

**NOTICE**

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2017 IL App (4th) 160865-U

NO. 4-16-0865

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

April 11, 2017

Carla Bender

4<sup>th</sup> District Appellate

Court, IL

In re: S.L., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Champaign County
v.	)	No. 16JA25
MELISSA CARTER,	)	
Respondent-Appellant.	)	Honorable
	)	John R. Kennedy,
	)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.  
Presiding Justice Turner and Justice Knecht concurred in the judgment.

**ORDER**

¶ 1 *Held:* The appellate court affirmed, concluding the trial court's adjudicatory and dispositional findings were not against the manifest weight of the evidence.

¶ 2 In October 2016, the trial court adjudicated S.L. (born June 26, 2016) a neglected minor after finding, in part, respondent, Melissa Carter, subjected S.L. to an injurious environment where she failed to correct the conditions that resulted in a prior adjudication of unfitness as it related to S.L.'s sibling. 705 ILCS 405/2-3(1)(b) (West 2014). In November 2016, the court entered a dispositional order making S.L. a ward of the court and granting guardianship and custody to the Department of Children and Family Services (DCFS).

¶ 3 Respondent appeals, asserting the trial court's adjudicatory and dispositional findings were against the manifest weight of the evidence. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In June 2016, the State filed a petition for adjudication of neglect, alleging respondent parents subjected S.L. to an environment injurious to her welfare as defined by section 2-3(1)(b) of the Juvenile Court Act of 1987 (705 ILCS 405/2-3(1)(b) (West 2014)) where respondent parents failed to correct the conditions which resulted in a prior adjudication of unfitness with respect to S.L.'s sibling, C.L. (Champaign County case No. 13-JA-69). The petition also alleged two counts of neglect against respondent father, but we need not address them here because he is not a party to this appeal. Following a shelter-care hearing later that month, the trial court found it was a matter of immediate and urgent necessity to remove S.L. from the home and place temporary guardianship with DCFS.

¶ 6 A. Adjudicatory Hearing

¶ 7 In September 2016, the case proceeded to an adjudicatory hearing over the course of two nonconsecutive days and included evidence with respect to the family's other pending cases not subject to this appeal. Because this appeal pertains to respondent only, we will discuss only the evidence pertinent to her appeal. We note, during the proceedings, the trial court took judicial notice of Champaign County case No. 13-JA-69, which involved C.L.

¶ 8 1. *Dominique Kinnie*

¶ 9 Dominique Kinnie was previously employed by the Cunningham Children's Home and the Center for Youth and Family Solutions, where she served as the family's caseworker from June 2014 through April 2016 with respect to C.L.'s case. Kinnie testified respondent participated in services inconsistently, and respondent's move to the Des Plaines, Illinois, area in August 2015 complicated Kinnie's ability to find the necessary services. Respondent would return to the Champaign area for services as often as possible. However, because of the distance, respondent's participation in services and visits was inconsistent, as was

her contact with Kinnie. Kinnie noted respondent lacked parenting abilities during visitation, and Kinnie believed unsupervised visitation would compromise C.L.'s safety. Although respondent's skills improved over time, Kinnie did not believe her progress was such that unsupervised visitation was appropriate. Due to respondent's inconsistency, Kinnie was unable to plan for C.L.'s return home.

¶ 10 *2. Tammy Roedl*

¶ 11 Tammy Roedl, the associate director of foster care at the Cunningham Children's Home, testified she was the caseworker for C.L. in Champaign County case No. 13-JA-69. According to Roedl, the current goal for C.L. was substitute care pending the termination of respondent's parental rights.

¶ 12 *3. Dr. Judy Osgood*

¶ 13 Dr. Judy Osgood, a licensed clinical psychologist, testified she performed a parenting-capacity assessment on respondent in February 2016 with respect to C.L.'s case. Dr. Osgood noted that parents diagnosed with bipolar disorder, like respondent, exhibit physical aggression, extreme irritability, and loss of control, all of which could be regulated with medication. If left untreated, however, a parent with bipolar disorder would have a limited ability to respond appropriately to a child. Because respondent was pregnant at the time she met with Dr. Osgood, she was not on any medication to regulate her bipolar disorder. According to Dr. Osgood, respondent admitted to self-medicating with marijuana prior to her pregnancy rather than remaining in compliance with her medication. Dr. Osgood expressed concerns over respondent's reported bouts of severe depression, her lack of psychological stability, and her lack of a support system. Dr. Osgood noted respondent minimized her threats to commit self-harm while in C.L.'s presence, which was part of the domestic-violence incident which led to C.L.'s

removal from the home. Moreover, Dr. Osgood testified respondent minimized her substance-abuse problem and admitted to using marijuana after C.L. was removed from the home to self-medicate when she was depressed.

¶ 14 Dr. Osgood opined respondent would need to take her medication, engage in mental-health counseling, and demonstrate long-term compliance with her treatment before she could properly parent a child. Further, respondent would need to develop and implement lifestyle changes to promote stability. If respondent stopped her medication or counseling, Dr. Osgood opined respondent would pose a danger to her children.

¶ 15 *4. Arnold Black*

¶ 16 Arnold Black, a DCFS child-protection advanced specialist, testified he was assigned to the family's case in June 2016, after S.L.'s birth. According to Black, DCFS became involved after receiving a hotline call regarding the birth of S.L. and took custody of the newborn due to respondent's previous contact with DCFS in Champaign County case No. 13-JA-69, where she had been found unfit. Respondent spoke with Black and explained she was involved in Community Elements, Crisis Nursery, and received rent assistance as part of the ongoing neglect case. She had also completed parenting classes and domestic-violence classes. According to Black, respondent admitted she had yet to fully complete mental-health counseling because her pregnancy required her to forego her medication, but she planned to start taking the medication immediately.

¶ 17 *5. Respondent*

¶ 18 Respondent testified about her progress in C.L.'s case. Respondent said she had completed parenting classes, domestic-violence counseling, and individual counseling. As a result of these services, respondent stated she was using the skills from her domestic-violence

and parenting classes to redirect C.L.'s behaviors. She had also been submitting clean drug screens and had maintained her sobriety for two years. During this time, respondent's living situation also became more stable. She received rent assistance that allowed her to enter into a one-year lease on her apartment, and she had been employed full-time since January 2016. According to respondent, she was involved in mental-health services at Rosencrance since June 2, 2016, and began taking prescription medication to address her bipolar disorder and anxiety shortly after S.L.'s birth. She was also taking medication for mental health prior to her pregnancy.

¶ 19 Respondent moved to Des Plaines for a period of time, but she moved back in January 2016. While in Des Plaines, respondent's caseworker was unable to arrange services due to long waiting lists and scarce resources in the area. However, respondent testified she reengaged in mental-health treatment following the birth of S.L. As a result of her participation in services and maintaining stability, respondent believed she had corrected the conditions that caused C.L. to be removed from her care.

¶ 20 *6. Katie Riddle*

¶ 21 Katie Riddle was a visitation supervisor for respondent's visits with C.L. starting in April 2016 and for S.L. since her birth. Riddle testified respondent's visits were going well and respondent was applying appropriate parenting skills.

¶ 22 *7. Edwin Hawkes*

¶ 23 Edwin Hawkes, a case manager at Rosencrance, testified he assisted respondent with mental-health services beginning in fall 2012. Overall, he found respondent cooperative with services. Hawkes said respondent regularly attended meetings with him, which were scheduled for two to four times a month. At their initial meetings, Hawkes described respondent

as unstable but, as the years progressed, she received a rent subsidy, rented an apartment, and obtained employment. To the best of his knowledge, since S.L.'s birth, respondent had been regularly receiving psychotropic medication.

¶ 24 *8. Robin Gill*

¶ 25 Robin Gill, respondent's sister, testified she regularly observed visits between respondent and C.L. between September 2014 and October 2015, as Gill was C.L.'s foster mother at that time. Gill testified respondent consistently attended visits, provided diapers and other necessary items, and remained in constant contact with Gill regarding C.L.'s well-being.

¶ 26 *9. Respondent's Exhibits*

¶ 27 Respondent tendered several exhibits to the trial court regarding her services. Sheri Daley, respondent's counselor at Rosencrance, wrote a letter stating respondent was working toward her therapy goals as established in May 2016, which included learning coping skills, problem-solving, and participating in social activities. Daley found respondent presented herself as functioning well, as respondent was employed, budgeting her money, considering her children's needs, and adjusting her schedule around visitation. Respondent consistently attended her appointments.

¶ 28 Elyse Biesler, a support worker for the Healthy Families program at Community Elements, wrote a letter stating respondent had been involved in their program since June 2016. Biesler provided free home visits and support for families needing assistance with parenting skills during visits.

¶ 29 *10. The Trial Court's Ruling*

¶ 30 Following the presentation of evidence, the trial court found S.L. was a neglected minor where respondent subjected S.L. to an injurious environment based on anticipatory

neglect. In support, the court noted respondent remained unfit in Champaign County case No. 13-JA-69, and the evidence presented supported the finding in that case.

¶ 31 B. Dispositional Hearing

¶ 32 In November 2016, the case proceeded to a dispositional hearing. The parties presented no witnesses and relied on the dispositional report. The dispositional report indicated S.L. and C.L. were placed together in a foster home where S.L. was thriving and meeting her developmental milestones. Respondent parents shared their resources with one another, such as the car seat, and they reported no domestic-violence incidents in the past 10 months. Respondent attended every visit with S.L.

¶ 33 The report further indicated respondent resided in a clean, one-bedroom apartment with rent assistance. She had two jobs but intended to quit her part-time job if S.L. was returned to her care. Respondent completed parenting classes, had improved her parenting skills, and expressed a desire to demonstrate her knowledge. Respondent's drug screens were all negative. Although she completed domestic-violence classes, the report indicated respondent could benefit from individual counseling.

¶ 34 The dispositional report highlighted respondent's challenges with respect to her mental-health treatment. Following her pregnancy, respondent was prescribed psychotropic medication to address her bipolar disorder. The report indicated respondent told her caseworker she wanted to stop taking her medication because she did not believe it was working. However, she changed her mind after the caseworker explained respondent engaged in erratic and dangerous behavior when she was not properly medicated. Due in large part to respondent's ongoing mental-health issues, the report recommended DCFS maintain custody and guardianship of S.L.

¶ 35 The trial court noted it was important to treat S.L. differently than C.L. because respondent was now at a higher level of parenting and S.L. needed to bond with respondent. However, the court was also familiar with respondent's need for ongoing services. The court was hopeful S.L. could be returned home in the near future due to respondent's progress. Accordingly, the court found respondent was unable, for reasons other than financial circumstances alone, to care for, protect, train, and discipline S.L., and it was against her health, safety, and best interest to be in respondent's custody. The court (1) adjudicated S.L. neglected, (2) made S.L. a ward of the court, and (3) awarded custody and guardianship to DCFS.

¶ 36 This appeal followed

## II. ANALYSIS

¶ 37 On appeal, respondent asserts the trial court's adjudicatory and dispositional findings were against the manifest weight of the evidence. We address these assertions in turn.

### ¶ 38 A. Adjudicatory Finding

¶ 39 Respondent first asserts the trial court's adjudicatory finding was against the manifest weight of the evidence.

¶ 40 Juvenile abuse or neglect proceedings should not be undertaken lightly, as these proceedings constitute a significant intrusion for the family. *In re Arthur H.*, 212 Ill. 2d 441, 463, 819 N.E.2d 734, 747 (2004). Where the State files a petition for neglect, the State bears the burden of proving the allegations by a preponderance of the evidence. *Id.* at 463-64, 819 N.E.2d at 747. We will not overturn the trial court's finding of neglect unless it is against the manifest weight of the evidence. *Id.* at 464, 819 N.E.2d at 747. "A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident." *Id.*



¶ 41 Here, the trial court found respondent subjected S.L. to an injurious environment due to anticipatory neglect based on a prior finding of unfitness as it related to S.L.'s sibling, C.L. Where the State files a petition alleging anticipatory neglect, "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." *Id.* at 468, 819 N.E.2d at 749. However, a finding of neglect related to one child does not *per se* establish neglect of another child in the same household. *Id.* Rather, we measure neglect "not only by the circumstances surrounding the sibling, but also by the care and condition of the child in question." (Internal quotation marks omitted.) *Id.* at 468, 819 N.E.2d at 749-50. At the same time, proof that a parent neglected another child is admissible to demonstrate the neglect of any other minor for whom the parent is responsible. *Id.* at 468, 819 N.E.2d at 750.

¶ 42 The basis for the petition was respondent's failure to correct the conditions that resulted in her being found unfit to parent C.L. C.L. had been taken into custody three years earlier, when respondent threatened self-harm during an argument with respondent father and in the presence of C.L. Respondent was diagnosed with a mental illness and required to participate in numerous services, such as parenting classes, substance-abuse counseling, and domestic-violence counseling. By the time S.L. was born in June 2016, respondent had been found unfit with respect to C.L. and had not yet been restored to fitness.

¶ 43 The evidence presented at the adjudicatory hearing demonstrated respondent had made great strides toward completing her recommended services. She completed parenting classes and sought to implement those skills at her visits. She completed domestic-violence

counseling and submitted numerous negative drug screens. She had procured a residence with rent assistance, worked two jobs, and consistently attended visitation.

¶ 44 However, respondent's mental-health issues remained ongoing due, in part, to her inability to take her psychotropic medication during the pregnancy. Dr. Osgood testified, without medication, respondent could pose a danger to her children, as evidenced by respondent's threats of self-harm during a domestic-violence incident in C.L.'s presence. The trial court need not wait until abuse occurs before taking action to protect the child's best interest. *In re M.K.*, 271 Ill. App. 3d 820, 827, 649 N.E.2d 74, 79 (1995). Although respondent was back on her medication after S.L.'s birth, she had not yet been in long-term compliance with her medication and treatment that Dr. Osgood believed was necessary to protect the child's safety. Accordingly, respondent failed to demonstrate she corrected the conditions which led to a finding of unfitness of C.L., and her ongoing mental-health issues could lead to S.L.'s neglect.

¶ 45 In her reply brief, respondent asserts this court should not consider the testimony of Dr. Osgood or Kinnie because the State did not make clear that their testimony would be used for the present case instead of two related cases heard at the same time. Respondent notes the State had previously rested and was therefore not in a position to reopen its case by calling Dr. Osgood or Kinnie absent the agreement of the parties or an order from the trial court. See Ill. S. Ct. R. 233 (eff. July 1, 1975).

¶ 46 On September 1, 2016, after presenting two witnesses, the State rested its case. Respondent presented a portion of her evidence and then requested a continuance to present the remainder on a later date. Upon granting the motion to continue to another date, the trial court stated, "Understand evidence will be heard in conjunction with other cases involving the same families." However, when the case resumed on September 26, 2016, the State indicated it had

two additional witnesses to present in its case-in-chief—Osgood and Kinnie. When calling the matter for a hearing, the trial court clearly called for evidence in the present case. Because none of the parties objected to the State introducing these additional witnesses, even if the State did so out of order, this issue has been forfeited. See *In re M.W.*, 232 Ill. 2d 408, 430, 905 N.E.2d 757, 772 (2009) (the failure to preserve an issue in the trial court results in forfeiture of that issue on appeal). Accordingly, we reject respondent's argument that we should disregard the testimony of Dr. Osgood and Kinnie.

¶ 47 We therefore conclude the trial court's adjudicatory finding was not against the manifest weight of the evidence.

¶ 48 B. Dispositional Finding

¶ 49 Respondent next asserts the trial court's dispositional finding was against the manifest weight of the evidence.

¶ 50 Following an adjudication of neglect, the trial court must conduct a dispositional hearing to determine if the minor should be made a ward of the court. 705 ILCS 405/2-22 (West 2014). In considering the appropriateness of wardship, the court must decide if the parent is unfit, unable, or unwilling, for reasons other than financial reasons alone, to care for, protect, train, or discipline the child, and that the health, safety, and best interest of the child will be jeopardized if the child remains in the parent's custody. 705 ILCS 405/2-27(1) (West 2014).

¶ 51 The dispositional report noted respondent had made great strides. Respondent was employed, had stable housing, and was engaging in mental-health treatment that included psychotropic medication. However, according to the report, respondent failed to fully comprehend the importance of her medication in regulating her mental health. In fact, her caseworker had to explain the importance of the medication to respondent, noting numerous

instances of erratic behavior respondent engaged in when she was not taking her medication. This included periods of severe depression and anger that could impact the health, safety, and best interest of S.L. Further, respondent had only been on her current treatment regimen for a few months, an insufficient amount of time to demonstrate the long-term compliance necessary to ensure the health and safety of S.L. The trial court remained hopeful that respondent's progress would allow S.L. to return home in the near future, but respondent must demonstrate long-term compliance with her mental-health treatment first. Accordingly, we conclude the trial court's dispositional finding was not against the manifest weight of the evidence.

¶ 52

### III. CONCLUSION

¶ 53

Based on the foregoing, we affirm the trial court's judgment.

¶ 54

Affirmed.