2018 IL App (4th) 170850-U

NO. 4-17-0850

FILED
April 16, 2018
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re W.C., a Minor	)	Appeal from the
	)	McLean County
	)	Circuit Court
(The People of the State of Illinois,	)	No. 17JA6
Petitioner-Appellee,	)	
v.	)	Honorable
Kaitlynn Lovell,	)	Kevin P. Fitzgerald,
Respondent-Appellant).	)	Judge Presiding.

PRESIDING JUSTICE HARRIS delivered the judgment of the court.
Justices Knecht and DeArmond concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's finding that respondent's child was an abused minor was not against the manifest weight of the evidence.

¶ 2 In February 2017, the State filed a petition for adjudication of wardship with respect to W.C. (born February 7, 2017), alleging he was a neglected minor based on respondent Kaitlynn Lovell's concurrent juvenile court involvement regarding her other minor child. In June 2017, the State filed a supplemental petition for adjudication of wardship, alleging W.C. was an abused minor on the basis that he sustained two fractures to his left arm by other than accidental means. In July 2017, the trial court adjudicated W.C. a neglected minor based on respondent's prior juvenile court involvement. In September 2017, the court made W.C. a ward of the court and placed guardianship and custody with the Department of Children and Family Services

(DCFS).

¶ 3 In October 2017, the trial court entered a second adjudicatory order finding that W.C. was an abused minor as alleged in the State's supplemental petition. In November 2017, it entered a supplemental dispositional order, stating that its previous dispositional order "remain[ed] in full force and effect." Respondent appeals, arguing the court's finding of abuse was against the manifest weight of the evidence. We affirm.

I. BACKGROUND

¶ 4 Respondent and David Cooper are the parents of W.C. The record reflects that respondent is also the mother of L.L., who was adjudicated abused by respondent in case No. 16-JA-55. L.L. is not the subject of this appeal, nor is Cooper, who surrendered his parental rights to W.C. during the underlying proceedings. Thus, we address the issues only as they relate to respondent and W.C.

¶ 5 In February 2017, the State filed a petition for adjudication of wardship alleging W.C. was a "neglected" minor as that term is defined in the Juvenile Court Act of 1987 (Act) (705 ILCS 405/2-3 (West 2016)). In support of the allegations of neglect, the State alleged, in pertinent part, as follows:

> "A. The minor [W.C.], who is a newly born infant, is residing in an environment injurious to his welfare if in the care of respondent mother in that she has concurrent juvenile court involvement as evidenced by McLean County Illinois case number 16-JA-55. In that case, pursuant to respondent mother's admission, the prior born minor was adjudicated to be abused. The abuse was inflicted by respondent mother. Respondent mother remains unfit and has not completed all

services. This creates a risk of harm to the minor.

B. The minor [W.C.], who is under the age of 18 years, is living in an environment injurious to his welfare if in the care of respondent mother in that she has unresolved issues of domestic violence and/or anger management. This creates a risk of harm to the minor."

¶ 6 In June 2017, the State filed a supplemental petition for adjudication of wardship alleging W.C. was "abused" as that term is defined in the Act (705 ILCS 405/2-3 (West 2016)). Specifically, the State alleged that, when W.C. was four weeks old, respondent, or someone to whom she entrusted W.C.'s care, inflicted physical injuries by other than accidental means where W.C. sustained a left humerus fracture and a left ulnar shaft fracture.

¶ 7 In July 2017, the trial court conducted an adjudicatory hearing on the State's original petition for adjudication of wardship, alleging W.C. was a neglected minor. Following the presentation of evidence, the parties presented argument as to the State's neglect allegations and the court found those allegations were proved by a preponderance of the evidence. The court then set the matter for a hearing on the State's supplemental petition for adjudication of wardship, alleging W.C. was abused. The same day, the court entered a written order adjudicating W.C. neglected. It based its finding on "[respondent's] JA-court involvement in [No.] 16-JA-55 as to prior-born minor [L.L.]. In that case, [respondent] ha[d] not attained a fitness finding. She had not yet completed domestic violence treatment."

¶ 8 In September 2017, the trial court conducted a hearing in the case, noting the matter had been scheduled for both an adjudicatory hearing on the State's supplemental petition for adjudication of wardship and a dispositional hearing. Initially, the State requested a

continuance of the adjudicatory hearing because of delays with respect to DCFS's investigation report regarding W.C.'s left arm fractures. Respondent did not object and the court postponed the adjudicatory hearing on the abuse allegations. The court then inquired as to whether they should "go ahead with the dispositional" or "wait until we have the adjudicatory on the supplemental petition." In response, respondent's attorney stated as follows:

> "I didn't see any reason we couldn't go forward with the dispositional. The facts are the same. I'm not arguing that [respondent] is fit. She's unfit in [L.L.'s] case, and we already have findings of neglect. So I didn't think this was any reason to delay the dispositional hearing."

The trial court proceeded with the dispositional hearing, following which it found respondent unfit to care for, protect, train, educate, supervise, or discipline W.C., and that placement with respondent was contrary to W.C.'s health, safety, and best interest. The court made W.C. a ward of the court and placed custody and guardianship with DCFS.

¶ 9 In October 2017, the trial court conducted a hearing on the State's supplemental petition for adjudication of wardship. The State presented the testimony of Dr. Channing Petrak, the child abuse pediatric unit medical director of the Pediatric Resource Center at the University of Illinois College of Medicine in Peoria. She testified that she was board certified in general pediatrics and child-abuse pediatrics. Dr. Petrak testified that she reviewed W.C.'s medical records, including a "skeletal survey [that] showed the known oblique fracture of the left humerus" and a "fracture in the ulna."

¶ 10 Dr. Petrak explained that, according to W.C.'s medical records from the emergency department at St. Joseph's Hospital, an X-ray was taken at the emergency room on

March 1, 2017. However, the examining physician at the emergency room did not identify any fractures and diagnosed W.C. with a "nursemaid's elbow," which is, according to Dr. Petrak, "a dislocation of the radial head of the arm." Dr. Petrak further explained that W.C.'s other examining physicians subsequently identified a humerus fracture in the left arm, but not an ulna fracture. Dr. Petrak testified that the ulna fracture was possibly overlooked because the other treating physicians reviewed images of W.C.'s entire arm, not isolated bones. She stated that she reviewed more detailed X-rays of isolated bones. Dr. Petrak also explained that W.C.'s other physicians may have been concentrating on joints, not bones, because they suspected nursemaid's elbow.

¶ 11 Dr. Petrak further testified that W.C.'s injuries did not appear to be consistent with respondent's explanation that W.C.'s arm was caught in the strap of a car seat. It was Dr. Petrak's medical opinion that the injuries were caused by physical abuse. When asked whether another physician could have caused the fractures while providing medical treatment, Dr. Petrak responded, "we teach parents how to do [corrections] at home so they don't have to come to the emergency department *** [so] I would not say that another physician caused this injury." Dr. Petrak reiterated that the fractures were most likely caused by abuse given W.C.'s age and the presence of both fractures in one arm.

¶ 12 Respondent presented the testimony of Dr. Lucas Pogue. Dr. Pogue was W.C.'s pediatrician since his birth in February 2017. Dr. Pogue examined W.C. two nights after he was seen at the emergency room. Dr. Pogue testified that his medical records indicated that he diagnosed W.C. with "possible nursemaid's elbow" but he "could not rule out a fracture at that time." Dr. Pogue stated that he had never seen nursemaid's elbow in a child as young as W.C. He

explained that he attempted to correct W.C.'s injury with a procedure called "hyperpronation," which is done by turning the child's palm downward, gripping the forearm, and pronating the arm until a "pop" is heard. Dr. Pogue stated that he did not think he corrected the suspected nursemaid's elbow because he did not hear the "pop." He explained that he did not think the hyperpronation would have worsened the fracture.

¶ 13 Dr. Pogue testified that, within a reasonable degree of medical certainty, W.C.'s injury could have been caused by removing him from a car seat. He stated that respondent's version of events were "plausible." Dr. Pogue further stated that having a humerus fracture and an ulna fracture in a child of W.C.'s age "would raise [a] suspicion for abuse." Dr. Pogue explained that his medical records indicate that "it was more likely an accidental [injury] than [an] intentional injury." However, "there was some uncertainty in [his] mind" and he could not "conclusively rule out abuse."

¶ 14 Respondent also presented the testimony of Dr. Melissa Martinek, a pediatric orthopedic surgeon. She testified that she first saw W.C. on March 6, 2017. Dr. Martinek diagnosed W.C. with only a left humerus fracture. Dr. Martinek testified that a "fracture is the second sign of non-accidental trauma *** with bruising being the first." She stated that she thought respondent's version of events regarding the mechanism of injury was "plausible." However, she could not say within a reasonable degree of medical certainty that respondent caused the humerus fracture by pulling W.C. out of a car seat because Dr. Martinek "didn't see it happen." When asked whether, in her training and experience, she had ever heard of a fracture occurring by removing a child from a car seat, Dr. Martinek responded, "I have not, but my partner has."

¶ 15 Tamika Thompson, an investigator with DCFS, testified that she received a hotline call regarding W.C.'s injuries on March 5, 2017. During Thompson's investigation, respondent provided medical documentation from W.C.'s treating physicians. Respondent also demonstrated how W.C. was taken out of the car seat on the day of the alleged incident. Thompson testified that respondent was "really concerned about *** getting [W.C.] care and making sure that he had been *** treated."

¶ 16 Thompson testified that she referred W.C. to Dr. Petrak for a child abuse examination. She testified that Dr. Petrak wrote a report concluding that W.C.'s injuries were caused by abuse. Thompson testified that she "had some questions *** regard[ing] *** Dr. Petrak's report." She explained that Dr. Petrak's report was "unclear [as to] the mechanism [of injury] and *** who caused the injury." Thompson testified that she ultimately recommended that the investigation be unfounded because W.C.'s "treating pediatric specialist *** said that *** [respondent's] version of events was very plausible" and "that any of the other doctors who were treating the misdiagnosed injury could have caused the *** one break ***." Thompson explained that W.C.'s case went from being unfounded to indicated because DCFS "policy is that the treating physician at [the Pediatric Resource Center], if they make a recommendation [of] abuse, *** it's abuse."

¶ 17 Following the adjudicatory hearing on the State's supplemental petition, the court entered a written order adjudicating W.C. abused, finding as follows:

> "[W.C.] was determined[,] by Dr. Petrak of [the] Pediatric Resource Center[,] to have an oblique fracture to [the] humerus and an oblique fracture to [the] ulna. The explanation provided by [respondent] [that W.C. was injured when

respondent removed W.C. from a car seat] was determined to be unlikely given the injuries. Additionally, the injury was determined to be caused by child physical abuse and inflicted."

¶ 18 In November 2017, the trial court entered a "first supplemental dispositional order," stating that all findings and rulings contained in its September 2017 dispositional order "remain[ed] in full force and effect." Respondent subsequently filed her notice of appeal.

¶ 19 II. ANALYSIS

¶ 20 Respondent appeals from the trial court's November 2017 dispositional order, arguing that the trial court's finding of abuse was against the manifest weight of the evidence. We disagree.

¶ 21 The Act provides a two-step process that the trial court must use to decide whether a minor child should be made a ward of the court. *In re A.P.*, 2012 IL 113875, ¶ 18, 981 N.E.2d 336. The first step is the adjudicatory hearing, during which the court considers whether the minor child is abused, neglected, or dependent. 705 ILCS 405/2-18(1) (West 2016). The State has the burden of proving its allegations of abuse, neglect, or dependency by a preponderance of the evidence. *A.P.*, 2012 IL 113875, ¶ 17. The State must prove only a single ground of neglect, abuse, or dependency to move the wardship proceedings forward. *In re Faith B.*, 216 Ill. 2d 1, 14, 832 N.E.2d 152, 159 (2005) ("Only a single ground for neglect need be proven, and thus when the circuit court has found a minor neglected on several grounds, we may affirm if any of the circuit court's bases of neglect may be upheld."). A trial court's finding of neglect, abuse, or dependency will not be reversed unless it is against the manifest weight of the evidence. *In re Arthur H.*, 212 Ill. 2d 441, 464, 819 N.E. 2d 734, 747 (2004). "A finding is

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

¶ 22 The second step in determining whether a minor child should be made a ward of the court is the dispositional hearing. *A.P.*, 2012 IL 113875, ¶ 21. "At the dispositional hearing, the trial court determines 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.* If the minor "is to be made a ward of the court, the court shall determine the proper disposition best serving the health, safety and interests of the minor and the public." 705 ILCS 405/2-22(1) (West 2016). The court may place custody and guardianship of the minor with DCFS upon a determination that "the parents *** of a minor adjudged a ward of the court are unfit or are unable, for some reason other than financial circumstances alone, to care for, protect, train or discipline the minor or are unwilling to do so, and that the health, safety, and best interest of the minor will be jeopardized if the minor remains in the custody of his or her parents." 705 ILCS 405/2-27 (West 2016). A trial court's determination that a parent is unfit "will be reversed if the findings of fact are against the manifest weight of the evidence or the trial court committed an abuse of discretion by selecting an inappropriate dispositional order." *In re Ta.A.*, 384 Ill. App. 3d 303, 307, 891 N.E.2d 1034, 1038 (2008).

¶ 23 Here, respondent challenges the trial court's finding that W.C. was an abused minor. Specifically, respondent contends that her explanation regarding W.C.'s injuries to his arm was "plausible" and she "did not cause physical abuse to W.C."

¶ 24 As an initial matter, we note that respondent only challenges the trial court's October 2017 finding of abuse. As discussed, however, the trial court previously found that W.C.

was a neglected minor and, in September 2017, entered a dispositional order making him a ward of the court and placing him in the custody and guardianship of DCFS. Because the State is only required to prove a single ground for neglect, abuse, *or* dependency, the neglect finding, alone, was sufficient to move the wardship proceedings to the dispositional stage. Further, as respondent did not timely appeal the court's September 2017 dispositional order, both the court's finding of neglect and related disposition are conclusive. In other words, even if we were to agree with respondent's contention that the court's subsequent abuse finding was against the manifest weight of the evidence, the unchallenged neglect finding and September 2017 dispositional order would remain in effect.

¶ 25 Although our resolution of respondent's appeal may have no practical effect on the underlying wardship proceedings, we nonetheless address the merits of her claim regarding the trial court's finding of abuse. See *A.P.*, 2012 IL 113875, ¶ 11, fn 1 (noting that the respondent's appeal of a neglect finding was not moot, even where it did not result in an adjudication of wardship, because such a finding could be used as evidence against the respondent at a later time). Because the court's finding of abuse could have collateral consequences, such as being used as evidence in a subsequent proceeding under the Act, we address the merits of respondent's argument that the finding of abuse was against the manifest weight of the evidence.

¶ 26 Here, the trial court's abuse finding was not against the manifest weight of the evidence. Dr. Petrak, the only expert at the hearing who was board certified in child-abuse pediatrics, testified that it was her medical opinion that W.C.'s injuries were caused by physical abuse. Dr. Petrak noted W.C.'s young age and the presence of both fractures in one arm. While

W.C.'s other treating physicians failed to identify the ulna fracture, Dr. Petrak identified both the humerus fracture and the ulna fracture. Dr. Petrak explained that the other physicians reviewed X-rays of W.C.'s entire left arm, not isolated bones. Notably, Dr. Petrak based her diagnosis on more detailed X-rays taken of W.C.'s isolated bones. Dr. Petrak concluded that the two fractures did not appear to be consistent with respondent's version of the injury-causing event involving the car seat but instead were likely the result of physical abuse.

¶ 27 Respondent presented the testimony of Dr. Pogue, W.C.'s pediatrician since birth. Although Dr. Pogue testified that, within a reasonable degree of medical certainty, W.C.'s injury could have been caused by removing him from a car seat, and he found respondent's version of events "plausible," Dr. Pogue also stated that "there was some uncertainty in [his] mind" regarding abuse and "that's why [he] wrote [in his medical records that he could not] conclusively rule out abuse." Respondent also presented the testimony of pediatric orthopedic surgeon, Dr. Martinek, who testified that, although respondent's version of events were "plausible," she could not say within a reasonable degree of medical certainty that W.C.'s injuries were caused by pulling W.C. from a car seat.

¶ 28 Thus, one expert who testified for the State concluded that W.C.'s injuries were caused by physical abuse. Two experts testified for respondent, both of whom found respondent's version of events only "plausible," and neither could conclusively rule out abuse. In light of this evidence, we cannot say that the trial court's finding of abuse was against the manifest weight of the evidence.

¶ 29 III. CONCLUSION

¶ 30 For the reasons stated, we affirm the trial court's judgment.

¶ 31 Affirmed.