2018 IL App (4th) 180331-U

NO. 4-18-0331

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
October 4, 2018
Carla Bender
4th District Appellate
Court, IL

In re S.C., Kyma. M., and Kymi. M., Minors	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Champaign County
Petitioner-Appellee,	)	No. 18JA16
v.	)	
Gennell C.-T.,	)	Honorable
Respondent-Appellant).	)	Brett N. Olmstead,
	)	Judge Presiding.

JUSTICE DeARMOND delivered the judgment of the court.
Justice Holder White concurred in the judgment.
Justice Cavanagh specially concurred.

ORDER

¶ 1 *Held*: The appellate court affirmed, finding the trial court did not err in adjudicating the minors neglected and making them wards of the court.

¶ 2 In February 2018, the State filed an amended petition for adjudication of neglect with respect to S.C., Kyma. M., and Kymi. M., the minor children of respondent, Gennell C.-T. In May 2018, the trial court adjudicated the minors neglected, made them wards of the court, and placed custody and guardianship with the Department of Children and Family Services (DCFS).

¶ 3 On appeal, respondent argues the trial court erred in finding the minors neglected. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In February 2018, the State filed an amended petition for adjudication of neglect with respect to S.C. (born in October 2012), Kyma. M. (born in September 2016), and Kymi. M.

(born in February 2018), the minor children of respondent. The petition alleged the minors 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)) because their environment was injurious to their welfare when they resided with respondent because the environment exposed them to illegal activity and violence. The court placed temporary custody with DCFS.

¶ 6 In April 2018, the trial court conducted the adjudicatory hearing. On January 31, 2018, Alise Nickerson, the daughter of Shanelle Nickerson, got into an argument on social media with someone named Precious. Respondent texted her mother, Wanda Pierce, asking if Kyma. M. could stay with her for "like a[n] hour" because "[t]hey tryna [*sic*] fight." Pierce consented to watch Kyma. M., but she implored respondent: "Don't go fight them[.] *** [W]ait until you have my grand baby." (Respondent was nine months pregnant with Kymi. M. at the time.)

¶ 7 Respondent was driving a van, and several other women were her passengers. She said she dropped Kyma. M. off with Pierce. Respondent drove to Shanelle Nickerson's house, where Alise Nickerson lived. Alise Nickerson and someone named Chyna were on the front porch. A group of women, including Precious, got out of the van. Alise Nickerson took off running down the street, and Precious ran after her. The other women converged on Chyna and beat her with a snow shovel. When Shanelle Nickerson saw them beating Chyna, she told her own son, Amario Turner, to "go get them," and she called the police.

¶ 8 The assailants then piled back into the van. Alise Nickerson returned to the house after running from Precious. Respondent drove the van into the yard of Shanelle Nickerson's house, as if to run Alise Nickerson over. Alise Nickerson ran onto the porch, and the van swerved and hit Shanelle Nickerson's garage and her truck, which was parked in the garage. Respondent then drove away with the other participants in the mob violence still in the van.

About 60 to 90 minutes after dropping off Kyma. M., Pierce stated respondent returned and picked him up again. The other participants in the fracas were still in the van.

¶ 9 Urbana police officer Jay Loschen was dispatched to the Nickerson residence, but he learned on the way there that the offenders had left. He changed course, to see if he could intercept them. He spotted the van and pulled it over within a short time and just over three miles away from the incident at Nickerson's residence. Respondent was driving, and there were four grown passengers, named Chyna, Jamir, Amariana, and Precious, as well as an infant behind the driver's seat. Respondent, who was unable to produce a driver's license or proof of insurance, identified herself as Chyna McFarland. Later, she confirmed her true identity. Around 1 a.m. on February 1, 2018, Loschen arrested her and booked her into the jail.

¶ 10 Pierce testified respondent dropped Kyma. M. off before going to the Nickerson residence. However, two of the occupants of respondent's vehicle, Chyna and Amariana, later said Kyma M. was in the van the entire time. Pierce testified respondent telephoned, told her the police had pulled her over, and asked Pierce to come and get Kyma. M. Because Pierce lacked transportation, Kyma. M.'s father picked him up instead. On February 2, 2018, respondent gave birth to Kymi. M.

¶ 11 At the close of the evidence, the trial court found the allegations of neglect to be proved. In its adjudicatory order, the court set forth its specific factual findings as follows:

> "[Respondent] arranged and conspired with a group of people to escalate a social media argument to violent confrontation in a mob action. She was nine months pregnant with [Kymi. M.] at the time and gave birth to her the next day. She drove her conspirators and [Kyma. M.] to [Kyma. M.'s] grandmother's home, dropped him

> off[,] and proceeded immediately to the home of adverse parties to fight. One of the adverse parties was beaten to the point of requiring hospitalization by the others that [respondent] brought to fight, after which they piled back into [respondent's] vehicle and she attempted to hit another adverse party with the vehicle but swerved and hit that person's garage. [Respondent] then drove to pick up [Kyma. M.], which she did while still in the process of a getaway[,] while conspirators were still in the vehicle. She was then pulled over by police and arrested.
>
> [Respondent] exposed [Kyma. M.] and [Kymi. M.] (then unborn) to illegal activity and violence. Neither the illegal activity nor the violence was necessarily done when [respondent] picked up [Kyma. M.] with her conspirators while in the process of a getaway, as the offense was ongoing and retaliation was a reasonable possibility. [S.C.] was not involved personally[,] but[,] given [respondent's] endangerment of [Kyma. M.] and [Kymi. M.], [S.C.'s] home environment with [respondent] carried the same risk."

¶ 12 In its May 2018 dispositional order, the trial court found respondent unfit and unable, for reasons other than financial circumstances alone, to care for, protect, train, or discipline the minors and the health, safety, and best interests of the minors would be jeopardized if the minors remained in their parents' custody. The court noted respondent "has a longstanding pattern of violence in her relationships and dealings with others, and she has allowed that pattern

to endanger the children's environment, involving [Kyma. M.] in a mob action by bringing him with her in the car as she drove to and from that mob action with her co-offenders." The court adjudicated the minors neglected, made them wards of the court, and placed custody and guardianship with DCFS. This appeal followed.

¶ 13 II. ANALYSIS

¶ 14 A. Jurisdiction

¶ 15 Initially, we note the State argues this court lacks jurisdiction to consider respondent's claim that the trial court's order at the adjudicatory hearing was erroneous. The State contends respondent's notice of appeal indicates she is appealing from the dispositional order, not the adjudicatory order, and thus we are without jurisdiction to review the latter since it was not raised in the notice of appeal. We disagree. This court has jurisdiction over both the adjudicatory order and dispositional order 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"); see also *In re D.R.*, 354 Ill. App. 3d 468, 473, 820 N.E.2d 1195, 1199 (2004) (finding this court had jurisdiction of the adjudicatory order because it "is a step in the procedural progression leading to the dispositional order"). Thus, we have jurisdiction in this case.

¶ 16 B. Neglect Finding

¶ 17 Respondent argues the trial court erred in finding the minors neglected. We disagree.

¶ 18 When deciding whether a minor should be made a ward of the court, the trial court must conduct an adjudicatory hearing to determine whether the minor is abused, neglected,

or dependent. *In re A.P.*, 2012 IL 113875, ¶ 19, 981 N.E.2d 336 (citing 705 ILCS 405/2-18(1) (West 2010)). The Juvenile Court Act states, in part, a minor is neglected when his environment is injurious to his welfare. 705 ILCS 405/2-3(b) (West 2016).

> "The concept of 'neglect' is not static; it has no fixed and measured meaning, but draws its definition from the individual circumstances presented in each case. [Citation.] Neglect based on 'injurious environment' is a similarly amorphous concept not readily susceptible to definition. [Citation.] However, as a general rule neglect is 'the failure to exercise the care that circumstances justly demand and encompasses both wilful and unintentional disregard of parental duty.' [Citation.]" *In re J.P.*, 331 Ill. App. 3d 220, 234-35, 770 N.E.2d 1160, 1172 (2002) (quoting *In re M.K.*, 271 Ill. App. 3d 820, 826, 649 N.E.2d 74, 79 (1995)).

Our supreme court has noted "neglect" has been generally defined as "the ' "failure to exercise the care that circumstances justly demand." ' [Citations.]" *In re Arthur H.*, 212 Ill. 2d 441, 463, 819 N.E.2d 734, 746 (2004). Moreover, the court has stated "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.' [Citations.]" *Arthur H.*, 212 Ill. 2d at 463, 819 N.E.2d at 747. "[C]ases involving allegations of neglect and adjudication of wardship are *sui generis*, and must be decided on the basis of their unique circumstances." *Arthur H.*, 212 Ill. 2d at 463, 819 N.E.2d at 747.

¶ 19 The State has the burden of proving the allegations of neglect by a preponderance of the evidence. *Arthur H.*, 212 Ill. 2d at 463-64, 819 N.E.2d at 747. On appeal, this court will

not reverse a trial court's finding of neglect unless it is against the manifest weight of the evidence. *Arthur H.*, 212 Ill. 2d at 464, 819 N.E.2d at 747. "A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident." *Arthur H.*, 212 Ill. 2d at 464, 819 N.E.2d at 747.

¶ 20 In the case *sub judice*, the evidence is unclear whether respondent dropped Kyma. M. off with her mother after respondent indicated she and others were about to engage in a fight. In its factual findings, the trial court believed that may have happened. However, a review of all the evidence makes it seem unlikely. The police officer stopped respondent soon after and a short distance from the attack and passengers in respondent's own vehicle said the child was present the entire time. Regardless, while nine months pregnant, respondent drove a van loaded with other women to a location where they then assaulted another woman. After everyone was back in the van, respondent then drove recklessly at Alise Nickerson in an apparent attempt to run her over and, when that failed due to Alise running onto the porch, respondent swerved the van and struck Shanelle Nickerson's garage and her vehicle before driving away. The evidence indicated respondent was still fleeing from the scene of the mob violence when she was stopped by police.

¶ 21 We find the evidence sufficiently proved the minors were neglected due to an injurious environment because of their exposure to respondent's illegal activity and violence. Fleeing from the scene of mob violence with Kyma. M. in the car was sufficient to create a real and present danger to the child. Respondent was stopped and required to exit the vehicle, while Kyma. M. was ultimately left with someone else because his mother was taken away. By her actions, respondent exposed the child to potentially dangerous and emotionally traumatic situations. Even if Kyma. M. was not present at the actual mob-action incident, the fact

respondent dropped him off just before and picked him up shortly thereafter, while the other co-conspirators were in the car and while they were fleeing the scene, created a circumstance where the child was present during the traffic stop and respondent's arrest, thereby creating an injurious environment since she was exposing the child to the results of her criminal behavior and violence. The potential for retaliation was immediately present, especially when young people are involved in these types of internet-fueled feuds. The potential for arrest was not only possible, but it became a reality very quickly.

¶ 22 More importantly, the evidence indicated this was an ongoing issue with respondent. The guardian *ad litem* noted how the total lack of judgment shown by the acts of the night in question was significant and reflect on respondent in general. In addition, this was not an isolated incident with respondent. Evidence at the dispositional hearing included respondent's history of domestic violence, and the trial court was asked to take judicial notice of two previous cases. Respondent had a total of nine charges and three convictions. She said she spent three months in juvenile detention following six months in juvenile prison at age 14 for residential burglary. At age 16, she said she was arrested for aggravated battery, charged as an adult, and served three months in jail followed by two years of probation. She also told how she stabbed a male who threatened her at a party and was charged as an adult and mentioned being involved in the murder of her aunt's paramour when she was a teenager.

¶ 23 The dispositional order took notice of all evidence and stipulations previously presented as well as the dispositional report, which included the above information. Respondent's longstanding pattern of violence and her actions in bringing Kyma. M. to and from the scene of mob violence, in which she was an active participant, are relevant to a determination of neglect based on injurious environment. Respondent, when Kyma. M. was in the van, was a

suspect in mob action, had driven the co-conspirators to the location, and had attempted to run down a person and then intentionally ran into a garage and vehicle causing property damage. She then fled the scene, and when stopped by the police shortly thereafter, she gave the officer a false name—at least a Class A misdemeanor for the offense of obstructing identification (720 ILCS 5/31-4.5 (West 2016)) and at most a Class 4 felony for the offense of obstructing justice (720 ILCS 5/31-4 (West 2016)), both of which subjected her to arrest.

¶ 24 With Kyma. M. in the car when stopped, respondent's recent criminal behavior and lying to the police about her identity all resulted in her arrest in the presence of the child. The arrest of a parent in the presence of a small child can be just as traumatic as the witnessing of domestic violence. The child does not appreciate the fine technical point of the legality of the arrest versus the manhandling of his or her parent by a spouse or paramour. Here, respondent exposed her child to her arrest on the street, in a vehicle, in his presence, and subjected him to being taken from her when removed by police, all of which exhibits an injurious environment caused by exposing the minor to illegal activity.

¶ 25 Along with S.C., and once Kymi. M. was born, anticipatory neglect would apply. "Under the anticipatory neglect theory, the State seeks to protect not only children who are the direct victims of neglect or abuse, but also those who have a probability to be subject to neglect or abuse because they reside, or in the future may reside, with an individual who has been found to have neglected or abused another child." *Arthur H.*, 212 Ill. 2d at 468, 819 N.E.2d at 749. "The doctrine of anticipatory neglect recognizes that a parent's treatment of one child is probative of how that parent may treat his or her other children." *In re Zion M.*, 2015 IL App (1st) 151119, ¶ 30, 47 N.E.3d 252. Sibling abuse or neglect may be *prima facie* evidence of neglect based on an injurious environment, although it weakens over time. *In re S.S.*, 313 Ill.

App. 3d 121, 127, 728 N.E.2d 1165, 1170 (2000).

¶ 26 Here, we have the unique circumstance where the neglect of the child in the car is not only relevant but contemporaneous with the presence of the unborn child, who was also present in the car at the time of the incident. Thus, there is no issue of time because the child was born the next day. For purposes of anticipatory neglect, the same pattern of criminal behavior applies to the newborn child. After the child is born, the mother, only one day before, engaged in a significant pattern of criminal behavior and it is reasonable to conclude she will continue. Undoubtedly, the trial court also took into consideration this entire violent episode occurred as a result of a social media "feud," something which has become so ubiquitous in our society that we have almost come to accept it. It took nothing more than posts on the internet to get respondent to pile into a vehicle with a number of co-conspirators and purposely engage in mob violence, while she was nine months pregnant. The court could reasonably conclude she would continue to expose her children to her activities in the future.

¶ 27 The trial court properly considered the information regarding respondent's criminal history. The only relevant issue is whether the injurious environment was sufficient to justify the court's finding making the children wards of the court. The court could undoubtedly take into consideration the fact respondent did all this while nine months pregnant. Considering all the evidence, we find the court's decision finding respondent unfit and adjudicating the minors to be neglected was not against the manifest weight of the evidence.

¶ 28 III. CONCLUSION

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

¶ 30 Affirmed.

¶ 31 JUSTICE CAVANAGH, specially concurring:

¶ 32 I agree with the majority that, under the procedural-progression rationale, we have subject-matter jurisdiction over this appeal.

¶ 33 I further agree with the majority that our deferential standard of review requires us to uphold the trial court's finding of neglect.

¶ 34 I respectfully disagree, however, with a couple of points in the majority's analysis.

¶ 35 First, the majority states that the evidence is unclear whether respondent dropped Kyma. M. off with Pierce before going to the Nickerson residence. The majority believes it is unlikely that respondent did so. But Pierce testified that respondent did so, and the trial court, as the trier of fact, chose to believe Pierce. The court found in its adjudicatory order: "[Respondent] drove her conspirators and [Kyma. M.] to [Kyma. M.'s] grandmother's house, dropped him off and proceeded immediately to the home of adverse parties to fight." We should defer to that finding of fact, since it has evidentiary support, namely, Pierce's testimony. See *In re K.S.*, 365 Ill. App. 3d 566, 570, 850 N.E.2d 335, 339 (2006).

¶ 36 Second, I am not quite convinced that seeing the arrest of a parent creates an injurious environment for the child as domestic violence does. The comparison is inapt. In a case of domestic violence, the injuriousness of the environment is not only the upsetting event in which one family member lays violent hands upon another; it also is the danger of continuing to live with a family member who has shown a willingness to inflict violence in the home. In other words, an *environment* is more than a traumatic incident; it is a continuing state of affairs. I would not go so far as to hold that a parent being arrested in the child's presence is, in itself, child neglect or an environment injurious to the child's welfare. For that matter, we really do not know if the interaction between respondent and Loschen caused Kyma. M. any trauma at all.

¶ 37 With those two reservations, I agree with the majority's decision. Having Kyma. M. in the van immediately after the attack on the Nickerson residence was child neglect, and the other two children, S.C. and Kymi. M., could be found to be neglected under a theory of anticipatory neglect.

¶ 38 Respondent argues otherwise. According to her, the record is devoid of evidence that Kyma. M. was, objectively, in any danger. She is right. There is no evidence that the Nickersons, or anyone on behalf of the Nickersons, intended to exact vengeance. Having called the police, it seems unlikely that Shanelle Nickerson had any inclination to dispatch a vigilante squad.

¶ 39 Even so, when respondent picked up Kyma. M. from his grandmother's house, with her co-conspirators still in the van, she had no way of knowing whether anyone thirsting for revenge had come looking for her. That was a risk to which she chose to expose Kyma. M., and, arguably, that choice was neglect, a breach of the parental standard of care.