

NOTICE

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2018 IL App (4th) 180279-U

NO. 4-18-0279

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

August 16, 2018

Carla Bender

4th District Appellate

Court, IL

<i>In re</i> T.R., a Minor)	Appeal from
)	Circuit Court of
(The People of the State of Illinois,)	Vermilion County
Petitioner-Appellee,)	No. 17JA65
v.)	
Shamarcus Reed,)	
Respondent-Appellant.))	Honorable
)	Thomas M. O’Shaughnessy,
)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Justices Knecht and Turner concurred in the judgment.

ORDER

- ¶ 1 *Held:* The appellate court affirmed, concluding the trial court’s finding of abuse or neglect was not against the manifest weight of the evidence.
- ¶ 2 In November 2017, the State filed a petition for adjudication of neglect, alleging T.R. (born August 20, 2010) was (1) neglected in that his environment was injurious to his welfare because respondent, Shamarcus Reed, had a history of domestic violence (705 ILCS 405/2-3(1)(b) (West 2016)) (count I), (2) abused in that respondent inflicted or allowed to be inflicted on the minor physical injury by other than accidental means (705 ILCS 405/2-3(2)(i) (West 2016)) (count II), and (3) abused in that he was at substantial risk of physical injury by other than accidental means (705 ILCS 405/2-3(2)(ii) (West 2016)) (count III). In January 2018, the trial court entered an adjudicatory order finding T.R. abused or neglected pursuant to the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3 (1)(b), (2) (i), (2) (ii) (West

2016)), based on all three counts in the petition. In April 2018, the court entered a dispositional order making T.R. a ward of the court and granting custody and guardianship to the Department of Children and Family Services (DCFS).

¶ 3 Respondent appeals, asserting the trial court erred by finding T.R. to be an abused minor because the State did not prove neglect by a preponderance of the evidence. For the following reasons, we affirm.

¶ 4 I. BACKGROUND

¶ 5 A. Initial Proceedings

¶ 6 In November 2017, the State filed a petition for adjudication of wardship, alleging T.R. was (1) neglected in that his environment was injurious to his welfare due to respondent's history of domestic violence (705 ILCS 405/2-3(1)(b) (West 2016)) (count I), (2) abused in that respondent inflicted or allowed to be inflicted on him physical injury by other than accidental means (705 ILCS 405/2-3(2)(i) (West 2016)) (count II), and (3) abused in that he was at substantial risk of physical injury by other than accidental means (705 ILCS 405/2-3(2)(ii) (West 2016)) (count III).

¶ 7 B. Adjudicatory Hearing

¶ 8 In January 2018, the trial court held an adjudicatory hearing, during which the court heard the following evidence.

¶ 9 1. *Dr. Brent Reifsteck*

¶ 10 Dr. Brent Reifsteck, a pediatric hospitalist at Carle Foundation Hospital, testified he was the lead physician on the child abuse safety team. In that role, Dr. Reifsteck served as a resource for medical teams in suspected cases of child abuse to “help them make sure that they are ordering the right tests, and that they are contacting the right people.” According to

Reifsteck, he also consulted with social agencies, such as DCFS and law enforcement, on medical aspects of abuse and neglect cases.

¶ 11 In November 2017, Dr. Reifsteck observed T.R. and reviewed his medical records. Included in T.R.'s medical records were images of his jaw, which Dr. Reifsteck testified showed two fractures of the mandible on the right and left sides. According to Dr. Reifsteck, in most cases two fractures in a single bone would be caused by two separate traumatic events. However, Dr. Reifsteck testified the mandible was different from most other bones in the body. Dr. Reifsteck stated the mandible was the densest bone in the body and required "quite a bit of force to fracture it." According to Dr. Reifsteck, if the mandible "were not to fracture and force was applied in the right direction, the jaw would be displaced into the skull, and so the answer is only simple if we could view the actual event." Another possible cause of two fractures in the mandible was a single strike to the point of the mandible. If enough force were applied to such a strike, the transmitted force could "cause fractures on either side farther up when the force gets to the weaker parts of the bone *** past the angle of the jaw."

¶ 12 According to Dr. Reifsteck, the force required to cause T.R.'s fractures was unlikely accidental and needed to be "at least an adult amount of force." In Dr. Reifsteck's opinion, T.R.'s injuries could not have been caused by another child or by a fall from the height of a child. Dr. Reifsteck testified, "So to have a child [T.R.'s] age fall in a way where he would fall chin first and not protect himself[] and i[t] generate enough force to fracture the mandible in this way[—]the odds of that would be astronomical."

¶ 13 When Dr. Reifsteck spoke with T.R., T.R. said he fell and hit his head on a tile floor. Dr. Reifsteck also observed multiple old injuries in various stages of healing on T.R.'s arms, legs, and torso. These injuries were alarming due to the number of injuries and the lack of

a good explanation for how they occurred. When asked for his opinion of the cause of T.R.'s fractured mandible, Dr. Reifsteck stated, "Based on the history given and the nature of the injury, it is completely certain with more than reasonable degree of medical certainty that this was an inflicted or abusive injury."

¶ 14

2. Dawn Hartshorn

¶ 15 Dawn Hartshorn, an officer with the juvenile investigation division of the Danville Police Department, testified that, on November 8, 2017, she received a call from DCFS. That same date, Hartshorn went to Carle Foundation Hospital and met T.R. in a playroom on the pediatrics wing. When Hartshorn met T.R., his face was swollen and "offset to the right." T.R. stated he was injured approximately two days earlier while playing karate with respondent. According to Hartshorn, T.R. said respondent "went to kick over him and he ducked down, and when he ducked down, he slipped, and he wasn't able to catch himself and he fell on his chin."

¶ 16 Hartshorn asked T.R. about a bruise on his left shoulder, and T.R. covered it up and denied having a bruise. Hartshorn also observed three or four long parallel marks across T.R.'s chest. T.R. initially denied having the marks and then told Hartshorn he did not know how he received the marks. After Hartshorn asked about the injuries to his chest, T.R. put his head down on the table in front of him and did not want to talk more.

¶ 17 On November 9, 2017, Hartshorn interviewed respondent, who reported T.R. was injured when he fell while playing karate and landed "with his arms underneath him on his chin." After T.R. fell, he spit some blood into the sink, but respondent did not check him over. On the day he fell, T.R. told respondent his teeth hurt, and later that night, respondent noticed swelling in T.R.'s face. The following day, a Monday, respondent did not send T.R. to school, "[b]ecause

he said that if he sent [T.R.] with his face being swollen, [respondent] knew that the police and DCFS would be involved.” Respondent took T.R. to see a doctor the following day.

¶ 18 In January 2018, Hartshorn conducted a second interview with T.R., during which Hartshorn testified T.R. told him “that he was playing with a toy shotgun at home the day—that day, and he was running, and that he had slipped and he had fell.” According to Hartshorn, T.R. did not like living with respondent because respondent hit him “a lot” in the stomach and face. When asked about the last time respondent hit him, Hartshorn stated T.R. said “it was when his jaw was broken, but [respondent] did not know his jaw was broken.”

¶ 19 *3. Mary Weber*

¶ 20 Mary Weber, a child protection investigator with DCFS, testified that, in November 2017, she received a call alleging T.R. had a fractured mandible, cuts, bruises, and welts. When Weber interviewed T.R., he was in pain and had difficulty speaking because his jaw was swollen. T.R. told Weber he was playing karate with respondent when he slipped and fell, hitting his chin on the floor. When T.R. was asked about the bruises on his chest and arm, his demeanor changed and he stopped talking. Weber testified the bruises on T.R.’s chest were approximately four or five inches long and the bruise on his arm had a deeper, circular bruise in the middle, similar to a thumbprint.

¶ 21 According to Weber, T.R. was involved in another indicated report approximately six to eight months prior to the report in the present case. Based on the prior report, DCFS opened an intact case. Weber testified that, “[T]he intact case was closed unsuccessfully because the caseworker was not able to continue or maintain contact with [respondent].”

¶ 22 *4. Emily Zimmerman*

¶ 23 Emily Zimmerman, a foster care caseworker with the Center for Youth and Family Solutions, testified she was T.R.'s caseworker for approximately one month. On December 20, 2017, Zimmerman met with T.R. and his "fictive kin foster parent." T.R. and Zimmerman talked about an upcoming visit with respondent, and Zimmerman asked T.R. how his jaw was broken. Zimmerman testified,

"He then advised that he had fallen when he was wrestling with his dad and broke his jaw. Then we started talking about school, and I had asked him later in the conversation if he was afraid of anybody. He advised he was afraid of his dad. I asked, [']Well why are you afraid of your dad?['] He said, [']Well, he used to beat me.['] He proceeded to then say, [']One time I was not eating fast enough and my dad yelled at me and then he punched me in the jaw. Then my jaw was bleeding, and I still was not eating fast enough, so he punched me in the jaw again on the other side.[']"

Zimmerman asked if that was how T.R.'s jaw was broken, and "he hung his head and then shook his head yes."

¶ 24 *5. Trial Court's Ruling*

¶ 25 Following the adjudicatory hearing, the trial court found the State proved the allegations of abuse and neglect in each of the counts of the petition for adjudication of wardship. The court based its findings on T.R.'s statements as to the history of physical abuse by respondent, which were corroborated by the medical testimony of Dr. Reifsteck. Specifically, the court pointed to Dr. Reifsteck's testimony that the injury was consistent with an inflicted or intentional injury and that the explanations given by T.R. and respondent were statistically

impossible and inconsistent with the physical findings. The court further found “the abuse and neglect were inflicted by a parent, specifically the father.” Finally, the court found placement outside of respondent’s home was necessary because placement in respondent’s home would be contrary to T.R.’s health, safety, and welfare.

¶ 26 C. Dispositional Hearing

¶ 27 In April 2018, the trial court held a dispositional hearing and considered the following evidence.

¶ 28 1. *Dispositional Hearing Report*

¶ 29 DCFS submitted a dispositional-hearing report, which indicated DCFS received a report of suspected abuse on November 7, 2017. According to the dispositional report, Dr. Reifsteck and T.R.’s oral surgeon both determined T.R.’s injury occurred several days before respondent sought treatment for T.R. When respondent was informed DCFS was going to be involved, he began cussing and indicated he did not intend to cooperate.

¶ 30 Respondent reported he experienced ongoing neglect while growing up, as well as physical and mental abuse by his mother. Respondent was removed from his mother’s care when he was seven years old and experienced further physical and emotional abuse in foster care. Respondent reported wanting to kill his older brother after a 2012 altercation. The report indicated numerous incidents of domestic violence, including (1) a 2012 domestic dispute during which respondent strangled his paramour, (2) a 2013 arrest for family violence, and (3) an incident during which respondent stabbed his girlfriend’s former paramour.

¶ 31 Respondent reported daily marijuana use and stated “that without marijuana, he would likely harm someone in anger.” The report indicated respondent had a history of panic

attacks, exhibited signs of a mood disorder and depression, and was psychiatrically hospitalized on four occasions as an adolescent.

¶ 32 According to the report, T.R. admitted he was afraid of respondent and reported respondent had beaten, choked, and threatened him. T.R. reported often feeling sad and upset, particularly when respondent threatened to kill him. T.R.'s behavior indicated he associated getting into trouble with physical abuse. When asked if he wanted to return to respondent's care, T.R. responded, "Nope."

¶ 33 *2. Sofia Dumlao*

¶ 34 Sofia Dumlao testified she was T.R.'s current caseworker. Since the adjudicatory hearing, respondent had begun services at New Directions Treatment Center for parenting classes and substance-abuse treatment. In Dumlao's opinion, respondent was not able to care for, protect, train, educate, or discipline T.R. at that time. Dumlao referred respondent to Crosspoint Human Services for counseling services, but respondent had not yet enrolled in counseling. The integrated assessment screener also recommended psychological and psychiatric evaluations, which had yet to be arranged.

¶ 35 Respondent attended some weekly visits with T.R. and canceled others due to a lack of transportation. Dumlao testified, "[T.R.] refused his visit twice with dad. The second time he refused, he was crying and just doesn't want to go to the van, and several of the parent-child visits we observed with dad, clearly, [T.R.] is afraid of dad, because he would pull his— whenever [respondent] gets mad, [T.R.] would pull his head down and just say, 'Yes, sir.' "

¶ 36 According to Dumlao, T.R. was experiencing significant behavioral problems. On April 4, 2018, T.R. hit and beat the bus monitor, and T.R.'s foster parent called the caseworker. T.R. was brought to the caseworker's office. Dumlao testified, "At the office, first

in the bathroom, he peed all over the wall and the toilet, and then he was hitting and beating one of our staff, and the staff tried to restrain him. He bit the staff. He broke the glass door. He tried to run away. Police was called twice. SASS [(Screen, Assessment, and Support Services)] was called twice. So—and this behavior is not rare.” At the time of the dispositional hearing, T.R. was hospitalized at Pavilion Behavioral Health System in Champaign, Illinois. Dumlao testified she had difficulty getting T.R. into counseling through Crosspoint Human Services, but another organization—Choices—was involved in referring T.R. to a therapist for counseling services.

¶ 37

3. Trial Court’s Findings

¶ 38 Following the dispositional hearing, the trial court determined it was in T.R.’s best interest to be made a ward of the court. The court found respondent unfit and unable to care for T.R. based on the prior findings of abuse and neglect and the need for services to deal with anger issues. The court further noted the recommendations for parenting classes and substance-abuse treatment. Accordingly, the court entered an order finding respondent unfit, making T.R. a ward of the court, and placing custody and guardianship with DCFS.

¶ 39 This appeal followed.

¶ 40

II. ANALYSIS

¶ 41 On appeal, respondent argues the trial court erred by finding T.R. abused because the State did not prove neglect by a preponderance of the evidence. Specifically, respondent asserts the State failed to demonstrate (1) respondent caused T.R.’s environment to be injurious to his welfare or (2) respondent caused T.R.’s injuries.

¶ 42 The Juvenile Court Act provides a two-step process for determining whether a child should be removed from parental custody and made a ward of the court. *In re A.P.*, 2012

IL 113875, ¶ 18, 981 N.E.2d 336. As an initial matter, the trial court must conduct an adjudicatory hearing to determine whether the child is abused, neglected, or dependent. *Id.* ¶ 19. It is the State’s burden to prove allegations of abuse or neglect by a preponderance of the evidence. *In re Arthur H.*, 212 Ill. 2d 441, 463-64, 819 N.E.2d 734, 747 (2004). Put another way, the State must demonstrate that the allegations of abuse or neglect are more probably true than not. *Id.* at 464. A trial court’s ruling of abuse or neglect will only be reversed if it is against the manifest weight of the evidence. *Id.* “A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident.” *Id.*

¶ 43 Respondent contends the State failed to prove abuse or neglect beyond a reasonable doubt because T.R. and respondent initially provided a consistent explanation for the fractures in T.R.’s mandible—namely, that T.R. slipped and hit his chin on the floor while playing with respondent. Respondent further asserts T.R. later stated his father punched him twice in the jaw because he changed his story due to repeated questioning about the incident. This argument ignores Dr. Reifsteck’s testimony that T.R.’s injuries could not have been the result of falling down. Dr. Reifsteck testified only an “adult amount” of force could have caused the fractures, and he opined the injuries could not have been accidental. Dr. Reifsteck further testified regarding T.R.’s numerous other healing injuries, including bruising to his left arm and chest. This testimony was corroborated by Hartshorn and Weber. Moreover, Hartshorn testified T.R. reported he did not like living with respondent because respondent hit him “a lot” in the stomach and face. This evidence was sufficient to prove the allegations of abuse and neglect were more probably true than not. Accordingly, we conclude the trial court’s finding of abuse and neglect was not against the manifest weight of the evidence.

¶ 44 After a child is found neglected, the matter proceeds to a dispositional hearing. *A.P.*, 2012 IL 113875, ¶ 21. The trial court must determine, by a preponderance of the evidence, whether it is in keeping with the health, safety, and best interest of the minor to remain with the parent, or if alternative custody and guardianship placement, *i.e.*, with DCFS, is more appropriate. 705 ILCS 405/2-22 (West 2016). The court’s central concern in fashioning a dispositional order is the best interest of the child. *In re M.P.*, 408 Ill. App. 3d 1070, 1073, 945 N.E.2d 1197, 1200 (2011). In making its decision, the court “should consider all reports, whether or not the author testifies, which would assist the court in determining the proper disposition for the minor.” *In re L.M.*, 189 Ill. App. 3d 392, 400, 545 N.E.2d 319, 325 (1989). “A trial court’s determination regarding dispositional unfitness will be reversed ‘only if the findings of fact are against the manifest weight of the evidence or if the trial court committed an abuse of discretion by selecting an inappropriate dispositional order.’ ” *In re K.B.*, 2012 IL App (3d) 110655, ¶ 23, 973 N.E.2d 470 (quoting *In re T.B.*, 215 Ill. App. 3d 1059, 1062, 574 N.E.2d 893, 896 (1991)).

¶ 45 We note respondent does not challenge the trial court’s dispositional determination that it was in T.R.’s best interest to be made a ward of the court and to place custody and guardianship with DCFS. However, we briefly address the court’s dispositional order. The evidence before the court showed respondent’s lengthy history of domestic-violence incidents. Although respondent had begun parenting classes and substance-abuse treatment, he had yet to begin counseling services to address domestic-violence and anger-management issues. Moreover, the evidence showed T.R. was experiencing significant behavioral problems and, at the time of the hearing, was hospitalized at Pavilion Behavioral Health Systems. Dumlao additionally testified T.R. refused to go to the two most recent visits with respondent, and most

recently, T.R. cried and refused to get in the van to be transported to the visit. According to Dumlao, T.R. clearly demonstrated his fear of respondent during visits. This evidence is sufficient to support the court's finding that respondent was unfit to care for T.R., and thus, making T.R. a ward of the court and placing custody and guardianship with DCFS was in his best interest. Accordingly, we conclude the court's dispositional order was not against the manifest weight of the evidence.

¶ 46

III. CONCLUSION

¶ 47

For the foregoing reasons, we affirm the trial court's judgment.

¶ 48

Affirmed.