

NOTICE

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FILED

May 26, 2017
Carla Bender
4th District Appellate
Court, IL

2017 IL App (4th) 160942-U
NOS. 4-16-0942, 4-16-0943 cons.

IN THE APPELLATE COURT
OF ILLINOIS

FOURTH DISTRICT

In re: A.S., a Minor,)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
Petitioner-Appellee,)	Macon County
v. (No. 4-16-0942))	No. 16JA46
ALEXANDER SALLEY,)	
Respondent-Appellant.)	

-----)	
In re: A.S., a Minor,)	
THE PEOPLE OF THE STATE OF ILLINOIS,)	
Petitioner-Appellee,)	
v. (No. 4-16-0943))	
LASHONDA MURPHY,)	Honorable
Respondent-Appellant.)	Thomas E. Little,
)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Justices Steigmann and Pope 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 Respondents, Alexander Salley and Lashonda Murphy, separately appealed the adjudication of neglect and the dispositional order of the circuit court of Macon County determining that their infant child, A.S., was neglected and awarding custody and guardianship to the Illinois Department of Children and Family Services (DCFS). Respondents argue the trial court's judgments, pursuant to the State's legal theory of anticipatory neglect, were against the manifest weight of the evidence. We have consolidated the appeals, and we affirm.

I. BACKGROUND

¶ 3

¶ 4 On March 20, 2016, DCFS received a hotline call indicating respondent mother had given birth to A.S. This was a concern to DCFS because respondents were involved in a pending case regarding their older child, A.M., who was approximately one year old, and they had made limited progress in that case. Additionally, in 2012, respondent mother had her parental rights to yet another child terminated due to her failure to correct the conditions which led to that child's removal. For these reasons, on April 11, 2016, A.S. was taken into protective custody upon his release from the hospital.

¶ 5 On April 13, 2016, the State filed a three-count petition alleging the minor was neglected and abused. In particular, in count I, the State alleged A.S. was neglected because he was not receiving the proper and necessary care from respondents. See 705 ILCS 405/2-3(1)(a) (West 2014). The State based its allegations on the pending DCFS case (Macon County case No. 15-JA-36) and respondent mother's prior termination of parental rights. The State alleged the "parents have a history of domestic violence, lack of supervision issues, and slow, very uneven progress in the open case."

¶ 6 In count II, the State alleged A.S. was neglected because his environment was injurious to his welfare for the same bases as stated in count I. 705 ILCS 405/2-3(1)(b) (West 2014). And, in count III, the State relied on the same bases and alleged A.S. was an abused minor because respondents created a substantial risk of physical injury to the minor. 705 ILCS 405/2-3(2)(ii) (West 2014). After the shelter-care hearing, DCFS was appointed as temporary custodian, and A.S. was placed in traditional foster placement.

¶ 7 On June 16, 2016, the trial court conducted an adjudicatory hearing. Denise Boaz, a DCFS child-protection investigator, testified she was assigned to A.S. on March 20, 2016, the

day he was born. Respondent father told Boaz, upon her questioning, that he was participating in services from the then-pending prior case. Respondent mother told Boaz the same thing. Despite respondents' self-reporting, Boaz learned respondent mother had *not* been attending her recommended domestic-violence class, and respondent father's anger-management class, which he had been attending sporadically, was of little benefit in that there had been a recent domestic-violence incident between them. Boaz decided to take protective custody of A.S. due to respondents' inadequate progress, the recent domestic-violence incident, and the fact respondent mother had her rights to another child terminated in 2012.

¶ 8 Kim Taylor, the assigned DCFS caseworker, testified she had already been assigned to the family with A.M.'s case. Taylor had prepared a service plan for both respondents, which recommended individual counseling, a parenting course, and supervised visitation. Respondent mother was recommended for domestic-violence-victim services, and respondent father was recommended for domestic-violence-perpetrator services. The most recent service plan for respondent father was rated satisfactory based on his self-reporting. However, when Taylor discussed his progress with the treatment provider, she discovered respondent father's report was inaccurate. Additionally, respondent mother had reported she was involved in domestic-violence services when, in fact, she was not. Both respondents had completed the parenting class, both were consistent with visitation, and both attended A.S.'s medical appointments. Respondent mother had completed anger-management classes, but she indicated to Taylor she did not need domestic-violence services, as she did not see herself as a victim. Respondent mother was not employed throughout the life of the case.

¶ 9 Further, Taylor testified the status of respondents' relationship and whether they resided together varied day-to-day. Respondent father maintained two residences, one on his own

and one with respondent mother. Taylor said she herself did not make the decision to take A.S. into protective custody, but she would have made that decision if it was up to her. Her greatest concern was “the domestic violence between the two parents.” However, she also testified as to the serious medical needs of A.S. and respondent mother’s lack of insight and ability to meet those needs. Taylor said respondent mother often fell asleep during visits. A.S. was on a “very routine feeding schedule” and needed to be “woken to be fed.” He had medical needs that needed to be addressed on a consistent basis.

¶ 10 Taylor testified there had been several reports of domestic violence between respondents, which meant neither could provide a safe or healthy environment for A.S. According to Taylor, respondent mother and respondent father had made unsatisfactory progress in their counseling and domestic-violence goals.

¶ 11 Tamika Hall, a counselor at Youth Advocate, had been respondent mother’s counselor since April 15, 2015, and respondent father’s counselor since August 12, 2015, as DCFS referrals from A.M.’s case. Hall and respondent mother established the following goals for counseling: (1) learn coping skills to manage symptoms of grief; (2) participate in psychotherapy to improve communication skills with significant others and her support system; (3) participate in cognitive behavioral therapy to learn how to diffuse irrational thought patterns; (4) comply with DCFS service plans; (5) participate in an eight-week anger-management group; and (6) attend a parenting/mental-health group to develop skills in managing mental-health issues and parenting in a constructive manner.

¶ 12 Hall worked with respondent father to develop the following goals: (1) develop communication skills to help improve and build stable relationships; (2) participate in cognitive behavioral therapy; (3) develop skills to identify triggers for anger; (4) develop coping skills to

manage anger in a constructive manner; and (5) attend a parenting/mental-health group to develop skills in managing mental-health issues and parenting in a constructive manner.

¶ 13 Both respondents were participating in services. However, Hall testified about a domestic-violence incident that occurred in February 2016, where respondent father broke the windows and slashed the tires on their vehicle to prevent respondent mother from using it. They had been working on coping skills for handling frustration in order to avoid similar situations. Hall characterized their progress as “unsuccessful” and was working on terminating counseling. She said she would help them find other counseling if needed. Hall stated:

“My take on it is I’ve had [respondent mother] since April 2015, and here it is May 2016. We’ve continued these same goals at her six-month mark. And then I did her year assessment April 2016. And we’re still working on the same goals. And there has not been significant progression towards achieving any of those goals, or to me appears like the willingness to achieve these goals.”

¶ 14 Dawn McCoy, a family interventionist with Youth Advocate, testified she does “drop-ins” on respondents’ unsupervised visits with A.M. and on their supervised visits with A.S. At a February 1, 2016, visit with A.M., McCoy witnessed respondent mother and A.M., who was considered an infant, co-sleeping in the bed. McCoy said co-sleeping was generally prohibited, and was especially prohibited on that day since A.M. was ill with breathing issues. Respondents had been warned before about the danger of co-sleeping.

¶ 15 Mandy Webb, visitation supervisor with Youth Advocate, testified she began working with the family in March 2016. She testified she saw “a few concerning things” during visits: (1) respondent mother would often sleep during visits with A.M.; (2) a piece of wood fell and, but for Webb’s intervention, it would have hit A.M., yet respondent mother did not move;

(3) Webb would often need to redirect A.M. when she was doing something wrong, yet respondent mother did nothing; and (4) respondent mother fell asleep while holding A.S.

¶ 16 Joyce Kirkland, a youth and family services coordinator with the domestic-violence program, testified she met respondent mother in January 2016. Respondent mother slept through her first group session, so she did not receive credit for it. She attended three other group sessions but then stopped around the time of A.S.'s birth. She requested individual sessions instead. She was late for the first session, and during the second session, she texted on her telephone throughout the session. After that, in March 2016, according to Kirkland, respondent mother was more attentive. However, she again stopped attending. Respondent mother has denied there was any domestic violence in her home.

¶ 17 After considering the State's evidence, as no other party presented evidence, the trial court found the State had proved by a preponderance of the evidence the allegations of count II (neglect based upon an injurious environment), but not counts I and III. The court found the minor neglected, noting a "clear history" of domestic violence, lack of supervision, and very slow and uneven progress.

¶ 18 On July 1, 2016, the trial court conducted a dispositional hearing. Kim Taylor testified she had been the family's caseworker since September 2015. She prepared a dispositional report indicating that DCFS recommended it be awarded guardianship of A.S. Taylor testified A.S. is an infant and respondent parents "have an instability in their relationship. They have not progressed into the services outlined in their service plan." Both parents had fallen asleep and had arguments during visits. Respondent mother would leave the room, allowing A.M. to be alone, and too aggressive with A.S. Respondent was told not to leave the minors alone. Neither parent had been able to implement what they learned in parenting. Taylor

described respondents' progress as follows: "[I]t's been at some visits where it seems that they make two steps forward and ten steps backward. It is not a consistency in which it would be a safe environment for a child to be in at this time."

¶ 19 Taylor set forth in her dispositional report that respondent mother remained unemployed, relying entirely on respondent father's income. She had not consistently attended domestic-violence services and denied the need for them, attending only because "DCFS 'made her.' " Respondent mother required "continued work" with respect to applying what she had learned in parenting class. Taylor documented that, according to Tamika Hall, respondent mother had failed to make reasonable progress in individual counseling.

¶ 20 According to the dispositional report, respondent father had attended his group domestic-violence sessions and was scheduled to complete the program on June 27, 2016. However, the group leader said she would "like him to be 'more open and less abrasive' in his interactions at group and would like to see more progress before completion." Respondent father had also failed to make reasonable progress during his individual counseling sessions with Hall.

¶ 21 The report also indicated that Hall reported "there [was] a plan to unsuccessfully discharge [respondents] from treatment in August due to lack of progress." Hall had attempted couple's therapy with respondents on two occasions, one in 2015 and the latest in May 2016. "In both instances, the couple's therapy was terminated by Ms. Hall due to [respondents] being unable to appropriately address their issues and to put it *** simply, their relationship is 'toxic.' " On June 8, 2016, respondent father advised Hall that respondent mother bit him. He showed Hall the bite mark on his back.

¶ 22 According to the report, respondents "have demonstrated they are incapable of devoting the few hours of supervised visits per week to [visit] their son. Both parents have fallen

asleep during one or more visits, they have engaged in verbal conflicts, and in [respondent mother]’s case, she has been unable to demonstrate her ability to properly supervise their oldest child to ensure [A.S.]’s safety while around her.” Additionally, the instability of respondents’ relationship “is not a healthy environment for a child to reside in.” Respondents “have had over one year to engage in, make progress in, and demonstrate changed behaviors in the areas outlined in their service plan. To date, this has not occurred. This is one of the most significant reasons [A.S.] came into DCFS custody.”

¶ 23 After considering the evidence and the dispositional report, the trial court found it was in A.S.’s best interest that he be made a ward of the court and that DCFS be given guardianship with the power to place and to consent to necessary medical treatment.

¶ 24 This appeal followed.

¶ 25 II. ANALYSIS

¶ 26 A. Adjudication of Neglect

¶ 27 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 (2004). Where the State files a petition for neglect, the State bears the burden of proving the allegations by a preponderance of the evidence. *Arthur H.*, 212 Ill. 2d at 463-64. We will not overturn the trial court’s finding of neglect unless it is against the manifest weight of the evidence. *Arthur H.*, 212 Ill. 2d at 464. “A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident.” *Arthur H.*, 212 Ill. 2d at 464.

¶ 28 Here, the trial court found respondents subjected A.S. to an injurious environment due to anticipatory neglect based on a prior finding of neglect as it related to A.S.’s sibling, A.M.,

and a prior finding of unfitness as it related to A.S.'s half-sibling, respondent mother's child. 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." *Arthur H.*, 212 Ill. 2d at 468. However, a finding of neglect related to one child does not *per se* establish neglect of another child in the same household. *Arthur H.*, 212 Ill. 2d at 468. 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.) *Arthur H.*, 212 Ill. 2d at 468. 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. *Arthur H.*, 212 Ill. 2d at 468.

¶ 29 The basis for the State's petition was respondents' failure to correct the conditions that resulted in A.M. being taken into protective custody a year earlier, and respondent mother's parental rights to her oldest child were terminated in 2012. Respondents were involved in a dysfunctional, tumultuous, and sometimes violent relationship and were required to participate in numerous services, such as parenting classes, domestic-violence counseling, couple's therapy, and individual counseling. Hall testified she intended to unsuccessfully terminate counseling due to their lack of progress. The domestic-violence counseling has been unsuccessful as well. Although there was evidence each respondent had taken some steps toward their individual goals, at the time of the dispositional hearing, such progress had been minimal. Each respondent continued to struggle with the issues that had plagued them at the time of A.M.'s removal in 2015. They were unable to effectively parent A.S., a high-needs infant, due to their individual issues, such as a lack of competent parenting skills, and their couple's issues, such as domestic

violence. In sum, we conclude the State adequately proved respondents' progress was insufficient to allow them to safely care for the minor. The trial court's finding that A.S. was a neglected minor was not against the manifest weight of the evidence.

¶ 30

B. Disposition

¶ 31 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).

¶ 32 The dispositional report noted respondents had not made sufficient progress toward the successful completion of their recommended services. Respondent mother was not employed and depended primarily on respondent father for support. The problem with such dependence is that their relationship was unstable, "toxic," and volatile. The question of whether they were together as a couple varied from day-to-day. The status of their relationship, their lack of appropriate parenting skills, and the lack of progress in recommended services would impact the health, safety, and best interest of A.S. Although the possibility of returning A.S. to respondents' care may occur in the future, it was not in his best interest at the time of the dispositional hearing. Accordingly, we conclude the trial court's dispositional finding was not against the manifest weight of the evidence.

¶ 33

III. CONCLUSION

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

¶ 35 Affirmed.