NOTICE
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June 8, 2017
Carla Bender
4th District Appellate Court, IL

2017 IL App (4th) 170072-U

NOS. 4-17-0072, 4-17-0073 cons.

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: S.C., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Champaign County
v. (No. 4-17-0072)	)	No. 16JA39
DAMINICA CLAYBROOKS,	)	
Respondent-Appellant.	)	
--	)	
In re: S.C., a Minor,	)	
THE PEOPLE OF THE STATE OF ILLINOIS,	)	
Petitioner-Appellee,	)	
v. (No. 4-17-0073)	)	Honorable
QUANTRELL McFARLAND,	)	John R. Kennedy,
Respondent-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE TURNER delivered the judgment of the court.
Justices Holder White and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court's finding the minor child neglected based on a theory of anticipatory neglect was not against the manifest weight of the evidence.

¶ 2 In September 2016, the State filed a petition for adjudication of wardship as to S.C. (born in 2015), the child of respondent mother, Daminica Claybrooks, and respondent father, Quantrell McFarland. After a December 2016 adjudicatory hearing, the court found the minor child was neglected. At the January 2017 dispositional hearing, the Champaign County circuit court made S.C. a ward of the court but allowed respondent mother to continue to have custody of S.C.

¶ 3 Respondent mother and respondent father both appeal, contending the circuit

court erred by finding S.C. was neglected. We affirm.

¶ 4 I. BACKGROUND

¶ 5 The State's September 2016 petition for adjudication of wardship alleged S.C. was neglected pursuant to section 2-3(1)(b) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(1)(b) (West Supp. 2015)) in that her environment was injurious to her welfare when she resided with (1) respondent mother because respondent mother had failed to correct the conditions that resulted in a prior adjudication of unfitness to exercise guardianship as to respondent mother's other three minor children (In re Summer C., No. 14-JA-29 (Cir. Ct. Champaign Co.)); and (2) respondent father because respondent father had failed to correct the conditions that resulted in a prior adjudication of unfitness to exercise guardianship as to one of respondent father's other children (In re Alexandria A., No. 14-JA-27 (Cir. Ct. Champaign Co.)).

¶ 6 At the December 2016 adjudicatory hearing, the State presented the testimony of Atiyya Thompson, the foster care case manager in case No. 14-JA-27; and Tyler Cipriano, who was the case worker in this case and case No. 14-JA-29. At the State's request, the circuit court took judicial notice of the orders in case Nos. 14-JA-27 and 14-JA-29. The guardian *ad litem* and respondent father did not present any evidence. We note respondent father failed to appear at the adjudicatory hearing. Respondent mother appeared and testified on her own behalf. The evidence relevant to the issue on appeal is set forth below.

¶ 7 Thompson testified she was assigned to case No. 14-JA-27 in September 2015. Respondent father needed to complete the following services in that case: (1) complete a parenting class, (2) obtain a substance-abuse assessment, and (3) participate in domestic violence services. Respondent father received referrals for those services but only completed the

parenting class at Cognition Works. Respondent father's parental rights were ultimately terminated in case No. 14-JA-27.

¶ 8 Cipriano testified he had been the caseworker in this case and case No. 14-JA-29 since September 2016. When he took over the case, respondent mother had already been assessed for services. She needed to complete (1) domestic violence counseling, (2) individual counseling, (3) a parenting class, and (4) a psychological evaluation. Respondent mother had completed the parenting class and individual counseling. She had attended domestic violence counseling but never completed it. Respondent mother was willing to complete domestic violence counseling. The last domestic violence incident involving respondent mother occurred in July 2015. Cipriano testified he believed respondent mother still needed domestic violence counseling. As to the psychological evaluation, an appointment for the evaluation had been made three times, and respondent mother had failed to attend.

¶ 9 Since he took over the case, the goal for the minor children in case No. 14-JA-29 had been return home. Respondent mother had visitation with those minor children for three hours once a week, which was supervised by a third party. No one had reported to him any concerns about visitation. Cipriano had no safety concerns with respect to S.C. Moreover, Cipriano had spoken to respondent father about his services, and he had not completed any services since the termination of his parental rights in case No. 14-JA-27. Additionally, Cipriano had not met Monel Brown, a sex offender and the father of one of respondent mother's children, or seen him during respondent mother's visits with the minor children. Cipriano had no cause to believe the minor children were being exposed to a sex offender.

¶ 10 The record on appeal contains the petition for wardship, the May 2014 adjudicatory order, the September 2014 dispositional order, the transcript of the dispositional

hearing, and the docket sheets in case No. 14-JA-29. In that case, Brown was named as the father of one of the minor children, and respondent father was named as a father of two of the minor children. The circuit court found the minor children in case No. 14-JA-29 were neglected under section 2-3(1)(b) of the Juvenile Court Act (705 ILCS 405/2-3(1)(b) (West 2014)) because their environment was injurious to their welfare in that it exposed them to a registered sex offender. The court noted Brown was a convicted sex offender and respondent mother allowed unsupervised visits between the minor children and Brown. Moreover, respondent mother had not engaged in "offered services to lessen or eliminate the risk to the children." In the dispositional order, the court found respondent mother, respondent father, and Brown unfit and unable to care for the minor children. At the hearing and in its written order, the court never specified its reasoning for finding respondent mother, respondent father, and Brown unfit. In its written order, the court simply adopted and incorporated its oral and written findings in all prior hearings. The court made the minor children wards of the court and placed the minor children's custody and guardianship with the Department of Children and Family Services (DCFS). The dispositional order also provided respondent mother and respondent father were to successfully complete "any course of education and counseling including one addressing domestic violence and sexual abuse recommended by DCFS." The appellate record in this case does not contain the report of proceedings for any hearings in case No. 14-JA-29, including the dispositional hearing.

¶ 11 None of the orders from case No. 14-JA-27 are included in the record on appeal.

¶ 12 Respondent mother testified she completed the parenting class in 2014 and completed all of the homework. She used some of things she learned in the parenting class in caring for S.C. Respondent mother also testified the first domestic violence program in which

she enrolled lasted 28 weeks and she attended for 19 or 20 weeks. She was removed from the class because she violated the attendance policy. Respondent mother received another referral for domestic violence classes. At the time of the hearing, she had not completed the program but was attending classes. Overall, she had attended around 30 domestic violence classes. She currently was living alone with S.C. Respondent father did not live with her. He had weekly visitation with S.C. for three hours at his mother's home. S.C. had never had contact with Brown and had never been exposed to any registered sex offender.

¶ 13 Respondent mother also testified that, on June 24, 2015, the police were called to an address at which both she and respondent father were present (S.C. would have been around one month old at the time). Respondent mother told the police respondent father hit her in the eye. The State's Attorney filed criminal charges against respondent father, but the charges were later dismissed. Respondent mother also acknowledged she had not completed a psychological evaluation and counseling services at Children's Home and Aid.

¶ 14 At the conclusion of the hearing, the circuit court found both counts of the State's petition for adjudication of wardship had been proved by both a preponderance of the evidence and clear and convincing evidence. The court entered a written adjudicatory order, finding respondent father had failed to correct the conditions leading to the prior finding of unfitness to exercise guardianship and custody because his parental rights had been terminated in case No. 14-JA-27 and he had not engaged in services. As to respondent mother, the court found she had failed to correct the conditions leading to her prior finding of unfitness, and the minor child's environment was injurious to her welfare when residing with respondent mother. The court noted respondent mother had yet to be found fit to exercise custody and guardianship of the minor children in case No. 14-JA-29. The court noted one of the conditions leading to

respondent mother's unfitness finding was the exposure of the minor children to domestic violence, and she had failed to complete the domestic violence services. It further pointed out the domestic violence incident that occurred after S.C.'s birth between respondent mother and respondent father. Additionally, the court noted respondent mother's failure to obtain a psychological examination and complete counseling at Children's Home and Aid.

¶ 15 On January 18, 2017, the circuit court held the dispositional hearing. The State presented the dispositional report, and respondent mother presented the testimony of Cipriano. At the conclusion of the hearing, the court found respondent mother was fit, able, and willing to exercise custody of S.C. and the continuation of custody with respondent mother would not endanger S.C.'s health, safety, or best interests at this time. As to respondent father, the court found he was unfit and unable to care for S.C. and it was in S.C.'s best interests to have her custody and guardianship removed from respondent father. The court also found it was in S.C.'s best interests to have her guardianship removed from respondent mother. Thus, the court made S.C. a ward of the court and placed her guardianship with DCFS.

¶ 16 On January 23, 2017, both respondent mother and respondent father filed timely notices of appeal in sufficient compliance with Illinois Supreme Court Rule 303 (eff. Jan. 1, 2015). See Ill. S. Ct. R. 660(b) (eff. Oct. 1, 2001) (providing the rules governing civil cases govern appeals from final judgments in all proceedings under the Juvenile Court Act, except for delinquency cases). Thus, this court has jurisdiction of their appeals under Illinois Supreme Court Rule 304(b)(1) (eff. Mar. 8, 2016). See *In re Austin W.*, 214 Ill. 2d 31, 43-44, 823 N.E.2d 572, 580 (2005), *abrogated on other grounds by In re M.M.*, 2016 IL 119932, ¶ 31, 72 N.E.3d 260 (noting "dispositional orders are generally considered 'final' for the purposes of appeal"). This court docketed respondent mother's appeal as case No. 4-17-0072 and respondent father's

appeal as case No. 4-17-0073. In February 2017, this court granted a motion to consolidate the two cases.

¶ 17 II. ANALYSIS

¶ 18 Cases involving neglect allegations and the adjudication of wardship are *sui generis*, and thus courts must decide them based on their unique circumstances. *In re A.P.*, 2012 IL 113875, ¶ 17, 981 N.E.2d 336. Moreover, in any proceeding brought under the Juvenile Court Act, including an adjudication of wardship, the paramount consideration is the child's best interests. *A.P.*, 2012 IL 113875, ¶ 18, 981 N.E.2d 336.

¶ 19 The Juvenile Court Act provides a two-step process the trial court must utilize to decide whether a minor should become a ward of the court. *A.P.*, 2012 IL 113875, ¶ 18, 981 N.E.2d 336. Step one of the process is the adjudicatory hearing, at which the court considers only whether the minor is abused, neglected, or dependent. See 705 ILCS 405/2-18(1) (West 2014); *A.P.*, 2012 IL 113875, ¶ 19, 981 N.E.2d 336. If a trial court determines the minor is abused, neglected, or dependent at the adjudicatory hearing, then the court holds a dispositional hearing, where the court determines whether it is consistent with the health, safety, and best interests of the minor and the public for the minor be made a ward of the court. *A.P.*, 2012 IL 113875, ¶ 21, 981 N.E.2d 336.

¶ 20 Here, respondents challenge only the first step, the trial court's neglect finding. The State bears the burden of proving a neglect allegation by a preponderance of the evidence, which means it must show the allegations are more probably true than not. See *A.P.*, 2012 IL 113875, ¶ 17, 981 N.E.2d 336. The State only has to prove a single ground for neglect, and when a trial court has found a minor neglected on more than one ground, the judgment may be affirmed if any of the bases of neglect are upheld. *In re Faith B.*, 216 Ill. 2d 1, 14, 832 N.E.2d

152, 159 (2005). On review, this court will not reverse a trial court's neglect finding unless it is against the manifest weight of the evidence. See *A.P.*, 2012 IL 113875, ¶ 17, 981 N.E.2d 336. "A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident." *A.P.*, 2012 IL 113875, ¶ 17, 981 N.E.2d 336.

¶ 21 In this case, the circuit court found S.C. was neglected under section 2-3(1)(b) of the Juvenile Court Act (705 ILCS 405/2-3(1)(b) (West Supp. 2015)), which provides a neglected minor is "any minor under 18 years of age whose environment is injurious to his or her welfare." Our supreme court has explained the terms "neglect" and "injurious" as follows:

> "Generally, neglect is defined as the failure to exercise the care that circumstances justly demand. [Citations.] This does not mean, however, that the term neglect is limited to a narrow definition. [Citation.] As this 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. [Citations.] Similarly, the term injurious environment has been recognized by our courts as an amorphous concept that cannot be defined with particularity. [Citation.] Generally, however, the term injurious environment has been interpreted to include the breach of a parent's duty to ensure a safe and nurturing shelter for his or her children. [Citations.]" (Internal quotation marks omitted.) *A.P.*, 2012 IL 113875, ¶ 22, 981 N.E.2d 336.

The State alleged an injurious environment based on respondent mother's and respondent father's failure to correct the conditions that resulted in a finding they were unfit to exercise guardianship and custody of other minor children in a prior case. Thus, the State's neglect

allegation was premised upon an anticipatory neglect theory. Under that 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, 819 N.E.2d 734, 749 (2004).

¶ 22 Our supreme court has explained the proper analysis of an anticipatory neglect theory as follows:

> "Although our appellate court has recognized the theory of anticipatory neglect for some time [citation], our courts have also held that there is no *per se* rule that the neglect of one child conclusively establishes the neglect of another child in the same household. [Citations.] Rather, such neglect should be measured not only by the circumstances surrounding the sibling, but also by the care and condition of the child in question. [Citations.] Although section 2-18(3) of the [Juvenile Court] Act (705 ILCS 405/2-18(3) (West 2000)) provides that the proof of neglect of one minor shall be admissible evidence on the issue of the neglect of any other minor for whom the parent is responsible [citation], we emphasize that the mere admissibility of evidence does not constitute conclusive proof of the neglect of another minor. Each case concerning the adjudication of minors, including those cases pursued under a theory of anticipatory neglect based upon the neglect of a child's sibling, must be reviewed according to its own

facts." (Internal quotation marks omitted.) *Arthur H.*, 212 Ill. 2d at 468-69, 819 N.E.2d at 749-50.

¶ 23 The evidence in this case showed a domestic violence incident between respondent mother and respondent father occurred after S.C.'s birth. Both respondent mother and respondent father had been found in need of domestic violence classes in the other cases, and neither one of them had completed the classes. Respondent father only completed parenting classes and ended up having his parental rights terminated to another child. He had yet to complete his services. While respondent mother still retained her parental rights to her other minor children, she had not completed two other services in addition to the domestic violence classes.

¶ 24 Respondent mother asserts the only condition that led to her unfitness finding was the minor children's exposure to Brown, who was a convicted sex offender. She had corrected that condition, as the evidence presented at the neglect hearing showed S.C. had not been around Brown or any other sex offender. The circuit court in this case found domestic violence was one of the conditions that led the court to find respondent mother unfit. In case No. 14-JA-29, the circuit court never expressly explained why it was finding respondent mother and the other respondents unfit. In its written order, it adopted its findings rendered orally and in writing in all prior hearings, but the appellate record contains only the report of proceedings for the dispositional hearing. The appellate record also lacks the dispositional report for case No. 14-JA-29. At the dispositional hearing, the State noted respondent mother had been offered numerous services to keep her family together and she had not taken advantage of any of those services. It also noted respondent mother had yet to realize the potential danger the minor children were in when in the presence of a sex offender. Additionally, while the adjudicatory

order addressed the minor children's exposure to Brown, it also mentioned respondent mother's failure to engage in services. Moreover, Cipriano, who was the caseworker in both this case and case No. 14-JA-29, testified respondent mother had been assessed as in need of domestic violence services, and in his opinion, she was still in need of domestic violence counseling. Furthermore, while a circuit court lacks the authority to order specific services (705 ILCS 405/2-23(3) (West 2014)), the written dispositional order in case No. 14-JA-29 specifically mentioned respondent mother's need to complete a course of education that included domestic violence and sexual abuse, as recommended by DCFS. Based on the record before us, we find the circuit court's finding in this case that domestic violence was among the conditions leading to the finding of unfitness in case No. 14-JA-29 was not against the manifest weight of the evidence.

¶ 25 Moreover, even without the orders in case No. 14-JA-27, the appellate record clearly shows respondent father had not changed the conditions that had resulted in the finding of his unfitness in that case. The evidence at the adjudicatory hearing showed his parental rights had been terminated to his other minor child and he had yet to complete the recommended services. Despite the termination of his parental rights, respondent mother allowed respondent father to have weekly visits with S.C. outside her presence.

¶ 26 Given the termination of respondent father's parental rights in case No. 14-JA-27 and his visitation with S.C., the domestic violence incident after S.C.'s birth, respondent mother's failure to complete a domestic violence course and two other services in case No. 14-JA-29, we conclude the circuit court's finding S.C. was neglected based on an anticipatory neglect theory when she resided with either respondent mother and/or respondent father was not against the manifest weight of the evidence.

¶ 27 III. CONCLUSION

¶ 28 For the reasons stated, we affirm the Champaign County circuit court's judgment.

¶ 29 Affirmed.