

NOTICE

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2018 IL App (4th) 180440-U

NO. 4-18-0440

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

November 7, 2018
Carla Bender
4th District Appellate
Court, IL

<i>In re</i> I.S., R.M., Tomi. J., and Toma. J., Minors,)	Appeal from
)	Circuit Court of
(The People of the State of Illinois,)	Champaign County
Petitioner-Appellee,)	No. 17JA76
v.)	
Tommy J.,)	Honorable
Respondent-Appellant).)	Brett N. Olmstead,
)	Judge Presiding.

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

ORDER

¶ 1 *Held:* The appellate court affirmed, concluding the trial court’s finding of neglect was not against the manifest weight of the evidence.

¶ 2 In December 2017, the State filed a petition for adjudication of neglect, alleging I.S. (born March 15, 2012), R.M. (born August 1, 2009), Tomi. J. (born December 6, 2006), and Toma. J. (born January 26, 2008) were neglected in that their environment was injurious to their welfare when they reside with respondent mother, Jennifer M., or respondent father of Tomi. J. and Toma. J., Tommy J., due to exposure to domestic violence. 705 ILCS 405/2-3(1)(b) (West 2016). This appeal involves only Tomi. J. and Toma. J. Respondent mother is not a party to this appeal.

¶ 3 In May 2018, the trial court entered an adjudicatory order finding Tomi. J. and Toma. J. neglected. Following a June 2018 dispositional hearing, the trial court (1) made Tomi.

J. and Toma. J. wards of the court, (2) found respondent father unfit, (3) ordered the children remain in the custody of respondent mother, whom it determined to be fit, and (4) placed guardianship with the Illinois Department of Children and Family Services (DCFS).

¶ 4 Respondent father appeals, arguing the trial court's finding of neglect was against the manifest weight of the evidence. We disagree and affirm.

¶ 5 I. BACKGROUND

¶ 6 In December 2017, the State filed a petition for adjudication of neglect, alleging I.S., R.M., Tomi. J., and Toma. J. were neglected in that their environment was injurious to their welfare when they reside with respondent mother or respondent father due to exposure to domestic violence. 705 ILCS 405/2-3(1)(b) (West 2016).

¶ 7 A. Adjudicatory Hearing

¶ 8 In May 2018, an adjudicatory hearing commenced. We summarize only the evidence necessary to resolve this appeal.

¶ 9 1. *Heidi Gulbrandson-Andrews*

¶ 10 Heidi Gulbrandson-Andrews, a supervisor of investigations and intact cases for DCFS, testified that in 2010, an open case involving Tomi. J. and Toma. J. closed. She testified that between the case closing in 2010 and an indicated report of domestic violence in 2016, DCFS investigated five claims of domestic violence involving respondent father and other paramours abusing respondent mother. Gulbrandson-Andrews testified that when she receives a new investigation involving prior contacts, she looks to see if there are patterns in behavior or decision-making.

¶ 11 2. *Officer Brian Greer*

¶ 12 Brian Greer, a Champaign police officer, testified that on September 14, 2017, he responded to a hotel in Champaign, Illinois, regarding a complaint alleging a battery. Once he arrived at the hotel, respondent mother reported she worked at the hotel and that while she walked through the vestibule, between the lobby and the exterior of the building, respondent father hit her on the back of the head, rendering her unconscious for a few seconds. Respondent mother testified that upon regaining consciousness, she saw respondent father walking away. Medical personnel observed a lump on the back of respondent mother's head.

¶ 13 *3. Officer Kaitlin Fisher*

¶ 14 Kaitlin Fisher, a Champaign police officer, testified on March 16, 2018, she responded to a hotel on Bloomington Road where respondent mother reported a violation of her order of protection by respondent father. Respondent mother provided Fisher a copy of the order of protection. Officer Fisher confirmed respondent father called respondent mother from jail in violation of the order of protection.

¶ 15 *4. Respondent Mother*

¶ 16 The State called respondent mother to testify to the multiple orders of protection she filed and obtained against respondent father. Respondent mother obtained an order of protection against respondent father in December 2014 (Champaign County case No. 14-OP-526) that remained in effect until January 2016. In the order, respondent mother alleged four incidents involving respondent father.

¶ 17 First, in December 2014, respondent father told Tomi. J. he was going to "beat his stepdad[']s ass" and frightened Tomi. J. Second, again in December 2014, respondent father showed up at respondent mother's house and threatened her if he could not see the children. Specifically, respondent father said if he cannot have his children, no one can and that either he

or DCFS would have the kids. Then he threatened to plant drugs on respondent mother and called DCFS. Subsequently, DCFS came to investigate respondent father's allegations. Third, in February 2014, respondent father showed up at respondent mother's place of employment and demanded that respondent mother let him claim the children as dependents on his tax returns or risk him calling DCFS. DCFS later questioned respondent mother. Fourth, in April 2014, respondent father showed up at respondent mother's place of employment and told her if she would not be with him, she would not have their children.

¶ 18 Respondent mother next filed for an order of protection in March 2017 (Champaign County case No. 17-OP-141). In the petition, respondent mother alleged respondent father (1) threatened to harm respondent mother multiple times with and without a weapon, (2) destroyed personal items of respondent mother, and (3) threatened to file a civil suit against respondent mother. Respondent mother obtained an emergency order, but the trial court dismissed the petition for want of prosecution.

¶ 19 Lastly, respondent mother filed for an order of protection in March 2018 (Champaign County case No. 18-OP-123). Respondent mother alleged that (1) in July 2017, respondent father broke out the front window of her vehicle; (2) in September 2017, he showed up at her place of employment, knocked her out, and broke out the back window of her vehicle; (3) in November 2017, he beat respondent mother and broke the rest of her vehicle windows and police were involved and took pictures of respondent mother's injuries and damage to her vehicle; (4) in December 2017, from jail, respondent father threatened to post nude and sexually explicit photos of respondent mother on the internet; (5) in January 2018, respondent father had other inmates threaten respondent mother; and (6) in February 2018, respondent father threatened respondent mother indicating, if she showed up to court, when he got out of jail he

intended to go to her boss and get her fired. The trial court dismissed the order of protection for want of prosecution.

¶ 20 The trial court took judicial notice of the order of protection cases. Also, the court took judicial notice of a June 2010 order where the court found respondent father remained unfit and unable to parent (Champaign County case No. 08-JA-50).

¶ 21 After the State and guardian *ad litem* rested, respondent mother testified on her own behalf. Respondent mother testified she obtained an order of protection against respondent father in 2008 and that she extended the order in 2010, 2012, and 2014 for two years each time. During that time, respondent father took her to court numerous times regarding visitation. Respondent mother testified to calling the police on him 10 to 15 times, but doing so failed to stop him. She said, “He is not afraid. He has no[—]he has no fear of police, or of jail.” To protect herself and her children from respondent father, respondent mother moved to the fourth floor of a gated-apartment building.

¶ 22 *5. Trial Court’s Finding*

¶ 23 At the close of evidence, the trial court found respondent father consistently threatened respondent mother and inflicted pain and abuse upon her. The court stated that those circumstances “can’t help but affect the children’s environment the way it’s described in the petitions.” The court also stated that violence “affects and impacts the children, whether or not the children are the ones who are struck, or whether or not the children are in the room when it happens, it infects the children’s environment.” The court entered an adjudicatory order finding the children neglected.

¶ 24 *B. Dispositional Hearing*

¶ 25 In June 2018, the trial court held a dispositional hearing. For the dispositional hearing, DCFS prepared a report. The report lacked information for respondent father because he “exercised his Fifth Amendment rights and [did] not provide[] any information for the *** report” due to pending criminal charges involving matters addressed in this case. At the time DCFS prepared the report, respondent resided in the Champaign County jail and Tomi. J. and Toma. J. lived with respondent mother. DCFS recommended guardianship and custody remain with respondent mother. The court-appointed special advocate (CASA) filed a report recommending DCFS obtain guardianship and custody of Tomi. J. and Toma. J.

¶ 26 Following the dispositional hearing, the trial court (1) made Tomi. J. and Toma. J. wards of the court, (2) found respondent father unfit, (3) ordered the children remain in the custody of respondent mother, whom it determined fit, and (4) placed guardianship with DCFS.

¶ 27 This appeal followed.

¶ 28 II. ANALYSIS

¶ 29 On appeal, respondent father argues the trial court’s finding of neglect was against the manifest weight of the evidence. We affirm.

¶ 30 The Juvenile Court Act of 1987 provides a two-step process the trial court must follow in deciding whether minor children should become wards of the court. 705 ILCS 405/2-18(1), 2-22(1) (West 2016). Step one of the process is the adjudicatory hearing where the trial court considers only whether the children are abused, neglected, or dependent. 705 ILCS 405/2-18(1) (West 2016). The State bears the burden of providing a neglect allegation by a preponderance of the evidence. *In re A.P.*, 2012 IL 113875, ¶ 17, 981 N.E.2d 336. An appellate court will not reverse a trial court’s neglect finding unless 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.*

¶ 31 After reviewing the record, we first acknowledge that respondent father did not forfeit or waive his neglect argument on appeal because he did not stipulate to the allegations of neglect during the adjudication hearing. Respondent father’s acknowledgement at the dispositional hearing that he would agree with the recommendation for wardship did not amount to respondent father admitting to neglect.

¶ 32 Respondent father asserts the trial court erred in finding Tomi. J. and Toma. J. neglected because the violence between respondent father and respondent mother seldom involved the children or occurred around the children. Respondent father argues the last incident involving the children occurred in December 2014 when respondent father told Tomi. J. he was going to “beat his stepdad[’]s ass” and frightened Tomi. J. Therefore, respondent father argues the paucity of evidence of abuse in the presence of the children, the age of the evidence of respondent father’s behavior in the children’s presence, and the limited contact respondent father has with the children undermines the State’s case.

¶ 33 We disagree with respondent father and find respondent father’s constant and repeated acts of violence directed toward respondent mother directly and indirectly affected Tomi. J. and Toma. J. Children are perceptive and observant, and even if they do not directly witness violence between their parents, the violence still affects their environment. The trial court correctly found that respondent father’s consistent threats toward respondent mother could not “help but affect the children’s environment the way it’s described in the petitions.” The court stated violence “affects and impacts the children, whether or not the children are the ones

who are struck, or whether or not the children are in the room when it happens, it infects the children's environment.”

¶ 34 Respondent father asserts that while there is no express limitation on the age of evidence, all evidence tends to lose relevance as the time between it and that which it is offered to prove increases. See *People v. Thingvold*, 191 Ill. App. 3d 144, 149, 547 N.E.2d 657, 660 (1989). While respondent father argues the age of the evidence of respondent father's behavior in the children's presence has lost its relevance, we find when looking at the direct and indirect evidence of violence, respondent father has continuously committed violence affecting the children since 2014. Respondent Father has managed to find ways even while incarcerated to contact and threaten respondent mother, thus affecting Tomi. J.'s and Toma. J.'s environment. Moreover, just a few months before the State filed a petition for adjudication of neglect, respondent father struck respondent mother on the back of her head, rendering her unconscious and leaving an injury.

¶ 35 For these reasons, we cannot find the trial court's finding of neglect was against the manifest weight of the evidence.

¶ 36 III. CONCLUSION

¶ 37 For the following reasons, we affirm.

¶ 38 Affirmed.