

NOTICE

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FILED

January 26, 2018
Carla Bender
4th District Appellate
Court, IL

2018 IL App (4th) 170710-U

NOS. 4-17-0710, 4-17-0711, 4-17-0712, 4-17-0713, 4-17-0714, 4-17-0715 cons.

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

<i>In re</i> N.C.P., a Minor,	)	Appeal from
	)	Circuit Court of
(The People of the State of Illinois,	)	Adams County
Petitioner-Appellee,	)	No. 16JA3
v. (No. 4-17-0710))	
Nakia Pate,)	
Respondent-Appellant).)	
_____)	
<i>In re</i> N.R.P., a Minor,	)	No. 16JA4
)	
(The People of the State of Illinois,)	
Petitioner-Appellee,)	
v. (No. 4-17-0711))	
Nakia Pate,)	
Respondent-Appellant).)	
_____)	
<i>In re</i> N.H., a Minor,	)	No. 16JA5
)	
(The People of the State of Illinois,)	
Petitioner-Appellee,)	
v. (No. 4-17-0712))	
Nakia Pate,)	
Respondent-Appellant).)	
_____)	
<i>In re</i> N.A.H., a Minor,	)	No. 17JA21
)	
(The People of the State of Illinois,)	
Petitioner-Appellee,)	
v. (No. 4-17-0713))	
Nakia Pate,)	
Respondent-Appellant).)	
_____)	

<i>In re</i> Nay. H., a Minor,	)	No. 17JA22
)	
(The People of the State of Illinois,)	
Petitioner-Appellee,)	
v. (No. 4-17-0714))	
Nakia Pate,)	
Respondent-Appellant).)	
<hr/>		
<i>In re</i> Nas. H., a Minor,	)	No. 17JA23
)	
(The People of the State of Illinois,)	
Petitioner-Appellee,)	
v. (No. 4-17-0715)	)	Honorable
Nakia Pate,	)	John C. Wooleyhan,
Respondent-Appellant).	)	Judge Presiding.

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

ORDER

¶ 1 *Held:* The circuit court’s August 2017 neglect adjudication and revocation of continuance under supervision were not against the manifest weight of the evidence.

¶ 2 In January 2016, the State filed petitions for adjudication of wardship as to N.C.P. (born in 2006), N.R.P. (born in 2007), and N.H. (born in 2009), the three oldest minor children of respondent, Nakia Pate, asserting the children were not receiving the proper education required by law. After an August 2016 adjudicatory hearing, the Adams County circuit court found the three minor children were neglected. At an October 2016 hearing, the court entered an order for continuance under supervision imposing several conditions on respondent. In March 2017, the State filed a petition to revoke supervision and motion for shelter care as to the three oldest minor children and petitions for the adjudication of wardship as to respondent’s three youngest children, N.A.H. (born in 2012), Nay. H. (born in 2014), and Nas. H. (born 2014). After an August 2017 hearing, the court entered an adjudicatory order finding the three youngest

children were neglected and revoking the continuance under supervision as to the three oldest children. At the September 2017 dispositional hearing, the court found respondent unfit, made all six minor children wards of the court, and placed their custody and guardianship with the Department of Children and Family Services (DCFS).

¶ 3 Respondent appeals, contending the circuit court erred by finding (1) the three youngest children were neglected and (2) she violated the conditions of the order of continuance under supervision. We affirm.

¶ 4 I. BACKGROUND

¶ 5 N.C.P.'s father is Tyrell Porter, and N.R.P's father is Tyrone Watson. Isaac Hazzard is the father of the other four children, N.H., N.A.H., Nay. H., and Nas. H. None of the fathers are a party to this appeal.

¶ 6 The State's January 2016 petitions for the adjudication of wardship of the three oldest children alleged the minor children were neglected pursuant to section 2-3(1)(a) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(1)(a) (West 2016)), in that the minor children were not receiving the proper education required by law. After an August 11, 2016, adjudicatory hearing, the circuit court adjudicated the oldest three children neglected, finding they were truants and attempts to improve their attendance had been unsuccessful. On October 3, 2016, the court held the dispositional hearing. At the conclusion of the hearing, the court entered an order for continuance under supervision because the three oldest children had not had attendance issues during the current school year. See 705 ILCS 405/2-20 (West 2016). The court placed respondent under court supervision and imposed the following conditions: (1) cooperate with DCFS and follow the service plans; (2) keep DCFS advised of her current address; (3) undergo evaluations, complete counseling, and sign releases for information

requested by DCFS; and (4) keep the children in Adams County, unless the court granted permission for them to leave.

¶ 7 The State's March 2017 petitions for adjudication of wardship as to the three youngest children alleged (1) the three older children were already "court-involved" due to chronic truancy; (2) the children were present for a physical fight between respondent and her partner, Michelle Rogers, which resulted in the State charging Rogers with aggravated domestic battery and domestic battery (People v. Rogers, No. 17-CF-265 (Cir. Ct. Adams Co.)); (3) one of the minor children was eating ice cream from a garbage can; and (4) the home was in poor condition with clutter and garbage throughout. The March 2017 petition to revoke supervision in the cases involving the three oldest children alleged the aforementioned allegations, as well as the following: (1) respondent had refused to (a) update the caseworker about respondent's pending ordinance violation charges in Adams County case Nos. 17-OV-247 and 17-OV-248, (b) allow the caseworker to enter the family residence on several occasions, and (c) meet with the caseworker several times; and (2) the three oldest minor children have incurred absences over the last three months, specifically 9 days for N.C.P., 8 days for N.R.P., and 10 days for N.H. The State later struck the allegation one of the minor children was eating out of the garbage can from both the wardship petitions and the petition to revoke supervision.

¶ 8 On August 10, 2017, the circuit court held the adjudicatory hearing. At the State's request, the court took judicial notice of (1) its October 2016 supervision order; (2) respondent's case No. 17-OV-247, in which she was found guilty of the offense of selling tobacco to a minor; and (3) respondent's case No. 17-OV-248, in which she pleaded guilty to the offense of possession of cannabis. The State presented the testimony of Stephanie Yates, a Quincy police officer; Mark Foley, a DCFS investigator; and Lisa Sutton, a Quincy Catholic

Charities intact family caseworker. It also presented several exhibits, including the information in Rogers's criminal case. The court took judicial notice of the fact that, in July 2017, Rogers pleaded guilty to the domestic battery charge and the court dismissed the aggravated battery charge. The State also presented certified copies of the three oldest children's school records, photographs of respondent after the domestic altercation, and the initial service plan.

Respondent's only evidence was a copy of the initial service plan with Sutton's March 2017 ratings. The evidence relevant to the issues on appeal is set forth below.

¶ 9 Officer Yates testified she responded to a disturbance call on the evening of March 27, 2017, at 628 Spruce Street in Quincy, Illinois. Officer Robert McGee also responded to the call. As she approached the home, Officer Yates could hear yelling coming from inside of the residence. Officer Yates entered the residence through the back door, and Officer McGee entered through the front door. Upon entering, Officer Yates observed "[c]omplete chaos." She saw 9 to 11 children running around the living room, of which three jumped on her and two were "play fighting." Officer Yates also observed three adults arguing. In addition to the living room, the residence had a kitchen, a front room, and a back room.

¶ 10 Officer Yates spoke with respondent, who stated the police had been to the home earlier that day and told Rogers and her to stay in different parts of the home. Respondent described Rogers as her "live-in girlfriend," and they were in an intimate relationship. Respondent told Officer Yates Rogers came into the front room and started pointing her fingers in respondent's face. Rogers then began to choke respondent, and respondent could not breathe. After that, Rogers began to punch her in the face and pull her hair. At least two of the children witnessed the altercation, and Officer Yates spoke with N.C.P. and N.R.P. Both children said Rogers came in the front room and started yelling at their mom. Rogers pointed her fingers in

their mom's face, punched their mom, and pulled her hair.

¶ 11 After determining Rogers was the initial aggressor, Officer Yates took a video-recorded statement from respondent. Respondent stated the police had told Rogers to stay in her room and respondent to stay in the front room. She also noted Rogers caused damage to the residence; specifically, she broke the hinges off a door, broke respondent's television, and poured water on a laptop. Respondent again described the domestic altercation. After the altercation, respondent ran outside. When respondent came back inside the residence, she locked the door behind her, and Rogers broke into the home through a window. Officer Yates observed respondent had a bruise and a bump under her right eye.

¶ 12 Foley testified that, on March 26, 2017, DCFS received a report about respondent and her family, alleging substantial risk of harm and environmental neglect based on the condition of the family residence at the time of the domestic incident against both respondent and Rogers. Respondent was indicated for substantial risk of harm to all six of the minor children. DCFS indicated respondent because of the domestic battery incident in the home, as well as the fact the children were involved in the incident. During his investigation, Foley learned Rogers and her minor children were not supposed to be in the home. Respondent had agreed with the previous caseworker Rogers and her children would not be living in the home, and he discovered they all had been living in the home. The home was not large enough to house everyone, and they were not supposed to be there together.

¶ 13 Foley met with respondent on March 27, 2017, at the family residence. One of Rogers's minor children was present in the home. Respondent admitted some the other children of Rogers had been living in the home, but their father had picked them up. When asked whether Rogers was living there, respondent stated "she wasn't necessarily living there but that she did

come there.” Additionally, during the meeting, respondent acknowledged the children were present for the altercation and the home was torn up during the incident. One of Rogers’s children, who was picked up by his or her father, verified some of the children were physically fighting with each other during the incident. Foley could not recall any information about prior incidents of domestic violence involving respondent.

¶ 14 Last, Sutton testified she had started her job eight months ago and had been involved in respondent’s children’s case since October 2016 when Catholic Charities received the case. At first, she attended visits with her supervisor and was involved in the planning process for the case. After her training, Sutton took responsibility for this case in February 2017. The service plan for the family assigned respondent the tasks of cooperation, parenting, and school attendance. Cooperation required respondent to meet with the caseworker on a weekly basis, which could be reduced to twice a month. Respondent also had to sign all releases and inform the caseworker within 24 hours of any household composition changes, as well as any change in address or telephone number. For the first 45 days, a caseworker had to be in the home once a week and then it could be reduced to twice a month. Sutton believed respondent was also required to keep her informed of any legal charges she received. She learned from other sources respondent had been charged with two ordinance violations. When Sutton asked respondent about the charges, she responded it was none of Sutton’s business and did not affect her parenting. Sutton tried to explain it did affect her parenting but did not feel she was successful. According to Sutton, respondent’s cooperation was declining.

¶ 15 Additionally, Sutton testified she tried to visit the home twice a month but was unable to do so because respondent would not allow her to enter. At the last scheduled visit, Sutton arrived at the home, and respondent greeted her at the door and said she was canceling the

visit. Respondent refused to let her into the home and see the children. On at least three occasions, respondent refused to allow Sutton to enter the home. Sutton attempted visits on February 8 and 15, and a babysitter answered the door and refused to allow her to enter.

¶ 16 On March 15, 2017, Sutton rated the family's initial service plan. As to having the children attend school every day, she found respondent made satisfactory progress but intervention was still needed. As to contacting the school when a child cannot attend due to illness or emergency and participating in parent-teacher conferences, Sutton again found satisfactory progress but maintain intervention. Respondent admitted she did not call the school every time the children were absent. Sutton rated respondent satisfactory and discontinued intervention for respondent's work with an Addus Homemaker. Regarding the requirement of meeting with a caseworker once a week, Sutton rated respondent's progress as satisfactory but maintain intervention. However, Sutton noted respondent met with her at least twice a month but had rescheduled visits several times or canceled appointments when the caseworker had arrived at the home. Additionally, respondent's telephone had been disconnected from February 8 to 14, 2017, and she did not report that to Sutton. On March 21, 2017, Sutton found the children could be maintained safely in the home. The March 25, 2017, domestic violence incident changed her assessment. After the incident, she believed it was in the minor children's best interests to be removed from the home.

¶ 17 At the conclusion of the hearing, the circuit court found the State had proved by a preponderance of the evidence the remaining allegations in the March 2017 wardship petitions and the petition to revoke supervision.

¶ 18 On September 18, 2017, the circuit court held the dispositional hearing, at which the only evidence was the dispositional report. After hearing the parties' arguments, the circuit

court found all six children should be made wards of the court and their custody and guardianship should be placed with DCFS. The court also found it was in the minor children's best interests to suspend respondent's visitation with the minor children until she engaged in services. That same day, the court entered a written order consistent with the aforementioned findings and also found respondent was unfit to have custody of the minor children.

¶ 19 On September 22, 2017, respondent filed timely notices 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 her appeals 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"). This court docketed N.C.P.'s case as case No. 4-17-0710, N.R.P's case as case No. 4-17-0711, N.H.'s case as case No. 4-17-0712, N.A.H.'s case as case No. 4-17-0713, Nay. H.'s case as case No. 4-17-0714, and Nas. H.'s case as case No. 4-17-0715. In December 2017, this court granted respondent's motion to consolidate the six appeals.

¶ 20

II. ANALYSIS

¶ 21

A. Neglect Finding

¶ 22 Respondent first challenges the circuit court's finding the three youngest children neglected. 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 children's best interests. *A.P.*, 2012 IL 113875, ¶ 18.

¶ 23 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. 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. 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.

¶ 24 Here, respondent challenges 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. 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. "A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident." *A.P.*, 2012 IL 113875, ¶ 17.

¶ 25 In this case, the circuit court found the minor children were neglected under section 2-3 (705 ILCS 405/2-3 (West 2016)) without specifying under what subsection. We

agree with the State the specific section is 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.

¶ 26 Respondent suggests the one incident of domestic violence between her and Rogers was insufficient to establish an injurious environment. In support of her argument, she cites *In re S.S.*, 313 Ill. App. 3d 121, 130, 728 N.E.2d 1165, 1172 (2000), where the Second District found the State’s evidence of one documented domestic-violence incident five months before the adjudicatory hearing was insufficient to establish neglect. The reviewing court noted the minor was not present during the dispute and had never witnessed domestic violence between the respondent parents. *S.S.*, 313 Ill. App. 3d at 130, 728 N.E.2d at 1172. That incident had

involved a dispute between the respondent parents about the possession of a car and the respondent father had pulled the respondent mother out of the car. *S.S.*, 313 Ill. App. 3d at 130, 728 N.E.2d at 1172. Additionally, the court noted the respondent parents had attended counseling following the domestic violence incident and no new incidents occurred. *S.S.*, 313 Ill. App. 3d at 130, 728 N.E.2d at 1172. The respondent parents also did not live together and did not intend to reunite. *S.S.*, 313 Ill. App. 3d at 130, 728 N.E.2d at 1172.

¶ 27 Unlike in *S.S.*, the domestic-violence incident in this case took place when the minor children were present in the home. When Officer Yates entered respondent's home, she explained the scene was "complete chaos" with the adults arguing, while two children engaged in play fighting and three children were jumping on the officer. Later, the two oldest children described Rogers's physical attack of respondent to Officer Yates. In addition to the minor children's presence during the dispute, respondent had previously agreed with the caseworker that Rogers and Rogers's minor children would not be living in the home because the home was not big enough for all of them. Officer Yates testified respondent described Rogers as her "live-in girlfriend." Moreover, the altercation was not a brief incident. The police had come to the home earlier due to a verbal dispute between respondent and Rogers. Respondent and Rogers had agreed respondent would stay in the front room and Rogers would stay in the back room. Respondent told Officer Yates that, after the first officers left, Rogers broke the hinges off the door, broke a television, and poured water on a laptop computer. Rogers's physical attack of respondent resulted in visible injuries to respondent's face. After Rogers physically attacked respondent, respondent ran outside. When she returned inside, respondent locked the door, and Rogers broke into the home through a window. Rogers and respondent were still engaged in a verbal dispute when the police arrived. When Foley investigated the incident the next day, one

of Rogers's children was still present in the home.

¶ 28 On these facts, respondent breached her parental duty to ensure a safe and nurturing shelter for her minor children by having Rogers and her children live in the home in violation of her agreement with the caseworker, especially after the police had come to the home the first time. Moreover, during the lengthy domestic-violence incident, respondent did not remove the minor children from the environment. She continued to engage Rogers in a verbal dispute. Additionally, the evidence did not indicate her relationship with Rogers was over, as one of her children was still present in the home after the incident. We note respondent's satisfactory rating for providing for the children's safety and well-being was given before the domestic violence incident. Accordingly, we find the circuit court's neglect finding was not against the manifest weight of the evidence.

¶ 29 B. Revocation of Supervision

¶ 30 Respondent also challenges the revocation of her continuance under supervision as to the three oldest minor children.

¶ 31 Section 2-20(5) of the Juvenile Court Act (705 ILCS 405/2-20(5) (West 2016)) provides, in pertinent part, the following: "If a petition is filed charging a violation of a condition of the continuance under supervision, the court shall conduct a hearing. If the court finds that such condition of supervision has not been fulfilled the court may proceed to findings and adjudication and disposition." With a motion to terminate supervision in juvenile and criminal cases, the State has the burden of showing a violation of supervision by a preponderance of the evidence. *In re Terry H.*, 2011 IL App (2d) 090909, ¶ 14, 952 N.E.2d 159 (citing *People v. McGuire*, 216 Ill. App. 3d 705, 709, 576 N.E.2d 391, 393 (1991)); 730 ILCS 5/5-6-4(c) (West 2016). "A proposition is proved by a preponderance of the evidence when the proposition is

more probably true than not true.” *Terry H.*, 2011 IL App (2d) 090909, ¶ 14. A reviewing court will not disturb a circuit court’s revocation of supervision unless it is against the manifest weight of the evidence. *Terry H.*, 2011 IL App (2d) 090909, ¶ 14 (citing *McGuire*, 216 Ill. App. 3d at 709, 576 N.E.2d at 393). “ ‘A finding is against the manifest weight of the evidence only if the opposite result is clearly evident.’ ” *Terry H.*, 2011 IL App (2d) 090909, ¶ 14 (quoting *People v. Love*, 404 Ill. App. 3d 784, 787, 937 N.E.2d 752, 755 (2010)). We will apply the aforementioned standards in this case.

¶ 32 One of the conditions of respondent’s supervision was to cooperate with DCFS. As previously discussed, respondent allowed Rogers and her minor children to live with her after agreeing with her caseworker Rogers would not live there. Respondent was also to keep all appointments with DCFS and meet with the caseworker on a scheduled and unscheduled basis. Sutton testified that, on at least three occasions, respondent would not allow her to enter respondent’s home. In March 2017, Sutton rated respondent unsatisfactory on the task of “[a]grees to keep all appointments with DCFS and meet with caseworker on a scheduled and unscheduled basis.” Moreover, respondent was to notify DCFS all changes in address, phone number, employment, and household composition within 24 hours. Sutton also rated respondent unsatisfactory on that requirement because respondent did not report a new telephone number in a timely fashion. While Sutton rated respondent satisfactory on the task of “[a]grees to meet with the DCFS caseworker once per week or more as necessary,” Sutton noted respondent met with her at least twice a month but had rescheduled visits several times and canceled appointments when the caseworker arrived at respondent’s home. Thus, the State’s evidence was sufficient to prove by a preponderance of the evidence respondent failed to cooperate with DCFS. Under section 2-20(5) of the Juvenile Court Act (705 ILCS 405/2-20(5) (West 2016)),

respondent's failure to comply with just one of the conditions of her supervision is sufficient for the court to revoke the continuance under supervision. Accordingly, we find the circuit court's revocation of respondent's supervision was not against the manifest weight of the evidence.

¶ 33

III. CONCLUSION

¶ 34

For the reasons stated, we affirm the Adams County circuit court's judgment.

¶ 35

Affirmed.