

NOTICE

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FILED
March 26, 2018
Carla Bender
4th District Appellate
Court, IL

2018 IL App (4th) 170821-U

No. 4-17-0821

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

<i>In re</i> H.L., a Minor)	Appeal from
)	Circuit Court of
(The People of the State of Illinois,)	Vermilion County
Petitioner-Appellee,)	No. 17JA54
v.)	
Danielle Russian,)	Honorable
Respondent-Appellant).)	Thomas M. O’Shaughnessy,
)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Presiding Justice Harris and Justice Steigmann concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed, concluding the trial court’s neglect finding was not against the manifest weight of the evidence.

¶ 2 Respondent mother, Danielle Russian, appeals from the trial court’s order finding her son, H.L. (born March 11, 2016), to be a neglected minor as defined by section 2-3(1)(b) of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/2-3(1)(b) (West 2016)). On appeal, respondent argues the court’s neglect finding is against the manifest weight of the evidence. We disagree and affirm.

¶ 3 I. BACKGROUND

¶ 4 A. State’s Petition and First Shelter-Care Hearing

¶ 5 On July 26, 2017, the State filed a three-count petition for adjudication of

wardship, alleging H.L. was a neglected minor as defined by sections 2-3(1)(b) and 2-3(1)(a) of the Act (705 ILCS 405/2-3(1)(b), 2-3(1)(a) (West 2016)). In relevant part, count I of the petition alleged H.L. was a neglected minor because he was subject to an injurious environment due to respondent's substance abuse. 705 ILCS 5/2-3(1)(b) (West 2016).

¶ 6 That same day, the trial court held a shelter-care hearing. Based on the evidence presented, the court found probable cause existed for the filing of the petition due to respondent's substance abuse. However, the court found the State failed to show an immediate and urgent necessity existed to remove H.L. from respondent's care. That is, the court found the State had failed to "tie[] [respondent's substance abuse] into the actual care or welfare of the child."

¶ 7 **B. Adjudicatory Hearing**

¶ 8 In August 2017, the trial court held an adjudicatory hearing. The State elicited testimony from (1) Officer Michael Stephens, and (2) Department of Children and Family Services (DCFS) investigator Sarah Sieberns. The following is a summary of the evidence presented as it relates to count I of the State's petition.

¶ 9 Officer Stephens testified, on November 28, 2016, at approximately 1:36 a.m., he was dispatched to a residence, where, upon arriving, he heard loud banging and screaming and observed the door to the residence was open. He entered the residence and found respondent in a bedroom closet, yelling and banging on the wall. Officer Stephens directed respondent to exit the closet. After respondent did so, Officer Stephens observed H.L. and a clear liquid on the floor of the closet. Respondent asked Officer Stephens if he could see the other people in the closet and indicated "a line of people [were] outside her residence the other day." Officer Stephens asked respondent if she could see and hear things that other people could not, to which respondent

indicated she could. Officer Stephens testified respondent appeared to be under the influence of a drug. She was breathing rapidly, talking quickly, contorting her body in awkward ways, flailing her arms, having difficulty walking, and struggling with answering questions. Officer Stephens asked respondent if she had taken any drugs, to which respondent indicated she had “shot up ice.” Officer Stephens testified “ice” referred to methamphetamine. Officer Stephens observed fresh bruises and needle marks on respondent’s arms and feet. Respondent explained the marks occurred after she “shot up crystal meth.” Respondent was involuntarily admitted to the hospital, and H.L. went into his grandmother’s care. On cross-examination, Officer Stephens acknowledged H.L. appeared to be in “good condition.”

¶ 10 Sieberns testified respondent was required to complete random drug screens and engage in services as part of an open intact case. Between February 1, 2017, and July 25, 2017, respondent failed to complete 17 of 25 drug screens. Respondent also failed to engage in services and was discharged from substance-abuse treatment. On July 21, 2017, DCFS received a hotline call concerning respondent’s drug use. On July 24, 2017, Sieberns visited with respondent, who appeared “very fidgety” and “uneasy.” Respondent stated H.L. was with his grandmother. Respondent admitted using marijuana and cocaine a few weeks prior. Respondent completed a drug screen that same day, which tested positive for methamphetamine.

¶ 11 Based on the evidence presented, the trial court found H.L. was a neglected minor as alleged in count I of the State’s petition. Specifically, the court found H.L. was subject to an injurious environment based on the evidence of respondent’s substance abuse while H.L. was in her immediate possession, which led respondent to hallucinate and hear voices and then be hospitalized.

¶ 12 C. Second Shelter-Care Hearing

¶ 13 In September 2017, the trial court held a second shelter-care hearing. Based on evidence showing respondent's continued drug use in H.L.'s presence and her refusal to engage in services, the court found an immediate and urgent necessity existed to remove H.L. from respondent's care. The court placed temporary custody with DCFS.

¶ 14 D. Dispositional Hearing

¶ 15 In October 2017, the trial court held a dispositional hearing. Based on the evidence presented, the court made H.L. a ward of the court, granted custody and guardianship to DCFS, and set a permanency goal of return home in 12 months.

¶ 16 This appeal followed.

¶ 17 II. ANALYSIS

¶ 18 On appeal, respondent argues the trial court's neglect finding is against the manifest weight of the evidence. The State disagrees.

¶ 19 The Act (705 ILCS 405/1-1 to 7-1 (West 2016)) provides a two-step process to determine whether a minor should be removed from his or her parents' custody and made a ward of the court. *In re A.P.*, 2012 IL 113875, ¶ 18, 981 N.E.2d 336. The first step requires the trial court to conduct an adjudicatory hearing to determine whether a minor is abused, neglected, or dependent. *Id.* ¶ 19. If the court finds the minor to be abused, neglected, or dependent, it moves to the second step and conducts a dispositional hearing to determine "whether it is consistent with the health, safety[,] and best interests of the minor and the public that the minor be made a ward of the court." *Id.* ¶ 21.

¶ 20 At the adjudicatory hearing, the State has the burden to prove the allegations of

abuse, neglect, or dependency by a preponderance of the evidence. *In re Arthur H.*, 212 Ill. 2d 441, 463-64, 819 N.E.2d 734, 747 (2004). That is, the State must prove the allegations are more probably true than not. *Id.* at 464.

¶ 21 On review, a trial court's adjudicatory finding will not be reversed unless it is against the manifest weight of the evidence. *A.P.* at ¶ 17. A court's finding is against the manifest weight of the evidence where the opposite conclusion is clearly evident or where its finding is unreasonable, arbitrary, or not based on the evidence presented. *Best v. Best*, 223 Ill. 2d 342, 350, 860 N.E.2d 240, 245 (2006).

¶ 22 A "neglected minor" includes "any minor under 18 years of age whose environment is injurious to his or her welfare." 705 ILCS 405/2-3(1)(b) (West 2016). "Neglect" is generally defined as the failure to exercise the care circumstances justly demand, which includes both willful and unintentional disregard of a parental duty. *A.P.*, 2012 IL 113875, ¶ 22. Similarly, the term "injurious environment" has been recognized as an "amorphous concept that cannot be defined with particularity," but includes the breach of a parent's duty to ensure a safe and nurturing shelter for his or her child. *Id.*

¶ 23 At the adjudicatory hearing, Officer Stephens described an incident where respondent was found to be under the influence of methamphetamine while caring for H.L. On that occasion, (1) the door to the residence was open in the early morning hours, (2) respondent was hallucinating and yelling and banging on the walls inside a closet, (3) Eight-month-old H.L. was found on the floor of the closet next to a clear liquid, and (4) respondent was involuntarily admitted to the hospital. Sieberns also generally described respondent's substance abuse history and her failure to complete substance-abuse services.

