2018 IL App (4th) 180036-U

NOS. 4-18-0036, 4-18-0092 cons.

FILED
June 15, 2018
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re D.R., a Minor (The People of the State of Illinois, Petitioner-Appellee, v. (No. 4-18-0036) Ashley Blasdell, Respondent-Appellant). *In re* D.R., a Minor (The People of the State of Illinois, Petitioner-Appellee, v. (No. 4-18-0092) Dominic Rabbers, Respondent-Appellant).	)	Appeal from the Circuit Court of Champaign County No. 17JA41 Honorable Brett N. Olmstead, Judge Presiding.

JUSTICE CAVANAGH delivered the judgment of the court.
Justices Steigmann and Holder White concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, concluding the trial court's order adjudicating the minor neglected and making him a ward of the court was not against the manifest weight of the evidence.

¶ 2 Respondents, Ashley Blasdell and Dominic Rabbers, are the parents of the minor, D.R. They appeal separately from the trial court's dispositional order adjudging D.R. a ward of the court and placing guardianship and custody with the Department of Children and Family Services (DCFS). They each contend the trial court erred by finding D.R. to be a neglected minor. We consolidated the appeals and affirm the court's judgment.

¶ 3 I. BACKGROUND

¶ 4 D.R. was born to respondent mother and respondent father on August 8, 2015. On July 20, 2017, Carle Foundation Hospital (Carle) staff called DCFS to advise that respondents had left the hospital with D.R. against medical advice. D.R. was suffering from a serious seizure disorder. The DCFS investigator found respondents at their home and was able to convince them to return D.R. to the hospital. Because the treating physician was of the opinion that respondents were not capable of caring for D.R.'s medical needs, on July 27, 2017, DCFS took him into protective custody.

¶ 5 On July 28, 2017, the State filed a petition for adjudication of neglect, alleging D.R. was a neglected minor because neither respondent provided proper medical care for him. See 705 ILCS 405/2-3(1)(a) (West 2016). The same day, the trial court conducted a shelter-care hearing. The court entered an order placing temporary custody of D.R. with DCFS but awarded respondents supervised visitation.

¶ 6 On November 16, 2017, the trial court conducted an adjudicatory hearing. Dr. Elizabeth E. Gilles, a child neurologist, testified she first saw D.R. at Carle on June 14, 2017, for his seizure disorder. Respondent mother had called in May 2017 expressing her concern about the number and severity of seizures D.R. had been experiencing. Dr. Gilles was concerned that D.R.'s medication needed to be changed so she scheduled an appointment to see him. At the June 14, 2017, appointment, D.R. appeared "extremely dirty" and "very smelly." Dr. Gilles discovered that respondent mother had been giving D.R. less than half of the recommended dosage of his new medication. Dr. Gilles asked the hospital social worker to call respondents every week to ensure they were providing D.R. with the proper medication regime. Gilles said another physician increased the dose and explained they "really needed some laboratory right

away." The laboratory tests were completed on July 11, 2017, and showed a toxic range of the medication, "not [the level] that should have been able to be obtained at the dose he was on."

¶ 7 Dr. Gilles said she scheduled an appointment for D.R. for July 20, 2017. Based on her observation and "given there was still quite a bit of confusion with what the parents were saying, [she] felt for his safety and to keep the workup going because[,] at this point[,] [respondents] refused workup that [staff] all felt was necessary, that it was important to admit him." Gilles said respondent mother "couldn't always be sure of what she was giving" D.R.

¶ 8 Dr. Gilles testified respondents were not cooperative with her recommendation to admit D.R. Respondents were "very mad" and "were yelling." The doctor said respondents "were screaming in the hallway upsetting other patients, and they stormed out to the outside saying that they would never come back to Carle[.]" They took D.R. and left the facility. Dr. Gilles called DCFS. The investigator assigned to the case went to respondents' home and requested they return D.R. to Carle. They did so, and D.R. was admitted.

¶ 9 The next day when Dr. Gilles visited D.R., respondents were angry and rude. They refused to speak with her. Dr. Gilles made the decision to transfer D.R. to OSF Healthcare (OSF St. Francis Hospital) in Peoria. From D.R.'s recent laboratory results, Dr. Gilles discovered respondents had not been giving D.R. his prescribed medication.

¶ 10 On cross-examination, Dr. Gilles explained she was "very concerned that [D.R.] was being medically neglected" based upon respondents' failure to follow through with recommended critical testing, failure to dose the medication properly, and D.R.'s personal hygiene. In Dr. Gilles's opinion, respondent mother had severe, "obvious processing[,] and memory issues." In fact, the doctor was concerned that respondent mother was not competent to care for D.R. Dr. Gilles said from respondents' perspective, "[t]here never was a single concern

about [D.R.] It was about [respondent father] had to get to work and [respondent mother] wanted to show the house to someone, and it was never about [D.R. being] sick, we have to take care of his seizures." She said, in her opinion, D.R. was "not a priority" to respondents.

¶ 11 Jerald Feingold, investigator for DCFS, testified he was assigned to the case after the doctor called DCFS about respondents leaving the hospital with D.R. at a time when he "was in immediate danger and needed to [go] back to the hospital right away." Feingold went to respondents' home in Rantoul immediately. He spoke with respondent father, who advised "they had somewhere else to go." Feingold explained he would take protective custody of D.R. if they refused to return to the hospital. He said respondents agreed to return to Carle, so Feingold followed them to Urbana. However, respondents drove past Carle and pulled into the emergency room at Presence Covenant Medical Center. Respondent father told Feingold they preferred a Catholic hospital. Respondent mother exited the vehicle with D.R., explaining there had been "an incident in the van." The staff at Presence Covenant Medical Center explained they were not equipped to treat D.R. and made arrangements to transfer him to Carle. Respondents told Feingold they believed the treatment at Carle was causing D.R.'s seizures. However, respondent mother was unable to reiterate to Feingold the prescribed dosages or times the medication was to be given to D.R.

¶ 12 D.R. was admitted to Carle. Feingold spoke with Dr. Gilles; a doctor at OSF St. Francis Hospital in Peoria; and respondents before finding respondents "were indicated for the medical neglect." According to the "medical information," respondents were "not capable of caring for the medical needs of this child." Feingold recommended D.R. be taken into protective custody.

¶ 13 Feingold testified D.R. was admitted to Carle on July 20, 2017, but within a day or two, D.R. was transferred to OSF St. Francis Hospital in Peoria. There, respondents spent a significant amount of time with D.R. and were "fairly cooperative during his treatment." The State rested.

¶ 14 Respondent mother testified on her own behalf. She said she learned when D.R. was seven months old that he had a seizure disorder so she sought treatment. She said the doctors at Carle gave her medicine for it "but apparently it wasn't working." She administered the medication as directed but D.R. would "spit it out and react, that he wasn't himself, and he would spit his food out." The doctor recommended D.R. have an MRI (magnetic resonance imaging) scan but the hospital "kept rescheduling it." Respondent said D.R. was dirty at his appointment with Dr. Gilles because he had been playing outside and had no time for a bath. She also testified she had every intention of taking D.R. to OSF St. Francis Hospital for proper treatment after his August 9, 2017, appointment but "then [she didn't] know what happened after that." Respondent mother denied any confrontation with Dr. Gilles. Instead, she claimed, D.R. was afraid of the doctor and did not want her touching him.

¶ 15 Respondent mother rested and respondent father presented no evidence. After considering the parties' respective recommendations, the trial court summarized the testimonial and documentary evidence in the case and stated:

> "But nonetheless, the evidence that I've heard shows a very young boy who has very special needs, and he has two parents who have not properly cared for those special needs. So, I do find that it has been proved by a preponderance of the evidence that [D.R.] is neglected as alleged in [c]ount I."

¶ 16 On December 1, 2017, the trial court entered an adjudicatory order finding D.R. to be a neglected minor in that he suffered from a lack of support, education and/or remedial care. See 705 ILCS 405/2-3(1)(a) (West 2016). In its written order, the court noted its finding was based on the following facts:

> "[Respondents] did not administer [D.R.]'s necessary seizure medication with the consistency of dosage and timing required to maintain a therapeutic level in his system, endangering his health. Through their behavior and actions, both with treating professionals at Carle and OSF St. Francis, they demonstrated a lack of understanding of the importance of maintaining the required medication level, a lack of ability to remember and administer the medication with the consistency required, or both."

¶ 17 The trial court was presented with a dispositional report authored by the caseworker, Valerie Garver of Lutheran Social Services of Illinois, which was filed on December 21, 2017. The report indicated both respondents suffered from intellectual disabilities, which impacted their functioning and ability to safely parent D.R. However, the stated permanency goal was "[r]eturn home within 12 months." Prior to DCFS involvement, respondents lived together in an apartment with D.R. According to the caseworker, there was a "low risk for violence within [the] current relationship." After protective custody was taken, both respondents experienced symptoms of situational depression with D.R. not in the home. The caseworker noted respondents "appear to care [about] and love" D.R., with the "quality of the relationship between [D.R.] and his parents [described as] fair." Respondents "lack the understanding and knowledge of parenting."

¶ 18 Garver noted: "Overall, the parents appear confused and lack the understanding of [D.R.]'s overall needs including medical. It was documented that the medical opinion of OSF St. Francis Medical Center is that the parents *** are not able to meet the needs of [D.R.]. This was the second documented medical opinion regarding the parent's inability to meet [D.R.]'s needs." According to Garver, respondents were aware of D.R.'s seizure disorder but unaware of his severe developmental delays. Garver recommended both respondents participate in a psychological evaluations and individual psychotherapy.

¶ 19 Garver noted D.R. was placed in a traditional foster home in Urbana. He has a "close relationship" with his foster family and "has adjusted very well there." She said he has "improved greatly while there and his seizures have stopped." He visits with respondents once a week and he "appears to enjoy these visits." Garver recommended DCFS be granted custody and guardianship of D.R.

¶ 20 On January 4, 2018, the trial court conducted a dispositional hearing with no party presenting evidence. After considering the dispositional report and the parties' recommendations, where all parties agreed wardship was appropriate, the court noted as follows:

> "And in this case, stepping back and looking at the case as a whole, [respondents] are both experiencing some depressive symptoms that are related to the ongoing case and DCFS's involvement, and that's totally understandable. They've also fully engaged, from all information I have in the report, with the department, have started counseling, and they each have psychological examinations or each one has a psychological examination that's set up later this month to be done. And so they're both very cooperative and the signs are very good.

There is a serious problem here, and the problem is that [respondents] don't understand the nature of [D.R.]'s issues, and they're serious issues, and they don't understand how to deal with those in an appropriate fashion. One of [D.R.]'s issues has to do with epilepsy. He has frequent seizures and has to have medication, and that medication has to be consistently provided and has to be maintained at a certain level within his system. If the medication isn't given on time, isn't given in the proper dose, that's a serious problem. They—[respondents] haven't been able to get a handle on that and consistently maintain that level of medication.

Another problem is that [D.R.] is developmentally delayed and it covers -- the delay he's experiencing right now covers about just every aspect of functioning. It covers gross motor, fine motor, problem solving, personal social interaction, communication. It's all delayed for him. He's not where he ought to be, and [respondents] have difficulty wrapping their heads around that issue.

The last time that [DCFS] had spoken to them for the integrated assessment, they both continue to maintain that [D.R.] is fine, there's nothing wrong, he's okay, everything is fine. It's, it's not. And there is information out there, there are skills you can acquire, there are tools you can learn here so that you can effectively and safely parent this very young child who has special needs. But right now it's clear that [respondents] don't have that yet. They don't have what they need to do that. Because of that, [D.R.]'s physical safety and welfare is at risk. There's a danger to it. That's the very first factor in this statutory list of best interest factors.

* * *

I do find that it's in [D.R.]'s best interest and the best interest of the public that he be made a ward of the Court and be adjudged neglected. I find that [respondent mother] is unfit and unable for reasons other than financial circumstances alone to care for, protect, train or discipline [D.R.] and that [D.R.]'s health, safety and best interest would be jeopardized if he remained in her custody.

For the finding, I rely on what I've stated already. [Respondent mother] lacks the understanding and tools right now to realize the importance of the care that [D.R.] needs both for developmental progress and for managing his, his epilepsy, which I would note that since he has entered foster care and his medication has been stabilized, he doesn't have those seizures, but it requires constant, consistent effort to reach that point. It took a while after he entered foster care to reach that point.

I also find that [respondent father] is unfit and unable for reasons other than financial circumstances alone to care for, protect, train or discipline [D.R.], and that [D.R.]'s health, safety and best interest would be jeopardized if he remained in his custody. And I adopt the findings that I have already made in that regard as well. [Respondent father] has similar issues to work on to develop an understanding and the tools to be able to manage these very urgent critical needs that [D.R.] has.

Considering the health, safety and best interest of [D.R.], appropriate services aimed at preservation and family reunification have so far been

> unsuccessful in rectifying the conditions that have led to these findings of unfitness and inability to care for, protect, train or discipline [D.R.], and I do find that it's in the best interest of [D.R.] and the public that custody and guardianship be removed from both of his parents and placed with the DCFS. I am entering those findings and making those orders."

¶ 21 The trial court entered a written dispositional order, finding that (1) it is in the best interest of the minor that he be made a ward of the court, (2) the minor be adjudicated neglected, and (3) the respondents are unfit and unable for reasons other than financial circumstances alone, to care for, protect, train, or discipline the minor.

¶ 22 This appeal followed.

¶ 23 II. ANALYSIS

¶ 24 Respondents argue the trial court's finding that D.R. was a neglected minor was against the manifest weight of the evidence. Specifically, respondents claim the basis for the court's decision was respondents' reported failure to administer to D.R. the proper medication in the appropriate dosage amounts. According to the hospital staff, respondents were confused about, and incapable of, providing the proper administration of the medication, as they did not appreciate the importance of the same. However, respondents contend any confusion stemmed from the physicians' frequent changes in the prescription and did not result from respondents' medical neglect.

¶ 25 The State has the burden to prove allegations of neglect by a preponderance of the evidence. *In re M.D.H.*, 297 Ill. App. 3d 181, 190 (1998). On review, we will not reverse a trial court's finding of neglect unless the finding is against the manifest weight of the evidence. *Id.*

¶ 26 In *In re Z.R.*, 274 Ill. App. 3d 422, 427 (1995) (quoting *In re T.B.*, 215 Ill. App. 3d 1059, 1062 (1991)), this court wrote the following:

> "A finding of the trial court is found to be against the manifest weight of the evidence only if a review of the record 'clearly demonstrates' the opposite result was the proper one. [Citation.] We will not overturn the trial court's findings merely because we might have reached a different conclusion. We will not second-guess the trial court on the issue of credibility. The trial court is in the best position to determine the credibility of witnesses."

¶ 27 Pursuant to the Juvenile Court Act of 1987, a "neglected minor" is a child "under 18 years of age who is not receiving the proper or necessary support, education as required by law, or medical or other remedial care recognized under State law as necessary for a minor's well-being[.]" 705 ILCS 405/2-3(1)(a) (West 2016). "Neglect" is generally defined as the failure to exercise the care that circumstances justly demand and includes both unintentional and willful disregard of parental duties. *In re A.P.*, 2012 IL 113875, ¶ 22. Because "neglect" has no "fixed and measured meaning," it takes its content from the specific circumstances of each case. *Id.* That is, any case involving an adjudication of neglect and wardship must be decided on the basis of its own unique circumstances. *In re Arthur H.*, 212 Ill. 2d 441, 463 (2004).

¶ 28 The trial court's finding that D.R. was a neglected minor is not against the manifest weight of the evidence. The evidence presented at the adjudicatory hearing supports the court's finding. Dr. Gilles testified that, at the time of his admission to Carle, D.R. was suffering up to 20 seizures per day. These severe seizures could have been prevented with the proper administration of his prescribed medication. The doctor specifically wrote down the dosage amounts and the time the medicine was to be given. She explained to respondents the importance

of proper dosage, as misuse of the powerful medicine could have disastrous consequences. Despite these cautionary instructions, respondents failed to properly administer the medication, resulting in toxic levels of the medicine according to D.R.'s laboratory results.

¶ 29 Dr. Gilles and DCFS investigator Feingold testified that, in their opinion, respondents did not comprehend the importance or urgency of D.R.'s medical condition. They missed appointments, voluntary left the hospital against medical advice, indicated they had engagements that took priority over D.R.'s medical treatment, blamed the medical staff for D.R.'s condition, and generally lacked the capacity to understand D.R.'s medical status.

¶ 30 Given the circumstances of this case, as presented through testimony at the adjudicatory hearing, we find the State sufficiently proved respondents medically neglected D.R. The trial court determined respondents were not providing appropriate medical care for D.R. which resulted in his neglect. We cannot say the opposite conclusion to that finding is clearly evident. See *Arthur H.*, 212 Ill. 2d at 464 ("A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident."). Therefore, we affirm the court's adjudication of neglect.

¶ 31 III. CONCLUSION

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

¶ 33 Affirmed.