

NOTICE

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FILED

December 14, 2017
Carla Bender
4th District Appellate
Court, IL

2017 IL App (4th) 170549-U
NO. 4-17-0549

IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

<i>In re</i> Lava. W., Lata. W., Larr. W., and Lari. W., Minors)	Appeal from
)	Circuit Court of
(The People of the State of Illinois,)	McLean County
Petitioner-Appellee,)	No. 17JA12
v.)	
Larry Waters and Wendy Webb,)	Honorable
Respondents-Appellants).)	Kevin P. Fitzgerald,
)	Judge Presiding.

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

ORDER

¶ 1 *Held:* The circuit court’s neglect adjudication was not against the manifest weight of the evidence.

¶ 2 In March 2017, the State filed a petition for the adjudication of wardship as to Lava. W. (born in 2016), Lata. W. (born in 2015), Larr. W. (born in 2011), and Lari. W. (born in 2009), the minor children of respondents, Larry Waters and Wendy Webb. After a June 2017 adjudicatory hearing, the McLean County circuit court found the minor children were neglected. At the June 2017 dispositional hearing, the court found both respondents unfit, 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).

¶ 3 Respondents appeal, contending the circuit court erred by finding the minor children were neglected. We affirm.

¶ 4

I. BACKGROUND

¶ 5 The State's March 2017 wardship petition first alleged the minor children were 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 2016)) in that their environment was injurious to their welfare because (1) Webb had unresolved issues of domestic violence and/or anger management that created a risk of harm to the minors; (2) Waters had unresolved issues of domestic violence and/or anger management that created a risk of harm to the minors; and (3) Webb allowed Waters to have contact with the minor children in violation of a DCFS safety plan that she knew prohibited such contact, creating a risk of harm to the minors. It further alleged the minor children were neglected under section 2-3(1)(a) of the Juvenile Court Act (705 ILCS 405/2-3(1)(a) (West 2016)) because they were not receiving the proper or necessary support, medical, or other remedial care as Webb did not take the minor children to be examined by a full body scan as directed by the minor children's pediatrician. Last, the petition alleged the minor children were abused pursuant to section 2-3(2)(i) of the Juvenile Court Act (705 ILCS 405/2-3(2)(i) (West 2016)) in that (1) Webb allowed Waters, on more than one occasion, to inflict physical injury to the minor children by other than accidental means which caused disfigurement, impairment of emotion health, or loss or impairment of any bodily function; and (2) Waters, on more than one occasion, inflicted physical injury to the minor children by other than accidental means which caused disfigurement, impairment of emotion health, or loss or impairment of any bodily function.

¶ 6 On June 6, 2017, the circuit court held the adjudicatory hearing. The State presented the testimony of Karrah Jensen, principal of Lari. W. and Larr. W.'s school; Bloomington police officer Paul Jones; Carmen Hill, DCFS investigator; and Webb. Webb

presented the testimony of her mother, Angela Schuck; and Waters testified on his own behalf. The evidence relevant to the issue on appeal is set forth below.

¶ 7 Officer Jones testified that, at around 9:37 p.m. on February 14, 2017, Webb came to the police department to talk with an officer about an incident that had taken place with Waters. Webb told Officer Jones she and Waters had moved from Peoria, Illinois to Bloomington, Illinois with their minor children. Webb and Waters had been together around nine years and had “various domestic situations in Peoria.” Around Thanksgiving 2016, she and Waters ended their relationship but were still living together and functioning as a family. Webb was trying to get Waters to move out of the home, but he was not leaving. That evening, they had an argument, and Waters pushed a table into her. She was not injured. According to Webb, Waters also stated he would have hit Webb in the face if she was not holding one of their children. Webb came to the police because she wanted Waters removed from the home.

¶ 8 Officer Jones, along with another officer, went to Webb and Waters’ residence. They met with Waters on the front porch because he did not want them coming into the residence. Waters said he and Webb had been dating for around nine years and their relationship had recently become rocky. That evening, they were arguing because Webb was concerned about Waters drinking alcohol. Waters did not admit he had pushed the table into Webb. However, he admitted they had some sort of physical altercation in the past, but he was past that. He had a punching bag in the garage that he used to get his aggression out. Waters also stated he received conflicting information from Webb, as one day she would want him to leave and the next she would want him to stay because he watched the minor children when she was working. Waters said he would have someone pick him up and take him back to Peoria that night.

¶ 9 Due to conflicting stories, Officer Jones did not arrest anyone. Officer Jones

completed a domestic violence supplemental form. Webb answered in the affirmative the question of “Did the suspect threaten to harm or kill anyone?” Webb reported being afraid of future assaults by Waters. She also indicated Waters’s alcohol usage had recently increased. Officer Jones also called DCFS.

¶ 10 Jensen testified Lari. W. had reported to a teacher Waters was aggressive at home and had punched and choked her. Webb was hurt as well. Someone at the school reported that information to DCFS. On February 24, 2017, Hill came to the school to interview Lari. W. and Larr. W. Hill interviewed them separately, and Jensen was present for the interviews. Lari. W. reported Waters and Webb were arguing over Waters being there and Waters got upset and pushed and hit Webb. Waters also hit Lari. W. on the head. Larr. W. stated Waters was upset and hurt Webb. He also stated Waters had hit him in the face. Jensen did not observe any marks on Lari. W. and Larr. W.

¶ 11 On March 6, 2017, Hill returned to the school after Larr. W. reported that, over the weekend, Waters had hit him again when they were at the zoo. This time, Hill interviewed Larr. W. and Lari. W. together, and Jensen was again present. Lari. W. was visibly upset when Larr. W. began talking. Lari. W. stated Webb had said not to talk to anyone. Larr. W. reported they were at the zoo and the keys went missing. Waters got upset and was yelling. Waters hit Larr. W. in the head. Lari. W. added they went to the zoo and Waters was with them. Jensen again did not observe any marks on Lari. W. and Larr. W. Jensen did not have any reason to believe the children’s statements were not credible.

¶ 12 Hill testified that she interviewed Larr. W. first on February 24, 2017. Larr. W. said Waters hit Webb in the head and punched him in the head. Larr. W. demonstrated a fist striking him on the right side of the head. He said it hurt. Hill did not observe any marks on

Larr. W. Larr. W. also reported his two-year-old brother, Lata. W., was crying, and Waters hit him as well. Larr. W. appeared scared and nervous while talking to Hill. Lari. W. reported Waters pushed Webb in the bathroom while she was holding onto the babies. Lari. W. was trying to help Webb at the time, and Waters struck her in the eye. Hill thought Larr. W. had a little bit of a black eye but she could not tell for certain. Lari. W. also stated Waters pushed Webb down the stairs and “flicked” the babies.

¶ 13 After speaking with Lari. W. and Larr. W., Hill went to respondents’ home and spoke with them. Hill told Waters she was there because of a domestic violence incident that happened the night before, and Waters said nothing happened. Waters stated he lived in the home sometimes, but his name was not on the lease. He denied hurting the minor children and said he never touched them. Hill described Waters as uncooperative. When she talked to Webb, Webb initially denied anything happened. She then said she had been trying to get Waters to move out for awhile and he came home last night. Webb explained Waters did not hit the minor children because she got between the minor children and Waters. She admitted Waters had pushed her in the bathroom but denied the minor children were present. Webb also stated Waters did not push her down the stairs. She was afraid of Waters and had been trying to get him to leave. Additionally, Hill examined Lava. W. and Lata. W., and Lata. W. had a faint bruise on his back.

¶ 14 After speaking with both respondents, Hill made a safety plan with Webb. The safety plan included her getting an order of protection against Waters by February 27, 2017. It also included her taking the minor children to PromptCare to get them examined for abuse and neglect. Last, Webb was to have no contact with Waters and was not to let Waters have any contact with the minor children. Hill explained to Webb that, if she did not comply with the

safety plan, DCFS would take the minor children. Webb agreed to the safety plan. The safety plan was admitted into evidence.

¶ 15 On March 6, 2017, Hill received a hotline call that Waters was back in the home and hurt Larr. W. again. She went to the school and interviewed Larr. W. and Lari. W. together since they arrived at the same time. Lari. W. tried to prevent Larr. W. from talking with hand motions. Lari. W. explained Webb had told them not to talk to DCFS and she would get in trouble if she did so. Larr. W. said Waters had hit him in the head when he lost Waters's keys at the zoo. Lari. W. added Larr. W. did not even cry when Waters hit him. Hill did not observe any marks on Larr. W. After talking with Lari. W. and Larr. W., Hill decided to take protective custody of the minor children. Due to her supervisor being out of the office, she could not go to respondents' home until the next day.

¶ 16 On March 7, 2017, Hill went to respondents' home with two police officers. Hill told Webb what the children had reported, and Webb responded she had not seen Waters because of the safety plan. Hill also questioned why Larr. W. and Lari. W. were not at school that day, and Webb said they were not feeling well. Hill asked to see the minor children. It took Webb awhile to bring out the baby, who was sleeping in Webb's bedroom. Hill then asked to check Webb's bedroom, and the police found Waters in the closet. Hill took protective custody of all four minor children.

¶ 17 Webb testified she was 25 years old and the mother of all four minor children. She had only once reported Waters for being violent, which was in 2011. During that incident, Waters had punched her in the face in a vehicle, while the two older children were in the backseat. At that time, she got an order of protection because the DCFS investigator told her to do so. The order was in effect for only a couple of days.

¶ 18 On February 14, 2017, Webb sought police intervention to get Waters to move out because he was named on the lease. She denied telling the police Waters threatened her that night. Webb further testified she never agreed to the safety plan but was forced to sign it. She also filed her March 8, 2017, petition for an order of protection from Waters at the insistence of DCFS workers. In the March 2017 petition for the order of protection, Webb stated that, on March 4, 2017, Waters called her names and told her she would not live to see her 30th birthday. He also threatened to take the minor children away from her. Moreover, the petition alleged that, on February 14, 2017, Waters called her a “b***h,” threatened to kill her, and pushed a table against her. Throughout their relationship, Waters had strangled Webb, pushed her, punched her, threw her to the ground, and threatened to “whoop” the kids. Waters also constantly yelled at her and intimidated her. He threatened to kill her if she called the police or got an order of protection. The petition also noted Waters “2012” arrest for domestic violence when he punched Webb in the face. Webb stated a worker helped her draft the petition and helped her on what to say. Webb testified the 2011 incident in which Waters punched her was the only true statement. She was forced to get the order of protection by DCFS workers, who threatened to take the minor children away if she did not obtain the order of protection. Webb testified she lied to the judge at the order of protection hearings. Additionally, she had never witnessed Waters abuse the minor children. Webb testified Larr. W. and Lari. W. were lying when they talked to Hill and Jensen. A copy of Webb’s March 2017 petition for an order of protection was admitted into evidence.

¶ 19 Schuck testified she had witnessed Webb and Waters’ nine-year relationship. She sees the family around three times a week. She had never seen Waters be violent with Webb or abuse the minor children. Schuck talked on the telephone with a DCFS worker and her daughter, and the worker stated she had explained to Webb that, if she did not get the order of protection,

the minor children would be taken away. Schuck also testified the minor children's stories had been coached.

¶ 20 Waters, who was 28 years old, testified he had never hit, slapped, punched, or otherwise abused the minor children. He also denied ever calling Webb derogatory names or threatening to kill her. Waters admitted the one domestic incident that occurred in 2011. He denied agreeing to stay out of the home. Waters returned to the home on March 6 because he wanted to see his family. He denied going to the zoo with the family. Webb did not ask him to leave when he returned to the house. Waters found the safety plan meaningless because it was ripping their family apart.

¶ 21 At the conclusion of the hearing, the circuit court found the minor children were neglected based on the three allegations of injurious environment (705 ILCS 405/2-3(1)(b) (West 2016)). The court found the State had not proved the other allegations of neglect and abuse.

¶ 22 On June 26, 2017, the circuit court held the dispositional hearing. The only evidence was the dispositional report. After hearing the parties' arguments, the court found both respondents unfit, made the minor children wards of the court, and placed the minor children's custody and guardianship with DCFS.

¶ 23 On July 25, 2017, respondents filed a timely notice of appeal in sufficient compliance with Illinois Supreme Court Rule 303 (eff. July 1, 2017). 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 this appeal 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”).

¶ 24

II. ANALYSIS

¶ 25 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 minor children’s best interests. *A.P.*, 2012 IL 113875, ¶ 18, 981 N.E.2d 336.

¶ 26 The Juvenile Court Act provides a two-step process the trial court must utilize to decide whether the minor children should become wards 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 children are abused, neglected, or dependent. See 705 ILCS 405/2-18(1) (West 2016); *A.P.*, 2012 IL 113875, ¶ 19, 981 N.E.2d 336. If the circuit court determines the minor children are 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 children and the public for the minor children to be made wards of the court. *A.P.*, 2012 IL 113875, ¶ 21, 981 N.E.2d 336.

¶ 27 Here, respondents challenge only the first step, the circuit 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 circuit court has found the minor children 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 circuit 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.

¶ 28 In this case, the circuit court found the minor children were neglected under section 2-3(1)(b) of the Juvenile Court Act (705 ILCS 405/2-3(1)(b) (West 2016)), 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.

¶ 29 Respondents contend Lari. W.’s and Larr. W.’s statements to Hill and Jensen were uncorroborated. They also argue Webb’s statements in her March 2017 petition for an order of protection were made under duress and thus are unreliable. To the extent respondents

are challenging the circuit court's credibility determinations, we emphasize this court gives deference to the circuit court as the finder of fact and will not substitute our judgment for that of the circuit court on the credibility of the witnesses, the weight given the evidence, or inferences drawn from the evidence. *In re A.W.*, 231 Ill. 2d 92, 104, 896 N.E.2d 316, 324 (2008).

Regardless of the court's credibility determination, other evidence corroborates the minor children's statements and Webb's statements in her petition for the order of protection.

¶ 30 As to the minor children's statements, respondents' contention overlooks the fact the children were interviewed separately and without notice and gave similar stories of Waters pushing Webb on February 24, 2017. Moreover, Lari. W. mentioned Webb being upset about Waters being present in the home, which is consistent with Webb wanting him to move out. Webb herself admitted to Hill Waters had pushed her the previous night. Additionally, Officer Jones testified Webb had come to the police station only 10 days before the February 24 incident and wanted help in getting Waters out of the home. She told Officer Jones Waters had pushed a table into her and stated he would have hit her if she was not holding one of the children. With the March 6, 2017, incident, Lari. W. corroborated Larr. W.'s story after she was unable to get Larr. W. to stop talking about the incident. Moreover, the next day, Hill found Waters in the home, which was consistent with Larr. W.'s statement Waters had returned. While the minor children may not have had physical marks corroborating their stories, the circumstantial evidence was corroborating.

¶ 31 Regarding Webb's statements in her petition for the order of protection, both Waters and Webb admitted one incident of domestic violence in 2011. Moreover, Webb told Officer Jones about the table shoving and threat of more violence on February 14, 2017. She also admitted to Hill Waters had pushed her on February 24. Thus, in addition to Webb's

statements in the petition for the order of protection, other evidence showed Webb and Waters had issues with domestic violence.

¶ 32 Here, DCFS instituted a safety plan on February 24, 2017, prohibiting Waters from having contact with the minor children due to the parties' issues with domestic violence and Waters striking the minor children. On March 6, 2016, only 10 days later, the two older children reported Waters was back in the home and had struck Larr. W. on the head. Webb clearly breached her parental duty to provide a safe and nurturing environment for her children as she allowed Waters to have contact with the minor children and he struck Larr. W.

Accordingly, we conclude the circuit court's finding the minor children were neglected was not against the manifest weight of the evidence.

¶ 33 III. CONCLUSION

¶ 34 For the reasons stated, we affirm the McLean County circuit court's judgment.

¶ 35 Affirmed.