigation.

¶ 61 Olufemi essentially urges us to reweigh the evidence presented to the trial court. However, the trial court is in "a superior position to assess the credibility of witnesses and weigh the evidence." *In re April C.*, 326 Ill. App. 3d 225, 238, 760 N.E.2d 85, 96 (2001). The evidence supported the trial court's findings, and we will not reweigh that evidence on appeal. We conclude that the court's determinations contained in the dispositional order were not against the manifest weight of the evidence.

¶ 62 3. *The Trial Court's Finding as to Reyes*

¶ 63 The trial court found that Reyes was unfit and unable to care for and protect K.D. That finding was not against the manifest weight of the evidence.

¶ 64 The evidence established that Reyes had a problem with alcohol, as shown by his March 2016 arrest for driving under the influence. In addition, the evidence presented by DCFS established that Reyes had a minimal relationship with K.D. and that Reyes was uncooperative with DCFS and failed to participate during the previous DCFS case involving K.D. The trial court noted that although it found Reyes currently unfit to parent, the court hoped that Reyes could someday become fit. The court's findings were not against the manifest of the evidence.

¶ 65 Reyes argues that the trial court failed to properly consider his evidence establishing that he was a good parent. As we explained above, the court was in a better position to weigh the credibility of witnesses and to resolve conflicts in the evidence. We will not reweigh the evidence on appeal. The court's decision was not against the manifest weight of the evidence.

¶ 66 III. CONCLUSION

¶ 67 For the following reasons, we affirm the trial court's judgment.

¶ 68 Affirmed.

¶ 69 JUSTICE APPLETON, dissenting.

¶ 70 I respectfully dissent from the majority's disposition. The mother of the minor children at issue cured the problem of the father's domestic violence by removing herself and the children to the State of Georgia. She established a new home, which resolved the issue of Johnson's domestic violence.

¶ 71 Moreover, the removal of the children to Georgia resulted in the establishment of a new home, where the mother's extended family has provided a stable and loving environment for the children and where they are now thriving.

¶ 72 I see no reason for the State of Illinois to interfere with the mother's resolution of the problem that brought her under the scrutiny of DCFS.