

No. 1-17-0297

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).

IN THE INTEREST OF G.B and D.M.,)	Appeal from the
)	Circuit Court of
Minors-Respondents-Appellees,)	Cook County
)	
(THE PEOPLE OF THE STATE OF ILLINOIS)	
)	
Petitioner-Appellee)	No. 16 JA 00017 & 00018
v.)	
)	
ERICCA M.,)	Honorable
)	Bernard Sarley,
Mother-Respondent-Appellant.))	Judge Presiding.

PRESIDING JUSTICE PIERCE delivered the judgment of the court.
Justices Harris and Simon concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court's finding of abuse as to physical injury and substantial risk of injury were not against the manifest weight of the evidence.
- ¶ 2 Respondent Ericca M., appeals from an order of the juvenile court finding her children G.B. and D.M. to be abused. For the following reasons, we affirm the judgment of the juvenile court.

¶ 3

BACKGROUND

¶ 4 Ericca M. is the mother of minors G.B. born December 23, 2010, and D.M. born March 18, 2001.

¶ 5 On January 8, 2016, the State filed a petition for adjudication of wardship as to each minor wherein the State alleged that D.M. was neglected due to an injurious environment pursuant to section 2-3(1)(b) of the Juvenile Court Act (Act) (705 ILCS 405/2-3(1)(b) (West 2014)), that D.M. was abused due to physical injury pursuant to section 2-3(2)(i) of the Act (705 ILCS 405/2-3(1)(b) (West 2014)), and that she was abused due to a substantial risk of physical injury, pursuant to section 2-3(2)(ii) of the Act (705 ILCS 405/2-3(2)(ii) (West 2014)). In support of these assertions, the State alleged the following facts:

"Mother has been diagnosed with bipolar disorder and schizophrenia. This minor has been diagnosed with emotion disorder. Mother has been noncompliant with ensuring that minor follows up with mental health treatment. On or about December 22, 2015 mother and this minor were involved in a physical altercation with each other. Minor states mother hit her with a metal pole during this incident resulting in her being badly injured. Minor was diagnosed with a fractured arm. On January 16, 2016 minor made an outcry that mother's former paramour had touched her in a sexual manner and made inappropriate comments. Putative father is incarcerated and paternity has not been established."

¶ 6 The petition regarding G.B. alleged that G.B. was neglected because her environment was injurious to her welfare (705 ILCS 405/2-3(1)(b) (West 2014)) and abused because she was at substantial risk of physical injury (705 ILCS 405/2-3(2)(ii) (West 2014)). Specifically, the

petition alleged:

“Mother has been diagnosed with bipolar disorder and schizophrenia. This minor’s sibling has been diagnosed with emotion disorder. Mother has been noncompliant with ensuring that minor’s sibling follows up with mental health treatment. On or about December 22, 2015 mother and this minor’s sibling were involved in a physical altercation with each other. Minor’s sibling states mother hit her with a metal pole during this incident resulting in her being badly injured. Minor’s sibling was diagnosed with a fractured arm. On January 16, 2016 minor’s sibling made an outcry that mother’s former paramour had touched her in a sexual manner and made inappropriate comments. Putative father is incarcerated and paternity has not been established.”

¶ 7 On January 8, 2016, the juvenile court placed the minors under the temporary custody of the Department of Children and Family Services (DCFS) guardianship administrator. On January 15, 2016, the juvenile court entered an order that allowed supervision between mother and D.M. The juvenile court allowed D.M. to travel to Wisconsin to have supervised visitation with her father.

¶ 8 The juvenile court held an adjudication hearing on April 27, 2016. The parties agreed to stipulate to the facts of the case. If called to testify, DCFS Investigator Lindsay would testify that on June 11, 2015, she was assigned to investigate allegations of abuse and neglect related to D.M. and G.B. She spoke with D.M. who stated:

“She did not want to return to the care of the mother;
Her mother last whooped her in April 2015;
She feels that she is always in trouble and her punishment is always physical;

Her mother forces her to take her clothes off and her mother hits her with hangers and cords and anything that she can get her hands on;

The mother does not believe the belt can hurt her anymore;

She feels she is caretaker for [G.B] even when her mother is home;

Her mother smokes 'weed';

Her mother was diagnosed with bipolar and schizophrenia;

She is afraid of her mother.”

¶ 9 Investigator Lindsay spoke with G.B. around June 16, 2015. G.B. stated that “she lives with her mother and has a sister named [D.M]” and that “[D.M.] received a ‘whooping.’” G. B. did not want to speak with Investigator Lindsay any further. Investigator Lindsay spoke with Ericca around June 17, 2015, and referred her to Intact Family Services. The case was then passed on to caseworker Danielle Robinson from Omni Youth Services, so that the family could engage in intact family services.

¶ 10 If called to testify, Danielle Robinson would state that she met with the family for a transitional visit around June 30, 2015. Ericca agreed to mental health services and medication monitoring for herself and to individual counseling for D.M. Robinson monitored the family’s progress. Between June and December, Robinson had multiple conversations with Ericca where she reiterated the need for the intact services. As of December 29, 2015, Ericca had not been in compliance with any services.

¶ 11 If called to testify, DCFS Investigator Diane Hankle would state that around December 22, 2015, she was assigned to investigate allegations of physical injury, substantial risk of physical injury, environment injurious to health and welfare by neglect. She went to Comer

Children's Hospital and spoke with D.M. about 2:30 a.m. on December 23, 2015. D.M. had a cast on her right arm and red marks on her thighs. D.M. stated that her injuries were caused by her mother. D.M. stated that she was scared of her mother because her mother is diagnosed with bipolar and schizophrenia but does not take her medication. She stated that her mother has mood swings and takes her anger out on D.M. D.M. stated that her mother hits her with objects. ON that particular night D.M. was hit with a shower rod. In the past, Ericca hit her with cable cords, extension cords, belts and shoes. D.M. also told investigator Hankle that she did not feel safe at home with her mother and that no one else resides in the home but her mother and sister G.B.

¶ 12 The State entered several exhibits into evidence. Of those exhibits, one was Ericca's conviction for domestic battery from March 18, 2016. Another was D.M.'s medical records from Hartgrove Hospital from July 2015. D.M. had been picked up by police and admitted to Hartgrove after she had been missing for over a week. She entered an intensive outpatient program for mental health issues. At the time, she reported that she was being physically and emotionally abused by her mother. She stated that her mother hit her with cords, belts and shoes. Ericca was to provide D.M. with transportation to her outpatient program. D.M. failed to attend the program at least eight times.

¶ 13 The State also entered certified records for D.M. from Comer Children's Hospital. She arrived at 6:53 p.m. on December 22, 2015, and was discharged at 3:14 a.m. the next day. The records showed that D.M. diagnosed with "XL L Forearm: Unicortal fracture of midshaft ulna." D.M. had reported that Ericca had struck her with a "stiff curtain rod" earlier in the evening during an argument. She had also been hit on her other extremities. The reports indicated that there was an "obvious deformity distal L forearm" and "tender welts L humerus, R elbow, b/1

upper legs.” The “ED Provider Notes” dated December 22, 2015, at 11:14 p.m. indicate that D.M. suffered from a “greenstick fracture, soft tissue injury” with “assault/intentional injury inflicted by another person” and as the “injury intent.” The radiology results state that there was “significant soft tissue swelling over the dorsum of the mid to distal forearm. NO acute fracture is evident” for the left forearm. However, the initial consult by Dr. Jovito Angeles states done on December 22, 2015, at 11:49 p.m. states that D.M. has a “non-displaced, unicortical L ulna fracture.” D.M. was given a sling for her arm and was instructed to follow up with an orthopedic in two weeks.

¶ 14 The State introduced evidence from the University of Illinois Hospital and Health Center for Ericca. These records show that Ericca was diagnosed with bipolar disorder and schizophrenia.

¶ 15 The State also introduced the certified agency file from Omni Youth Services for D.M., G.B. and Ericca. The intake conducted on June 11, 2015, states that D.M. was living in a homeless shelter and Ericca was staying at the “Y” but was being evicted from there for not following the rules. The report further stated:

“[D.M.] does not want to go to mother who she reports is mentally ill with a history of beating [D.M.] and pulling a knife on people. [D.M.] states she was present when her mom stabbed her last boyfriend, Gabe Brown. [D.M.] states she is scared of being with her mom. Her mom has whipped her 4 to 5 times weekly with hangers, cords and belts. [Ericca] told Reporter she has been diagnosed with Bi Polar (sic) Disorder and Schizophrenia. [Ericca] states she doesn’t believe in medication and is not in therapy. [Ericca] is a risk to [D.M.] and the little girl she reportedly has with her.”

There is a notation in the records from later that same afternoon that the caseworker had received a phone call from D.M. who stated that Ericca had called her and told her to get her stuff together because D.M. had gotten Ericca in trouble. According to the records, despite the information provided by D.M., there was insufficient evidence at that time to suggest that the situation rose to the level of abuse or neglect.

¶ 16 The State also introduced certified medical records from Chatham Family Counseling for D.M. The record shows that D.M. failed to appear for her intake appointment on October 15, 2015, and again on November 3, 2015.

¶ 17 At the conclusion of the adjudication hearing on May 13, 2016, the juvenile court found that D.M. and G.B. had been abuse and neglected. The juvenile court stated:

“The evidence has shown that in December of 2015, that the minor was at the University of Chicago Comer’s Children’s Hospital and was diagnosed with a broken arm.

The mother and the minor’s statements to the investigator corroborate each other, that the mother struck the minor, causing the broken arm. And, of course, the medical records corroborate that as well.

First of all with regards to physical abuse, clearly the State has proven physical abuse of [D.M] by a preponderance of the evidence for the reasons I already stated. I believe that abuse substantial risk of injury because of the serious injuries has also been proven.

With regard to neglect injurious environment, this is again as to [D.M.], the State has proven that with regard to - - or within the evidence of the physical abuse as

well as the failure to satisfactorily complete intact services. So as to [D.M.], all three of the allegations have been proven by a preponderance of the evidence.

Because of the evidence with regard to the physical abuse as well as the failure to satisfactorily comply with intact services, I feel that the minor [G.B.] was also at risk so that the State has proven abuse substantial risk of injury and neglect injurious environment. And the abuse substantial risk of injury is due to the fact that the services were not complied with and there was physical abuse to a child in the home.”

¶ 18 A dispositional hearing commenced on May 13, 2016, and was completed on January 3, 2017. The court found it was in D.M.’s and G.B.’s best interests to be made wards of the court because Ericca was “unable for reason other than financial circumstance alone to care for, protect, train or discipline the minor.” Both fathers were found unable and unwilling. The juvenile court appointed a DCFS Guardianship Administrator as D.M.’s and G.B.’s guardian. The juvenile court also entered a permanency goal of returning home within twelve months for G.B. and a goal of substitute care pending independence for D.M. This appeal followed.

¶ 19 ANALYSIS

¶ 20 Ericca argues that the juvenile court's finding that D.M. was abused due to a physical injury (705 ILCS 405/2-3(2)(i) (West 2014)) and that G.B. was abused due to a substantial risk of physical injury (705 ILCs 405/2-3(2)(ii) (West 2014)) were against the manifest weight of the evidence. Ericca is not challenging the juvenile court’s other findings.

¶ 21 The Juvenile Court Act defines an “abused minor” as a minor whose parent “causes to be inflicted, or allows to be inflicted upon such minor physical injury, by other than accidental means, which causes death, disfigurement, impairment of physical or emotional health, or loss or

impairment of any bodily function” (705 ILCS 405/2-3(2)(i) (West 2014)) and “whose parent creates a substantial risk of physical injury to such minor by other than accidental means which would be likely to cause death, disfigurement, impairment of emotional health, or loss or impairment of any bodily function” (705 ILCS 405/2-3(2)(ii) (West 2014)).

¶ 22 The Act “sets forth the procedures and criteria to be used in deciding whether a minor should be removed from his parents' custody and made a ward of the court.” *In re A. W.*, 231 Ill. 2d 241, 254 (2008) (citing 705 ILCS 405/1-1 *et seq.* (West 2012)). At an adjudicatory hearing, the circuit court must determine whether the minor is abused, neglected, or dependent before conducting a dispositional hearing on wardship. 705 ILCS 405/2-21 (West 2014); 705 ILCS 405/2-18(1) (West 2014) (“At the adjudicatory hearing, the court shall first consider only the question whether the minor is abused, neglected, or dependent.”); *In re Arthur H.*, 212 Ill. 2d 441, 462 (2004). The court must consider the status of the minors at the time the adjudication petition was filed and not their status at the time of the hearing. *In re C.W.*, 199 Ill. 2d 198, 217 (2002); *In re Kenneth D.*, 364 Ill. App. 3d 797, 804 (2006).

¶ 23 It is the burden of the State to prove allegations of abuse and neglect by a preponderance of the evidence. *In re Arthur H.*, 212 Ill. 2d at 463. The trial court has broad discretion when determining the existence of neglect or abuse as it has the best opportunity to observe the demeanor and conduct of the parties and witnesses and is therefore in the best position to determine the credibility and weight to be given to the witnesses' testimony. *In re Stephen K.*, 373 Ill. App. 3d 7, 20 (2007). We review a trial court's finding of abuse and neglect under the manifest weight of the evidence standard. *In re Alexis H.*, 401 Ill. App. 3d 543, 551 (2010). “A finding is against the manifest weight of the evidence only if the opposite result is clearly

evident.” *In re A. W.*, 231 Ill. 2d at 254.

¶ 24 Ericca claims that the juvenile court’s finding that D.M. was abused based on a physical injury (705 ILCS 405/2-3(2)(1) (West 2014)) is against the manifest weight of the evidence because the record is ambiguous as to whether she actually broke D.M.’s arm.

¶ 25 Contrary to Ericca’s argument, the State was not required prove that D.M.’s arm was broken. Rather, the State was required to prove that Ericca physically injured D.M. and that injury caused “death, disfigurement, impairment of physical or emotional health, or loss or impairment of any bodily function.” (705 ILCS 405/2-3(2)(i) (West 2014)). The record clearly establishes that the State met its burden of proof that D.M. was injured, whether her arm was fracture or not.

¶ 26 Diamond was admitted to Comer Children’s Hospital on the evening of December 22, 2015. D.M. had reported that her mother had struck her with a “stiff curtain rod” earlier in the evening during an argument. She had also been hit on her other extremities. The reports indicated that there was an “obvious deformity distal L forearm” and “tender welts L humerus, R elbow, b/l upper legs.” Following an x-ray, at 11:14 p.m., she received a differential diagnosis of “greenstick fracture, soft tissue injury.” Later, at 11: 9 p.m., she received a diagnosis of XL L Forearm: Unicortal fracture of midshaft ulna.” The final report was signed off on the following day and indicated that D.M. suffered from a “non-displaced, unicortal L ulna fracture.”

Admittedly, the record is somewhat unclear as to whether there was a fracture or not. However, the record is clear that D.M. was physically injured by her mother and the trial court’s finding was not against the manifest weight of the evidence.

¶ 27 Ericca also argues that the juvenile court’s finding that G.B. was abused based on a

substantial risk of physical injury (705 ILCS 405/2-3(2)(ii) (West 2014)) was against the manifest weight of the evidence. Ericca argue that there is no evidence that G.B. ever sustained physical injury at the hands of her mother, other than D.M.'s testimony that Ericca had hit G.B.'s behind with her hands. Ericca asserts that the court made a finding of substantial risk of injury on a theory of anticipatory abuse.

¶ 28 “Under the anticipatory [abuse] theory, the State seeks to protect not only children who are the direct victims of neglect or abuse, but also those who have a probability to be subject to neglect or abuse because they reside, or in the future may reside, with an individual who has been found to have neglected or abused another child.” *In re Arthur H.*, 212 Ill. 2d 441, 468 (2004). Section 2-18(3) of the Act provides that “proof of the abuse, neglect or dependency of one minor shall be admissible evidence on the issue of the abuse, neglect or dependency of any other minor for whom the [parent] is responsible” (705 ILCS 405/2-18(3) (West 2014)). Cases pursued under a theory of anticipatory neglect, like any other cases concerning the adjudication of minors, must be reviewed on their own facts and must take into consideration not just the circumstances relating to the minor's siblings, but also “the care and condition of the child in question.” (Internal quotation marks omitted.) *Arthur H.*, 212 Ill. 2d at 468-69. Ultimately, however, when the court is faced with prior evidence of parental neglect, it need not, and “ ‘should not be forced to refrain from taking action until each particular child suffers an injury.’ “ *Id.* at 477 (quoting *In re Brooks*, 63 Ill. App. 3d 328, 339 (1978)).

¶ 29 In this case, the State sought to protect G.B. because there was a high probability that she would be the subject of Ericca's physical abuse because she lived in the same household as her mother and her older sister D.M., who was physically abused by Ericca. Ericca's physical abuse

of D.M. occurred while G.B. was in her care. The evidence established that Ericca had been diagnosed with bipolar disorder and schizophrenia and failed to engage in mental health treatment. She also told her caseworker from Omni that she did not believe in medication, which suggests that Ericca did not regularly take her prescribed psychotropic medication. Based on the record before us, we are unable to conclude that the trial court's finding that G.B. was at substantial risk for injury (705 ILCS 405/2-3(2)(ii) (West 2014)) is against the manifest weight of the evidence.

¶ 30

CONCLUSION

¶ 31 For the foregoing reasons, we affirm the judgment of the juvenile court.

¶ 32 Affirmed.