

NOTICE

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2018 IL App (4th) 180367-U

NO. 4-18-0367

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

September 24, 2018
Carla Bender
4th District Appellate
Court, IL

<i>In re</i> S.I. and K.M., Minors)	Appeal from the
)	Circuit Court of
(The People of the State of Illinois,)	Champaign County
Petitioner-Appellee,)	No. 18JA14
v.)	
Delbert I.,)	Honorable
Respondent-Appellant).)	John R. Kennedy,
)	Judge Presiding.

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

ORDER

¶ 1 *Held:* The trial court’s finding that a minor was neglected was not against the manifest weight of the evidence of the evidence.

¶ 2 Annemarie G. is the mother of S.I. (born August 4, 2005) and K.M. (born October 9, 2001). Delbert I. is the father of S.I. In January 2018, the State filed a petition for adjudication of neglect. Count I of the petition alleged that S.I. and K.M. were neglected due to their being minors less than 18 years of age whose environment is injurious to their welfare when they reside with Annemarie because that environment exposes the minors to Annemarie’s history of and continued mental illness. 705 ILCS 405/2-3(1)(b) (West 2016). Count II alleged that S.I. was neglected due to being a minor less than 18 years of age whose environment is injurious to her welfare when she resides with Delbert because that environment exposes S.I. to substance abuse. *Id.* In April 2018, the trial court concluded that the State had proved both counts beyond

a preponderance of the evidence. Delbert appeals, arguing only that the trial court's finding that he exposed S.I. to substance abuse was against the manifest weight of the evidence. We disagree and affirm.

¶ 3

I. BACKGROUND

¶ 4 Annemarie is the mother of S.I. and K.M. Delbert is the father of S.I. On January 25, 2018, S.I. and K.M. were taken into protective custody.

¶ 5 On January 26, 2018, the State filed a petition for adjudication of neglect. Count I of the petition alleged that S.I. and K.M. were neglected due to their being minors less than 18 years of age whose environment is injurious to their welfare when they reside with Annemarie because that environment exposes the minors to Annemarie's history of and continued mental illness. *Id.* Count II alleged that S.I. was neglected due to being a minor less than 18 years of age whose environment is injurious to her welfare when she resides with Delbert because that environment exposes S.I. to substance abuse. *Id.* On January 29, 2018, the trial court placed the children in the temporary custody of DCFS.

¶ 6 In April 2018, the matter proceeded to an adjudicatory hearing. Annemarie stipulated to the allegation in count I, and the trial court determined that a factual basis supported this stipulation. The court then turned to count II. The State requested that the court take judicial notice of Delbert's 2014 conviction for aggravated driving under the influence of alcohol and a September 2016 order that declared that Delbert "seriously endangered the health and welfare of the party's minor child by drinking while caring for the child during the summer of 2015[.]" The court took judicial notice of those cases.

¶ 7 Delbert testified that he had not consumed alcohol since August 2015. He noted that he had recently obtained a substance-abuse evaluation that recommended no further treat-

ment beyond attending Alcoholics Anonymous meetings. Delbert stated that he often attended such meetings but was unable to do so recently because of inclement weather and work conflicts. Annemarie testified that she saw Delbert transporting a 24-pack of beer on his motorized bicycle approximately two months before the adjudicatory hearing. The court found that the State had proven both counts by a preponderance of the evidence.

¶ 8 In May 2018, the trial court conducted a dispositional hearing, found both children were neglected, and made them wards of the court. The court placed the children in the custody and guardianship of the Department of Children and Family Service (DCFS).

¶ 9 This appeal followed.

¶ 10 II. ANALYSIS

¶ 11 Delbert appeals, arguing only that the trial court's finding that he exposed S.I. to substance abuse was against the manifest weight of the evidence. We disagree.

¶ 12 A. The Applicable Law

¶ 13 The Juvenile Court Act of 1987 (Act) provides a systematic framework for determining when a minor can be removed from his or her parents and made a ward of the State. *In re A.L.*, 2012 IL App (2d) 110992, ¶ 13, 969 N.E.2d 531. A trial court must make a finding of abuse, neglect, or dependence regarding a child before it can adjudicate the child a ward of the court. 705 ILCS 405/2-10 (West 2016). A "neglected minor" is defined as any minor less than 18 years of age whose environment is injurious to his or her welfare. *Id.* § 2-3(1)(b). The term "neglect" has been defined as the failure to exercise the level of care that is required under the circumstances and encompasses both the willful and unintentional disregard of parental duty. *In re An.W.*, 2014 IL App (3d) 130526, ¶ 57, 17 N.E.3d 878. The State bears the burden of proving the allegations of neglect by a preponderance of the evidence. *In re Arthur H Jr.*, 212 Ill. 2d 441,

463-64, 819 N.E.2d 734, 747 (2004).

¶ 14 A reviewing court will not reverse a trial court's finding of abuse or neglect unless the determination is against the manifest weight of the evidence. *In re An.W.*, 2014 IL App (3d) 130526, ¶ 55. A finding is against the manifest weight of the evidence if the opposite result is clearly proper. *In re Audrey B.*, 2015 IL App (1st) 142909, ¶ 32, 31 N.E.3d 892. A trial court's finding of neglect is given great deference. *In re J.S.*, 2012 IL App (1st) 120615, ¶ 31, 977 N.E.2d 879. When reviewing a trial court's judgment under the manifest weight of the evidence standard, a reviewing court will not substitute its judgment for that of the trial court on matters of witness credibility, the weight to be given to the evidence, and inferences to be drawn from the evidence. *In re Parentage of W.J.B.*, 2016 IL App (2d) 140361, ¶ 25, 68 N.E.3d 977.

¶ 15 In *In re R.B.*, 336 Ill. App. 3d 606, 607, 784 N.E.2d 400, 402 (2003), the State filed a petition alleging that R.B., the minor child of Gaston B. and Sonja C., was a neglected minor under section 2-3(1)(b) of the Act. Sonja stipulated to the neglect allegation. *Id.* at 609. Gaston refused to stipulate, and the matter proceeded to a dispositional hearing. *Id.* at 610-11. At the dispositional hearing, the State asked the trial court to take notice of Sonja's stipulation. *Id.* at 610. Over Gaston's objection, the court took notice of Sonja's stipulation and found that the minor was neglected. *Id.* at 611. Gaston appealed, arguing that the trial court improperly accepted Sonja's stipulation as evidence against him and that the evidence was not sufficient to prove him "guilty" of neglect. *Id.* at 613. This court disagreed, concluding that "the purpose of juvenile court proceedings is to determine the *status* of the child on whose behalf the proceedings are brought, *not* to determine any particular person's criminal or civil liability. *** What matters initially is only whether the child is neglected because these conditions exist." (Emphases in original.) *Id.* at 614-15. This court further concluded as follows:

“[T]he legislature that drafted section 2-3 of the Act—as well as the public—would be outraged and view as bizarre a trial court’s ruling at the conclusion of the adjudicatory hearing *** that [a] child involved was not an abused minor because the State had not proved who was responsible for the abuse. The fact that the State cannot prove causation [i.e., who is responsible for the neglect] makes the child no less abused and no less needful of court intervention to both protect [the child] and assure that the abuse stop[s].” *Id.* at 616.

¶ 16 In *In re Arthur H., Jr.*, 338 Ill. App. 3d 1027, 1034, 789 N.E.2d 890, 895 (2003), the trial court determined that the child was a neglected minor based primarily upon the actions of his mother. The Second District reversed the trial court, concluding that a neglect finding must be made against both parents before a child can be adjudicated neglected. *Id.* at 1042. The Illinois Supreme Court reversed the Second District, concluding as follows:

“[T]he Act instructs the circuit court during the adjudicatory hearing to determine whether the child is neglected, and not whether the parents are neglectful[.] [This] furthers the purpose and policy of the Juvenile Court Act, which is to ensure the best interests and safety of the child. 705 ILCS 405/1–2 (West 2000). A contrary result would lead to the unacceptable proposition that a child who is neglected by only one parent would be without the protections of the Act. Similarly, a child would have no protection under the Act if the child were neglected, but it could not be determined which parent’s conduct caused the neglect. The General Assembly could not have intended such absurd results. See *In re R.B.*, 336 Ill. App. 3d at 615-16 (setting forth hypothetical scenarios to show that a determination of causation is irrelevant at the adjudicatory stage).” *In re Arthur H. Jr.*, 212

Ill. 2d at 467.

¶ 17

B. This Case

¶ 18 In this case, the trial court took judicial notice of defendant's 2014 conviction for aggravated driving under the influence of alcohol and a September 2016 order that declared that Delbert "seriously endangered the health and welfare of the party's minor child by drinking while caring for the child during the summer of 2015[.]" The court also considered Delbert's testimony that he had not consumed alcohol since August 2015.

¶ 19 The record in this case does not clearly show that the opposite result was the proper result. *In re Audrey B.*, 2015 IL App (1st) 142909, ¶ 32. The trial court, rather than this court, was in the superior position to determine the credibility of Delbert's testimony and the inferences to be drawn from the admitted evidence. Accordingly, we conclude that the trial court's finding that Delbert exposed S.I. to substance abuse was not against the manifest weight of the evidence.

¶ 20 Furthermore, Delbert only challenges the evidence as applied to him. He fails to consider that, regardless of his own conduct, the trial court could still find S.I. to be a neglected minor because of the actions of Annemarie. *In re R.B.*, 336 Ill. App. 3d at 614-15. The trial court determines the status of the child as a whole, not which particular parent was neglectful. See *id.* On appeal, Delbert fails to challenge Annemarie's stipulation to count I or the trial court's acceptance of that stipulation, nor did he make any such challenge before the trial court. Thus, even if the trial court had not found that the State had proved count II, the court's finding regarding count I was a sufficient basis for the court's later adjudication of both children as wards of the court. Accordingly, defendant fails to demonstrate that the trial court's finding that S.I. was neglected was against the manifest weight of the evidence.

III. CONCLUSION

¶ 21

¶ 22

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

¶ 23

Affirmed.