2018 IL App (1st) 180920-U

No. 1-18-0920

Fourth Division
September 28, 2018

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

In re BRYALA C., GLORIA C., SHIALYSE C., BRYANT C., CAITLYN C., DAVID C., and ALISHA C., Minors	)	Appeal from the Circuit Court of Cook County.
(The People of the State of Illinois, Petitioner-Appellee,	)	No. 17 JA 286-292
v.	)	The Honorable Maxwell Griffin, Jr., Judge Presiding.
Mardine W., Respondent-Appellant).	)	

JUSTICE GORDON delivered the judgment of the court.
Presiding Justice McBride and Justice Burke concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's finding that the minor was abused due to a substantial risk of physical injury is affirmed where the record indicates that the respondent hit the minor on the head with a broomstick and threatened to kill her.

¶ 2 Respondent Mardine W. is the paternal grandmother of seven minors, currently ages 9 to 15, for whom she has been the legal guardian since they were infants. The State filed petitions for adjudication of wardship for all seven minors based on neglect. In addition, the

State's petition for adjudication of wardship for 12-year-old Shialyse C. contained an allegation of abuse, based on an incident in which respondent had repeatedly struck her on the head with a broomstick. The juvenile court entered adjudication orders finding all seven minors neglected and also finding Shialyse C. abused; the trial court also entered dispositional orders requiring the minors to be placed in the care of Janet Wukas Ahern, the Department of Children and Family Services (DCFS) guardianship administrator. On appeal, respondent challenges only the finding of abuse with respect to Shialyse C.; she does not challenge the findings of neglect with respect to any of the minors and does not challenge the court's dispositional orders. For the reasons that follow, we affirm.

¶ 3 BACKGROUND

¶ 4 Since the instant appeal concerns only the juvenile court's finding of abuse with respect to Shialyse C., we focus on the facts pertaining to that finding and relate other details from the juvenile proceedings only where necessary to provide context.

¶ 5 On March 29, 2017, the State filed seven petitions for adjudication of wardship, one for each minor in respondent's custody, requesting that the minors be adjudicated wards of the court; the State also filed motions for temporary custody the same day. The adjudication petition relating to Shialyse C. claimed that Shialyse was a female minor born on January 28, 2005, and that respondent was her legal guardian. The petition alleged that Shialyse was neglected under sections 2-3(1)(a) and (b) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(1)(a), (b) (West 2016)). The petition also alleged that Shialyse was abused under section 2-3(2)(i) of the Juvenile Court Act (705 ILCS 405/2-3(2)(i) (West 2016)) in that the person responsible for her welfare "[i]nflicts, caused to be inflicted, or allows to be inflicted upon her physical injury, by other than accidental means, which caused

death, disfigurement, impairment of physical or emotional health, or loss or impairment of any bodily function" and further alleged that she was abused under section 2-3(2)(ii) of the Juvenile Court Act (705 ILCS 405/2-3(2)(ii) (West 2016)) in that the person responsible for her welfare "[c]reates 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."

¶ 6 The facts in the petition underlying all the claims set forth above were the same. According to the petition:

> "[The] Legal guardian has prior indicated reports for inadequate supervision, substance misuse and substantial risk of harm. [The] Legal guardian admits hitting this minor with a broom on or about March 25, 2017. This minor was observed on or about March 27, 2017 with swelling and abrasions on her head. This minor's siblings observed legal guardian beating this minor with the broom. [The] Legal guardian tells the minors that she wants to kill them. At the time of protective custody, these minors were observed to be dirty, unkempt and foul-smelling. [The] Legal guardian admits that she cannot care for these minors. Mother and father are unavailable to care for the minors at this time."

¶ 7 After a temporary custody hearing on March 29, 2017, at which respondent was present, the juvenile court found probable cause that all seven minors were abused and/or neglected and that an immediate and urgent necessity existed to support their removal from the home. The court granted temporary custody of all seven minors to Janet Wukas Ahern, the DCFS guardianship administrator.

¶ 8 On February 21, 2018, the parties appeared before the juvenile court for an adjudication hearing, which proceeded by way of stipulated facts. The parties stipulated that, if called to testify, Heather Parker would testify that she was a child protection investigator with DCFS and was initially assigned to work on the instant case after a hotline call on March 5, 2015. She spoke to six of the minors alone, who informed her that respondent gave them a " 'calm down pill' " to calm them at night. Parker spoke to respondent, who admitted that she was overwhelmed by caring for the children at times and gave them Benadryl to calm them. Parker indicated respondent for substance misuse;[1] respondent agreed not to give the children sleep medication and to participate in intact services,[2] so Parker terminated the safety plan.

¶ 9 Parker also would testify that she was assigned to investigate several more hotline calls involving the family between May 5, 2015, and July 25, 2015. She was again assigned to investigate a hotline call on March 27, 2017, and interviewed 13-year-old Gloria, one of the minors, at her school. Gloria told Parker, in relevant part, that respondent "hit her sister Shialyse repeatedly over the head with a broom" and that respondent was "verbally abusive" to the children and "calls them bitches." Parker interviewed Shialyse the same day, and "observed a bruise to Shialyse's forehead which was red and had a knot on it." Shialyse informed Parker that on March 25, 2017, respondent "hit her multiple times on the head with a broom while yelling 'I'm going to kill you' repeatedly and cursing" and that respondent "says she is going to kill them daily." Parker also spoke with 14-year-old Bryala, one of the minors, who confirmed Shialyse's account of the March 25, 2017, events.

[1] While the stipulation does not expressly specify, the "substance misuse" was clearly based on respondent's administration of the Benadryl to calm the children.

[2] The stipulation does not specify the exact services that respondent agreed to complete.

¶ 10 Parker also spoke with respondent, who "admitted hitting Shialyse on the head with a broom because she was riding her bike with boys after she was told to come home." Respondent told Parker that "she grabbed a broom because the kids hid all of the belts" and "she did not mean to hit Shialyse on the forehead." Respondent told Parker that she could no longer care for the children, but did not want them to be split up.

¶ 11 The parties also stipulated to the testimony of Maria Paredes, another DCFS investigator, who would testify about an earlier hotline call; and to the testimony of Chauntay Worsham and Marvin Ibarra, caseworkers who would testify about respondent's compliance with services. Finally, the parties stipulated to the admission of a number of exhibits, including records from the social service agencies and hospital medical records.

¶ 12 In argument, respondent's counsel argued that the incident in which Shialyse was injured was an accident. However, the court did not find this argument persuasive, stating that "I don't infer from the facts the same things that apparently a legal guardian would like me to." The court found that, from the stipulation, respondent stated that "she did not mean to hit Shialyse on the head." The court continued: "Maybe not, but she certainly meant to hit her [and that] is what I am interpreting from this. So it wasn't that the child was hit as a result of an accident. She was hit in the head as a result of an accident. Would have been the accidental part is all I can infer from the facts as set forth there."

¶ 13 After the hearing, the juvenile court entered an adjudication order finding Shialyse neglected due to an injurious environment and abused due to a substantial risk of physical injury. The court entered similar orders with respect to the other minors, except that theirs contained only findings of neglect. The court found:

> "On or about 3/27/17, legal guardian admitted to hitting Shialyse with a broom on the head. On or about 3/27/17, Shialyse was observed to have a knot on her forehead that was bruised. Gloria, Shialyse, and Bryala confirmed that the legal guardian had hit Shialyse on the head with a broom. Gloria and Shialyse state that the legal guardian is verbally abusive towards the children. Intact services have been offered to this family from 4/10/15 until 8/12/16. [The] Legal guardian has prior indicated reports for inadequate supervision, substance misuse, and substantial risk of harm. Bryala, Alisha, Gloria, and David have a history of psychiatric issues."

¶ 14 On March 29, 2018, the juvenile court entered a dispositional order finding it in Shialyse's best interest to be adjudged a ward of the court and finding respondent unable for some reason other than financial circumstances alone to care for, protect, train, or discipline her.[3] The court ordered Shialyse placed in the custody of the DCFS guardianship administrator with the right to place her. The court entered similar orders with respect to all of the minors. This appeal follows.

¶ 15 ANALYSIS

¶ 16 On appeal, as noted, respondent challenges only the finding that Shialyse was abused; she does not challenge the findings of neglect as to any of the minors, nor does she challenge the dispositional orders entered by the juvenile court. "A proceeding for adjudication of wardship 'represents a significant intrusion into the sanctity of the family whish should not be undertaken lightly.' " *In re Arthur H.*, 212 Ill. 2d 441, 463 (2004) (quoting *In re Harpman*, 134 Ill. App. 3d 393, 396-97 (1985)). It is the State's burden to prove allegations of neglect or abuse by a preponderance of the evidence. *In re A.P.*, 2012 IL 113875, ¶ 17. "In

[3] In the same order, the juvenile court found both of Shialyse's parents unwilling and unable to care for her.

other words, the State must establish that the allegations of neglect [or abuse] are more probably true than not." *In re A.P.*, 2012 IL 113875, ¶ 17. A reviewing court will reverse the juvenile court's determination "only if the factual findings are against the manifest weight of the evidence or if the court abused its discretion by selecting an inappropriate dispositional order." *In re Kamesha J.*, 364 Ill. App. 3d 785, 795 (2006); see also *In re Malik B.-N.*, 2012 IL App (1st) 121706, ¶ 56; *In re J.C.*, 396 Ill. App. 3d 1050, 1060 (2009); *In re Gabriel E.*, 372 Ill. App. 3d 817, 828 (2007). "A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident." *In re Arthur H.*, 212 Ill. 2d 441, 464 (2004) (citing *In re Edward T.*, 343 Ill. App. 3d 778, 794 (2003)). "Because a trial court is in a superior position to assess the credibility of witnesses and weigh the evidence, a reviewing court will not overturn the trial court's findings merely because the reviewing court may have reached a different decision." *In re April C.*, 326 Ill. App. 3d 245, 257 (2001) (citing *In re Lakita B.*, 297 Ill. App. 3d 985, 994 (1998)). "Ultimately, there is a 'strong and compelling presumption in favor of the result reached by the trial court' in child custody cases." *In re William H.*, 407 Ill. App. 3d 858, 866 (2011) (quoting *Connor v. Velinda C.*, 356 Ill. App. 3d 315, 323 (2005)).

¶ 17 In the case at bar, the public guardian suggests that the trial court's order is subject to *de novo* review, rather than being reviewed under a manifest-weight standard, because the trial court's findings were based on a stipulated record. Where the trial court's findings were not based on any observations of witnesses or witness testimony, "the trial court was not in a better position than the reviewing court to assess credibility or weigh the evidence." *In re Zion M.*, 2015 IL App (1st) 151119, ¶ 28. In that case, "since we are in the same position as the trial court, the trial court is not vested with wide discretion, and our review is *de novo*."

In re Zion M., 2015 IL App (1st) 151119, ¶ 28. However, in the case at bar, we reach the same conclusion regardless of the standard of review.

¶ 18 Under section 2-3 of the Juvenile Court Act, an abused minor includes one whose parent or other person responsible for her welfare "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." 705 ILCS 405/2-3(2)(ii) (West 2016). In the case at bar, the basis for the trial court's finding of abuse was the March 25, 2017, incident in which respondent struck Shialyse on the head with a broomstick. Respondent does not argue on appeal that this injury did not occur or that she was not responsible for the injury.

¶ 19 Instead, respondent makes two arguments. First, she argues that the evidence did not show that the injury was anything other than accidental. Second, she argues that the injury sustained by Shialyse was not severe enough to constitute a "substantial risk of physical injury *** which would be likely to cause death, disfigurement, impairment of emotional health, or loss or impairment of any bodily function" (705 ILCS 405/2-3(2)(ii) (West 2016)). We do not find either of these arguments persuasive.

¶ 20 First, we agree with the trial court that respondent's statements to the DCFS investigator do not suggest that striking Shialyse was accidental. Respondent "admitted hitting Shialyse on the head with a broom because she was riding her bike with boys after she was told to come home." She also told Parker that "she grabbed a broom because the kids hid all of the belts" and "she did not mean to hit Shialyse on the forehead." Thus, at most, respondent's statements show that the *location* of the injury may have been accidental. Respondent's argument suggests that there is a meaningful difference between respondent intentionally

striking Shialyse on the torso and striking her on the head. However, respondent's claim that "[r]easonable corporal punishment is permissible for discipline" (see *In re Malik B.-N.*, 2012 IL App (1st) 121706, ¶ 38) does not give respondent the right to strike the child with a broomstick. The stipulated evidence showed that that three of the minors, including Shialyse, separately told the investigator that respondent was "verbally abusive" and threatened to kill Shialyse, and cursed at her while repeatedly striking her with the broomstick. This behavior belies respondent's argument that Shialyse's injury was accidental.

¶ 21 We are similarly unpersuaded by respondent's argument that the injury was not severe enough to constitute abuse. The injury was sufficiently severe that, two days later, Shialyse had a knot and redness on her forehead that was apparent to the DCFS investigator. Additionally, abuse encompasses a substantial risk of physical injury which would be likely to cause "impairment of emotional health" (705 ILCS 405/2-3(2)(ii) (West 2016)). Here, the combination of respondent's repeatedly striking Shialyse on the head with a broomstick over an infraction and respondent's cursing and threatening to kill her—which Shialyse claimed occurred "daily"—is certainly sufficient to cause impairment of Shialyse's emotional health. Accordingly, we affirm the juvenile court's finding of abuse.

¶ 22 CONCLUSION

¶ 23 For the reasons set forth above, we affirm the juvenile court's finding of abuse with respect to Shialyse.

¶ 24 Affirmed.