

NOTICE

Decision filed 10/05/16.
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Rehearing or the
disposition of the same.

2016 IL App (5th) 160202-U

NOS. 5-16-0202, 5-16-0203, & 5-16-0204 (Consolidated)

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE

This order was filed
under Supreme Court
Rule 23 and may not be
cited as precedent by
any party except in the
limited circumstances
allowed under Rule
23(e)(1).

<i>In re</i> I.V., R.W., and E.T., Minors)	Appeal from the
)	Circuit Court of
(The People of the State of Illinois,)	Saline County.
)	
Petitioner-Appellee,)	
)	
v.)	Nos. 16-JA-11, 16-JA-12, &
)	16-JA-13
Lacey W.,)	
)	Honorable Todd D. Lambert,
Respondent-Appellant).)	Judge, presiding.

JUSTICE GOLDENHERSH delivered the judgment of the court.
Justices Welch and Chapman concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's finding that respondent's minor children were neglected was not against the manifest weight of the evidence. The trial court properly denied restoration of the minor children to respondent.

¶ 2 We initially observe that the three cases concerning I.V., R.W., and E.T. have been consolidated for purposes of this appeal. No reply brief was filed by respondent.

¶ 3 **BACKGROUND**

¶ 4 Respondent, Lacey W., a resident of Eldorado, Illinois, is the mother of three minor children: I.V., born August 18, 2008, R.W., born August 7, 2009, and E.T., born

January 25, 2016. I.V. and R.W. share the same father, Roberto S., who resides in Marion, Illinois. E.T.'s father is Basil T., who resides in Como, Mississippi.

¶ 5 E.T. was born addicted to Subutex, which was prescribed to respondent as part of a drug treatment program for respondent's opiate dependence. E.T. weighed 5 pounds, 10 ounces at birth. A few days after E.T. and respondent were discharged from the hospital following E.T.'s birth, E.T. was taken to see Dr. Aaron Newcomb for a well-check appointment. At the well-check appointment, Dr. Newcomb discovered E.T. had lost weight since his birth, dropping from 5 pounds, 10 ounces to 4 pounds, 15 ounces. Thereafter, E.T. was readmitted to the hospital and treated for failure to thrive and withdrawal from Subutex.

¶ 6 During E.T.'s readmittance, respondent was permitted to stay at the hospital to assist with feedings and for bonding and attachment reasons. While at the hospital, an incident occurred in which respondent left two of her minor children, I.V. and R.W., unattended in a hospital room. Respondent took E.T. to see Dr. Newcomb a few days after E.T.'s second release from the hospital, and E.T. had again lost weight while in the primary care of respondent. E.T. was then placed in protective custody. After temporary custody was granted, E.T. was placed in a traditional foster care placement.

¶ 7 The Illinois Department of Children and Family Services (DCFS) filed petitions for adjudication of wardship on February 17, 2016, alleging the minors were neglected and/or abused by respondent. Specifically, the petition charged respondent with three counts of negligence and/or abuse pursuant to section 2-3 of the Juvenile Court Act of

1987 (Act) (705 ILCS 405/2-3 (West 2014)): (1) E.T. was hospitalized for failure to thrive because he was not fed properly and suffered weight loss after being discharged to respondent after birth; (2) the environment was injurious to the welfare of E.T. because respondent could not be located for the discharge of E.T. resulting in the infant being released to the grandmother, and the environment was injurious to the welfare of I.V. and R.W. because respondent left the two young children in a hospital room unattended—respondent later admitted she had fallen asleep in her car; and (3) the environment was injurious to the welfare of all three minor children because respondent "has an ongoing medical condition whereby she falls asleep/blacks out without warning."

¶ 8 An adjudication hearing was held on April 12, 2016. Several witnesses testified at the hearing, including Dr. Newcomb, Amber Maslovsky, respondent, and Debra Richey. The relevant testimony of these witnesses transpired as follows.

¶ 9 Dr. Newcomb, a family doctor and addiction medicine doctor who treated respondent and E.T., testified that he was currently treating respondent for opiate dependence for which he prescribed Subutex to treat her addiction. After respondent and E.T. were discharged from the hospital days after E.T.'s birth, Dr. Newcomb testified E.T. "had lost a considerable amount of weight," and noted E.T. "was experiencing withdrawal, which can happen after a baby is born to any mom that's taking an opiate long term which is the case even if they're taking treatment with Suboxone or Subutex." Thereafter, Dr. Newcomb testified that he arranged for E.T. to be readmitted to the hospital due to the weight loss, which he stated "is by diagnosis failure to thrive." Dr. Newcomb attributed E.T.'s failure to thrive to withdrawal and a lack of effective feeding.

When Dr. Newcomb observed E.T. after being readmitted to the hospital, he testified E.T. was thriving. Dr. Newcomb further testified that E.T.'s collarbone was broken during birth, but "[i]t got missed at the hospital."

¶ 10 Amber Maslovsky, a case management social worker employed by Memorial Hospital of Carbondale, testified she became familiar with E.T. after E.T. was readmitted to the hospital, and that her responsibilities included "[s]afe discharge planning for the infants and the pediatrics on the special care nursery as well as the emergency department." Maslovsky testified that the nursing staff contacted DCFS, and she worked with DCFS to develop a safe discharge plan for E.T. Based on the nursing and doctor's notes she used to develop the plan, Maslovsky testified that she believed respondent should have been spending more time with E.T., "at least three to four more feedings a day." Maslovsky testified that when she attempted to work with respondent, respondent "was not available in the hospital most of the time." Maslovsky further testified that certain interactions she witnessed between respondent and E.T. were appropriate, while other interactions were inappropriate. Inappropriate interactions included respondent sleeping and one instance where respondent was slumped over in a chair "not engaged with the care of the child at all."

¶ 11 Respondent testified she and E.T. were in the hospital four days following E.T.'s birth prior to being discharged, and that E.T.'s weight had declined in that period of time. Respondent testified she was told it was normal for babies to lose weight during the first week, and that E.T.'s weight would increase after approximately one week. Respondent

testified a doctor in the neonatal intensive care unit also told her E.T. "was not experiencing any kind of withdrawal whatsoever" and that "he was completely fine."

¶ 12 After being discharged from the hospital and prior to E.T.'s readmittance following his well-check appointment, respondent testified she fed E.T. every three hours via breast feeding, powder formula, and formula provided by the hospital. After E.T.'s initial well-check appointment, respondent testified the medical staff "seemed more concerned with [E.T.'s] withdrawal than how much weight he had lost."

¶ 13 Upon E.T.'s readmittance, respondent testified she was involved in E.T.'s feedings about every two or three hours, but there were also feedings in which she did not participate because the nursing staff informed her that she did not have to be present at certain feedings. Respondent indicated she stayed in a hospital room every night E.T. was admitted to the hospital. She further indicated that E.T. was discharged from the hospital a second time after a safety plan was executed, which included the following: respondent could not be alone with E.T., respondent's mother had to be around respondent and E.T. at all times, and E.T. should not lose weight. Respondent stated there was no safety plan in effect the first time E.T. was discharged.

¶ 14 Respondent testified that while E.T. was in the hospital, there was an occurrence in which I.V. and R.W. visited the hospital and stayed the night. Respondent testified that while I.V. and R.W. were asleep the next morning, she was informed by the nursing staff that she could go outside the hospital to smoke "as long as the children were sleeping." Respondent stated that one of her children woke up inside the hospital while

respondent was outside, and that she was located by a security guard near the front of the hospital. Respondent further testified she was not present when E.T. was discharged from the hospital a second time, and that E.T. was released to her mother.

¶ 15 Debra Richey, an investigator for DCFS, testified she became familiar with E.T. after receiving a report alleging that an infant born with Subutex in his system was released from the hospital and readmitted soon thereafter with nearly one pound of weight loss. Richey testified E.T. steadily gained weight while at the hospital, but again started to lose weight after his second discharge.

¶ 16 After hearing all testimony, the trial court entered an order of adjudication finding the State successfully proved the first and second counts of the petition. Specifically, the court determined the minors were neglected in that their environment was injurious to their welfare. 705 ILCS 405/2-3(1)(b) (West 2014). In support of its determination, the court noted that E.T. failed to thrive because respondent failed to properly feed him, and respondent left I.V. and R.W. unattended in a hospital room.

¶ 17 A dispositional hearing was held on May 10, 2016. The court determined I.V. and R.W. should be returned to their father because he was a "fit, able, and willing parent." Regarding E.T., the court determined the child needed to be a ward of the court because his father was unable to care for the child due to his out of state residency. However, the court noted E.T. would return to his father if the father's interstate compact were approved, and set a future status hearing for E.T.'s case. The court further noted it had

"problems with [respondent's] credibility," and ordered that respondent complete services prescribed by DCFS. Respondent timely filed a notice of appeal.

¶ 18

ANALYSIS

¶ 19

I. Finding of Neglect

¶ 20 Respondent argues the State provided insufficient proof that the minor children were neglected. In cases concerning claims of abuse and neglect, the State bears the burden to prove the allegations by a preponderance of the evidence. *In re Christopher S.*, 364 Ill. App. 3d 76, 86, 845 N.E.2d 830, 838 (2006). The trial court has broad discretion when determining the existence of abuse or neglect since it has the best opportunity to observe the demeanor and conduct of the parties and witnesses. *In re Davon H.*, 2015 IL App (1st) 150926, ¶ 47, 44 N.E.3d 1144. Thus, the trial court is in the best position to determine the credibility and weight to be given to the witnesses' testimony. *In re Davon H.*, 2015 IL App (1st) 150926, ¶ 47, 44 N.E.3d 1144. On review, we will not disturb the trial court's determinations of abuse and neglect unless they are against the manifest weight of the evidence. *In re Tamesha T.*, 2014 IL App (1st) 132986, ¶ 31, 16 N.E.3d 763. A finding is against the manifest weight of the evidence only where the opposite conclusion is clearly evident. *In re Tamesha T.*, 2014 IL App (1st) 132986, ¶ 31, 16 N.E.3d 763.

¶ 21 Section 2-3(1)(b) of the Act defines a neglected minor to include "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). "Neglect" has been defined as the failure to exercise the care that

circumstances justly demand and includes both willful and unintentional disregard of parental duty. *In re Kamesha J.*, 364 Ill. App. 3d 785, 792-92, 847 N.E.2d 621, 628 (2006). The term "injurious environment" has been characterized as an amorphous concept that cannot be defined with particularity, but has been interpreted to include the breach of a parent's duty to ensure a safe and nurturing shelter for his or her children. *In re Arthur H.*, 212 Ill. 2d 441, 463, 819 N.E.2d 734, 747 (2004). Cases involving abuse, neglect, and wardship are *sui generis*, and must be decided on the basis of their unique circumstances. *In re Arthur H.*, 212 Ill. 2d at 463, 819 N.E.2d at 747.

¶ 22 Here, the trial court determined the minor children were neglected by respondent as a result of their environment being injurious to their welfare pursuant to section 2-3(1)(b) of the Act (705 ILCS 405/2-3(1)(b) (West 2014)). In support of its decision, the trial court noted that E.T. failed to thrive because respondent failed to properly feed him, and respondent left I.V. and R.W. unattended in a hospital room.

¶ 23 After careful consideration, we cannot conclude the trial court's determination that the minor children were neglected by respondent was against the manifest weight of the evidence. As indicated above, Dr. Newcomb, the treating doctor for respondent and E.T., testified E.T. lost a considerable amount of weight after he was discharged from the hospital after birth. Dr. Newcomb attributed E.T.'s weight loss to withdrawal and lack of effective feeding. E.T.'s weight loss occurred while he was in the primary care of respondent over the period of a weekend, and E.T. regained that weight only after he was admitted to the hospital. Although we acknowledge respondent asserts she attempted to feed E.T. but he would not eat, the hospital staff reported it had no problems feeding E.T.

¶ 24 Further, respondent testified she was not present for E.T.'s discharge from the hospital, and that E.T. was released to respondent's mother. Maslovsky, the social worker who became familiar with E.T. after E.T.'s readmittance to the hospital, testified that although she observed appropriate interactions between respondent and E.T., she also observed inappropriate interactions which included respondent sleeping in the presence of E.T. and not engaging in the care of E.T.

¶ 25 Regarding I.V. and R.W., respondent testified there was an incident in which she left I.V. and R.W. unattended in her hospital room while she went outside to smoke. The dispositional report submitted to the court by Lutheran Social Services of Illinois indicated I.V. and R.W. were left unattended in the hospital room for at least 30 minutes, and that respondent "was later found asleep in her car."

¶ 26 In light of the foregoing, we conclude respondent breached her parental duty to ensure a safe and nurturing shelter for her minor children which caused them to remain in an environment injurious to their welfare. The record rebuts respondent's claim that the State failed to prove by a preponderance of the evidence that the minor children were neglected. As we indicate above, the record indicates E.T. lost a substantial amount of weight while in the primary care of respondent and only regained weight upon admission to the hospital. Further, respondent concedes she left I.V. and R.W. unattended in a hospital room. For these reasons, the trial court's finding that the minor children were neglected by respondent as a result of their environment being injurious to their welfare was not against the manifest weight of the evidence.

¶ 27

II. Disposition

¶ 28 Respondent next alleges the trial court erred in granting custody and guardianship of I.V. and R.W. to their father and custody and guardianship of E.T. to DCFS rather than restoring custody of the minors to respondent.

¶ 29 A reviewing court will not reverse a trial court's dispositional decision unless the findings of fact are against the manifest weight of the evidence or the trial court abused its discretion by selecting an inappropriate disposition. *In re J.C.*, 396 Ill. App. 3d 1050, 1060, 920 N.E.2d 1285, 1293 (2009). A court may make a neglect finding and adjudicate wardship of a minor as to one parent while not finding neglect as to the other parent. *In re S.S.*, 313 Ill. App. 3d 121, 133, 728 N.E.2d 1165, 1174 (2000). In such manner, the fit parent may maintain custody of the minor while the court exercises its supervisory powers over the child's relationship with the other parent. *In re S.S.*, 313 Ill. App. 3d at 133, 728 N.E.2d at 1174.

¶ 30 Here, the trial court found the minor children were neglected by respondent. For the reasons discussed above, we conclude this determination was supported by the record. As a result, the court ordered that I.V. and R.W. remain with their father with whom they had been residing since the onset of this case. E.T. was ordered to remain a ward of the court because his father lives out of state. However, the court set a status hearing regarding E.T.'s case, and stated E.T.'s father would be awarded custody if his interstate compact paperwork were approved.

¶ 31 After careful review, we find no error in the trial court's disposition. At the dispositional hearing, the court heard testimony from Amy Gibson, a child welfare specialist employed by Lutheran Social Services of Illinois, regarding her recommendation that I.V. and R.W. remain with their father and not respondent:

"At this time [respondent] doesn't—does not have a home. She doesn't have employment. [Respondent] has not participated in any of the services at this time that were recommended, including the substance abuse treatment, mental health counseling. So at this time I think it would be in their best interests to stay where they're at."

¶ 32 I.V. and R.W.'s father, Roberto S., also testified. He stated that he took custody of I.V. and R.W. at the beginning of this case, and had seen an improvement with them since that time:

"They go to the HUB and swim. Wednesday they go to church. Healthy, they look really, really good. Everybody, teachers, everybody saw that, the difference. They were so skinny before. When I'm saying skinny, you can tell in their faces that sometimes they don't eat. Now they just look healthy. And, yes, improvement. Before they didn't have no manners at all, like they didn't say no thank you, nothing. They just playing around. Now they do have manners. My mom has helped me a lot. I just see normal kids, you know."

Roberto further testified that I.V. and R.W.'s behavior had improved since he took custody, and that he dropped and picked them up from school every day unless he was working, in which case his mother helped transport the children.

¶ 33 Regarding E.T., Gibson testified that she recommended E.T.'s custody and guardianship be granted to DCFS and not respondent "for the same reason as the other two" children. Gibson indicated paperwork to start an interstate compact with the state of Mississippi, where E.T.'s father resides, had been completed, and that she had been communicating with a worker from the state of Mississippi regarding the process.

¶ 34 In light of the foregoing, we find the trial court properly denied restoration of the minor children to respondent. This decision appropriately disassociated the children from a neglectful mother and an injurious environment. I.V. and R.W. were ordered to remain with their father with whom they have a healthy relationship, and custody of E.T. was granted to DCFS pending approval of E.T.'s father's interstate compact paperwork. This disposition was not against the manifest weight of the evidence or an abuse of discretion.

¶ 35 **CONCLUSION**

¶ 36 In sum, we conclude the record in this case supports the trial court's determination that the minor children were neglected by respondent in that their environment was injurious to their welfare. Further, the record supports the trial court's decision not to restore custody of the minor children to respondent. Accordingly, these determinations were not against the manifest weight of the evidence. For these reasons, the judgment of the circuit court of Saline County is affirmed.

¶ 37 Affirmed.