

2018 IL App (2d) 180191-U
No. 2-18-0191
Order filed June 25, 2018

NOTICE: This order was filed under Supreme Court Rule 23(c) and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

<i>In re Z.W.</i> , a Minor)	Appeal from the Circuit Court
)	of Winnebago County.
)	
)	No. 17-JA-173
)	
)	
(The People of the State of Illinois, Petitioner-Appellee, v. Tammy W., Respondent-Appellant.))	Honorable Francis M. Martinez, Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Presiding Justice Hudson and Justice Burke concurred in the judgment.

ORDER

¶ 1 *Held*: Counsel’s motion to withdraw pursuant to *Anders v. California*, 386 U.S. 738 (1967) is allowed, and the trial court’s order finding Z.W. neglected pursuant to section 2-3(1)(a) of the Juvenile Court Act was not against the manifest weight of the evidence.

¶ 2 I. BACKGROUND

¶ 3 Respondent, Tammy W., is the mother of Z.W. (born July 16, 2007). On May 19, 2017, the state filed a neglect petition alleging Z.W. to be a Neglected Minor under 705 ILCS 405/2-3 of the Juvenile Court Act (the Act). In the sole count of the petition, the state alleged that Z.W.

was not receiving a proper education as required by section 2-3(1)(a) of the Act. The trial court held an adjudicatory hearing on the state's petition on December 7, 2017.

¶ 4 At the adjudicatory hearing, the state sought to introduce People's Exhibit 1, a certified record of Z.W.'s school attendance for the 2015-2016 and 2016-2017 school years. Respondent's counsel objected to the introduction of People's Exhibit 1 on the basis that the records were not certified. The trial court called Harold Sweeney, director of student services for the regional office of education, to lay the foundation for the attendance records.

¶ 5 Mr. Sweeney testified that his office sends records to the Winnebago County State's Attorney's Office in order to request a petition to be filed for truant or neglected minors. He said that in May 2017, his office sent a letter of referral to the State's Attorney for Z.W. that indicated that the attendance records were certified. The letter attached to Z.W.'s attendance records was prepared by Jean Kearney, attendance secretary for the Regional Office of Education, and also contained the stamp of Dr. Lori Fanello, the Regional Superintendent of Schools. The attached letter was also signed by Dr. Fanello, indicating the certification of the attendance records. Following another objection by respondent's counsel, the trial court admitted People's Exhibit 1.

¶ 6 Z.W.'s certified school attendance record for the 2015-2016 school year reflected that he had 35 excused absences, 30 unexcused absences, and 18 tardies out of 177 attendance days; as of May 1, 2017, the date the report was generated, Z.W. had 29 excused absences, 28 unexcused absences, and 13 tardies out of 141 attendance days.

¶ 7 Respondent was then called to testify and elicited the following for the trial court. She testified that Z.W. was born with gastroesophageal reflux disease (GERD). Z.W.'s GERD has been an ongoing issue throughout his life as it requires him to refrain from eating certain foods that upset his condition and cause him severe discomfort. Respondent would administer a

prescribed drug called Ranitidine to Z.W. whenever symptom of GERD would become apparent. Sometimes it would take three to four days for Z.W.'s symptoms to alleviate following the administration of Ranitidine. Additionally, respondent said that Z.W. has a weak immune system that makes him susceptible to colds and other viruses, which further complicates his problems with GERD.

¶ 8 Aside from dealing with the various maladies of Z.W., respondent's 14 year old daughter had been hospitalized in the recent past for issues related to drugs and suicidal tendencies. Respondent also cares for Z.W.'s 70 year old grandmother full-time. The grandmother is bedridden and has needed to be taken to the hospital by ambulance on several occasions, disturbing the sleep patterns of Z.W. Respondent also cares for her 2 year old grandson which further dominates her time.

¶ 9 Respondent admitted that she had received report cards regarding Z.W.'s attendance and its negative effect on his school work and performance. Z.W.'s school had informed respondent that he had not turned in any of his weekly homework packets and does not complete the nightly required reading logs. As of the time of the adjudicatory hearing, respondent testified that Z.W. had 29 excused absences and 45 unexcused absences during the 2016-2017 school year.

¶ 10 Respondent further reiterated Z.W.'s complications from GERD; specifically that the condition causes stomach cramps and makes it hard for him to sit or lay down. She said that Z.W.'s doctors recommended that Ranitidine only be administered when Z.W. feels he needs it, but not every day.

¶ 11 Following respondent's testimony, the court heard closing arguments from Z.W.'s guardian *ad litem* (GAL). The GAL said that the state had proven its case of neglect. There was no question as to whether Z.W. had missed the requisite number of school days to constitute

educational neglect. The GAL pointed to Z.W.'s medical records which discussed the prescription for Ranitidine to deal with GERD. The order details on the Ranitidine dictate that Z.W. be given the prescription twice daily to prevent the symptoms associated with GERD. The GAL could point to nowhere in the record to where any doctor had suggested that Z.W. be excused from school for GERD, nor did the GAL think that respondent had made Z.W.'s education a priority.

¶ 12 The state also spoke in closing arguments regarding Z.W.'s medical history. The state alluded to Z.W.'s medical record by pointing out that between March 2016, and March 2017, he had been to the doctor for the following reasons: (1) March 18, 2016, for cough and congestion; (2) March 22, 2016, follow-up for the March 18, 2016, visit and ADHD review; (3) May 12, 2016, right ankle evaluation; (4) June 30, 2016, sore throat; (5) March 24, 2017, for abdominal pain.

¶ 13 The trial court issued its finding of neglect on January 11, 2018. The court articulated as follows:

“I believe the State has shown by a preponderance of the evidence that the minor is neglected. *** [T]he child has certain medical challenges, but the testimony revealed a couple of things that led me to the conclusion that the minor is a neglected minor. *** [I]t does not appear that Mother was taking full advantage of the medical resources to deal with this young man's GERD symptoms ***. I also got the impression from the testimony *** of the Mother that there was a tendency to lean on the medical condition as an excuse for not getting the child *** to school ***, but it seemed while I was listening to Mother that the condition provided a bit of a convenient excuse when things went a little over her head. *** These proceedings are not about really fault *** [i]t's about the

child. Are the caretakers providing a proper education or assuring that the child receives the education that's mandated by the State of Illinois? Based on all the testimony that I heard, I don't believe that's the case. I think *** the situation can be rectified. ***So the State's petition is granted by a preponderance of the evidence.”

¶ 14 Following the trial court's adjudication of Z.W. as neglected, the trial court found no need for removal, and guardianship of Z.W. remained with his parents.

¶ 15 A dispositional hearing was held on February 16, 2018, wherein the trial court entered an order requiring respondent to administer Z.W.'s prescription medications as ordered by his doctors. Additionally, the order required respondent to fill out forms regarding Z.W.'s dietary requirements for school lunches and release of his medical records to the school.

¶ 16 On March 14, 2018, respondent was appointed appellate counsel and this appeal was timely filed.

¶ 17 **II. ANALYSIS**

¶ 18 The trial court appointed counsel to represent respondent on appeal. Pursuant to the procedures established in *Anders v. California*, 386 U.S. 738 (1967), appellate counsel has filed a motion for leave to withdraw. Counsel avers that he has reviewed the record in detail, but is unable to identify any non-frivolous issues on appeal which would warrant relief by this court. Counsel has submitted a memorandum suggesting one potential issue on appeal which would warrant relief by this court. The clerk of this court also notified respondent of the motion and informed her that she would be afforded an opportunity to present, within 30 days, any additional matters to this court. This time has elapsed, and respondent has not presented anything to this court.

¶ 19 The sole issue raised in appellate counsel's memorandum regards the trial court's

admission of People's Exhibit 1 as a certified record at the adjudication hearing. Certification of attendance records and their admissibility are governed by section 2-18(4)(a) of the Act. The Act states:

“Any writing, record, photography or x-ray of any hospital or public or private agency, whether in the form of an entry in a book or otherwise, made as a memorandum or record of any condition, act, transaction, occurrence or event relating to a minor in an abuse, neglect or dependency proceeding, shall be admissible in evidence as proof of that condition, act transaction, occurrence or event, if the court finds that the document was made in the regular course of the business of the hospital or agency and that it was in the regular course of such business to make, at the time of the act, transaction, occurrence or event, or within a reasonable time thereafter. A certification by the head or responsible employee of the hospital or agency that the record, photograph or x-ray is the full and complete record of the condition, act, transaction, occurrence or event and that it satisfies the conditions of this paragraph shall be prima facie evidence of the facts contained in such certification. A certification by someone other than the head of the hospital or agency shall be accompanied by a photocopy of a delegation of authority signed by both the head of the hospital or agency and by such other employee. All other circumstances of the making of the memorandum, record, photograph or x-ray, including lack of personal knowledge of the maker, may be proved to affect the weight to be accorded such evidence, but shall not affect its admissibility.” 705 ILCS 405/2-18(4)(a) (West 2018).

¶ 20 People's Exhibit 1 is signed by Lori Fanello, the Regional Superintendent of Schools. Ms. Fanello is the head of the Regional Office of Education. The letter written and signed by Ms. Fanello on the first page of People's Exhibit 1, clearly communicates that the purpose of the

record is to notify the State’s Attorney that Z.W. had missed a significant number of school days. At the adjudication hearing, Harold Sweeney testified that People’s Exhibit 1 was a true and correct copy of Z.W.’s attendance record for the applicable school years and that the record was kept in the regular course of the Regional Office of Education’s business. Therefore, the trial court’s finding that Z.W.’s attendance record was properly certified and admissible was wholly proper.

¶ 21 We now analyze the trial court’s adjudication of Z.W. as a neglected minor. Section 2–3(1)(b) of the Act defines a “neglected minor” to include any minor under 18 years of age whose environment is injurious to his or her welfare. 705 ILCS 405/2–3(1)(b) (West 2018). Because of the “fact-driven nature” of neglect, a reviewing court will reverse a finding of neglect only if it is against the manifest weight of the evidence. *In re N.B.*, 191 Ill. 2d at 346. A ruling is against the manifest weight of the evidence only if the opposite conclusion is clearly evident. *In re R.S.*, 382 Ill. App. 3d 453, 459–60 (2008).

¶ 22 Section 2-3(1)(a) of the Act provides a minor is deemed neglected if the minor is under the age of 18 and is not receiving the proper education as required by law. 705 ILCS 405/2-3(1)(a) (West 2018). Section 2-18(5) of the Act sets forth a procedure in which to prove a minor educationally neglected:

“In any hearing under this Act alleging neglect for failure to provide education as required by law under subsection (1) of Section 2–3, proof that a minor under 13 years of age who is subject to compulsory school attendance under the School Code is a chronic truant as defined under the School Code shall be *prima facie* evidence of neglect by the parent or guardian in any hearing under this Act.” 705 ILCS 405/2–18(5) (West 2018).

¶ 23 A child is truant when the child is subject to compulsory school attendance and “is absent without valid cause from such attendance for a school day or portion thereof.” 105 ILCS 5/26-2a (West 2018). A chronic truant is defined as “a child who is subject to compulsory school attendance and who is absent without valid cause from such attendance for 5% or more of the previous 180 regular attendance days.” 105 ILCS 5/26-2a (West 2018).

¶ 24 Here, the trial court was informed through Z.W.’s certified attendance record that Z.W. had 28 unexcused absences during the 2016-2017 school year, and that was only after 141 attendance days had elapsed. Z.W. had 30 unexcused absences during the 177 attendance days of the 2015-2016 school year. Respondent admitted that she had received report cards regarding Z.W.’s attendance and its negative effect on his school work and performance. Further, she testified that he had amassed 45 unexcused absences by the close of the 2016-2017 school year. While respondent did testify that she is overwhelmed with issues at home involving the care of Z.W.’s grandmother, her daughter’s health, and the care of her young grandson, respondent never provided any reason as to why Z.W.’s chronic absenteeism was ongoing. She discussed Z.W.’s issues with GERD, but did not administer his medications as ordered by his doctors. She talked of how Z.W. needed to see a host of doctors to treat his ongoing condition, but the evidence presented regarding his doctor visits reflect sporadic appointments to deal with issues unrelated to GERD on days that do not correspond with Z.W.’s absences from school.

¶ 25 The evidence presented to the trial court shows that Z.W. fits the definition of a chronic truant as his absences far exceed the statutory threshold described above. As this is *prima facie* evidence of neglect by respondent, and no evidence was presented to rebut the unexcused nature of these absences at the adjudicatory hearing, the trial court’s finding that Z.W. is a neglected

minor pursuant to section 2-3(1)(a) of the Act was not against the manifest weight of the evidence.

¶ 38

III. CONCLUSION

¶ 39 For the reasons stated, we affirm the judgment of the circuit court of Winnebago County and grant appellate counsel's motion to withdraw.

¶ 40 Affirmed.