

NOTICE

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2018 IL App (4th) 180284-U

No. 4-18-0284

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

September 11, 2018
Carla Bender
4th District Appellate
Court, IL

<i>In re</i> G.W., J.S., E.R., and A.R., Minors)	Appeal from the
)	Circuit Court of
(The People of the State of Illinois,)	Champaign County
Petitioner-Appellee,)	No. 17JA73
v.)	
Dustin R.,)	Honorable
Respondent-Appellant).)	John R. Kennedy,
)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justices Holder White and Turner concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed, concluding the trial court’s findings the respondent’s two children were abused and neglected were not against the manifest weight of the evidence.

¶ 2 In December 2017, the State filed a petition for adjudication of wardship, alleging G.W. (born February 13, 2010), J.S. (born September 26, 2011), E.R. (born May 5, 2013), and A.R. (born August 27, 2017) were abused and/or neglected children as defined by the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(2)(ii), 2-3(2)(i), 2-3(1)(b) (West 2016)). Karie S. is the minors’ mother, Dustin W. is G.W.’s father, Brenden N. is J.S.’s father, and Dustin R. is E.R.’s and A.R.’s father. At the time the petition was filed, the minors resided with Karie S. and Dustin R.

¶ 3 Following a February 2018 adjudicatory hearing, the trial court found the minors were abused and/or neglected as alleged in the State’s petition. In March 2018, the court made the minors wards of the court and placed guardianship and custody with the Department of Children and Family Services (DCFS).

¶ 4 Dustin R. appeals, arguing the trial court’s findings of abuse and neglect were against the manifest weight of the evidence. We affirm.

¶ 5 I. BACKGROUND

¶ 6 A. State’s Petition for Adjudication of Wardship

¶ 7 On December 19, 2017, the State filed a three-count petition for adjudication of wardship. Count I alleged G.W., J.S., E.R., and A.R. were abused minors as defined by section 2-3(2)(ii) of the Juvenile Court Act (705 ILCS 405/2-3(2)(ii) (West 2016)) because a “parent or household member creates a substantial risk of physical injury to such minors by other than accidental means, which would likely cause impairment of the physical or emotional health of the minors.” Count II alleged J.S. was an abused minor as defined by section 2-3(2)(i) of the Juvenile Court Act (705 ILCS 405/2-3(2)(i) (West 2016)) because a “parent or household member inflicts physical injury by other than accidental means which causes impairment of physical or emotional health, or allows such injury to be inflicted.” Count III alleged G.W., E.R., and A.R. were neglected minors as defined by section 2-3(1)(b) of the Juvenile Court Act (705 ILCS 405/2-3(1)(b) (West 2016)) because they are subject to an injurious environment “when they reside with [Karie S.] and [Dustin R.] in that said environment exposes the minors to the physical abuse of their sibling.” The State later amended counts I and II to indicate the parent or household member was Karie S. or Dustin R.

¶ 8

B. Adjudicatory Hearing

¶ 9

In February 2018, the trial court held an adjudicatory hearing. The following is a summary of the evidence presented.

¶ 10

1. *DCFS Child Protection Specialist Ashley Murphy*

¶ 11

Ashley Murphy, a child protection specialist with DCFS, testified, on Monday, December 18, 2017, she investigated a report involving J.S. Murphy went to J.S.'s school, where she had the opportunity to observe J.S. Murphy described J.S. as having "a significant mark on the right side of his face" and "[h]is cheeks were flushed red but he did have a red mark in an— almost looked like it could be a bruise." Murphy took a photograph of J.S., which was admitted into evidence. Murphy then had a discussion with J.S.'s teacher. After that discussion, Murphy requested police assistance to conduct an interview of J.S. Murphy also contacted Karie S. to inform her of the investigation. During her conversation with Karie S., Murphy testified Karie S. indicated her children lie and DCFS had badgered her children in the past. Murphy also learned Karie S. and her children lived with Dustin R., who J.S. considered to be his stepfather. Murphy testified Karie S. agreed to allow an individual from the Champaign County Children's Advocacy Center to conduct an interview of J.S.

¶ 12

Later that day, Mary Tewell, an interviewer with the Champaign County Children's Advocacy Center, conducted an interview of J.S. at the Children's Advocacy Center. No parents were present for the interview. Murphy and Tim Beckett, an investigator with the Champaign County Sheriff's Office, watched the interview live from a separate room with the assistance of audio and video equipment. Murphy described J.S.'s behavior during the interview as "all over the place," indicating he was unable to sit still. The following exchange occurred

concerning Murphy's observations during the interview:

[STATE]: Did Miss Tewell start out by asking him who lived in his house with him?

[MURPHY]: Yes.

[STATE]: And what did he tell her?

[MURPHY]: He named mom, dad, and then his siblings, and dad he referred to as [Dustin R.]

[STATE]: Did Miss Tewell ask him how he gets along with the people he lives with?

[MURPHY]: Yes.

[STATE]: What did he tell her?

[MURPHY]: He said that dad, meaning [Dustin R.], scares him, scares him with a doll, and sometimes is rough with him.

[STATE]: Did he make a statement about [Dustin R.] being physical with him?

[MURPHY]: He wouldn't state who was physical with him, but he did say someone hit him.

[STATE]: What happened after that?

[MURPHY]: After that, he refused to talk any[]more."

Murphy testified Tewell ended the interview after J.S. refused to speak.

¶ 13 After the interview at the Children's Advocacy Center, Murphy took J.S. to Carle Clinic for a medical evaluation by Dr. Mary Buetow. Investigator Beckett, Karie S., Dustin R.,

and the other children were present at the clinic. After Dr. Buetow conducted her evaluation of J.S., Murphy entered an examination room where J.S. and Karie S. were present. At that time, Murphy testified J.S. told her “ ‘I don’t have to talk to you,’ ” to which she responded, “ ‘You don’t really need to speak to me. I just wanted to talk to your mom is why I came in here.’ ” Murphy then had a conversation with Karie S. with J.S. present. During that conversation, Murphy testified Karie S. indicated she observed the injuries to J.S.’s face when he came home from school on Friday and he told her another student by the name of Nora had caused his injuries. Karie S. then showed Murphy a video on her cell phone. The video was recorded on Sunday at a Steak ‘n Shake. Murphy described the video as showing the following:

“It was of [J.S.] talking about this incident at school. It started out with his parents telling him to tell them what happened, and that if he didn’t tell them what happened, they were going to tell his grandma, and then he started going into the story about how Nora punched him and kicked him at school on the playground.”

¶ 14 Murphy had a discussion with Investigator Beckett after watching the video on Karie S.’s cell phone. Murphy testified Investigator Beckett indicated Dustin R. had disclosed “he was playing around with [J.S.], and at one point he struck [J.S.] in the face while they were goofing around and that he admitted to hitting him, and he said that he might have done it too hard.” Murphy testified she was also aware of prior investigations involving the family, one of which involved [G.W.] having “his leg broken by [Dustin R.]” Based on this information, Murphy took the children into protective custody.

¶ 15 2. *Champaign County Sheriff’s Office Investigator Tim Beckett*

¶ 16 Investigator Beckett testified, on December 18, 2017, he observed an interview of J.S. at the Champaign County Children’s Advocacy Center. Investigator Beckett watched the interview live from a separate room with the assistance of audio and video equipment. The following exchange occurred concerning Investigator Beckett’s observations during the interview:

 “[STATE]: Could you describe the interview that you observed on the 18th of December?”

 [INVESTIGATOR BECKETT]: *** During that interview [Tewell] started with the initial basic questions, you know, age, school, all that, who lives in the household, at the point in which she brought up [Dustin R.’s] name. [J.S.] made a comment—I don’t know the exact quote right now without referencing my report—but something like ‘Played with me. Smacked me.’

 [STATE]: After he made—after [J.S.] made that comment about [Dustin R.], what—what did he do? What was his behavior in the interview room?

 [INVESTIGATOR BECKETT]: Well, in the interview room when he was there, he was kind of all around the place anyway, I mean not really settling, kind of all around. After he made that initial comment, [Tewell] kind of asked some follow-up on that and he made a comment, ‘Oh, when my cheeks get dry, they get red,’ you know, referencing the right side of his face.”

Investigator Beckett further testified J.S. “refer[ed] to the mark on the right side of his face” when he made the comment “ ‘Played with me. Smacked me.’ ”

¶ 17 After the interview at the Children’s Advocacy Center, Investigator Beckett went to Carle Clinic for J.S.’s medical examination. Upon his arrival, Investigator Beckett observed J.S. in the clinic lobby. Investigator Beckett testified he observed “a red mark” on J.S.’s right cheek and there appeared to be “a little bit of bruising in the inner part of it.”

¶ 18 While at the clinic, Investigator Beckett conducted an interview of Dustin R. The following exchange occurred concerning that interview:

[STATE]: Did he tell you what his understanding of [J.S.’s] bruise on his face was caused by?

[INVESTIGATOR BECKETT]: He initially said it was a result of an incident at school.

[STATE]: What did he tell you he knew about that?

[INVESTIGATOR BECKETT]: Just that [J.S.] informed him—they were trying to get it out of him. They got him to tell them on Sunday that it happened at school at Steak ‘n Shake, in which time they videotaped it.

[STATE]: Did you speak with [Dustin R.] about his schedule as far as when he comes home from work?

[INVESTIGATOR BECKETT]: Yeah. He advised he gets home from work approximately four-thirty, five p.m.

[STATE]: Did he tell you—did you ask him whether he

had seen any injuries to [J.S.] when he came home on Friday from work?

[INVESTIGATOR BECKETT]: Yeah. He advised he doesn't really—[J.S.] gets home from school before he does. After speaking with him further, he said he observed it later Friday evening.

[STATE]: Did he tell you whether he had any interaction with J.S. after he came home from work on Friday?

[INVESTIGATOR BECKETT]: He did.

[STATE]: What did he tell you about that?

[INVESTIGATOR BECKETT]: He said that he was rough housing around with him, that initially—or he wouldn't make his bed so he was playing around with him and described several small playful slaps to his face.

[STATE]: When you say he described that, did he actually physically demonstrate that to you?

[INVESTIGATOR BECKETT]: Yes.

[STATE]: How did he do that?

[INVESTIGATOR BECKETT]: Was this (demonstrating). I mean with his hands, like light slaps.

[STATE]: And when you say this, for the record you're taking both of your hands and kind of making them go back and

forth in a small back and forth motion; is that correct?

[INVESTIGATOR BECKETT]: Yes, ma'am.

[STATE]: What were the words he used to describe that behavior with the back and forth motion with his hands?

[INVESTIGATOR BECKETT]: Roughhousing.

[STATE]: And did he tell you why—he told you that had something to do with [J.S.] not making his bed; is that correct?

[INVESTIGATOR BECKETT]: Yeah. He said he didn't make his bed, him and [G.W.] both, [G.W.], his brother, so he plays with them, at which point I brought up the fact that, you know, as punishment for your kid you don't play with them.

[STATE]: What was his response to that?

[INVESTIGATOR BECKETT]: His initial response to that was, you know, he still, you know, considered he was playing. He.

Got down in like what he described as a dinosaur and kind of slapped him multiple times. Trying to think of the exact quote he used. I can't—I mean without reference to my report, I'm not sure right now at this point in time."

Investigator Beckett testified he questioned Dustin R. as to J.S.'s response to his roughhousing, to which Dustin R. indicated J.S. was initially laughing and then weeping and getting teary-eyed. Investigator Beckett also testified he questioned Dustin R. as to whether he told Karie S. about the roughhousing, to which Dustin R. stated he did not because she tended to freak out about

things like that. Dustin R. indicated he, rather than Karie S., handled discipline matters with the children.

¶ 19 Investigator Beckett and Dustin R. discussed the video Dustin R. and Karie S. made at Steak 'n Shake. Investigator Beckett testified Dustin R. stated they made the video because of the “ ‘constant DCFS shit [they] have been having to deal with.’ ” Investigator Beckett testified he advised Dustin R. DCFS had been involved because of the incident a few years prior where G.W. sustained a broken leg. After so advising, Investigator Beckett testified Dustin R. indicated G.W.’s injury occurred when they were roughhousing.

¶ 20 After his interview with Dustin R., Investigator Beckett interviewed Karie S. Investigator Beckett testified Karie S. indicated she observed J.S.’s injuries around dinner time on Friday. Investigator Beckett testified he questioned Karie S. about Dustin R.’s roughhousing with the children, to which Karie S. indicated she was aware of the roughhousing but did not believe such behavior caused J.S.’s injuries. Investigator Beckett testified he questioned Karie S. whether she would be concerned if J.S.’s injuries were in fact caused by Dustin R.’s roughhousing, to which Karie S. stated she would want Dustin R. to calm down if that was the case. Investigator Beckett testified he advised Karie S. that Dustin R. admitted to hitting J.S. for disciplinary reasons and she appeared not to be aware of any such conduct.

¶ 21 *3. Child Abuse Expert Dr. Mary Buetow*

¶ 22 Dr. Mary Buetow, a qualified expert in the field of pediatrics and child-abuse investigations, testified, on December 18, 2017, she conducted an examination of J.S. at Carle Clinic. Prior to conducting that evaluation, Dr. Buetow was provided with information indicating (1) J.S. arrived at school that day with a mark on his face; (2) J.S. lived with his three siblings,

stepfather, and mother; and (3) a prior “founded report” existed concerning a fracture to J.S.’s sibling.

¶ 23 Dr. Buetow testified only she and a social worker were present during her examination of J.S. Dr. Buetow described the beginning of that examination as follows:

“When we went in the room [J.S.] was sitting at a small table that we generally use during our evaluation to get some history. We asked him to stay at the table. He got up and left the table. He was very hyperactive, very busy child. [He] [t]alked to us in a rather rude manner. [He] [t]old us that we didn’t have any business asking him about his injury. He told us that there was nothing wrong with his face, that his teacher had not noticed anything, and that his mother said he shouldn’t talk to strangers.”

When asked if she observed any physical injuries during her examination, Dr. Buetow testified:

“[J.S.] had a very vivid red mark on his face that conformed to the size of an adult hand and finger. Finger marks were apparent in that mark.”

Dr. Buetow took photographs of J.S.’s injuries, which were admitted into evidence. When asked to describe the photographs, Dr. Buetow testified:

“Those *** photographs *** show [a] significant amount of redness to his left—to his right side of his face over his cheek, and you can see streaks that look like finger marks. He has a small abrasion just lateral to his right eye. [They] [a]lso indicate he does

not have any bruising on his forehead.”

Dr. Buetow testified J.S. did not disclose how he sustained his injuries during the examination.

¶ 24 Dr. Buetow spoke with Karie S. about J.S.’s injuries. Dr. Buetow testified Karie S. indicated she became aware of J.S.’s injuries as soon as he came home from school on Friday and she had a video of J.S. explaining how he sustained his injuries. Karie S. then proceeded to show Dr. Buetow a video on her cell phone. Dr. Buetow testified the video showed J.S. eating at a Steak ‘n Shake. Dr. Buetow testified she “first heard some talking, a female voice said, ‘Now go and tell your story,’ and then [J.S.] seemed reluctant to do that, and a male voice said, ‘If you don’t tell, I’m going to tell grandma on you.’ ” Dr. Buetow testified she then heard J.S. indicate “at the lunch recess on Friday, a girl named Nora and a black boy had attacked him, they had hit him, they had kicked him on the forehead and in the groin and injured his face.”

¶ 25 Dr. Buetow testified the injuries she observed were not consistent with J.S.’s explanation in the video. Dr. Buetow testified:

“He had no lesions on his forehead, no lesions in his groin, but in addition, the bruise that I saw on the 18th was fairly new and fresh. If that bruise had been there inflicted seventy-five hours previously, I would have anticipated that parts of that bruise would have looked brown or yellow in color because of the normal resolution of bruises, and that had not happened. So the bruise was more recent than the Friday recess time.”

Dr. Buetow testified, based on a reasonable degree of professional certainty, J.S.’s injuries were sustained no earlier than 48 hours prior to her examination. Dr. Buetow also testified, based on a

reasonable degree of professional certainty, the injuries were not caused by a child due to the size of the marks. Dr. Buetow testified she found the video of J.S. to be concerning as she believed J.S. was “threatened and forced to lie.”

¶ 26 When asked as to the significance of J.S.’s injuries based on her professional opinion, Dr. Buetow testified:

“One, they look severe. They looked like they—significant force had been used to cause those injuries. They appeared to be in the shape of a hand print, and in size of an adult hand print, and I felt that this was a non[-]accidental injury to this child. Otherwise, child abuse.”

Dr. Buetow also testified, to a reasonable degree of professional certainty, she did not believe the injuries could have been caused by an accidental fall given the hand-print pattern.

¶ 27 Dr. Buetow testified she spoke with Investigator Beckett, who indicated J.S.’s stepfather had made statements indicating he hit J.S. in the face. Based on her examination and the information provided, Dr. Buetow concluded “the household in which [J.S.] resided was not a safe environment for any of the children.” That is, “[J.S.] was injured but there were also three other children within the environment that I thought were potential victims of injury and needed to be protected.”

¶ 28 *4. Prior Aggravated Battery Conviction*

¶ 29 Over no objection, the trial court took judicial notice of a criminal case where Dustin R. pleaded guilty to a charge of aggravated battery and was sentenced to probation. The court stated the charge to which Dustin R. pleaded guilty alleged, on January 29, 2013, “[Dustin

R.] knowingly caused great bodily harm to [G.W.] [by] grabb[ing] [him] and forc[ing] him to the ground, cr[u]shing [his] leg.” Dustin R.’s sentence was discharged on January 25, 2016.

¶ 30

5. Trial Court’s Findings

¶ 31

After considering the evidence and arguments presented, the trial court found the minors to be abused and/or neglected as alleged in each count of the State’s petition. In so finding, the court stated as follows:

“[I]t’s clear that [J.S.] suffered a non[-]accidental injury. The court finds that that was caused by being struck by [Dustin R.] It was clear, according to the evidence, that this happens while [Dustin R.] is engaged in what he calls roughhousing, some form of, whether it’s punishment or not, an interaction with this child that takes place after the child is not doing what, in [Dustin R.’s] opinion, he should be doing, and that’s when and how this injury takes place. Again it’s a non[-]accidental injury. It’s caused by an adult hand. Dr. Buetow references her observation of an adult handprint on [J.S.’s] cheek. And this is consistent with not the first version but the second version that [Dustin R.] gives when he talks to Investigator Beckett. That was the causation.

And then when assessing issues of physical and/or emotional health, the court does take into consideration that after this event occurs, and there is an apparent injury, this is apparently coming to the attention of someone at school, is going to be

apparent to other persons who have some observing—observation skills, and it’s not clear from the evidence whether [J.S.] came up with the Nora story himself or whether that was induced, but certainly the evidence is clear that at least [Karie S.] and it appears also with the assistance of [Dustin R.] afterwards, at least encouraged [J.S.] to publish this erroneous version of how he became injured, which I think adds to the emotional trauma that a child suffers after being struck and then having to explain it by lying.”

¶ 32 C. Dispositional Hearing

¶ 33 Following an April 2018 dispositional hearing, the trial court made the minors wards of the court and placed custody and guardianship with DCFS.

¶ 34 This appeal followed.

¶ 35 II. ANALYSIS

¶ 36 On appeal, Dustin R. argues the trial court’s findings of abuse and neglect were against the manifest weight of the evidence. The State disagrees.

¶ 37 The Juvenile Court Act (705 ILCS 405/1-1 to 7-1 (West 2016)) provides a two-step process for determining whether a minor should be removed from his or her parents’ custody and made a ward of the court. *In re A.P.*, 2012 IL 113875, ¶ 18, 981 N.E.2d 336. The first step requires the trial court to conduct an adjudicatory hearing to determine whether a minor is abused, neglected, or dependent. *Id.* ¶ 19. The State bears the burden of proving the allegations of abuse, neglect, or dependency by a preponderance of the evidence. *In re Arthur H.*, 212 Ill. 2d

441, 463-64, 819 N.E.2d 734, 747 (2004). A trial court's finding of abuse, neglect, or dependency will not be reversed on appeal unless it is against the manifest weight of the evidence. *A.P.* at ¶ 17. A court's finding "is against the manifest weight of the evidence only if the opposite conclusion is clearly evident." *Arthur H.*, 212 Ill. 2d at 464.

¶ 38 Dustin R.'s argument on appeal focuses on contesting the trial court's factual determination he intentionally caused J.S.'s injuries. After citing evidence in support thereof, Dustin R. argues "[i]t was against the manifest weight of [the] evidence to conclude J.S. was abused[] as alleged [in count II of the State's petition]." He further contends, "[i]nasmuch as both counts [I and III] are predicated on the abuse alleged in count [II], both fail if count [II] fails." Dustin R. requests we "reverse the adjudicatory order, vacate the dispositional order, and remand the case with instructions to dismiss the [State's] petition."

¶ 39 The State does not dispute the trial court's findings of abuse and neglect were based on its factual determination Dustin R. intentionally caused J.S.'s injuries. The State further does not dispute Dustin R. has standing to contest the court's factual determination as it directly concerns whether his children, E.R. and A.R., were neglected and abused as alleged in the petition for adjudication of wardship. The State asserts, however, Dustin R. lacks standing to appeal the court's orders as they relate to G.W. and J.S. because he is not a parent, guardian, legal custodian, or responsible relative to G.W. or J.S.

¶ 40 Dustin R. has not filed a reply brief responding to the State's argument suggesting he lacks standing to appeal the trial court's orders as they relate to G.W. and J.S. Based on the record presented and absent any argument to the contrary, we agree with the State and find Dustin R. lacks standing to appeal the trial court's orders as they relate to G.W. and J.S. We will

consider the court's factual determination Dustin R. intentionally caused J.S.'s injuries solely for the purpose of addressing the court's findings E.R. and A.R. were abused and neglected minors as defined by sections 2-3(2)(ii) and 2-3(1)(b) of the Juvenile Court Act (705 ILCS 405/2-3(2)(ii), 2-3(1)(b) (West 2016)). The court's factual determination will be reversed only if it is against the manifest weight of the evidence.

¶ 41 In support of his argument suggesting the trial court's determination he intentionally caused J.S.'s injuries was against the manifest weight of the evidence, Dustin R. relies on J.S.'s explanation indicating he was injured by Nora and another student and asserts any testimony disputing that cause lacked context, was attenuated, and/or was unsupported by the photographs admitted into evidence. Child abuse investigation expert Dr. Buetow opined the injuries she observed were not consistent with J.S.'s explanation in the video given the size of the marks, the absence of any lesions on J.S.'s forehead or groin, and the fact the injuries were sustained within the 48 hours prior to the examination. Dr. Buetow opined the injuries appeared to be in the shape of an adult hand print and resulted from a "non[-]accidental injury ***[,] [o]therwise, child abuse." Murphy testified J.W. would not disclose who was physical with him but did state someone hit him and Dustin R. was sometimes rough with him. Investigator Beckett testified J.S. made a statement after hearing Dustin R.'s name and while referring to the mark on the right side of his face to the effect of " 'Played with me. Smacked me.' " Investigator Beckett also testified Dustin R. later admitted to "roughhousing" with J.S. and slapping him in the face because he did not make his bed. Finally, the court heard evidence indicating Dustin R. had previously pleaded guilty to the aggravated battery of G.W. for similar conduct. The trial court was in the best position to determine the credibility and weight of the witnesses's testimony. See

In re R.G., 2012 IL App (1st) 120193, ¶ 31, 977 N.E.2d 869. We find the court's factual determination Dustin R. intentionally caused J.S.'s injuries was not against the manifest weight of the evidence. Given that determination, the court's findings E.R. and A.R. were abused and neglected as alleged in counts I and III of the State's petition were not against the manifest weight of the evidence.

¶ 42

III. CONCLUSION

¶ 43 We affirm the trial court's judgment.

¶ 44 Affirmed.