2019 IL App (1st) 190595-U

No. 1-19-0595

Order filed September 20, 2019

Fifth Division



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IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

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| IN THE INTEREST OF: | ) | Appeal from the |
| | ) | Circuit Court of |
| B.H., Jr. and Z.H., | ) | Cook County. |
| | ) | |
| Minors-Respondents-Appellants, | ) | Nos. 18 JA 1110 |
| | ) | 18 JA 1217 |
| (The People of the State of Illinois, | ) | |
| | ) | Honorable |
| Petitioner-Appellee, | ) | Bernard J. Sarley, |
| | ) | Judge, Presiding. |
| v. | ) | |
| | ) | |
| Latrice S., | ) | |
| | ) | |
| Respondent-Appellee, | ) | |
| | ) | |
| and | ) | |
| | ) | |
| Bobby H., | ) | |
| | ) | |
| Respondent-Appellee). | ) | |

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JUSTICE HALL delivered the judgment of the court.
Presiding Justice Hoffman and Justice Rochford concurred in the judgment.

**ORDER**

¶ 1 *Held*: We affirm where the juvenile court's denial of the guardian *ad litem*'s motion to reconsider the temporary custody order leaving the minor in his parents' care was not an abuse of discretion, and the juvenile court's setting of the minor's permanency goal to return home was not against the manifest weight of the evidence.

¶ 2 The guardian *ad litem* (GAL) for the minors, B.H., Jr. and Z.H., filed this interlocutory appeal pursuant to Illinois Supreme Court Rule 306(a)(5) (eff. Nov. 1, 2017) to challenge the juvenile court's orders of March 8, 2019, that: (1) denied the GAL's motion to reconsider the temporary custody order keeping B.H., Jr. in his parents' care (case number 18 JA 1217)[1], and (2) set the permanency planning goal for Z.H. as return home within five months (case number 18 JA 1110). For the following reasons, we affirm.

¶ 3 This is an expedited appeal, pursuant to Illinois Supreme Court Rule 311(a) (eff. July 1, 2018), because it involves the custody of unemancipated minors, and under that rule, our decision is due on September 22, 2019. This case became ready for appellate review on September 9, 2019, and will be filed on September 20, 2019.

¶ 4 FACTS

¶ 5 The facts that led to this family's involvement with the Illinois Department of Children and Family Services (DCFS) are not in dispute. In 2016, six-week-old Zyla H. (Zyla), the daughter of respondents Latrice S. (respondent-mother) and Bobby H. (respondent-father), died while in their care. As a result, the State filed petitions for adjudication of wardship pursuant to the Juvenile Court Act of 1987 (Act) (705 ILCS 405/1-1 *et seq.* (West 2016)) as to Latrice's three older children from a prior relationship (older siblings), (who are not a part of this appeal). The

[1] The State joins in this portion of the GAL's appeal.

older siblings were placed in the temporary custody of DCFS and placed in foster care. After the adjudicatory hearing for the older siblings, the juvenile court found that the undisputed evidence was that Zyla suffered severe, traumatic, nonaccidental injuries which caused her death. The court concluded that Zyla suffered injuries on at least two different occasions that were the result of physical abuse and that the perpetrator was "unknown" but that both respondents were the sole caretakers of the children, and that it was almost certain that one of them caused the physical abuse to the infant. The court also noted that the older siblings were living in the home with respondents and Zyla at the time those injuries were caused. The court concluded that the State proved both neglect based on an injurious environment and abuse based on a substantial risk of injury by a preponderance of the evidence as to each of the older siblings. However, the juvenile court found that the State did not prove respondent-mother was unfit by clear and convincing evidence. Orders were entered to that effect on March 1, 2017.

¶ 6 On October 26, 2017, the State filed a petition for adjudication of wardship for Z.H., who was born on October 21, 2017, alleging neglect based on an injurious environment, and for abuse based on a substantial risk of physical injury under the Act. 705 ILCS 405/2-3(1)(b), (ii) (West 2016). Z.H. was subsequently placed in a foster home after a temporary custody hearing.

¶ 7 B.H., Jr. was born on December 17, 2018, and taken into protective custody by DCFS on December 21, 2018. A petition for adjudication of wardship was filed on December 26, 2018, alleging neglect based on an injurious environment, and for abuse based on a substantial risk of physical injury under the Act. 705 ILCS 405/2-3(1)(b), (ii) (West 2016). A temporary custody hearing was held on January 3, 2019.

¶ 8 A. Temporary Custody Hearing – B.H., Jr.

¶ 9 At the temporary custody hearing, the juvenile court found probable cause based on evidence of the reason B.H. Jr.'s siblings came into care but found no urgent and immediate necessity to remove him from respondents' care. During its oral ruling, the court referenced *In re Yohan K.*, 2013 IL App (1st) 123472. In that case, this court rejected the notion that parents should be declared unable to care for their children merely because they persist in their own belief of innocence of wrongdoing. *Yohan K.*, 2013 IL App (1st) 123472, ¶153. The juvenile court then noted that it appeared that the State and the GAL were making the same arguments in the instant case and that it had happened throughout the case. The court observed that respondent-mother had completed almost all of the required services, was still in therapy and had not completed the psychiatric evaluation. The respondent-father had completed all services. The court further noted that respondents had engaged in unsupervised visitation with Z.H. for a substantial period of time, including when she was very young. Those visits showed that respondent-mother made progress enough that the juvenile court believed it was in the best interests of B.H., Jr. to be in the custody of respondents. The court concluded that respondent-mother could continue her services while B.H., Jr. was in respondents' care.

¶ 10 A written temporary custody order was entered on January 3, 2019, leaving B.H., Jr. in respondents' care under an order of protection. The court also entered an order finding no reasonable efforts by DCFS on that date. The juvenile court subsequently agreed to reconsider both orders.

¶ 11 B. Permanency Planning Hearing – Z.H. and the Older Siblings

¶ 12 Regarding Z.H., as previously stated, she has been in DCFS custody since her birth on October 21, 2017, and has been in foster care since that time. The juvenile court held a permanency-planning hearing, which included Z.H. and the older siblings, on March 8, 2019.

¶ 13 At the permanency hearing on March 8, 2019, for Z.H. and the older siblings, the juvenile court found that the goal of return home within five months was in their best interests and entered an order to that effect. The order found that: the parents were engaged in services and visiting the minors; the services contained in the service plan were appropriate and reasonably calculated to facilitate achievement of the permanency goal; the selected goal could not be immediately achieved because services were ongoing; the services required by the service plan have been provided; the minors' placement is necessary and appropriate to the case plan and goal; and DCFS has made reasonable efforts in providing services to facilitate achievement of the permanency goal. The juvenile court then entered a permanency planning order with a goal of return home within five months for Z.H. and the older siblings on March 8, 2019.

¶ 14 C. Motion to Reconsider – B.H., Jr.

¶ 15 The State filed a motion to reconsider the juvenile court's finding that there were no reasonable efforts by the DCFS in B.H., Jr.'s case. The GAL filed a motion to reconsider the temporary custody order and to reopen proofs. The GAL was allowed to reopen proofs over the respondents' objections.

¶ 16 At the hearing on its motion to reconsider, the GAL presented additional evidence that the respondents needed to address the different risk factors that could have led to Zyla's death in order to be considered a safe and appropriate placement for B.H., Jr. Evidence was also presented through respondents' then therapist, Arturo Huizar, that the goal of therapy was to

come up with some protective factors that they could agree with and avoidance of risk factors that could lead to physical abuse of the children. The State argued that the issue of respondents' lack of meaningful therapy services needed to be addressed in detail because of the severe manner of Zyla's death and respondents' continued denial that Zyla died as a result of child abuse.

¶ 17 The juvenile court denied the GAL's motion to reconsider the temporary custody finding verbally on March 7, 2019, after the hearing. However, a written order was not entered until the following day on March 8, 2019, along with the juvenile court's written findings.

¶ 18 In its written findings, the juvenile court noted that the initial temporary custody hearing on January 3, 2019, consisted of four witnesses: Investigator Paula Dinkins, Child Link Supervisor Gail Tasker, Housing Advocate Crystal Vargas, and respondent-mother. There were also exhibits presented and admitted into evidence. At the hearing to reconsider, additional evidence was produced by both the State and the GAL. Vargas was recalled to testify and additionally, Program Manager Danielle Gusick, Case Worker Makeda Langdon and Therapist Arturo Huizar, testified. The GAL also offered numerous exhibits that were entered into evidence. The exhibits detailed the history of the family's involvement with the DCFS, which began with the "horrible and untimely" death of six-week-old Zyla and the subsequent removal of the older siblings from respondent-mother's care.

¶ 19 Investigator Dinkins testified that a doctor and nurse at the hospital saw no red flags and that respondent-mother was appropriate with B.H., Jr. and that the paternal grandmother said that respondent-mother was wonderful with the kids, and there were no parenting issues. She further testified Langdon told her that respondent-mother had completed services and that the parents

presented well, but there was the unexplained death of Zyla, so Dinkins initially took protective custody of B.H., Jr.

¶ 20 Tasker testified that the only outstanding service for respondent-mother was a psychiatric evaluation (which was since completed) and that individual therapy was ongoing. Additionally, there were no other outstanding services, and visitation with the older siblings was a combination of supervised and unsupervised. Respondent-mother had been successfully discharged from individual therapy but started again in October 2018. Tasker testified that the agency was against the return home of B.H., Jr. because they didn't know how Zyla died.

¶ 21 Respondent-mother testified that she did not know what happened to Zyla and denied causing any injuries to her. This was consistent with prior statements she made to law enforcement, investigators and therapists.

¶ 22 Langdon testified that she was the case worker for the family since 2016 and that the parents were successfully discharged from parent coaching after three sessions, although a letter dated May 1, 2018, said that 10 sessions were required to be completed for a certificate. Langdon testified that domestic violence was not a required service, that she never had a concern with respondent-mother's parenting, that father was very loving, engaging and attentive at visits, and that B.H., Jr. appeared well since being returned home on January 3, 2019.

¶ 23 Huizar testified that he had only been a therapist for a short time. The goals of therapy were to address why the case came in and to identify risk and protective factors. He described respondent-mother's progress in therapy as minimal because of her reluctance to discuss scenarios of what, hypothetically, could have happened to Zyla. As a result, he opined that respondent-mother had not engaged in meaningful therapy. Huizar did concede that respondent-

mother had successfully addressed her grief in therapy, but concluded that if the parents could not or would not come up with possible scenarios for what may have happened to Zyla, they could never successfully address the risk factors and will not have made sufficient progress in therapy.

¶ 24 The juvenile court noted that, in addition to reviewing prior testimony, it reviewed all of the exhibits, which constituted a complete history of the family's involvement with the DCFS, and indicated that a few of those exhibits were worthy of mention.

¶ 25 First, the closing report of respondent-mother's therapist, Ms. Yang, stated that "goal – client will be able to create a normative narrative to discuss the death of Zyla; which she is currently unable to do. Progress is adequate, [respondent-mother] has shown great motivation, communication and judgment, which is significantly different from 7/11/18."

¶ 26 Second, a May 4, 2017, mental health assessment of respondent-mother from Child Link stated that "[she] has expressed overwhelming grief and sadness and is burdened with allegations that she may be the perpetrator. Despite that, [she] has worked diligently to meet all of her service plan obligations, maintain consistent visitation and stable employment. She has successfully completed individual therapy and Howard Counseling and would benefit from family therapy."

¶ 27 The court noted that a part of the January 18, 2019, report of Mr. Huizar stated that respondent-mother reported that "she felt like she failed to protect her daughter and it hurts but she chooses not to dwell and sit still because she does not know what happened."

¶ 28 Third, a May 3, 2018, permanency hearing report by Langdon recommended a goal of return home within five months for Z.H., while stating under "progress," that respondent-mother had completed individual therapy, and no domestic violence services were necessary.

¶ 29 Fourth, a September 6, 2017, UCAN clinical Individual Treatment Plan review stated that respondent-father met the goals of his treatment plan and that he achieved the goal of utilizing his individual therapy sessions to discuss issues and concerns related to his DCFS involvement.

¶ 30 Fifth, the May 15, 2018, Howard Counseling discharge summary written by Therapist Reggans stated that respondent-mother took accountability for not being a more "persistent" parent. It recommended that because she met the goals of her treatment plan, the services were complete, and continued services were not necessary.

¶ 31 Sixth, a summary report outline was prepared by Christine Miller, LCSW, on January 24, 2019, after B.H., Jr. was returned home to his parents. The report requested that the court reconsider the return home order, stating, in part, that because the factors contributing to Zyla's death are still unknown and therefore had not been addressed. This lack of knowledge significantly contributed to an increased risk of reoccurrence of death or injury.

¶ 32 The juvenile court noted that while both the State and the GAL have "gone to great pains" to make a distinction between the parents admitting to causing the fatal injuries to Zyla and participating in what was described as "meaningful therapy," those distinctions must be explored on a case-by-case basis. The court recounted its adjudication findings of March 1, 2017, regarding the death of Zyla and emphasized that the perpetrators were unknown although both respondents were custodial and home at the time. The court stated it was "readily apparent to this court that the factors contributing to the death of Zyla is another way of saying 'what happened' "

and found that the bottom line was that, according to the agency, respondents could not participate in meaningful therapy unless they tell them what happened to Zyla, even after both parents had already been successfully discharged from therapy.

¶ 33 The juvenile court further noted "it is not as if the parents in this case have taken the fifth and refused to make statements. They have answered the questions of all who have asked. In the court's view, based on the particular facts in this case, the 'meaningful therapy' that is being required of the parents in this case is, tell us how this baby, Zyla, got injured." The court noted Tasker's testimony regarding the agency being against return home, and quoted from *Yohan K.*: "To require that the parents must 'acknowledge' the truth of a trial court's nonfinal findings of fact to be deemed to have had 'meaningful therapy' has no precedent." The court also noted that the cases cited by the GAL supported the court's conclusion.

¶ 34 The juvenile court found that in this case, respondent-mother had, on more than one occasion, taken responsibility and/or accountability for failing to protect Zyla. She had done so without admitting to causing injury to Zyla or making a statement as to "what happened," and the court believed that satisfactory progress in therapy does not require such a statement. The court again noted that both respondents were found to have successfully completed therapy, that neither were in need of additional services, both were successfully discharged from parent coaching and both were loving, attentive and engaging during visits. The court also noted that since B.H., Jr. had been home, there were no concerns or issues.

¶ 35 The juvenile court concluded that, in its view, this was a clear case of "moving the goal post" after the parents had completed all services satisfactorily, and it was being done because a baby died and "we don't know how." And while the court could understand the sentiment

involved in making such a determination, it found that it did not conform to the law in this particular case. The court then denied the GAL's motion to reconsider, finding that it was in the best interest of B.H., Jr. to remain in the care and custody of his parents.

¶ 36 As to the State's motion to reconsider the finding of no reasonable efforts on the part of DCFS, the juvenile court reversed itself, finding that services had been offered to the parents, and the parents participated in those services. The court noted the disagreement as to the progress made and found that such disagreement was not a basis for a finding of no reasonable efforts.

¶ 37 D. Interlocutory Appeal

¶ 38 On March 22, 2019, the GAL filed a petition for leave to file an interlocutory appeal pursuant to Rule 306(a)(5) (eff. Nov. 1, 2017), which this court partially granted on April 11, 2019. We did not grant the request to review the juvenile court's oral denial of the GAL's motion for a Cook County Juvenile Court Clinic Evaluation.

¶ 39 On appeal, the GAL seeks review of the juvenile court's order denying its motion to reconsider its finding of no urgent and immediate necessity to remove B.H., Jr. from respondents' care. The State joins in that portion of the GAL's appeal. The GAL also appeals the order setting Z.H.'s permanency planning goal as return home within five months.

¶ 40 ANALYSIS

¶ 41 A. The Juvenile Court Act

¶ 42 Here, we are faced with two child adjudication cases at two different stages. As to Z.H., the matter was before the juvenile court in a permanency planning hearing, while as to B.H., Jr., the matter was before the juvenile court in a temporary custody hearing. Both proceedings are

covered under the Act, and we will begin our review by outlining the general policies of the Act applicable to both cases.

¶ 43 The Act sets forth the process by which a court will decide whether a child should be removed from his or her parents and made a ward of the court. 705 ILCS 405/1-1 *et seq.* (West 2016); *In re Ashli T.*, 2014 IL App (1st) 132504, ¶ 12. The purpose and policy of the Act is to preserve and strengthen the minor's family ties, removing him or her from his family only when his welfare or safety or the protection of the public cannot be adequately safeguarded. 705 ILCS 405/1-2(1) (West 2016); *In re Lawrence M.*, 172 Ill. 2d 532, 529-30 (1996).

¶ 44 The State may initiate proceedings by filing a petition alleging that the minor is abused or neglected and that it is in the minor's best interest to be adjudged a ward of the court. 705 ILCS 405/2-13 (West 2016). Upon the filing of a petition, the court shall conduct a temporary custody hearing to determine who will be granted temporary custody of the minor until further hearings are conducted as to whether the minor should be adjudged a ward of the court and placed in the permanent custody of someone other than the minor's parents. *Ashli T.*, 2014 IL App (1st) 132504, ¶ 12 (citing *In re A.H.*, 195 Ill. 2d 408, 417 (2001)). The additional hearings consist of an adjudicatory hearing, a dispositional hearing, and a permanency hearing. *A.H.*, 195 Ill. 2d 408, 417 (2001).

¶ 45 Biological parents have a superior right of custody to their children, and both parents must be adjudged unfit, unable or unwilling to care for the minor before placement with the DCFS is authorized. *In re Terrell L.*, 368 Ill. App. 3d 1041, 1051 (2006). A fit parent has a superior right to custody of his child that can only be superceded by a showing of good cause to place custody of the child in a third party. *Terrell L.*, 368 Ill. App. 3d at 1051.

¶ 46 Cases involving allegations of neglect and adjudication of wardship are *sui generis*, and must be decided on the basis of their unique circumstances. *In re Arthur H.*, 212 Ill. 2d 441, 463 (2004). The best interest of the child is the paramount consideration whenever a petition for adjudication of wardship or any proceeding is brought under the Act. *In re M.W.*, 386 Ill. App. 3d 186, 196 (2008).

¶ 47 We now turn our discussion to the merits of the appeal.

¶ 48 B. Motion to Reconsider Denial of Temporary Custody of B.H., Jr.

¶ 49 The GAL and the State contend that the manifest weight of the evidence does not support the juvenile court's decision to deny the GAL's motion to reconsider placing B.H., Jr. in the temporary custody of respondents, and also that continued services were unnecessary. Both cite to the additional evidence presented at the hearing on the motion to reconsider, namely the testimony of Arturo Huizar, the therapist, who indicated that respondents' progress in therapy was "minimal," and conclude that this establishes that respondents have not made satisfactory progress. They also contend that all of the evidence presented raised a presumption of urgent and immediate necessity. Both also argue that the presumption of urgent and immediate necessity was not rebutted in this case, and the burden of demonstrating the lack of immediate and urgent necessity was on respondents. Additionally, the State asserts that until there is clear progress made by respondents to address and reduce the risk of severe physical abuse recurring, it is inconsistent with B.H., Jr.'s health, safety, or best interests to remain in respondents' care.

¶ 50 1. Overall Standard of Review

¶ 51 This issue comes before us on the denial of the GAL's motion to reconsider the juvenile court's finding of no urgent and immediate necessity. The purpose of a motion to reconsider is to

bring to the court's attention newly discovered evidence, changes in the law, or errors in the court's previous application of existing law. *In re Ashley F.*, 265 Ill. App. 3d 419, 426 (1994); *Belluomini v. Zaryczny*, 2014 IL App (1st) 122664, ¶ 20. Generally, a trial court's ruling on a motion to reconsider is reviewed under the abuse of discretion standard. *Belluomini*, 2014 IL App (1st) 122664, ¶ 20. However, where a motion to reconsider only asks that the trial court reevaluate its application of the law to the case as it existed at the time of judgment, the standard of review is *de novo*. *Belluomini*, 2014 IL App (1st) 122664, ¶ 20.

¶ 52 We first note that the GAL's motion never explicitly argued the basis for its motion to reconsider. However, the motion also included a request to reopen proofs, which was granted over respondents' objections. As such, for purposes of review, we will treat it as a general motion to reconsider and review it under an abuse of discretion standard. *Ashley F.*, 265 Ill. App. 3d at 426. A court abuses its discretion when its ruling is arbitrary, fanciful, or unreasonable, or when no reasonable person would adopt its view. *Ashli T.*, 2014 IL App (1st) 132504, ¶ 17.

¶ 53 Thus, we will review the juvenile court's best interests ruling that there was no immediate and urgent necessity to remove B.H., Jr. from respondents' care for abuse of discretion.

¶ 54 2. Discussion

¶ 55 Section 2-10 of the Act (705 ILCS 405/2-10 (West 2016)), which governs temporary custody proceedings following the filing of a petition alleging that a minor is abused, neglected or dependent, is part of a comprehensive statutory scheme designed to, "in a just and speedy manner, 'determine families in need, reunify families where appropriate and, if reunification is inappropriate, find other permanent homes for children.' " *Lawrence M.*, 172 Ill. 2d at 530 (citing

705 ILCS 405/-14(a) (West 2016)). The temporary custody hearing must take place within 48 hours of the minor's protective custody. 705 ILCS 405/2-9(1) (West 2016); *In re I.H.*, 238 Ill. 2d 430, 439 (2010).

¶ 56 The purpose of a temporary custody order is to decide who will have custody of the minor until permanent custody is determined. *Ashli T.*, 2014 IL App (1st) 132504, ¶ 18, (citing *A.H.*, 195 Ill. 2d at 417).

¶ 57 At the temporary custody hearing, the court must first make a threshold determination as to whether there is probable cause to believe that the minor is abused, neglected, or dependent. 705 ILCS 405/2-10(1) (West 2016); *A.H.*, 195 Ill. 2d at 417. If the court finds no probable cause, it must release the minor and dismiss the petition. 705 ILCS 405/2-10(1) (West 2016). If, however, the court finds there is probable cause, it must determine whether it is a matter of urgent care and immediate necessity for the protection of the minor to remove him from his home. 705 ILCS 405/2-10(2) (West 2016); *Ashley F.*, 265 Ill. App. 3d at 424. Once a temporary custody order has been entered, any party may file a motion to modify or vacate that order. 705 ILCS 405/2-10(9) (West 2016).

¶ 58 A trial court exercises wide discretion in its determinations of the best interests of the child in temporary custody hearings, and those determinations will not be disturbed absent an abuse of discretion or a judgment that is against the manifest weight of the evidence. *In re Niki K.*, 374 Ill. App. 3d 795, 800 (2007).

¶ 59 Our review of the evidence in this case reveals neither an abuse of discretion nor a judgment that is against the manifest weight of the evidence.

¶ 60 In this case, the State proceeded under a theory of anticipatory neglect, whereby 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 subjected to neglect or abuse because they reside with an individual who has been found to have neglected or abused another child. *M.W.*, 386 Ill. App. 3d at 198 (citing *Arthur H.*, 212 Ill. 2d at 468). This theory flows from the concept of an injurious environment. *Arthur H.*, 212 Ill. 2d at 468. Both the State and GAL argue that sibling abuse is *prima facie* evidence of neglect which raises the presumption of urgent and immediate necessity. They also contend that the presumption of the urgent and immediate necessity was not rebutted by respondents.

¶ 61 We initially note that a finding of probable cause is not equivalent to a finding on the merits of abuse, neglect or dependency. *I.H.*, 238 Ill. 2d at 440-41. The juvenile court does not issue any findings of abuse or neglect at a temporary custody hearing; the court only considers whether probable cause exists to believe the minor is abused or neglected. See *I.H.*, 238 Ill. 2d at 441.

¶ 62 As our supreme court and this court have previously stated in numerous cases, there is no *per se* rule that the neglect of one child conclusively establishes the neglect of another child in the same household. See *Arthur H.*, 212 Ill. 2d at 468; *In re Edricka C.*, 276 Ill. App. 3d 18, 28 (1995); *M.W.*, 386 Ill. App. 3d at 198. Instead, such neglect should be measured not only by the circumstances surrounding the sibling, but also by the care and condition of the child in question. *Arthur H.*, 212 Ill. 2d at 468. Our supreme court has further emphasized that, while such evidence is admissible under section 2-18(3) of the Act (705 ILCS 405/2-18(3) (West 2016)), the mere admissibility of evidence does not constitute conclusive proof of the neglect of another

minor. *Arthur H.*, 212 Ill. 2d at 468. Moreover, each case must be decided on its own facts. See *Arthur H.*, 212 Ill. 2d at 469; *M.W.*, 386 Ill. App. 3d at 198.

¶ 63 In the case at bar, it is undisputed that respondents' had an infant child die while in their care, custody and control in 2016. It is also undisputed that because of that infant's death, three of respondent-mother's children were removed from the home and adjudged neglected at that time. Additionally, Z.H. was also removed from the home and subsequently adjudged neglected shortly after her birth on October 26, 2017. Thus, there were no children in respondents' home at the time of B.H., Jr.'s birth on December 21, 2018. Further, the juvenile court specifically found that the perpetrator was unknown, despite the evidence presented in the older siblings' adjudicatory hearings.

¶ 64 It is also undisputed that neither the State nor the GAL presented any evidence at the temporary custody hearing or at the hearing on the motion to reconsider that B.H., Jr., was specifically exposed to a substantial risk of physical injury besides the fact that Zyla died in 2016, and the older siblings were previously adjudged neglected. There was no testimony at any proceeding before the juvenile court that B.H., Jr. was not healthy or well cared for. Although respondents had previous housing issues, they had received housing through services provided by DCFS. Additionally, respondents' supervised and unsupervised visitations with the older siblings were all appropriate and without incident. Further, as noted in the supplemental record filed by the GAL, a permanency order was entered on March 8, 2019, with a goal to return all of the older siblings home to respondents' care within five months, and a subsequent report of proceedings indicated that the older siblings would actually be returned home in June 2019.

¶ 65 We have reviewed the supplemental record filed by the GAL in this court, and note that it contains several additional motions to amend the petition for temporary custody and violate and vacate the order of protection, and grant temporary custody of B.H., Jr. to the GAL, all filed by the GAL after the filing of this appeal. The juvenile court denied those petitions for lack of jurisdiction.

¶ 66 Additionally, the supplemental record indicates that a hearing was held on the GAL's emergency petition, which alleged that a hotline call was made to DCFS regarding what purported to be a bruise to B.H., Jr.'s eye when respondents arrived to pick up Z.H. from daycare in April 2019. The GAL offered the testimony of the daycare worker in support of its claims. Respondent-mother testified that B.H., Jr., a fair-skinned child, has darker skin around his hairline, near his ears and under his eyes, as does one of the older siblings. At the end of the hearing, the juvenile court denied the motion, indicating that even viewing the evidence in the light most favorable to the moving party, the fact that the minor may have received an injury, and it was certainly not clear whether there was any injury, accidental or otherwise, there was "no evidence that any of the parents inflicted any injury on the minor." The court concluded that, given the nature of the testimony it heard, without some sort of evidence as to what may have happened or even certainly any intent, it was not within the best interests of the minor to violate and vacate the order of protection, and denied the GAL's motion.

¶ 67 After reviewing all of the evidence presented to the juvenile court, we find that its determination that it was in the best interests of B.H., Jr. to remain in the care and custody of respondents was not an abuse of discretion. Although evidence of sibling abuse may be *prima facie* evidence of neglect, as argued by the State and GAL, we believe their argument to be

premature. Again we note that the order appealed from in this case was a temporary custody order, and as such, no finding of neglect had been made, only a finding of probable cause. It is not until the adjudicatory hearing that the juvenile court makes an actual finding of abuse or neglect. See 705 ILCS 405/2-21 (West 2016); *I.H.*, 238 Ill. 2d at 440; *Arthur H.*, 212 Ill. 2d at 462. A finding of probable cause is not equivalent to a finding of neglect on the merits. *I.H.*, 238 Ill. 2d at 441.

¶ 68 Although respondents still had ongoing counseling services at the time the temporary custody order was entered (which had been completed by the time of the hearing on the GAL's motion to reconsider), we agree with the juvenile court that there was no reason that those services could not continue with B.H., Jr. in their care. Like the courts before us, we stress that although the proof of neglect of one minor shall be admissible evidence on the issue of neglect of any other minor for whom the parent is responsible, the mere admissibility of such evidence is not conclusive proof of the neglect of another minor, and parent-child relationships are not to be severed upon mere speculation. See *Arthur F.*, 212 Ill. 2d at 478. Each case is to be reviewed on its own merits, and the court's findings, which are based on its opportunity to observe the demeanor and conduct of the parties and witnesses, must be given great weight. *Ashley F.*, 265 Ill. App. 3d at 425. In this case, the only arguments proffered by the State and the GAL for the substantial risk of injury to B.H., Jr. is that respondents have not acknowledged their role in Zyla's death and this failure to do so prevents their affirmative progress in therapy. This is not the standard, as noted by this court in *Yohan K.*, 2013 IL App (1st) 123472, ¶ 153.

¶ 69 In the context of a temporary custody hearing, the juvenile court must determine if there is probable cause to believe that the minor is abused or neglected and if there is an immediate

and urgent necessity to place the minor in shelter care. 705 ILCS 405/2-10(2) (West 2016). The findings made at the hearing and the temporary custody order entered by the juvenile court on January 3, 2019, applied the standards appropriate to a temporary custody determination. See *Ashli T.*, 2014 IL App (1st) 132504, ¶ 20.

¶ 70 We conclude that the juvenile court did not abuse its discretion in determining that it was in the best interests of B.H., Jr. to remain in respondents' care at the time of the temporary custody hearing, and in denying the GAL's motion to reconsider.

¶ 71 C. Permanency Goal – Return Home Within Five Months – Z.H.

¶ 72 The GAL also contends that it was not in Z.H.'s best interests for the juvenile court to set a permanency goal of return home within five months on March 8, 2019, because respondents have made only sporadic and limited progress in therapy aimed at addressing how to reduce the risk factors that were present when Zyla died. The GAL notes that family reunification services remained ongoing when the permanency order was entered, and the juvenile court's order was against the manifest weight of the evidence.

¶ 73 Ordinarily, an order setting a permanency planning goal is a nonfinal order that does not finally determine a right or status of a party but instead looks to the anticipated future status of the child and is generally not appealable. *In re Faith B.*, 348 Ill. App. 3d 930, 936 (2004). However, because the GAL filed a petition for leave to appeal under Rule 306(a)(5), which allows the permissive appeal of an order affecting the care and custody of a minor where appeal is not specifically provided for elsewhere, we have jurisdiction to hear the appeal as if it were a dispositional order. Ill. S. Ct. R. 306(a)(5) (eff. Nov. 1, 2017); *Faith B.*, 349 Ill. App. 3d at 937.

When conducting a dispositional hearing, the question is what is in the best interests of the child. *Terrell L.*, 368 Ill. App. 3d 1041, 1046 (2006).

¶ 74 At a dispositional hearing, the court shall determine whether it is in the best interests of the minor and the public to make the minor a ward of the court and, if the minor is made a ward of the court, then the court shall enter a disposition order which serves the health, safety, and interests of the minor and the public. 705 ILCS 405/2-22(1) (West 2016). If the minor is made a ward of the court due to abuse or neglect, the court may enter a disposition order: (1) continuing custody with the minor's parent, guardian, or custodian; (2) placing the minor in legal custody or guardianship; (3) restoring custody to the parent, parents, guardian, or custodian on condition of compliance with an after-care plan; or (4) partially or completely emancipating the minor. 705 ILCS 405/2-23(1)(a) (West 2016). Any disposition order may provide for protective supervision or include an order of protection. 705 ILCS 405/2-23(2) (West 2016).

¶ 75 Section 2-28(2) of the Act (705 ILCS 405/2-28(2) (West 2016)), which pertains to permanency planning proceedings, states that the court is to review whether reasonable efforts have been made by all the parties to the service plan to achieve that goal. *In re D.H.*, 295 Ill. App. 3d 981, 987 (1998).

¶ 76 Ultimately, the juvenile court's final determination regarding a minor's permanency lies within its sound discretion and that decision will not be overturned unless it is against the manifest weight of the evidence. *In re Tajannah O.*, 2014 IL App (1st) 133119, ¶ 20. The court's decision is against the manifest weight of the evidence only when the opposite conclusion is clearly apparent, and it abuses its discretion only when it acts arbitrarily without conscientious judgment. *Tajannah O.*, 2014 IL App (1st) 133119, ¶ 20.

¶ 77 Here, the juvenile court heard testimony from the foster parents and case workers in determining the permanency goal for all of the older siblings and Z.H. The GAL only argues that family reunification services remain ongoing to support its argument that it was not in Z.H.'s best interests to have her permanency goal set to return home within five months. As noted by the respondents, the permanency order was not final but rather an "intermediate procedural step taken for the protection and best interests of the child." See *In re Reiny S.*, 374 Ill. App. 3d 1036, 1052 (2007) (citing *In re D.S.*, 198 Ill. 2d 309, 329 (2001)). While the State agrees that respondents still have outstanding services to address the risk factors that caused Zyla's death in 2016, it also concludes that the outstanding services can be complied with in a short period of time, and that the permanency goal should be affirmed.

¶ 78 We find that an insufficient basis exists to conclude that the juvenile court's decision to set Z.H.'s permanency planning goal to return home within five months was against the manifest weight of the evidence.

¶ 79 CONCLUSION

¶ 80 For the foregoing reasons, we affirm the orders of the juvenile court.

¶ 81 Affirmed.