

NOTICE

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2017 IL App (4th) 170478-U

NO. 4-17-0478

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

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

<i>In re</i> S.H., a Minor)	Appeal from
)	Circuit Court of
(The People of the State of Illinois,)	Champaign County
Petitioner-Appellee,)	No. 17JA19
v.)	
Emonya Davis-Hurtado,)	Honorable
Respondent-Appellant).)	John R. Kennedy,
)	Judge Presiding.

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

ORDER

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

¶ 2 In May 2017, the trial court adjudicated S.H. (born February 7, 2017) a neglected minor on the basis of anticipatory neglect. The following month, the court entered a dispositional order finding respondent, Emonya Davis-Hurtado, unfit, making S.H. a ward of the court, and placing custody and guardianship with the Department of Children and Family Services (DCFS).

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

¶ 4 I. BACKGROUND

¶ 5 In March 2017, the State filed a petition for adjudication of wardship, asserting

S.H. was neglected or abused in that she was subjected to an injurious environment pursuant to section 2-3(1)(b) of the Juvenile Court Act of 1987 (705 ILCS 405/2-3(1)(b) (West 2016)), where respondent failed to correct the conditions which led to prior adjudications of unfitness as to another child, Z.H.

¶ 6 A. Adjudicatory Hearing

¶ 7 In May 2017, the trial court held an adjudicatory hearing, where it heard the following evidence.

¶ 8 1. *Tara Gilman*

¶ 9 Tara Gilman, a child-protection supervisor for DCFS, testified she was assigned to the family's case in February 2017, when S.H. was born. DCFS became involved after receiving a hotline call alleging S.H. was at risk of harm due to anticipatory neglect, based on respondent's prior contacts with DCFS. Gilman noted respondent's parental rights as to another child, Z.H., were terminated in October 2015 when she failed to complete her recommended services. The prior case focused not only on respondent's failure to complete services, but also with ongoing domestic violence by her husband, Victor Hurtado. *In re Z.H.*, 2016 IL App (4th) 150797-U. At the time of the adjudicatory hearing, respondent was still married to but separated from Victor, and she claimed S.H.'s father was another man. According to respondent, she no longer had a relationship with Victor.

¶ 10 Gilman first spoke with respondent immediately after S.H.'s birth. Gilman reached out to a caseworker in Peoria who had overseen respondent's services in the prior case. In her prior case, DCFS recommended respondent complete psychiatric services, domestic-violence counseling, and psychological counseling. The records indicated respondent completed psychological counseling and anger-management classes. Since the termination of her parental

rights, respondent had completed two of six classes with Crisis Nursery of Urbana, a parenting program. Respondent indicated she intended to contact a psychiatrist for counseling, but she had not yet done so due to her pregnancy complications.

¶ 11 After speaking with respondent, Gilman had several concerns with respect to respondent's ability to parent S.H. She noted respondent had three abuse and neglect cases with DCFS related to domestic violence, relationship issues, and mental-health issues. Respondent had three mental-health crises from March 2016 to February 2017, and she did not follow up on the recommendations for treatment. In July 2016, respondent was abusing alcohol, cannabis, and opiates, but she denied abusing substances since that time.

¶ 12 *2. Letter from Nancy Mings*

¶ 13 Respondent submitted a letter from Nancy Mings, a social worker, stating she had been working with respondent since September 2016. Mings wrote that respondent loved and wanted to care for her baby. Respondent also told Mings that Victor was violent, so she left their home and relocated to Champaign.

¶ 14 Mings outlined the steps taken to provide services to respondent. She connected respondent with Crisis Nursery of Urbana due to respondent's history of depression. She referred respondent to parenting classes, but respondent's pregnancy complications precluded her from taking those classes. Mings visited the food pantry to provide respondent with food and helped respondent prepare a healthcare power of attorney. Finally, Mings referred respondent to Land of Lincoln Legal Assistance Foundation, Inc. for help in preparing divorce documents. Mings noted respondent initiated contact with service providers and kept medical appointments.

¶ 15 *3. Mary Agnes Davis*

¶ 16 Mary Agnes Davis, respondent's mother and S.H.'s grandmother, testified she had

contact with respondent once or twice a week. Based on her conversations with respondent, Davis believed respondent's relationship with Victor ended more than six months ago and that respondent had filed for divorce. Since then, Davis had not seen Victor.

¶ 17 In the past, Davis had observed respondent with her children. According to Davis, respondent acted appropriately and appeared to have knowledge of child care. Davis noted respondent had been addressing her mental-health concerns by attending counseling, and she had no present concerns about respondent's parenting ability.

¶ 18 *4. Respondent*

¶ 19 Respondent testified she was no longer in a relationship with Victor. The relationship ended two years prior, but they remained in communication until approximately a year ago. She admitted that police were called to her home in April 2016 to address a domestic dispute between herself and Victor, which resulted in Victor being arrested. Respondent obtained an emergency order of protection but did not attempt to obtain a plenary order. Respondent said she filed for divorce in August 2016, but proceedings were still ongoing.

¶ 20 During her high-risk pregnancy, respondent suffered serious complications that were out of her control. These complications resulted in her being hospitalized in January 2017, prior to S.H.'s birth. Respondent testified that she not only suffered complications personally, but S.H. was born preterm and with her own medical issues, such as underdeveloped organs.

¶ 21 Respondent stated she attempted to engage in services starting in fall 2016, but her pregnancy complications—which included hospitalizations—made it difficult to find a service provider willing to work around her condition. Respondent eventually found services through Crisis Nursery of Urbana, where she addressed parenting and mental-health stressors. According to respondent, after being released from the hospital following S.H.'s birth, she

completed a parenting class, anger-management counseling, and cognition-thinking classes. She also attended drug counseling twice a week, where she submitted two drug tests, both of which were clean. Additionally, respondent was still engaged in individual counseling.

¶ 22 Following the hearing, the trial court entered an adjudicatory order finding S.H. neglected based on anticipatory neglect.

¶ 23 B. Dispositional Hearing

¶ 24 The following month, the trial court held a dispositional hearing, where it considered the following evidence.

¶ 25 Lutheran Social Services of Illinois, which was providing services for respondent through DCFS, provided a dispositional report. The report noted, since the petition was originally filed, respondent participated in parenting classes at Crisis Nursery of Urbana, reinitiated services with the Family Advocacy Center, completed a mental-health assessment, and requested participation in any available services. The report also provided information regarding respondent's pregnancy, outlining the severe pregnancy complications respondent experienced both before and after S.H.'s birth, including suffering a hemorrhage that nearly killed both respondent and S.H. Respondent's pregnancy complications made it difficult for her to procure services prior to S.H.'s birth.

¶ 26 Respondent was living in an apartment scheduled for condemnation, so she was attempting to secure Section 8 housing. Respondent had recently accepted full-time employment as a dishwasher at a local restaurant, and she had a history of full-time employment.

¶ 27 Respondent reported her children had never been exposed to her substance abuse. However, she did not deny using drugs in the past. In July 2016, respondent presented at the emergency room with a blood alcohol concentration of 0.218 and tested positive for both

cannabis and opiates. She has since reported that she maintains her sobriety. Respondent reengaged in substance-abuse treatment in May 2017 and was attending classes twice a week.

¶ 28 Respondent had a history of traumatic events, including being the victim of sexual assault, a home invasion, and domestic violence; experiencing multiple miscarriages; and nearly dying in childbirth. This has resulted in frequent nightmares, flashbacks, and panic attacks. Respondent noted a final judgment in her divorce case was entered in May 2017. Respondent was optimistic that she could complete any tasks necessary to reunite with S.H., and she attended weekly supervised visits with S.H.

¶ 29 In March 2015, respondent was diagnosed with bipolar disorder and borderline personality disorder, and her psychiatrist found respondent minimized her issues and had difficulty recalling events. Respondent also admitted difficulty in controlling her anger despite completing anger-management classes on three different occasions.

¶ 30 Following S.H.'s birth, respondent sought mental-health services at Rosecrance, where she continued to attend individual psychotherapy once or twice per week. She also participated in classes at the Crisis Nursery of Urbana. Respondent also expressed her intention to continue psychiatric services and remain on her current treatment regimen. Respondent attended anger-management classes twice a week and a self-change class three times a week. She recently completed parenting classes and, in June 2017, she was engaged in a domestic-violence program, where she was showing great progress and improvement. Also in May 2017, respondent completed 67 hours of substance-abuse treatment, as well as anger-management classes. The report also noted respondent's frequent contact with her caseworker.

¶ 31 The report recommended the following services for respondent: (1) trauma-informed psychotherapy to help respondent cope with her past traumas; (2) continued psychiatric

services to address her anxiety, depression, and posttraumatic-stress disorder; (3) continued substance-abuse treatment; (4) domestic-violence classes that will help her understand the cycle of violence; and (5) parent coaching to help her develop further parenting skills. The report also encouraged the caseworker to promote an attachment between respondent and S.H. and to help respondent access community resources.

¶ 32 The dispositional report also provided updates regarding S.H.'s placement and health. S.H. was hospitalized until March 28, 2017, at which time she was placed in foster care with her godmother. S.H. was being monitored for sleep apnea, heart conditions, and gastrointestinal issues. However, overall, S.H. demonstrated age-appropriate development. S.H.'s godmother ensured S.H. attended all medical appointments and addressed S.H.'s medical needs at home. The caseworker had no concerns with S.H.'s placement. The report ultimately recommended DCFS be granted custody and guardianship of S.H.

¶ 33 Following arguments, the trial court entered a dispositional order finding respondent unfit, making S.H. a ward of the court, and placing custody and guardianship with DCFS. The court noted respondent had made strides in completing her services. However, the court found, in the past, respondent lacked the necessary parenting skills to maintain custody of her children. Accordingly, the court wanted to provide respondent with additional time to complete services.

¶ 34 This appeal followed.

¶ 35 II. ANALYSIS

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

¶ 37 A. Adjudicatory Order

¶ 38 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.*

¶ 39 Here, the trial court found respondent subjected S.H. to an injurious environment due to anticipatory neglect based on a prior finding of unfitness as it related to S.H.'s sibling, Z.H. 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.

¶ 40 Here, the State based its petition on respondent's failure to correct the conditions that resulted in her being found unfit as to Z.H. Respondent argues that Z.H. had been taken into custody due to domestic violence within the home, but that was at a time when respondent remained a victim of Victor's domestic violence. See *In re Z.H.*, 2016 IL App (4th) 150797-U.

Because respondent ended her relationship with Victor, respondent argues S.H. would not be subjected to domestic violence. However, even after her parental rights were terminated as to Z.H., respondent continued her relationship with Victor. In fact, in April 2016, less than a year before S.H.'s birth, police responded to a domestic dispute between respondent and Victor that resulted in Victor's arrest. Thus, respondent remained within the cycle of domestic violence after she was found unfit as to Z.H., thus potentially placing S.H. in harm's way. Moreover, since the finding of unfitness as to Z.H., respondent has not completed domestic-violence counseling, much less had an opportunity to implement the skills learned through her counseling that would keep her from entering into abusive relationships in the future. Without the necessary skills in place, respondent could easily find herself in a situation where she subjected S.H. to domestic violence.

¶ 41 Additionally, when Z.H. was taken into DCFS custody, DCFS recommended respondent engage in services, such as anger-management classes, individual counseling, psychiatric services, domestic-violence classes, and psychological counseling. According to Gilman, respondent completed only the psychological counseling prior to the termination of her parental rights. Respondent had not yet completed the remaining services, which would have helped her in parenting S.H. Respondent failed to engage in and complete mental-health treatment, which was recommended in her case with Z.H., and she continues to struggle with mental-health issues. Gilman testified respondent had suffered from three mental-health crises since March 2016, and respondent failed to follow through with the treatment recommended by her doctors. Although respondent had, commendably, reengaged in services prior to the adjudicatory hearing, she had not completed the services or provided evidence she corrected all the conditions that led the trial court to find her unfit as to Z.H.

¶ 42 Respondent also contends we should take into consideration that three years have passed since Z.H. was taken into care, relying on *In re J.C.*, 396 Ill. App 3d 1050, 920 N.E.2d 1285 (2009). In *J.C.*, the appellate court held that "a lengthy period of time between allegations of neglect or abuse, without evidence of current conditions of the current child's neglect or abuse, to be insufficient to prove anticipatory neglect." *Id.* at 1058, 920 N.E.2d at 1291. We do not find three years to be such a lengthy period, particularly where respondent failed to correct the conditions which led her to the termination of parental rights as to Z.H., and the unaddressed issues—domestic violence and mental health—continued to impact respondent's ability to parent.

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

¶ 44 **B. Dispositional Order**

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

¶ 46 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 2016). 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 2016). We will not overturn the court's dispositional order unless it is against the manifest weight of the evidence. *In re Jennifer W.*, 2014 IL App (1st) 140984, ¶ 44, 22 N.E.3d 329.

¶ 47 Respondent has a history of failing to complete services, as evidenced from the termination of her parental rights as to Z.H. Respondent failed to address her mental-health

issues despite suffering from three mental-health "crises" since March 2016. She had continuing issues with substance abuse, as evidenced from her July 2016 trip to the emergency room where she was highly intoxicated and tested positive for illegal substances. Respondent had yet to complete domestic-violence counseling, which would help her to understand the importance of healthy relationships and avoid entering into abusive relationships in the future. Respondent's difficulty in escaping the cycle of violence is demonstrated by the April 2016 domestic dispute with Victor. Thus, respondent has ongoing issues that still need to be addressed.

¶ 48 As the trial court noted, respondent is making great strides. She is actively pursuing all avenues of treatment, visiting with S.H., finding employment, and seeking stable housing. She has completed several recommended services and has engaged in domestic-violence classes and mental-health treatment. As a result of respondent's recent enrollment in or completion of services, the court had cautious optimism for her continued progress. But as the court also noted, respondent had difficulty with her parenting skills in the past, which warranted a measured approach. The court has provided respondent with an opportunity to demonstrate her commitment to parenting S.H. by not only completing her services, but also implementing these services in a way that would improve her parenting skills. We commend respondent for her cooperation and achievements, which clearly demonstrate her desire for a swift reunification with S.H. However, we conclude the trial court's dispositional order was not against the manifest weight of the evidence.

¶ 49 III. CONCLUSION

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

¶ 51 Affirmed.