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).

2017 IL App (4th) 160705-U

NO. 4-16-0705

FILED
January 18, 2017
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: M.L., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Plaintiff-Appellee,	)	Sangamon County
v.	)	No. 15JA129
NINA JACKSON,	)	
Respondent-Appellant.	)	Honorable
	)	Karen S. Tharp,
	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justices Steigmann and Appleton concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's neglect finding was not against the manifest weight of the evidence.

¶ 2 Respondent, Nina Jackson, appeals the trial court's dispositional order adjudicating her teenage child, M.L. (born February 6, 2000), neglected. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On July 23, 2015, the State filed a petition for adjudication of wardship, alleging 15-year-old M.L. was a neglected minor. Specifically, it asserted he was without the proper care and supervision necessary for his well-being because respondent failed to allow M.L. "back home" or to make a proper care plan for him.

¶ 5 On May 5, 2016, the trial court conducted an adjudicatory hearing in the matter.

Although respondent failed to appear in person, she was represented by counsel, who asserted he had personally informed respondent of the date and time for the hearing.

¶ 6 At the hearing, the State presented the testimony of Deborah Clifton-Kemp, a child protective investigator with the Illinois Department of Children and Family Services (DCFS). Clifton-Kemp was assigned to investigate allegations that M.L. had been subjected to a "lockout" by respondent. She described a lockout as "when a parent contacts the police and refuses to allow their child to remain in the home." Clifton-Kemp testified M.L. wanted to return home but respondent would not allow it. Further, she stated respondent did not provide any other plan for M.L. to stay elsewhere. During the course of Clifton-Kemp's investigation, respondent did not ever state that she would take M.L. back into her home.

¶ 7 According to Clifton-Kemp, in lockout situations, a parent normally has 48 hours to make an alternative care plan for the minor. In the present case, respondent did not suggest anyone else who was available to care for M.L. within that time period. As a result, M.L. stayed at the Youth Services Bureau much longer than the typical 48-hour time frame. Clifton-Kemp testified respondent reported that she would not let M.L. return home because she was "scared for her other kids." Respondent also stated that she did not think any family or friends would provide care for M.L. and she "wouldn't call them."

¶ 8 On cross-examination, Clifton-Kemp denied that respondent contacted her by telephone prior to locking M.L. out of the home. Further, she did not recall any reports by respondent before the lockout that respondent was unsafe. Clifton-Kemp acknowledged having intermittent interactions with respondent and M.L. before the lockout and during the course of other investigations; however, she did not recall ever telling respondent "that she should lock her

child out."

¶ 9 Clifton-Kemp identified an investigation report she prepared regarding the lock-out incident. In the report, she noted that, on the day of the incident, respondent asserted M.L. became "confrontational" with her and other children in the home. According to respondent, M.L. " 'became out of control' " and threw her cell phone to the ground, breaking it. Clifton-Kemp agreed that respondent reported feeling "threatened" by M.L., that she felt her other children were "threatened" by him, and that M.L. was "violent" on the day of the lockout.

¶ 10 Clifton-Kemp testified she attempted to get respondent to resolve the situation and discussed different options with her, including having M.L. cared for by relatives, friends, church family, or "anybody that [respondent] could come up with." On examination by the trial court, Clifton-Kemp stated respondent refused an offer to have M.L. back in the home with services in place through DCFS.

¶ 11 Finally, Clifton-Kemp acknowledged that M.L. had a criminal record. At the request of respondent's attorney, the trial court took judicial notice that, in December 2014, M.L. pleaded guilty to two counts of aggravated battery.

¶ 12 No further evidence was presented, and the trial court found the State proved M.L. was a neglected minor. In reaching its decision, the court stated it did not believe the evidence rose "to the level of making this a dependency case." It reasoned that there had been "merely some general statement by the mother to [Clifton-Kemp] that she felt threatened, she felt her children—I don't know what ages they were in the home, they felt threatened." The court also noted there had been a report that M.L. broke respondent's cell phone and had been adjudicated delinquent; however, it found "much more than that" was necessary to warrant a finding of

dependency. With respect to M.L.'s delinquency adjudications, it stated as follows: "I don't believe [a minor] being an adjudicated delinquent gives the parents the ability to say he's now a dependent minor even if they are aggravated batteries, particularly with no other evidence as to what those are. [M.L.] could have, that could have been a battery to a peer on the sidewalk."

¶ 13 On May 5, 2016, the trial court entered its adjudicatory order, finding M.L. neglected as alleged by the State. On June 2, 2016, the court entered its dispositional order, adjudicating the minor a ward of the court and placing him in the custody and guardianship of DCFS. On June 3, 2016, respondent filed a motion to reconsider, alleging she had no notice of the adjudicatory hearing and requesting a new hearing on that basis. On September 21, 2016, the court denied respondent's motion.

¶ 14 This appeal followed.

¶ 15 II. ANALYSIS

¶ 16 On appeal, respondent argues the State failed to meet its burden of proving M.L. was a neglected minor and, as a result, the trial court's neglect finding was against the manifest weight of the evidence. She maintains the evidence, instead, supported a finding that M.L. was a dependent minor because M.L. was a dangerous child and respondent needed to protect the other children in her home.

¶ 17 When deciding whether a minor should be made a ward of the court, the trial court must conduct an adjudicatory hearing to determine whether the minor is abused, neglected, or dependent. *In re A.P.*, 2012 IL 113875, ¶¶ 18-19, 981 N.E.2d 336 (citing 705 ILCS 405/2-18(1) (West 2010)). Under the Juvenile Court Act of 1987 (Act) (705 ILCS 405/2-3(1)(a) (West 2014)), a neglected minor includes "any minor *** who is not receiving the proper or necessary

support, education as required by law, or medical or other remedial care recognized under State law as necessary for a minor's well-being, or other care necessary for his or her well-being, including adequate food, clothing and shelter." Alternatively, a dependent minor includes any minor "who is without proper medical or other remedial care recognized under State law or other care necessary for his or her well being through no fault, neglect or lack of concern by his parents." 705 ILCS 405/2-4(1)(c) (West 2014).

¶ 18 In the instant case, the State's petition alleged M.L. was a neglected minor. We note "cases 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).

> " 'Generally, "neglect" is defined as the "failure to exercise the care that circumstances justly demand." ' (Internal quotation marks omitted.) [Citations.] This does not mean, however, that the term neglect is limited to a narrow definition. [Citation.] As [the supreme 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.' (Internal quotation marks omitted.) [Citations.]" *A.P.*, 2012 IL 113875, ¶ 22, 981 N.E.2d 336.

¶ 19 The State has the burden of proving its neglect allegations 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.* "On review, a trial court's finding of neglect will not be reversed unless it is against the manifest weight of the evidence," and "[a] finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident." *Id.*

¶ 20 On appeal, respondent primarily relies on two cases—*In re Christopher S.*, 364 Ill. App. 3d 76, 845 N.E.2d 830 (2006), and *In re S.W.*, 342 Ill. App. 3d 445, 794 N.E.2d 1037 (2003)—to support her contention that the trial court's neglect finding was against the manifest weight of the evidence. The State asserts both cases are factually and procedurally distinguishable from the case at bar and the trial court committed no error in finding M.L. neglected. We agree with the State.

¶ 21 The cases cited by respondent both involved allegations of a lockout by the minors' parents, assertions by the State that the minors were dependent through no fault of the respondent parents, and findings of no-fault dependency by the trial court. *Christopher S.*, 364 Ill. App. 3d at 78-84, 845 N.E.2d at 832-37; *S.W.*, 342 Ill. App. 3d at 446-50, 794 N.E.2d at 1038-41. In *Christopher S.*, 364 Ill. App. 3d at 85-86, 845 N.E.2d at 838, the minor's guardian *ad litem* appealed the finding of no-fault dependency, arguing the trial court's decision was against the manifest weight of the evidence and it should have found the minor neglected due to a lack of necessary care. On review, the First District affirmed. *Id.* at 90, 845 N.E.2d at 842. It stated the evidence presented established that the minor had a "very troubled" relationship with his adoptive parents and that the parents did not want the minor to return home "because they feared for their family's safety." *Id.* at 87, 845 N.E.2d at 839. Evidence presented at the adjudicatory hearing showed the minor had a long history of behavioral issues, including acting aggressively toward others, being defiant, damaging the family's home, and engaging in suspected criminal ac-

tivities. *Id.* at 79-81, 845 N.E.2d at 833-34.

¶ 22 The First District specifically noted evidence showing the minor threatened his parents with physical violence and that he "used verbal and physical intimidation toward [the] mother on more than one occasion." *Id.* at 87, 845 N.E.2d at 839. During one "violent altercation," the minor "yell[ed] at his mother, threw a telephone over her head[,] and punched a hole in the wall right next to her." *Id.* On another occasion, the minor, who had been hospitalized for a psychiatric evaluation, had to be restrained by hospital staff because he became agitated during a visit from his parents and started walking toward them. *Id.*

¶ 23 The First District also found the evidence was clear that the minor's parents tried to find alternate care for him. *Id.* It noted recommendations were made by doctors that the minor be placed in residential treatment rather than return home and that the parents "contacted over 43 different agencies and individuals in an attempt to find alternative care" for the minor. *Id.* However, due to the minor's behavior, age, and pending criminal issues, the parents were unable to find an affordable agency that was willing to take him. *Id.* The parents had also arranged for the minor to temporarily live with his biological aunt. *Id.* Further evidence showed the minor did not want to return to his parents' home or to have any contact with them. *Id.*

¶ 24 In *S.W.*, 342 Ill. App. 3d at 450-53, 794 N.E.2d at 1041-43, the minor's mother appealed the trial court's dependency finding and, again, the First District affirmed. In so holding, it noted the minor had mental-health issues and "had been hospitalized several times for emotional and psychological problems." *Id.* at 450-51, 794 N.E.2d at 1041. The minor's mother reported that she could not take care of the minor. *Id.* at 451, 794 N.E.2d at 1041. Additionally, evidence was presented at the adjudicatory hearing that the minor had hit her mother and at-

tempted to kill her. *Id*. at 447-49, 794 N.E.2d at 1039-40. It also showed the mother had attempted to arrange alternative care for the minor by seeking hospitalization and suggesting placement with a relative. *Id*. at 448, 794 N.E.2d at 1039-40.

¶ 25 As argued by the State, both *Christopher S.* and *S.W.* are factually distinguishable from the present case. First, in both of those cases, evidence demonstrated the minors at issue had long histories of behavioral problems and that they had been physically threatening, aggressive, and violent toward their parents. No similar history was presented here, and the evidence showed only a vague assertion by respondent that she felt "threatened" by M.L. on the day of the lockout. Moreover, no specific evidence was presented showing M.L. was physically violent with respondent or that he had physically harmed or threatened physical harm to anyone in the home. Although evidence showed M.L. previously pleaded guilty to two counts of aggravated battery, no context was presented for those crimes, and they do not support a finding that M.L. was a danger to respondent or those in her household.

¶ 26 Second, the evidence in both *Christopher S.* and *S.W.* demonstrated the respondent parents tried to find alternative care for their minor children after locking them out of the home. In *Christopher S.* the respondent parents contacted over 43 different agencies and individuals when attempting to find alternative care. In *S.W.*, the mother sought to have the minor hospitalized and recommended placement with a relative. In the case at bar, however, no evidence was presented to show any action taken by respondent to locate an alternative placement for M.L. According to Clifton-Kemp, respondent failed to suggest any possible alternatives for M.L.'s care and refused an offer of having M.L. return home with services in place through DCFS.

¶ 27 The evidence presented in this case falls far short of the evidence presented in both *Christopher S.* and *S.W.*, and we find it more similar to *In re Rayshawn H.*, 2014 IL App (1st) 132178, 16 N.E.3d 57, a case relied upon by the State. There, the minor was adjudicated neglected "due to lack of necessary care and *** an injurious environment," and the trial court rejected an argument that the evidence supported a finding of no-fault dependency. *Id.* ¶ 17. On review, the First District upheld the trial court's neglect finding. *Id.* ¶ 31. It distinguished both *Christopher S.* and *S.W.*, finding that, in the case before it, the mother "made little to no effort in finding alternative living arrangements" for the minor; the minor did not exhibit physically aggressive behavior toward the mother, "did not harm her, and did not present any real danger to her"; and the mother "showed no interest in engaging in support services offered by DCFS." *Id.* ¶¶ 28-30.

¶ 28 As noted by the State, in *Rayshawn H.*, the First District also pointed out procedural differences between its case and both *Christopher S.* and *S.W.* Specifically, it stated as follows:

> "In both *In re Christopher S.* and *In re S.W.*, the circuit court entered findings of no-fault dependency, which were affirmed on appeal. In contrast, in the case at bar, the circuit court entered a finding of neglect. As discussed, we review the circuit court's findings at an adjudication hearing only to determine whether they are against the manifest weight of the evidence. [Citation.] In order to reverse the circuit court's findings under this standard of review, the opposite conclusion must be 'clearly evident from the record.'

[Citation.]" *Id.* ¶ 31.

¶ 29 This case is similarly distinguishable in that, like *Rayshawn H.*, it involves a finding of neglect by the trial court. Although respondent argues the court's neglect finding was against the manifest weight of the evidence because M.L. was a dangerous child and she needed to protect others in her home, scant evidence was presented to support that contention. Moreover, we note the complete absence of any evidence demonstrating respondent attempted to make an alternative care plan for M.L. after locking him out of the home. Given these circumstances, we find the court's neglect finding was amply supported by the record and an opposite conclusion was not clearly apparent.

¶ 30 III. CONCLUSION

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

¶ 32 Affirmed.