

2017 IL App (1st) 170995-U

No. 1-17-0975

Order filed December 8, 2017

Fifth Division

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
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

IN THE INTEREST OF:) Appeal from the
ANGELA G.,) Circuit Court of
) Cook County.
Minor-Respondent-Appellee,)
)
(The People of the State of Illinois,)
)
Petitioner-Appellee,) No. 16 JA 325
)
v.)
)
DAVID G.,) Honorable
) Bernard Sarley,
Father-Respondent-Appellant.) Judge, presiding.

JUSTICE HALL delivered the judgment of the court.
Presiding Justice Reyes and Justice Lampkin concurred in the judgment.

ORDER

¶ 1 *Held:* Circuit court's adjudicatory order finding A.G. neglected due to an injurious environment and abused due to both the infliction of excessive corporal punishment and a substantial risk of physical injury was not against the manifest weight of the evidence.

¶ 2 The primary issue on appeal is whether respondent David G. "abused" his minor daughter Angela G. (born July 30, 2002), as that term is defined in the Juvenile Court Act of 1987 (Act) (705 ILCS 405/2-3 (West 2014)), when he administered corporal punishment on her. We answer in the affirmative and affirm.

¶ 3 Respondent appeals an adjudication order entered by the circuit court on April 5, 2017, finding his minor daughter Angela G. neglected and abused under the Act. The court's findings were primarily based on respondent's infliction of corporal punishment on his minor daughter, which the court determined was excessive. The court found that the minor was neglected due to an injurious environment under section 2-3(1)(b) of the Act (705 ILCS 405/2-3(1)(b) (West 2014)), and that she was abused due to both the infliction of excessive corporal punishment and a substantial risk of physical injury under sections 2-3(2)(v) and 2-3(2)(ii) of the Act (705 ILCS 405/2-3(2)(v), (2)(ii) (West 2014)).

¶ 4 **BACKGROUND**

¶ 5 The following evidence was presented at the adjudicatory hearings. Police officer Tyrone Knight of the Evergreen Park Police Department testified that on February 1, 2016, as part of his police duties, he was assigned to the Central Middle School in Evergreen Park as a "resource officer." On that day, he met and spoke with Angela G. in the school psychologist's office. Present at the meeting was the school's principal, Rita Sparks.

¶ 6 Officer Knight testified that Angela G. informed him that on the previous Saturday, after she told respondent she had not cleaned her room, respondent struck her in the face with his open hand. He then grabbed her by the arm, took off his belt, and struck her with the belt over ten times. Angela G. told officer Knight that her mother, Ms. B., was present in the house when the

respondent struck her, but that her mother did not do or say anything. Angela G. stated that the respondent had hit her with his belt on prior occasions, but this was the first time he hit her with his hand. The minor further stated that the respondent had previously hit her mother. Angela G. told officer Knight she was afraid to go home because she feared what the respondent would do to her.

¶ 7 Officer Knight observed a bruise on Angela G.'s right arm. When Angela G. informed the officer that she had additional bruises, the school principal suggested she change into her gym shorts. Once Angela G. changed into her gym shorts, officer Knight observed additional bruises on the minor's legs. The officer identified People's exhibits No. 2 through No. 7 as photographs depicting bruises on Angela G.'s right arm and legs, and testified that the photographs accurately reflected how the minor appeared to him on February 1, 2016. The exhibits were admitted into evidence.

¶ 8 Detective Michael Kmetty spoke with respondent in lockup at the Evergreen Park Police Department on February 2, 2016. Respondent admitted hitting Angela G. with a belt. He stated he hit her about seven or eight times on her legs and buttocks. He claimed he did this in an attempt to discipline her.

¶ 9 On cross-examination by the guardian *ad litem*, detective Kmetty acknowledged that in 2012 or 2013, he and fellow police officers were dispatched to the respondent's home in response to a domestic battery call involving Ms. B. When they arrived at the home, respondent refused to allow them to enter the home. Detective Kmetty gained entry to the home through a back door. Once inside the home, the detective was required to take respondent down to the ground, where he was subsequently handcuffed.

¶ 10 Ladonna Woods, a child protection investigator with the Illinois Department of Children and Family Services (DCFS), testified that in February 2016, she was assigned to investigate allegations that Angela G. was at risk of physical harm and had suffered cuts, welts, and bruises on her body. Woods spoke with Angela G. at her school in Evergreen Park on February 1, 2016. The minor showed Woods purple bruising on her thigh, a bruise on her right arm, and additional bruises on her legs and thighs. Angela G. told Woods she got the bruises when respondent grabbed her arm and whipped her with his belt. The minor informed Woods that respondent had hit her on prior occasions.

¶ 11 Angela G. told Woods that over the previous weekend, respondent slapped her in the face when they were in her mother's bedroom, but that her mother did not do or say anything. The minor stated that respondent had been abusive towards her mother, sister, and brother. Angela G. told Woods she was afraid to return home because of respondent.

¶ 12 Woods testified that later that same day, she went to Advocate Christ Medical Center where she spoke with Angela G.'s mother, Ms. B., in the waiting area of the hospital's emergency room. Woods informed Ms. B. that Angela G. was taken to the emergency room to have her bruises examined by a physician. Ms. B. responded she was unaware of any physical abuse regarding her daughter. Ms. B. accused Woods of being "disrespectful" when Woods inquired about possible domestic violence in the home and she denied any such violence occurred. Ms. B. acknowledged she previously received and completed services from DCFS, but claimed she was unaware of any services respondent participated in or completed. Ms. B. also admitted calling the police on respondent in the past, but refused to reveal why she made the call.

¶ 13 Woods had a phone conversation with respondent on February 5, 2016. Woods informed respondent that she was investigating allegations of abuse made against him by Angela G. and offered him services. Respondent told Woods that DCFS had no jurisdiction over him and told her to stop asking him questions about services.

¶ 14 On February 9, 2016, Woods met with respondent in person at a DCFS office. Woods again informed respondent of her ongoing investigation into allegations of physical abuse made against him by his daughter Angela G. Woods told respondent that Angela G. was in a "safety plan," and would remain in the plan because there had been no cooperation with correcting the problems that brought the case to the attention of DCFS. Woods explained that the case was headed to court and that she would notify respondent of the court proceedings. Respondent then admitted to Woods that he had disciplined Angela G. by "whooping" her with his belt for coming home late at 8:30,¹ which he claimed she had done on four prior occasions.

¶ 15 On March 21, 2016, Woods went to speak with Angela G. at her great aunt's house for a well-being check. Angela G. told Woods she saw respondent at a court hearing and became so afraid she started shaking.

¶ 16 Woods testified that at the conclusion of her investigation, she "indicated" Angela G.'s case for cuts, welts, and bruises. Woods testified that based on prior indicated reports concerning the family, she also indicated the case against Ms. B. for failing to protect Angela G. and for allowing respondent to come back into the home where he had access to the minor. Woods identified People's exhibits No. 2 through No. 7 as photographs depicting bruises on

¹ The record does not specify a.m. or p.m.

Angela G.'s right arm and legs, and testified that the photographs accurately reflected how the minor appeared to her when she saw her in February 2016.

¶ 17 On cross-examination by the guardian *ad litem*, Woods acknowledged that the current DCFS report she investigated regarding Angela G. was the tenth report concerning the minor's family that was brought to the attention of DCFS. Woods testified that she indicated the current case, based in part on these prior indicated reports, as well as on her conversations with the minor and her personal observations of the minor's bruises and contusions.

¶ 18 Woods testified that during her phone conversation with respondent on February 5, 2016, she asked him if he had participated in any services such as parenting classes or any services to address prior indicated reports against him for alleged sexual abuse of Angela G.'s older sister, Twanda B.

¶ 19 The parties then agreed to the following stipulations, which the circuit court accepted: on February 9, 2008, respondent was indicated for cuts, bruises, welts, abrasions and oral injuries concerning Twanda B.; on April 7, 2008, he was indicated for cuts, bruises, welts, abrasions and oral injuries, as well as tying/close confinement, sexual penetration, sexual molestation, substantial risk of sexual abuse, sibling of sexual abuse victim with the victim being Twanda B.; and on December 9, 2015, respondent was indicated for substantial risk of physical injury/environment injurious to health and welfare with the victim being Angela G.

¶ 20 The circuit court admitted the following additional People's exhibits into evidence: medical records and a report from Advocate Christ Medical Center emergency room as to the care and treatment Angela G. received on February 1, 2016, for bruises to her shins, right arm

and shoulder, and lower thighs; and photographs of the bruises taken at the hospital emergency room.

¶ 21 The court also admitted into evidence the following additional People's exhibits regarding Angela G.: an adjudication order dated August 6, 2009, finding that she was neglected due to an injurious environment and abused due to a substantial risk of physical injury; a dispositional order dated September 21, 2009, finding respondent and Ms. B. unable to care for, protect, train, or discipline Angela G.; a dispositional order dated December 11, 2009, finding Ms. B. fit, able, and willing to care for, protect, train, and discipline Angela G. and returning her to the care of Ms. B.; and an order dated May 21, 2010, to close the proceedings and ordering the custody of Angela G. and her brother Treshawn B. to stand with Ms. B.

¶ 22 In regard to Angela G.'s siblings Twanda B. and Treshawn B., the court admitted the following People's exhibits into evidence: an adjudication order dated August 6, 2009, finding Twanda B. neglected due to an injurious environment and abused due to physical abuse and substantial risk of physical injury, and finding the perpetrator of the abuse to be respondent; a dispositional order dated August 6, 2009, finding Ms. B. and Twanda B.'s noncustodial natural father, Anthony T., unable to care for, protect, train, or discipline Twanda B.; an order of August 13, 2012, to close the proceedings after finding that Twanda B. turned 21 years old; an adjudication order dated August 6, 2009, finding Treshawn B. neglected due to an injurious environment and abused due to a substantial risk of physical injury; a dispositional order dated September 21, 2009, finding Ms. B. unable to care for, protect, train, or discipline Treshawn B.; and an order dated May 21, 2010, to close the proceedings and ordering the custody of Angela G. and her brother Treshawn B. to stand with Ms. B.

¶ 23 On April 5, 2017, after hearing all of the evidence and reviewing the exhibits, the circuit court adjudicated Angela G. neglected due to an injurious environment and abused due to excessive corporal punishment inflicted by respondent and abused due to substantial risk of physical injury. A dispositional hearing was held on the same day and the court adjudged Angela G. a ward of the court and found both Ms. B. and respondent unable to care for, protect, train, or discipline her.

¶ 24 Respondent does not challenge the circuit court's finding at the dispositional hearing that Angela G. be adjudged a ward of the court. This appeal addresses only the sufficiency of the evidence presented at the adjudication hearings.

¶ 25 ANALYSIS

¶ 26 Respondent raises a number of arguments as to why he believes the circuit court's findings that Angela G. was abused based on excessive corporal punishment are against the manifest weight of the evidence. None of his arguments have merit.

¶ 27 Before discussing the arguments respondent raises in his appeal, we address the timeliness of our decision. This is an accelerated case under Illinois Supreme Court Rule 311(a) (eff. Feb. 26, 2010). Pursuant to Rule 311(a)(5), we are required to issue our decision within 150 days after the filing of the notice of appeal, except for good cause shown. Respondent's notice of appeal was filed on April 11, 2017, making the deadline to issue our decision September 8, 2017. Respondent's appellate counsel filed a motion for leave to withdraw as counsel, and a memorandum in support of the motion pursuant to *Anders v. California*, 386 U.S. 738, 744 (1967). This court denied the motion. In addition, the State filed a motion for an extension of time to file its appellate brief. Accordingly, we revised the briefing schedule pursuant to those

requests. Because this case was not ready for disposition until October 13, 2017, we find good cause for issuing our decision after the 150-day deadline.

¶ 28 Respondent contends on appeal that the circuit court's findings that Angela G. was abused based on excessive corporal punishment were against the manifest weight of the evidence. Respondent argues that the circuit court's finding as to the reason he disciplined Angela G. was not supported by the evidence; he argues that the State failed to admit evidence that Angela G. suffered any injury due to his discipline; and he argues that the State failed to present any corroborating evidence that his discipline of Angela G. amounted to abuse.

¶ 29 Respondent maintains that the State failed to produce any evidence linking Angela G.'s bruises on her arm to his discipline. He argues that therefore, Angela G.'s out-of-court allegations of abuse were not corroborated and as a result, the circuit court's finding of excessive corporal punishment was against the manifest weight of the evidence.

¶ 30 We consider respondent's arguments within the framework of "reasonableness." A parent has the "right" to corporally discipline his or her child – a right derived from the constitutional right to privacy. *In re J.P.*, 294 Ill. App. 3d 991, 1002 (1998). However, this right is not absolute. *People v. Walker*, 130 Ill. App. 3d 58, 60 (1985). The standard which governs parental discipline is one "reasonableness." *J.P.*, 294 Ill. App. 3d at 1002; *In re F.W.*, 261 Ill. App. 3d 894, 898 (1994); see also *People v. Green*, 2011 IL App (2d) 091123, ¶ 9 (the use of corporal punishment must be reasonable).

¶ 31 Whenever an adjudicatory hearing on a petition for adjudication of wardship is conducted under the Act, the best interests of the child are the paramount consideration. *In re A.P.*, 2012 IL 113875, ¶ 18. The purpose of an adjudicatory hearing is to determine whether an allegation that

a minor is neglected and/or abused is supported by a preponderance of the evidence. *In re Arthur H.*, 212 Ill. 2d 441, 465 (2004). A preponderance of the evidence is "that amount of evidence that leads a trier of fact to find that the fact at issue is more probable than not." *In re K.G.*, 288 Ill. App. 3d 728, 735 (1997).

¶ 32 Under the Act, an abused minor has been defined to include a minor whose parent inflicts excessive corporal punishment. 705 ILCS 405/2-3(2)(v) (West 2014). The Act does not define "excessive corporal punishment." *In re B.H.*, 389 Ill. App. 3d 316, 319 (2009). Instead, each case involving the adjudication of abuse on the basis of corporal punishment is *sui generis*, and must be decided on its own distinct set of facts and circumstances. *J.P.*, 294 Ill. App. 3d at 1002; *In re Malik B.-N.*, 2012 IL App (1st) 121706, ¶ 38.

¶ 33 A circuit court has broad discretion when determining whether a child has been neglected or abused, and its decision will not be disturbed on review unless it is against the manifest weight of the evidence. *In re Stephen K.*, 373 Ill. App. 3d 7, 20 (2007). A court's decision is against the manifest weight of the evidence only if the opposite conclusion is clearly evident. *Arthur H.*, 212 Ill. 2d at 464.

¶ 34 With these principles in mind we conclude, after reviewing the evidence, that the circuit court's finding that respondent's infliction of corporal punishment on his minor daughter Angela G. was excessive is not against the manifest weight of the evidence. Here, the circuit court, sitting as the trier of fact, considered the following evidence in finding that respondent's infliction of corporal punishment on his minor daughter Angela G. was excessive.

¶ 35 Respondent admitted to Detective Kmetty that he struck Angela G. with a belt about seven or eight times on her legs and buttocks in an attempt to discipline her. Respondent

admitted to Woods that he disciplined Angela G. by "whooping" her with his belt for coming home late.

¶ 36 Officer Knight and Woods both observed bruises on Angela G.'s right arm and legs, and they both identified photographic exhibits depicting these various bruises. The circuit court admitted into evidence medical records and a report from Advocate Christ Medical Center emergency room as to the care and treatment Angela G. received for bruises to her shins, right arm and shoulder, and lower thighs as well as photographs of the bruises taken at the emergency room.

¶ 37 Angela G. stated that after she told respondent she had not cleaned her room, he struck her in the face with his open hand, and then grabbed her by the arm, took off his belt, and struck her with the belt over ten times. Angela G. told Woods she got the bruises when respondent grabbed her arm and whipped her with his belt. Angela G. told officer Knight that the respondent had hit her with his belt on prior occasions, but this was the first time he hit her with his hand.

¶ 38 This evidence was more than sufficient for the circuit court, exercising its broad discretion, to conclude that the respondent's conduct exceeded the bounds of reasonableness and amounted to excessive corporal punishment within the meaning of the Act. See, *e.g.*, *In re L.M.*, 189 Ill. App. 3d 392, 398 (1989) (mother's whipping of seven-year-old son with belt was unreasonable and exceeded the bounds of proper parental discipline amounting to excessive corporal punishment); *In the Interest of Weber*, 181 Ill. App. 3d 702, 703-04 (1989) (two-year-old boy was found to have been physically abused by his mother because he repeatedly was found to have bruises on his head, arms, buttocks, and back).

¶ 39 Moreover, the same evidence that supports the finding of abuse due to excessive corporal punishment, also supports the circuit court's findings that the State proved, by a preponderance of the evidence, that Angela G. was both neglected due to an injurious environment and abused due to a substantial risk of physical injury. See *In re Tamesha T.*, 2014 IL App (1st) 132986, ¶ 44 (same facts and evidence supporting finding of neglect due to injurious environment also supported court's finding of abuse due to substantial risk of physical injury); *In re Malik B.-N.*, 2012 IL App (1st) 121706, ¶ 53 (same facts and evidence supporting finding of abuse due to excessive corporal punishment and substantial risk of physical injury also supported court's finding of neglect due to injurious environment).

¶ 40 The circuit court found Angela G. neglected pursuant to section 2-3(1)(b) of the Act. This section provides that 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). The term "neglect" as used in the Act " ' 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 the surrounding circumstances changes.' " *In re N.B.*, 191 Ill. 2d 338, 346 (2000) (quoting *People ex rel. Wallace v. Labrenz*, 411 Ill. 618, 624 (1952)). The term has generally been defined as the failure of a responsible adult to exercise the care that circumstances demand and encompasses both unintentional and willful disregard of parental duties. *In re John Paul J.*, 343 Ill. App. 3d 865, 879 (2003). Similarly, the term "injurious environment" has been recognized "as an amorphous concept that cannot be defined with particularity." *Arthur H.*, 212 Ill. 2d at 463. The term has generally been interpreted to include " 'the breach of a parent's duty to ensure a "safe and nurturing shelter" for his or her children.' " *Id.*, at 463 (quoting *N.B.*, 191 Ill. 2d at 346).

¶ 41 Section 2-3(2)(ii) of the Act, provides in part that an abused minor includes "any minor under 18 years of age whose parent or immediate family member, or any person responsible for the minor's welfare, or any person who is in the same family or household as the minor, or any individual residing in the same home as the minor *** 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).

¶ 42 Cases involving adjudication of neglect, abuse, and wardship are *sui generis* and each case must ultimately be decided on the basis of its own particular facts. *In re K.T.*, 361 Ill. App. 3d 187, 201 (2005). As noted above, a trial court has broad discretion when determining whether a child has been neglected or abused and its decision will not be disturbed on review unless it is against the manifest weight of the evidence. *In re Stephen K.*, 373 Ill. App. 3d 7, 20 (2007). A court's decision is against the manifest weight of the evidence only if the opposite conclusion is clearly evident. *In re Arthur H.*, 212 Ill. 2d at 464.

¶ 43 With these principles and the above case law in mind we conclude, after reviewing the evidence, that the circuit court's findings that Angela G. was neglected due to an injurious environment and abused due to a substantial risk of physical injury, were not against the manifest weight of the evidence.

¶ 44 With these principles and the above case law in mind we conclude, after reviewing the evidence, that the circuit court's findings that Angela G. was neglected due to an injurious environment and abused due to a substantial risk of physical injury, were not against the manifest weight of the evidence.

No. 1-17-0975

¶ 45 Affirmed.