

NOTICE

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FILED

October 25, 2018
Carla Bender
4th District Appellate
Court, IL

2016 IL App (4th) 180443-U
NOS. 4-18-0443, 4-18-0444 cons.

**IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT**

<i>In re</i> Y.R.-Z., a Minor)	Appeal from the
(The People of the State of Illinois,)	Circuit Court of
Petitioner-Appellee,)	Champaign County
v. (No. 4-18-0443))	No. 18JA03
Dimarrio Z.,)	
Respondent-Appellant.))	
-----)	
<i>In re</i> Y.R.-Z., a Minor)	
(The People of the State of Illinois,)	
Petitioner-Appellee,)	
v. (No. 4-18-0444))	Honorable
Kinny R.,)	Brett N. Olmstead,
Respondent-Appellant.))	Judge Presiding.

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

ORDER

¶ 1 *Held:* The appellate court affirmed, concluding the trial court’s adjudicatory findings were not against the manifest weight of the evidence.

¶ 2 In January 2018, the State filed a petition for adjudication of neglect, alleging Y.R.-Z. (born August 22, 2016) was subjected to an injurious environment in that (1) respondent father, Dimarrio Z., and respondent mother, Kinny R., failed to correct the conditions that resulted in a prior adjudication of unfitness (count I) and (2) the environment exposes him to domestic violence (count II). 705 ILCS 405/2-3(1)(b) (West 2014). The State filed the petition in response to an incident in which respondent father punched respondent mother, knocking her to the ground, and forced her into the front seat of a vehicle before driving off. Following an

adjudicatory hearing, the trial court found the State proved Y.R.-Z. was subjected to an injurious environment while in respondents' care. In June 2018, following a dispositional hearing, the court made Y.R.-Z. a ward of the court and placed custody and guardianship with the Department of Children and Family Services (DCFS).

¶ 3 Respondents appeal, asserting the trial court's adjudicatory finding was against the manifest weight of the evidence. For the following reasons, we affirm the judgment of the circuit court.

¶ 4 I. BACKGROUND

¶ 5 In January 2018, the State filed a petition for adjudication of neglect and shelter care, alleging Y.R.-Z. was neglected by being subjected to an injurious environment 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 2014)) in that (1) respondents failed to correct the conditions that resulted in a prior adjudication of unfitness (count I) and (2) the environment exposes him to domestic violence (count II).

¶ 6 A. Adjudicatory Hearing

¶ 7 Over the course of two nonconsecutive days in March and April 2018, the trial court held an adjudicatory hearing and heard the following evidence.

¶ 8 1. *Billy Nash*

¶ 9 Billy Nash, respondents' neighbor, testified that, in January 2018, he was in the bathroom when he heard a "loud commotion" and "a lot of yelling." Nash looked out the window and observed respondents arguing. Although Nash could not make out all that was said, "the only clear thing that [he] heard was[,] [']what about the kids?[']" According to Nash, respondent mother was resisting respondent father's attempts to get her into the vehicle. Once

respondent mother was in the vehicle, Nash testified, “there was a blowing of the horn. She kept pressing the horn like she wanted to get out, and I heard a loud thumping as if she was kicking the inside of the door.” Respondent mother was able to get out of the car and began walking away. Nash saw defendant father punch respondent mother “upside the head,” causing her to fall to the snow-covered ground. After she fell, respondent father forced her back into the vehicle and sped off, prompting Nash to call the police. Police officers responded to his call within “[m]aybe five minutes or less.”

¶ 10 According to Nash, respondents moved into the duplex across the alley behind his house approximately one month before this incident. Nash thought the woman lived in the duplex because he had seen her car parked there with the man’s car behind it more than once. Nash “once or twice” saw respondents with one or more children. At the time of the incident, Nash did not know if there was anybody else in the vehicle.

¶ 11 *2. Shannon Barrett*

¶ 12 Shannon Barrett, a patrol officer with the Urbana Police Department, responded to Nash’s police call. According to Barrett, Nash’s testimony was consistent with what he told her, except that, on the day of the incident, Nash stated it was after respondent mother exited the vehicle a second time that respondent father struck her and forced her into the vehicle a third time.

¶ 13 Another officer located the vehicle Nash described, and Barrett went to the scene where respondents had been stopped. At the scene, Barrett observed a white, powdery substance on respondent mother’s left side, which Barrett thought looked like salt or dust and was consistent with Nash’s description of respondent mother falling in the snow. Barrett testified respondent mother’s hair concealed a portion of her face and she refused to cooperate with

Barrett's request to get a better look at her face. Barrett overheard respondent mother say respondent father was mad at her and yelling at her about another child that was sick at school. Respondent mother denied a physical altercation.

¶ 14 Barrett spoke with respondent father, who denied anything happened. According to Barrett, respondent father said he put his two children in the vehicle, respondent mother got in the front passenger seat, and he drove to pick up his other son who was sick at school.

¶ 15 *3. Karen Allen*

¶ 16 Karen Allen, a child protection specialist with DCFS, testified Y.R.-Z. had a three-year-old sibling, Y.Z. Allen spoke with Y.Z. the day after the incident, and Y.Z. said respondent father told her to call respondent mother "Tracy." According to Allen, Y.Z. said she and Y.R.-Z. were in the vehicle at the time of the incident. Allen testified, "I asked [Y.Z.] if she saw anything and she was very animated, standing there pointing her fingers stating, 'I saw Mommy run this way. I saw Tracy run this way. I saw Daddy run this way, and then I saw Daddy hit her with a belt.'" Y.Z. identified "her" as "[h]er mom, Tracy." Allen did not have a picture of respondent mother to show Y.Z. and she did not confirm with Y.Z. that Tracy was respondent mother.

¶ 17 *4. Judicial Notice*

¶ 18 The trial court took judicial notice of Champaign County case No. 2015-JA-32, including the findings and orders entered. Specifically, the State drew the court's attention to a permanency order entered in October 2017, which prohibited contact between respondent mother and Y.Z.

¶ 19 *5. Lisa Barkstall*

¶ 20 Lisa Barkstall, a child welfare advanced specialist with DCFS, testified respondents were the parents of Y.Z. and Y.R.-Z. Barkstall was assigned Y.Z.'s case in October 2017 and Y.R.-Z.'s case in January 2018. According to Barkstall, Y.R. was taken into DCFS care in 2015 following an incident in which respondent mother killed respondent father's dog by placing it in an oven. Respondent mother completed a psychological evaluation but otherwise did not complete services in connection with Y.Z.'s case. Barkstall testified respondent mother surrendered her parental rights to Y.Z.

¶ 21 According to Barkstall, respondent mother did not participate in services with DCFS after she surrendered her rights to Y.Z. but she completed services for an Indiana case related to Y.R.-Z. In Barkstall's understanding, respondent mother completed parenting services and participated in visitation in connection with the Indiana case. With respect to mental-health services, respondent mother reported attending a program called "Illini Christian."

¶ 22 Prior to the January 2018 domestic-violence incident, the case regarding Y.Z. was close to closing. Barkstall acknowledged there was a court order in Y.Z.'s case prohibiting contact between respondent mother and Y.Z. because she had not completed services in Illinois and surrendered her parental rights. According to Barkstall, the case in Indiana was opened when Y.R.-Z. was born and he tested positive for tetrahydrocannabinol (THC). At the time of Y.R.-Z.'s birth, respondent mother could not provide the hospital with an address. Apparently, these circumstances raised suspicions and prompted inquiries that revealed information about respondent mother previously killing the dog by placing it in an oven. Once the case in Indiana was opened, Indiana Child Services placed Y.R.-Z. with respondent father. Through an interstate compact, DCFS in Illinois worked with Indiana Child Services with regard to Y.R.-Z.

psychological examination. In August 2016, a case in Indiana opened regarding Y.R.-Z. As part of that case, respondent mother was required to complete parenting classes, counseling, visitation, a drug and alcohol assessment, and a mental-health assessment. Respondent mother completed parenting classes and participated in visitation, which was increased as the case moved forward. Following a drug and alcohol assessment, respondent mother was not recommended for substance-abuse treatment. Respondent mother also participated in counseling, which addressed parenting skills and domestic violence.

¶ 29 According to respondent mother, she was in a vehicle stopped by police in January 2018 along with respondent father, Y.R.-Z., and respondent father's niece. Respondent mother testified there was no domestic-violence incident prior to the police stop, which baffled respondent mother. According to respondent mother, the white residue Officer Barrett observed likely came from salt spread after a recent snow storm. When asked about Y.Z.'s statement that she saw her father hit Tracy with a belt, respondent mother testified she had not heard Y.Z.'s voice "in over a couple of years."

¶ 30 Prior to January 2018, respondent mother had reasonable visitation with Y.R.-Z. and respondent father had primary custody of Y.R.-Z. pursuant to a court order entered in Champaign County case No. 2017-F-311. According to respondent mother, DCFS asked that her visits with Y.R.-Z. not take place in respondent father's home, where Y.Z. resided. Respondent mother denied currently being in a romantic relationship with respondent father and further denied they were in a romantic relationship at the time of the January 2018 incident or at the time of Y.R.-Z.'s birth.

¶ 31 B. Adjudication of Neglect

¶ 32 The trial court noted the basis for count I was not a failure to complete recommended services in a prior case but rather a failure to correct the domestic violence in the relationship. If the incident occurred as Nash described, then whatever services respondent mother completed in connection with the Indiana case did not adequately address the domestic-violence issue that the court saw as the core issue of the prior case involving Y.Z. Similarly, although respondent father completed domestic-violence services in the case involving Y.Z., Nash's testimony showed the domestic-violence service "didn't stick" with respondent father.

¶ 33 The trial court went on to say it found Nash to be an "extremely credible witness" with no motivation to lie about the events he observed. Nash's testimony was consistent and his demeanor was not that of someone exaggerating or lying. In contrast, the court found respondent mother's testimony that no incident occurred to be not credible. The court noted the police pulled over a vehicle consistent with Nash's description and encountered people clothed in a manner consistent with Nash's description. Additionally, the court noted Officer Barrett's testimony regarding the white residue on respondent mother's clothing was consistent with Nash's description of her falling to the ground.

¶ 34 According to the trial court, respondents' response to the police was "circled wagons," where they both denied anything had occurred. Also of note was Allen's testimony that Y.Z. described an incident where she saw "daddy" strike "Tracy" and said she was told to call "mommy" "Tracy." The court indicated its belief that respondents were attempting to conceal an ongoing relationship.

¶ 35 The trial court concluded the State proved by a preponderance of the evidence a domestic-violence incident occurred between respondents despite services in an earlier case.

Accordingly, the court found the State established Y.R.-Z. was neglected pursuant to both count I and count II. The court then set the matter for a dispositional hearing.

¶ 36 C. Dispositional Hearing

¶ 37 In June 2018, the case proceeded to a dispositional hearing. After hearing testimony and argument, the trial court found respondents unfit and unable to parent Y.R.-Z. The court found it would be in Y.R.-Z.'s best interest to be made a ward of the court and to place custody and guardianship with DCFS.

¶ 38 Both parties filed timely notices of appeal. We docketed respondent father's appeal as case No. 4-18-0443 and respondent mother's appeal as case No. 4-18-0444. We have consolidated respondents' cases for review.

¶ 39 II. ANALYSIS

¶ 40 On appeal, respondents argue the trial court's adjudicatory finding was against the manifest weight of the evidence.

¶ 41 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. First, the trial court must conduct an adjudicatory hearing to determine whether the child is abused, neglected, or dependant. *Id.* ¶ 19. The State bears the burden to prove the allegations of abuse or neglect by a preponderance of the evidence; that is, the State must demonstrate the allegations are more probably true than not. *In re Arthur H.*, 212 Ill. 2d 441, 463-64, 819 N.E.2d 734, 747 (2004). We reverse a ruling of abuse or neglect only if it is against the manifest weight of the evidence. *Id.* at 464. "A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident." *Id.*

¶ 42 The record shows the trial court thoroughly considered the testimony and made specific findings regarding the credibility of the witnesses and the evidence in support of its adjudicatory finding of neglect. The court credited Nash’s testimony regarding the incident he witnessed between respondents in January 2018. Nash described respondent father’s attempts to force respondent mother into a vehicle. After one successful attempt, respondent mother honked the vehicle’s horn and Nash heard thumping, as though she were kicking at the door. When respondent mother exited the vehicle and began to walk away, respondent father punched her and knocked her to the ground before forcing her into the vehicle again and driving off. The court found this testimony credible and noted Nash had no reason to fabricate his testimony.

¶ 43 We note the trial court found respondent mother’s testimony regarding services she completed in connection with the Indiana case to be credible. Additionally, it was undisputed respondent father completed all the recommended services in connection with Y.Z.’s case. However, the issue is not whether respondents participated in and completed services. The issue, as the trial court correctly noted, was whether the State proved that respondents failed to correct the conditions (*i.e.* ongoing domestic violence) that led to a prior adjudication of unfitness. Respondents argue that “[j]ust as one may overcome alcoholism, yet occasionally drink to intoxication, succumb to the temptation, so may a person overcome the habit of resorting to violence, yet occasionally slip up.” Respondents argue that, after having completed services, a single incident of domestic violence should not result in a finding of neglect based on a failure to correct conditions because that “would necessarily mean the parent could never again give in to a formerly habitual pattern of behavior.” We cannot accept an argument that condones domestic violence. The suggestion that one incident of domestic violence is insufficient to show a failure to correct a pattern of domestic violence is unpersuasive, particularly in this case where

respondent father punched respondent mother in the head and knocked her to the ground in front of the minor children.

¶ 44 We conclude the State proved by a preponderance of the evidence that the respondents failed to correct the conditions that led to a prior adjudication of parental unfitness. Given the evidence of this domestic-violence incident, we conclude the State also proved count II by a preponderance of the evidence. Accordingly, we affirm the judgment of the trial court.

¶ 45 III. CONCLUSION

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

¶ 47 Affirmed.