

NOTICE

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FILED

November 9, 2017
Carla Bender
4th District Appellate
Court, IL

2017 IL App (4th) 170452-U

NOS. 4-17-0452, 4-17-0454 cons.

IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

<i>In re</i> K.M.H., a Minor)	Appeal from
)	Circuit Court of
(The People of the State of Illinois,)	Vermilion County
Petitioner-Appellee,)	No. 16JA56
v. (No. 4-17-0452))	
Shane Hunt,)	
Respondent-Appellant).)	
_____)	
)	
<i>In re</i> K.M.H., a Minor)	
)	
(The People of the State of Illinois,)	
Petitioner-Appellee,)	
v. (No. 4-17-0454))	Honorable
Kailie Hunt,)	Craig H. DeArmond,
Respondent-Appellant).)	Judge Presiding.

PRESIDING JUSTICE TURNER delivered the judgment of the court.
Justices Harris and Knecht concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court’s decision to adjudicate K.M.H. an abused minor was not against the manifest weight of the evidence in this case.
- ¶ 2 In August 2016, the State filed a petition for adjudication of wardship of K.M.H. (born in June 2016), the minor child of respondents, Shane Hunt and Kailie Hunt. After an adjudicatory hearing in May 2017, the trial court adjudicated K.M.H. an abused minor. At the June 2017 dispositional hearing, the court made K.M.H. a ward of the court, placed guardianship and custody with the Department of Children and Family Services, and denied any visitation to

the respondent parents while they were incarcerated. Respondents filed separate appeals which have been consolidated for purposes of our review, arguing the trial court erred in adjudicating K.M.H. an abused minor and finding respondents were unfit and unable to care for K.M.H. We affirm.

¶ 3

I. BACKGROUND

¶ 4 On August 11, 2016, the State filed its petition for adjudication of wardship as to K.M.H. Count I of the petition alleged K.M.H. was abused as defined by section 2-3(2)(ii) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(2)(ii) (West 2016)) in that she was under 18 and her:

“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, or a paramour of the minor’s parent, 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.”

Count II of the petition also alleged abuse under the same section of the Juvenile Court Act (705 ILCS 405/2-3(2)(ii) (West 2016)) because K.M.H.’s “parents create a substantial risk of physical injury to [K.M.H.] by other than accidental means which would be likely to cause death or impairment of emotional health.”

¶ 5 In May 2017, the trial court held an adjudicatory hearing. Brad Norton, a deputy with the Vermilion County sheriff’s department, testified he responded to the hospital emergency room on August 5, 2016, because of K.M.H.’s injuries. He spoke with an emergency room nurse and Dr. Napolez, who told him there were two brain injuries, the current injury and what looked

like a prior injury. Norton also viewed the child.

¶ 6 Norton then went to the Vermilion County Public Safety Building and interviewed respondent mother. She testified she fed K.M.H. at 4 p.m. before leaving K.M.H. with respondent father so she could attend a baby shower. Respondent father and K.M.H. were the only people present when she left. She returned home after receiving a call from respondent father saying something was wrong with K.M.H. She thought K.M.H. might have had a seizure. According to Norton, when asked what might have caused the child's injuries:

“She mentioned that at one point she had conked her child's head on the wall and wondered if that may have caused it. And eventually she stated that when her child would cry and was very fussy the only way to get the child to stop was to shake or rock [her] harder.”

Respondent mother said she had been diagnosed as bipolar and was taking medication. She told the officer she sometimes would lash out and not be able to remember what she had done. She referred to this as “snapping.” To calm herself, she would hold K.M.H. very tightly.

¶ 7 She told Norton she had a “snapping” incident on August 1 around 5:00 a.m. She was not able to sleep, and K.M.H. was very fussy. She was getting up with the baby every few minutes. She attempted to solve this problem by rocking the baby harder and more than normal. On cross-examination, Norton stated respondent mother demonstrated how she was rocking the baby and how the baby's head was moving. The deputy did not answer whether the baby's head was moving vigorously but stated he did not believe a one-month-old baby's head should be moving at all. Except for that one occasion, respondent mother claimed she always gave K.M.H. to respondent father if she got upset so she could calm down.

¶ 8 Norton testified respondent mother did not identify anyone else who might have

shaken K.M.H. She did identify herself as a person who shook the child in the past.

¶ 9 Norton asked respondent mother whether respondent father might have shaken the baby. She did not want to believe he did. Norton asked if she would leave respondent father if he did shake the baby. She said no.

¶ 10 According to Norton, toward the end of the interview, respondent mother was very upset. Norton asked her if she was getting ready to have a “snapping” episode. She said she was able to control herself right then, otherwise she would come across the table and hurt him. She did not believe respondent father could have shaken the baby.

¶ 11 On August 6, 2016, Norton met with respondent father at the Public Safety Building. Norton asked respondent father what happened to the child. He said the child had been crying for a while. When K.M.H. stopped crying, he went to check on her. The baby was tensed up. Respondent father said he thought she might be having a seizure. Respondent father also said he thought K.M.H. might have died. He picked her up and shook her a few times to see if she was breathing.

¶ 12 Initially, respondent father told Norton the baby fell off his lap and hit her head on a coffee table and then the floor. Respondent father said he forgot she was on his lap, he stood up, and she fell. He later changed his story and said he thought K.M.H. had stopped breathing so he shook the baby to see if she was breathing. Respondent father demonstrated how he shook K.M.H. According to Norton, when respondent father demonstrated what he did, “It appeared [respondent father] grabbed the child underneath each armpit and shook it back and forth three times.” At the completion of the interview, Norton arrested respondent father.

¶ 13 Jennifer Halder testified she was a friend of both respondent parents. She talked to them around the end of July when they brought K.M.H. to her house. She spoke with

respondent mother about the frustrations of being a new mother. Respondent mother asked Halder if she ever thought about shaking Halder's daughter when she was little. Halder believed respondent mother was serious. She observed respondent father with the baby two or three times. He was very gentle and loving with the child.

¶ 14 Dr. Brent Reifsteck, a pediatrician at Carle Foundation Hospital in Urbana and the head of the child abuse safety team at the hospital, testified K.M.H. had been his patient since August 6, 2016. She was diagnosed with subdural hematomas and diffused intraretinal hemorrhages. Dr. Reifsteck testified a greater than 95% chance existed K.M.H.'s injuries were caused by an inflicted trauma and her injuries required an adult amount of force. The baby's injuries were not at all consistent with her head hitting against a wall or being dropped from four feet off the ground. According to the doctor, K.M.H.'s symptoms would have presented themselves within moments of the incident which caused her injuries. He did not believe the extensive symptoms and presentation on imaging and ophthalmologic exam could have resulted from any kind of shaking that may have occurred on August 1, 2016. However, he could not say an event on August 1 could not have caused some of her pathology. If K.M.H. had been injured on August 1, that injury would be obscured by what happened on August 5.

¶ 15 Dr. Reifsteck testified he could say within a reasonable degree of medical certainty that K.M.H. suffered a significant injury moments before the medics responded to the 9-1-1 call and the injury was caused by some kind of a shaking or shearing force. He could not say with any medical certainty whether there was any injury prior to that.

¶ 16 Respondent mother called Hailie Haga, her twin sister, as a witness. She testified she saw K.M.H. daily before August 5, 2017, and never noticed the baby being limp, refusing to eat, or having a seizure. She never saw respondent mother get physically rough or inappropriate

with the baby. She did testify the baby's eyes had rolled to the back of her head while Haga was giving her a bath three days before August 5. She said this could have been a seizure. The family had a history of seizures.

¶ 17 Karter Blakeney, respondent mother's maternal grandfather, testified respondent father told him K.M.H. stopped breathing, he did not know what to do, and he shook her a little bit to try to get her heart going.

¶ 18 Robert Fauver, respondent mother's stepfather, testified the respondent parents and the baby lived with him, his wife, and two other people in a trailer. He had daily interactions with the baby. In the week before August 5, he did not notice anything out of the ordinary with the baby. He never saw her as unresponsive or refusing to eat. He testified he fed the baby on August 5 around 4:00 or 4:30 and his wife burped the baby. He said she was eating normally. He did not remember if respondent mother was present when he fed the baby. He left the trailer to go to the baby shower around 5:00 with his wife.

¶ 19 Respondent father called his father, James Hunt, as a witness. Hunt testified he lived in the same trailer park as the respondent parents. On August 5, respondent father came to his trailer with K.M.H. who was pale white and limp. Respondent father said he checked on K.M.H. and she was not moving so he picked her up and tried to wake her. Hunt called 9-1-1. Hunt's wife was holding the baby, talking to her, trying to get her to respond. The ambulance arrived a few minutes later, and K.M.H. started to respond and move around a little bit more. K.M.H. gradually started to move a little bit and cry a little bit. K.M.H. started to act like she was more aware when the ambulance was getting ready to leave with her. Hunt testified he saw respondent father and K.M.H. almost daily. He said respondent father had a lot of patience with her and was gentle and loving.

¶ 20 On May 15, 2017, the trial court found K.M.H. had clearly been abused, suffering massive head injuries probably as a result of being shaken violently back and forth. The court noted, “Whether it was done by the mother, the father, or both, is not quite as easy to determine, but that’s not required of the Court either.” The court found the stories provided by both respondent parents were not believable based on the medical evidence. The court found the State had established by clear and convincing evidence the child was abused as alleged in counts I and II of State’s adjudicatory petition.

¶ 21 On May 19, 2017, the trial court entered a written adjudicatory order, finding K.M.H. was abused or neglected as defined by section 2-3 of the Juvenile Court Act (705 ILCS 405/2-3 (West 2016)) because she (1) was in an environment injurious to her welfare as defined by section 2-3(1)(b) of the Juvenile Court Act (705 ILCS 405/2-3(1)(b) (West 2016)), (2) was physically abused as defined by section 2-3(2)(i) of the Juvenile Court Act (705 ILCS 405/2-3(2)(i) (West 2016)), and (3) was in substantial risk of physical abuse as defined by section 2-3(2)(ii) of the Juvenile Court Act (705 ILCS 405/2-3(2)(ii) (West 2016)). The court based its findings on the child being brought to the emergency room with massive head trauma, which occurred either shortly before the child’s appearance at the hospital or at an earlier time when the child was in the care of one or both her parents. The court found either the mother, father, or both parents inflicted the injuries on the child. The court noted the State proved the allegations with respect to K.M.H. by clear and convincing evidence.

¶ 22 On June 14, 2017, the trial court held a dispositional hearing. Lauren Bennett, a child welfare specialist familiar with K.M.H., testified both respondent parents were incarcerated at the time of the hearing. Bennett had recommended respondent mother receive an anger-management assessment, psychotherapy, parent coaching, differential parent-child visits,

continued mental health services, a psychological evaluation, and continued psychiatric services. Respondent mother had started psychotherapy while in jail, and the therapist was also doing individual parenting coaching.

¶ 23 Bennett testified she recommended services for respondent father, including an anger-management assessment, a sex offender assessment, individual psychotherapy, a psychiatric consult, individual parenting coaching, a substance-abuse evaluation, differential parent-child visits, continued mental health services, and continued parenting support.” Respondent father was receiving individual counseling in jail.

¶ 24 Bennett testified she had not referred K.M.H. to any services yet. A developmental screening was done on K.M.H. and further evaluation would be done six months later. K.M.H. was doing well medically. She still had retinal bleeding behind her eyes and had an issue with ear infections. K.M.H.’s foster placement was stable at that time.

¶ 25 Based on the family service plan filed February 8, 2017, the dispositional report filed June 5, 2017, and Bennett’s testimony, the trial court found respondent mother was unfit and unable for dispositional purposes to care for K.M.H. and placement with her would be “contrary to the health, safety and best interest of the minor, as the mother [was] in custody” due to K.M.H.’s massive injuries, consistent with shaken baby syndrome, and needed significant mental health treatment and services. The court found respondent father dispositionally unfit and unable for the same reasons.

¶ 26 On June 21, 2017, the trial court entered a written dispositional order, finding both respondent mother and respondent father unfit and unable, for reasons other than financial circumstances alone, to care for, protect, train, educate, supervise or discipline the minor and placement with either of the respondent parents was contrary to the health, safety and best

interests of the minor.

¶ 27

II. ANALYSIS

¶ 28 Respondent mother argues the State presented no evidence to prove she was involved in causing the injuries to K.M.H. Respondent father makes this same argument. They both argue they should not have been found unfit and unable to care for K.M.H. and the cases against them should have been dismissed.

¶ 29 Both parents cite Dr. Reifsteck's testimony that the reasons given by the respondent parents could not have caused K.M.H.'s injuries in this case. However, this provides no support for the parent's argument. Instead, it only means they provided no valid explanation why K.M.H. was horrifically injured while in their care.

¶ 30 Respondent parents also point to the fact other adults lived in the house who could have caused the injuries. However, the trial court noted respondent parents presented no evidence any of these other adults could have caused the injuries.

¶ 31 The State only had to prove the allegation of abuse by a preponderance of the evidence, which means the State only had to show the allegations were more probably true than not. *In re A.P.*, 2012 IL 113875, ¶ 17, 981 N.E.2d 336. The State easily met its burden. Both parents had access to the child, and neither parent could provide any valid explanation for how the child's severe injuries occurred. Further, the State presented medical testimony K.M.H.'s injuries could not have been accidental and would have been caused by an adult level of force.

¶ 32 Based on the evidence in this case, the trial court's decision to adjudicate the child abused was not against the manifest weight of the evidence, which is the standard we apply to the court's adjudication decision. *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. Cases involving neglect and abuse allegations and the adjudication of wardship are *sui generis*, and thus courts must decide them based on their unique circumstances. *A.P.*, 2012 IL 113875, ¶ 17, 981 N.E.2d 336.

¶ 33 As the trial court noted, K.M.H. suffered massive head injuries on August 5, which were the result of being shaken on that day. The evidence also showed the child could have been shaken prior to the incident which occurred on August 5. The parents had access to the child during the period of time when the child was injured on August 5 based on the medical testimony. The court found either respondent mother, respondent father, or both respondent parents caused K.M.H.'s severe injuries on August 5, 2017.

¶ 34 The trial court did not need to find which of respondent parents abused the child before adjudicating the child abused. We note the Juvenile Court Act provides a two-step process the trial court must utilize to decide whether a minor child should become a ward of the court. *A.P.*, 2012 IL 113875, ¶ 18, 981 N.E.2d 336. The first step is the adjudicatory hearing, at which the court considers only whether the minor child is abused, neglected, or dependent. *A.P.*, 2012 IL 113875, ¶ 19, 981 N.E.2d 336. At the adjudicatory stage, the court does not have to determine which parent was to blame for the child's abuse. *A.P.*, 2012 IL 113875, ¶ 19, 981 N.E.2d 336. As our supreme court has noted:

“Our holding that the Act instructs the circuit court during the adjudicatory hearing to determine whether the child is neglected, and not whether the parents are neglectful, furthers the purpose and policy of the Juvenile Court Act, which is to ensure the best interests and safety of the child. 705 ILCS 405/1-2 (West 2000). A contrary result would lead to the unacceptable proposition that a child who is neglected by only one parent would be without the protections of the Act.

Similarly, a child would have no protection under the Act if the child were neglected, but it could not be determined which parent's conduct caused the neglect." *In re Arthur H.*, 212 Ill. 2d 441, 467, 819 N.E.2d 734, 749 (2004).

The same reasoning applies to a child who is the victim of abuse.

¶ 35 Because the trial court's decision to adjudicate K.M.H. as abused was not against the manifest weight of the evidence, the trial court correctly proceeded to the second step of the process, which is the dispositional hearing. "At the dispositional hearing, the trial court determines whether it is consistent with the health, safety and best interests of the minor and the public that the minor be made a ward of the court." *A.P.*, 2012 IL 113875, ¶ 21, 981 N.E.2d 336.

¶ 36 In its dispositional order, the trial court found both respondent parents were unfit and unable for dispositional purposes to care for K.M.H. Without any explanation, both respondent parents argue they should not have been found unfit or unable to care for the child. It is not the obligation of this court to make arguments and perform research for an appellant. As a result, respondent parents forfeited their arguments with regard to the court finding them both dispositionally unfit and unable to care for K.M.H. *Elder v. Bryant*, 324 Ill. App. 3d 526, 531, 755 N.E.2d 515, 521-22 (2001). Regardless of forfeiture, the trial court did not err in finding them unfit and unable as both parents were incarcerated at the time of the dispositional hearing because of K.M.H.'s injuries and were in need of mental health treatment.

¶ 37 III. CONCLUSION

¶ 38 For the reasons stated, we affirm the Vermilion County circuit court's judgment.

¶ 39 Affirmed.