

NOTICE

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FILED

July 13, 2018
Carla Bender
4th District Appellate
Court, IL

2018 IL App (4th) 180166-U

NOS. 4-18-0166, 4-18-0167, 4-18-0168, 4-18-0169, 4-18-0170 cons.

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

<i>In re</i> T.B., a Minor	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Vermilion County
Petitioner-Appellee,	)	No. 17JA28
v. (No. 4-18-0166))	
Cassandra Venson,)	
Respondent-Appellant).)	
_____)	
<i>In re</i> Zan. L., a Minor	)	No. 17JA29
)	
(The People of the State of Illinois,)	
Petitioner-Appellee,)	
v. (No. 4-18-0167))	
Cassandra Venson,)	
Respondent-Appellant).)	
_____)	
<i>In re</i> Zar. L., a Minor	)	No. 17JA30
)	
(The People of the State of Illinois,)	
Petitioner-Appellee,)	
v. (No. 4-18-0168))	
Cassandra Venson,)	
Respondent-Appellant).)	
_____)	
<i>In re</i> K.L., a Minor	)	No. 17JA31
)	
(The People of the State of Illinois,)	
Petitioner-Appellee,)	
v. (No. 4-18-0169))	
Cassandra Venson,)	
Respondent-Appellant).)	
_____)	

<i>In re</i> T.S., a Minor	)	No. 17JA32
)	
(The People of the State of Illinois,)	
Petitioner-Appellee,)	
v. (No. 4-18-0170)	)	Honorable
Cassandra Venson,	)	Charles C. Hall,
Respondent-Appellant).	)	Judge Presiding.

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

ORDER

¶ 1 *Held:* The circuit court’s January 2018 neglect finding was not against the manifest weight of the evidence.

¶ 2 In May 2017, the State filed petitions for adjudication of wardship as to T.B. (born in December 2003), Zan. L. (born in February 2013), Zar. L. (born in December 2010), K.L (born in January 2010), and T.S. (born in June 2002), the minor children of respondent, Cassandra Venson, asserting the children were both neglected and abused. After a January 2018 adjudicatory hearing, the Vermilion County circuit court found the minor children were neglected and abused as alleged in the petition. At a March 2018 dispositional hearing, the court (1) found respondent unfit, unable, and unwilling to care for the minor children; (2) made the minor children wards of the court; and (3) placed the minor children’s custody and guardianship with the Department of Children and Family Services (DCFS).

¶ 3 Respondent appeals, contending the circuit court erred by finding the minor children were neglected.

¶ 4 I. BACKGROUND

¶ 5 T.B.’s father is Timothy Brown, and T.S.’s father is Marlon Brown. Keyvell Lewis is the father of the other three children, Zan. L., Zar. L., and K.L. None of the fathers are a party to this appeal. Lewis did file separate appeals, which this court docketed as Nos. 4-18-

0171, 4-18-0172, and 4-18-0173.

¶ 6 The State's May 2017 petitions alleged the minor children were neglected pursuant to section 2-3(1)(b) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(1)(b) (West 2016)), in that their environment was injurious to their welfare due to (1) respondent allowing her paramour Lewis, who had previously been indicated for sexual penetration and molestation against T.S., access to her minor children; and (2) substance use by respondent. The petitions further alleged the minor children were abused under section 2-3(2)(iii) of the Juvenile Court Act (705 ILCS 405/2-3(2)(iii) (West 2016)) based on Lewis's sex offense against T.S., who is the half-sibling of the other four minor children in this case.

¶ 7 On January 24, 2018, the circuit court held a joint adjudicatory hearing for all five minor children. The State presented the testimony of (1) Erin McNulty, emergency room nurse; (2) John Thompson, retired Danville police officer; (3) Dawn Hartshorn, Danville police officer; (4) Narciso Mendoza, DCFS child abuse and neglect investigator; (5) Danielle Lewallen, Danville police officer; and (6) Jocelyn Venson, respondent's cousin. The State also presented the following exhibits: (1) a recording of Hartshorn and Lewallen's interview of T.S.; (2) four photos of the bathroom of respondent's apartment on January 12, 2017; and (3) T.S.'s medical records from the emergency room on January 12, 2017. Respondent testified on her own behalf and presented a letter signed by her and T.S., in which T.S. supposedly admitted Lewis did not sexually assault her. We note the record on appeal contains no exhibits. Lewis did not present any evidence. The evidence relevant to the issues on appeal is set forth below.

¶ 8 McNulty testified that, around 4 a.m. on January 12, 2017, she was working in the emergency room when a patient came in with a complaint of a sexual assault. The patient was T.S., who was 14 years old at the time. T.S. identified the perpetrator as Lewis, whom she

referred to as her stepdad. T.S. explained she, Lewis, and her siblings had walked respondent to work that day. When they returned home, Lewis “informed her that she owed him sex because of the last time that she got him in trouble.” Lewis forced T.S. to perform oral sex and then had vaginal intercourse with her. He told T.S. to clean up with a pink and blue towel and said he would kill her and respondent if she told anyone. The incident happened around 9 a.m., and her siblings were at school at the time.

¶ 9 At around 1:20 a.m. on January 12, 2017, Thompson responded to a call at respondent’s residence for a female having trouble breathing. The female was T.S., who was being held up by respondent and a young man. Thompson observed respondent was extremely intoxicated. Respondent fell down two different times and needed assistance in getting in the ambulance to go to the hospital with T.S. Thompson could smell alcohol on her. Thompson then responded to the hospital at 2:10 a.m. as a result of the sexual assault complaint. T.S. told Thompson that Lewis assaulted her in the bathroom of their residence around 9:30 a.m. When Thompson talked with respondent, she denied a male adult was living in the residence. Respondent was still extremely intoxicated when Thompson spoke with her. When Thompson needed to take T.S. and respondent to the public safety building around 4 a.m., Thompson had difficulty waking up respondent. He had to physically shake respondent to get her to respond to him.

¶ 10 Hartshorn met with T.S. at 5 a.m. on January 12, 2017. Lewallen was present for the interview. T.S. had only been in Danville, Illinois, for two days. She lived with respondent, Lewis, and the other children. T.S. had previously lived in Chicago with her great-grandmother because she could not live with Lewis. T.S. stated she had reported to the Chicago police department Lewis had been sexually touching her. On January 11, 2017, she and Lewis walked

respondent to work and got the other children on the school bus. Lewis asked her why she made the report to the Chicago police department. He told T.S. she owed him for breaking up the family. When they returned home, Lewis had her go into his bedroom and told her to take off her clothing. He had her lay on the bed. Lewis told T.S. he missed her and this would be the last time they had sex. Lewis had vaginal intercourse with her. Lewis then had T.S. put his penis in her mouth. After that, he gave her oral sex. At one point, Lewis asked if T.S. wanted him to keep doing it, and she told him no. He continued. T.S. also began to cry during the assault, and Lewis told her to wipe her face. He had T.S. clean up with a towel, and he did the same. Lewis threatened to kill T.S. if she told respondent. T.S. told Hartshorn that, later in the day after the assault, the family had a birthday party for T.S.'s sibling K.L. Lewis got drunk and struck respondent in the face. As a result, respondent had a knot on her forehead.

¶ 11 Additionally, Hartshorn testified she and Lewallen met with respondent on January 12, 2017. Respondent had a large knot on her forehead and was intoxicated. Hartshorn could smell the alcohol coming from respondent's breath. Respondent indicated she had consumed about six to seven beers during the birthday party. Respondent stated she got the knot because she fell. When Hartshorn informed respondent of T.S.'s accusations of a sexual assault, respondent stated she believed T.S. and would "ride with her." Hartshorn took that to mean respondent would stick with T.S. through everything.

¶ 12 On January 12, 2017, Hartshorn also spoke with Lewis. He had been living at his current address with respondent and their children for more than a year. Lewis stated that, after he and T.S. got the kids on the bus, they returned to the apartment and watched a movie in his bedroom. He sat at the head of the bed and smoked "weed." T.S. sat at the end of the bed. They watched the movie until it was time to get the kids off of the bus. Lewis admitted he had three

shots of vodka and around six beers on January 11, 2017. He did not recall a fight with respondent that day but did admit their fights get physical. Lewis later said a fight may have taken place because his right hand was slightly swollen around the knuckle area.

¶ 13 Mendoza testified he met with T.S.'s brother, T.B., on January 12, 2017. T.B. stated Lewis cared for him and his siblings when respondent was not around. He also stated he thought respondent should stop drinking because it led to problems between her and Lewis. Mendoza also met with respondent that day. Respondent was intoxicated and almost fell on the way to the interview room. At first, respondent indicated Lewis did not live with her and the children. She later stated he had been living with her since November 2015. As to the prior investigation, respondent told Mendoza she did not believe anything had occurred and thought all charges or investigations had been dropped. Mendoza testified DCFS indicated Lewis for sexual molestation, penetration, and risk of sexual abuse to siblings in the home. DCFS implemented a safety plan for respondent's minor children, under which respondent agreed the minor children would have no contact with Lewis and she would obtain a restraining order against Lewis. DCFS did investigate Lewis a second time after the indicated finding, and that investigation was unfounded.

¶ 14 Mendoza interviewed T.S. in March 2017. During that interview, T.S. stated she told a family member she felt respondent was trying to get her to recant her statements. T.S. maintained Lewis inappropriately touched her and stated he put his penis in her. According to Mendoza, T.S. was pretty quiet and seemed sad. She stated she might be better off living with family in Chicago because respondent did not believe what she was reporting.

¶ 15 Lewallen testified she interviewed 13-year-old T.B. on January 12, 2017. T.B. stated Lewis and respondent had been arguing the night before but he did not witness any

physical altercation. The argument had taken place in the bathroom. He also stated Lewis had been living in their apartment. Lewallen testified she was also present when the search warrant for respondent's apartment was executed. In the bathroom, the towel rack was unattached from the wall, and the shower curtain was not completely attached to the top rod of the shower.

¶ 16 Jocelyn testified she was respondent's first cousin. T.S. lived with Jocelyn the summer of 2016 because T.S. was in her father's care and he was too busy to care for her. She then stayed at the homes of Jocelyn's grandmother and T.S.'s father's grandmother until January 2017. T.S. moved back home because she missed her brothers and sisters. On March 8, 2017, T.S. called Jocelyn and seemed a little frightened. She wanted to move back to Chicago. T.S. stated she found a letter written by respondent stating T.S. told respondent that T.S. had lied about what Lewis had done. During the telephone call, T.S. told Jocelyn a court date or something was coming up, and respondent had told T.S. that, if T.S. stated she was lying, respondent would allow her to return to Chicago. T.S. was afraid to lie because Lewis might be able to come back home. Jocelyn testified T.S. had expressed fear about living with Lewis.

¶ 17 Respondent testified Lewis and T.S. had walked her to work the morning of January 11, 2017, and later walked her home from work. She admitted T.S. was home alone with Lewis. According to respondent, T.S. had an opportunity to tell her about the sexual assault outside Lewis's presence on January 11 but did not do so. Respondent did not see fear in T.S.'s face. Respondent further testified that, on February 22, 2017, T.S. told respondent the sexual assault by Lewis did not happen. Respondent wrote down T.S.'s statements in a letter and had her sign it. Respondent then signed the letter before a notary public. T.S. was not present at the notary. Respondent denied telling T.S. to change her story. Additionally, respondent believed T.S.'s prior allegations were unfounded. She noted Lewis was never arrested for the prior

allegations.

¶ 18 On the evening of January 11, 2017, respondent drank alcohol at K.L.'s birthday party. Respondent admitted she was intoxicated. It took her "a day and a half or something" to sober up after K.L.'s party. Respondent could not remember much about the night of K.L.'s party. She believed it was her son who called for help when T.S. was having chest pains during the party. Respondent stated she tried to limit her drinking to weekends. Respondent admitted she drank when the minor children were home. She also acknowledged that drinking alcohol sometimes led to arguing and fighting between her and Lewis.

¶ 19 At the time of the adjudicatory hearing, Lewis was in the county jail. Respondent visited him weekly and talked to him on the telephone almost every day. She had talked to him on the night before the hearing. T.S. was aware of respondent's continued contact with Lewis.

¶ 20 At the conclusion of the hearing, the circuit court found the State had proved all three allegations in the wardship petition. At the State's request, it granted DCFS temporary custody of the minor children based on the evidence presented at the adjudicatory hearing.

¶ 21 On March 8, 2017, the circuit court held the dispositional hearing. In addition to the dispositional report, the State presented the testimony of Gwen Richardson, the caseworker from February 2017 to February 2018; lab reports; T.S.'s recanted statement; and "a video jail call" in which respondent brought T.S. to the jail to visit Lewis in February 2017. The guardian *ad litem* presented the testimony of Jill Miller, the caseworker since February 16, 2018. After hearing the parties' arguments, the circuit court found both respondent and Lewis were unfit, unable, and unwilling to care for the minor children. The court made the minor children wards of the court and placed their custody and guardianship with DCFS. The next day, the court entered a written order consistent with the aforementioned findings.

¶ 22 On March 12, 2018, 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 T.B.’s case as case No. 4-18-0166, Zan. L.’s case as case No. 4-18-0167, Zar. L.’s case as case No. 4-18-0168, K.L.’s case as case No. 4-18-0169, and T.S.’s case as case No. 4-18-0170. In May 2018, this court granted respondent’s motion to consolidate the five appeals.

¶ 23 II. ANALYSIS

¶ 24 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. *In re A.P.*, 2012 IL 113875, ¶ 18, 981 N.E.2d 336. 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.

¶ 25 Here, respondent challenges only the first step and only 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 of abuse, neglect, or dependency to move the wardship proceedings to the second step. See *In re Faith B.*, 216 Ill. 2d 1, 14, 832 N.E.2d 152, 159 (2005) (noting the State need only prove one ground for neglect and thus this court may affirm if any of the circuit court’s bases for a neglect finding are upheld). 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.

¶ 26 Because the State is only required to prove a single ground for neglect, abuse, or dependency, the unchallenged abuse finding alone was sufficient to move the wardship proceedings to the dispositional stage and thus sufficient for us to affirm the circuit court’s adjudication of wardship since respondent does not challenge the dispositional order.

Nonetheless, we will address the merits of her claims related to the two bases for the circuit court’s neglect finding, as they may have collateral consequences. See *A.P.*, 2012 IL 113875, ¶ 11 n.1 (noting 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).

¶ 27 In this case, the circuit court found the minor children were neglected under 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. [Citation.] 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. [Citation.] 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. [Citation.]” (Internal quotation marks omitted.) *A.P.*, 2012 IL 113875, ¶ 22.

¶ 28 As to the neglect allegation based on respondent allowing Lewis to have contact with the minor children, we find the State’s evidence, even without the exhibits, was sufficient to prove by a preponderance of the evidence Lewis sexually assaulted T.S. Respondent admitted she had left T.S. home alone with Lewis. Based on Lewis having been previously indicated by DCFS for sexual molestation and penetration of T.S., respondent was not to allow Lewis to have contact with the minor children, including T.S. Moreover, respondent continued to have contact with Lewis after the most recent sexual assault, and T.S. was aware of her continued contact. Thus, the State’s evidence was sufficient to prove respondent breached her duty to provide a safe and nurturing environment for the minor children. The aforementioned finding is consistent with the court’s other finding the minor children were not in immediate and urgent danger, as Lewis was incarcerated at the time of the findings.

