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

2018 IL App (4th) 180171-U

NOS. 4-18-0171, 4-18-0172, 4-18-0173 cons.

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re Zan. L., a Minor	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Vermilion County
Petitioner-Appellee,	)	No. 17JA29
v. (No. 4-18-0171)	)	
Keyvell Lewis,	)	
Respondent-Appellant).	)	
	)	
In re Zar. L., a Minor	)	No. 17JA30
	)	
(The People of the State of Illinois,	)	
Petitioner-Appellee,	)	
v. (No. 4-18-0172)	)	
Keyvell Lewis,	)	
Respondent-Appellant).	)	
	)	
In re K.L., a Minor	)	No. 17JA31
	)	
(The People of the State of Illinois,	)	
Petitioner-Appellee,	)	
v. (No. 4-18-0173)	)	Honorable
Keyvell Lewis,	)	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 Zan. L. (born in February 2013), Zar. L. (born in December 2010), and K.L (born in January 2010), the

minor children of respondent, Keyvell Lewis, 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 The minor children's mother is Cassandra Venson, who has two other children, T.B. and T.S. Cassandra, T.B., and T.S. are not parties to this appeal. Cassandra did file separate appeals, which this court docketed as Nos. 4-18-0166, 4-18-0167, 4-18-0168, 4-18-0169, and 4-18-0170.

¶ 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) Cassandra allowing respondent, who had previously been indicated for sexual penetration and molestation against T.S., access to the minor children; and (2) substance use by Cassandra. 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 respondent's sex offense against T.S., who is the half-sibling of the minor children in this case.

¶ 7 On January 24, 2018, the circuit court held a joint adjudicatory hearing for the

minor children in this case, as well as Cassandra's other two children, T.S. and T.B. 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, Cassandra'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 Cassandra's apartment on January 12, 2017; and (3) T.S.'s medical records from the emergency room on January 12, 2017. Cassandra testified on her own behalf and presented a letter signed by her and T.S., in which T.S. supposedly admitted respondent did not sexually assault her. We note the record on appeal contains no exhibits. Respondent 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 respondent, whom she referred to as her stepdad. T.S. explained she, respondent, and her siblings had walked Cassandra to work that day. When they returned home, respondent "informed her that she owed him sex because of the last time that she got him in trouble." Respondent 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 Cassandra 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 Cassandra's residence for a female having trouble breathing. The female was T.S., who was being held up by Cassandra and a young man. Thompson observed Cassandra was extremely

intoxicated. Cassandra 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 respondent assaulted her in the bathroom of their residence around 9:30 a.m. When Thompson talked with Cassandra, she denied a male adult was living in the residence. Cassandra was still extremely intoxicated when Thompson spoke with her. When Thompson needed to take T.S. and Cassandra to the public safety building around 4 a.m., Thompson had difficulty waking up Cassandra. He had to physically shake Cassandra 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 Cassandra, respondent, and the other children. T.S. had previously lived in Chicago with her great-grandmother because she could not live with respondent. T.S. stated she had reported to the Chicago police department respondent had been sexually touching her. On January 11, 2017, she and respondent walked Cassandra to work and got the other children on the school bus. Respondent 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, respondent had her go into his bedroom and told her to take off her clothing. He had her lay on the bed. Respondent told T.S. he missed her and this would be the last time they had sex. Respondent had vaginal intercourse with her. Respondent then had T.S. put his penis in her mouth. After that, he gave her oral sex. At one point, respondent 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 respondent told her to wipe her face. He had T.S. clean up with a towel, and he did the same. Respondent threatened to kill

T.S. if she told Cassandra. 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. Respondent got drunk and struck Cassandra in the face. As a result, Cassandra had a knot on her forehead.

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

¶ 12 On January 12, 2017, Hartshorn also spoke with respondent. He had been living at his current address with Cassandra and their children for more than a year. Respondent 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. Respondent admitted he had three shots of vodka and around six beers on January 11, 2017. He did not recall a fight with Cassandra that day but did admit their fights could get physical. Respondent 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 respondent cared for him and his siblings when Cassandra was not around. He also stated he thought Cassandra should stop drinking because it led to problems between her and respondent. Mendoza also met with Cassandra that day. Cassandra was intoxicated and almost

fell on the way to the interview room. At first, Cassandra indicated respondent 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, Cassandra told Mendoza she did not believe anything had occurred and thought all charges or investigations had been dropped. Mendoza testified DCFS indicated respondent for sexual molestation, penetration, and risk of sexual abuse to siblings in the home. DCFS implemented a safety plan for Cassandra's minor children, under which Cassandra agreed the minor children would have no contact with respondent and she would obtain a restraining order against respondent. DCFS did investigate respondent 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 Cassandra was trying to get her to recant her statements. T.S. maintained respondent 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 Cassandra did not believe what she was reporting.

¶ 15 Lewallen testified she interviewed 13-year-old T.B. on January 12, 2017. T.B. stated respondent and Cassandra 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 respondent had been living in their apartment. Lewallen testified she was also present when the search warrant for Cassandra'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 Cassandra'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 Cassandra stating T.S. told Cassandra that T.S. had lied about what respondent had done. During the telephone call, T.S. told Jocelyn a court date or something was coming up, and Cassandra had told T.S. that, if T.S. stated she was lying, Cassandra would allow her to return to Chicago. T.S. was afraid to lie because respondent might be able to come back home. Jocelyn testified T.S. had expressed fear about living with respondent.

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

¶ 18 On the evening of January 11, 2017, Cassandra drank alcohol at K.L.'s birthday party. Cassandra admitted she was intoxicated. It took her "a day and a half or something" to sober up after K.L.'s party. Cassandra 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. Cassandra stated she tried to limit her drinking to weekends. Cassandra admitted she drank when the minor children were home. She also acknowledged that drinking alcohol sometimes led to arguing and fighting between her and respondent.

¶ 19 At the time of the adjudicatory hearing, respondent was in the county jail. Cassandra 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 Cassandra's continued contact with respondent.

¶ 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 Cassandra brought T.S. to the jail to visit respondent 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 Cassandra and respondent 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 his 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 Zan. L.'s case as case No. 4-18-0171, Zar. L.'s case as case No. 4-18-0172, and K.L.'s case as case No. 4-18-0173. In May 2018, this court granted respondent's motion to consolidate the three 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 his arguments related to the first ground for the circuit court's neglect finding, as it 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 Respondent asserts the State did not show the minor children's environment was unsafe given T.S. had recanted her statements against respondent. He further notes the circuit court found the minor children were not in immediate and urgent danger while in Cassandra's care. We find the State's evidence, even without the exhibits, was sufficient to prove by a preponderance of the evidence respondent sexually assaulted T.S. The court did not find Cassandra credible, and the State presented evidence Cassandra made up T.S.'s recanted statement or forced T.S. to recant her statements against respondent. Regardless, Cassandra admitted she had left T.S. home alone with respondent. As a result of respondent having been previously indicated by DCFS for sexual molestation and penetration of T.S., Cassandra was not to allow respondent to have contact with the minor children, including T.S. Moreover, Cassandra continued to have contact with respondent after the most recent sexual assault, and T.S. was aware of her continued contact. Thus, we find the State's evidence was sufficient to prove Cassandra breached her duty to provide a safe and nurturing environment for the minor children. We note the aforementioned finding is consistent with the court's other finding the minor children were not in immediate and urgent danger, as respondent was incarcerated at the time of the findings.

¶ 29 III. CONCLUSION

¶ 30 For the reasons stated, we affirm the Vermilion County circuit court's judgment.

¶ 31 Affirmed.