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2019 IL App (3d) 170494-U

Order filed June 4, 2019

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IN THE  
APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2019

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<i>In re</i> Q.A., K.B., J.B. and H.J.,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
Minors	)	Peoria County, Illinois,
	)	
	)	Appeal Nos. 3-17-0494
(The People of the State of Illinois,	)	3-17-0495
	)	3-17-0496
	)	3-17-0497
Petitioner-Appellee,	)	Circuit Nos. 17-JA-65
	)	17-JA-66
v.	)	17-JA-67
	)	17-JA-68
Tasea J.,	)	
	)	Honorable
	)	Katherine S. Gorman,
Respondent-Appellant).	)	Judge, Presiding.

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JUSTICE HOLDRIDGE delivered the judgment of the court.  
Presiding Justice Schmidt and Justice Wright concurred in the judgment.

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**ORDER**

- ¶ 1 *Held:* The trial court's findings that the minor children were neglected due to an injurious environment and that the minors' mother was an unfit parent were not against the manifest weight of the evidence.
- ¶ 2 The State filed juvenile neglect petitions in the circuit court of Peoria County alleging that Q.A., K.B., J.B., and H.J., four minor children, were neglected due to an environment that

was injurious to their welfare. The trial court adjudicated the children neglected due to an injurious environment. After conducting a dispositional hearing, the trial court found the respondent unfit, made the children wards of the court, appointed the Illinois Department of Children and Family Services (DCFS) as the children's temporary guardian, and placed the children outside of the respondent's home. This appeal followed.

¶ 3 BACKGROUND

¶ 4 The respondent is the children's mother. On March 10, 2017, the State filed juvenile neglect petitions in this matter in which the State alleged that the children's environment was injurious to their welfare in several respects, including the respondent permitted the children to reside with Dushawn B. (the father of K.B.) despite a court order in effect at the relevant time that ordered her not to permit any unsupervised contact between the minors and Dushawn B; an indicated report of ongoing physical abuse of the minors; findings of physical or sexual abuse of one or more of the minors by Dushawn, Terry A. (the father of Q.A.), and Howard J., who was believed at the time to be the father of H.J.

¶ 5 On March 10, 2017, the same date the neglect petitions were filed, all four children were placed in temporary shelter care. The order for temporary care stated that removal of the children was necessary for their protection and no reasonable efforts could obviate the need for removal. On April 5, 2017, the respondent stipulated to a factual basis for all allegations in the petitions except one, and stated that she supervised the children's contact with Dushawn B, except when the children were asleep.

¶ 6 On July 12, 2017, an adjudication hearing was held at which the State introduced three group exhibits without objection: (i) certified pleadings of the earlier juvenile case involving the minors; (ii) certified records from Children's Home Intact Program; and (iii) certified records of DCFS indicated reports. In addition, the State presented evidence that: (i) Dushawn had been

previously found unfit, and had, while intoxicated, physically abused Q.A.; (ii) Dushawn was a repeat child sex offender with multiple victims, and had been indicated by DCFS for sexual abuse of Q.A.; and (iii) the respondent had been admonished that Dushawn had been found unfit and she had been directed in the previous juvenile matter not to allow unsupervised contact of “any sort” between Dushawn and the children. The State further presented evidence that the respondent had admitted to a DCFS caseworker that she and the children had been staying with Dushawn and his girlfriend for a week. The caseworker report noted the respondent’s statement that “she did not think that she did anything wrong as she never left the kids alone with Dushawn.” Additionally, the State proffered the caseworker’s testimony that respondent reported that she had gotten into a physical altercation with Dushawn, although the children were not present. The State also presented evidence that the respondent knew that Q.A. reported that Dushawn had sexually molested her, but the respondent took no steps to keep Q.A. separated from Dushawn after she became aware of the molestation. The State further presented evidence that the respondent had been previously determined to have allowed Dushawn to physically abuse Q.A., K.B. and J.B. Evidence also established that Terry A. (father of Q.A.) sexually abused a 14-year-old during the same time period.

¶ 7 The State introduced a DCFS report prepared immediately prior to the shelter proceeding, showing, *inter alia*, that Q.A. attempted self-harm and had been institutionalized for PTSD. The report also established that the respondent was currently residing with an individual indicated for abuse, which would preclude the return of the children to her care. The report further described that Q.A. continued to engage in problematic self-harm behavior after release from the inpatient treatment program.

¶ 8 The respondent's attorney presented evidence that respondent's choice to seek housing with Dushawn was dictated by unavoidable circumstances and that she was cooperating with services at the time of the adjudication/dispositional hearing.

¶ 9 The trial court found that the neglect petition had been proven based on the respondent's repeated failures to isolate the children from individuals she knew were indicated for physical and sexual abuse. The minors were adjudicated neglected and the matter then proceeded immediately to a dispositional hearing.

¶ 10 A dispositional report prepared by a caseworker was presented to the court without objection. The report summarized the history of abuse of the minors. The report indicated, that in March 2014, the children were placed in foster care after Q.A. was sexually and physically abused by Dushawn; that the respondent was aware of Dushawn's history as a sexual offender but nonetheless permitted him to have contact with her children; that the respondent had been uncooperative with DCFS during the previous neglect proceeding and had violated the safety plan resulting in the children being placed in shelter care; and that after the children were returned to her care, the respondent continued to engage in conduct conducive to an injurious environment. The report concluded that the prognosis for reunification was guarded, but that it would still be possible to return the children to the respondent's care if she would follow the recommended reunification plan and understand the need to protect the children from exposure to inappropriate individuals.

¶ 11 The State also presented testimony from the assigned caseworker, who testified that the children were functioning at acceptable levels in foster care and that supervised visitation with all the children except Q.A. were proceeding satisfactorily. The caseworker further testified that the respondent had been referred for behavioral counseling and was on a waitlist for family counseling. The State recommended that the respondent be found unfit, the children be made

wards of the court, and DCFS be named guardian. The court-appointed guardian *ad litem* agreed with the State's position, noting that respondent had previously been admonished not to permit Dushawn to have contact with children, yet she moved in with Dushawn knowing that he had previously molested Q.A.

¶ 12 The trial court found the respondent unfit and adopted the recommendation of the State regarding custody and guardianship of the children. It noted that the respondent had repeatedly demonstrated an inability to protect her children from the harm presented by Dushawn and others. It further noted that resources were being made available to the respondent to equip her to adequately protect her children and that the respondent needed to avail herself of those resources. The court adopted the recommendations contained in the dispositional report and ordered the respondent to cooperate with the proposed counseling and treatment.

¶ 13 This appeal followed.

¶ 14 ANALYSIS

¶ 15 1. Neglect

¶ 16 The respondent argues that the trial court's finding that the children were neglected due to an injurious environment was against the manifest weight of the evidence. The determination of the trial court in a neglect case will not be disturbed on appeal unless it is against the manifest weight of the evidence. *In re Arthur H.*, 212 Ill. 2d 441, 464 (2004). A determination is against the manifest weight of the evidence where the opposite conclusion is clearly apparent or the determination is unreasonable, arbitrary, or not based on the evidence presented. *In re D.F.*, 201 Ill. 2d 476, 498 (2002). "The reviewing court gives deference to the trial court's findings of fact as the trial court is in the best position to observe the conduct and demeanor of the parties and witnesses, assess their credibility, and weigh the evidence" presented at adjudicatory and dispositional hearings. *In re Sharena H.*, 366 Ill. App. 3d 405, 415 (2006).

¶ 17 “Neglect” is the failure to exercise the care that circumstances justly demand and encompasses both willful and unintentional disregard of parental duty. *In re K.B.*, 2012 IL App (3d) 110655, ¶ 16. Pursuant to section 2-3(1)(b) of the Juvenile Court Act of 1987, a “neglected minor” includes “any minor under 18 years of age whose environment is injurious to his or her welfare.” 705 ILCS 405/2-3(1)(b) (2016). An “injurious environment” is “an amorphous concept that cannot be defined with particularity but has been interpreted to include the breach of a parent’s duty to ensure a safe and nurturing shelter for his or her children.” (Internal quotation marks omitted.) *K.B.*, 2012 IL App (3d) 110655, ¶ 16; see also *In re Gabriel E.*, 372 Ill. App. 3d 817, 822-23 (2007). Our courts have consistently recognized that a parent has a duty to keep her children safe and free from harm. *Gabriel E.*, 372 Ill. App. 3d at 822-23; *In re Kamesha J.*, 364 Ill. App. 3d 785, 793 (2006).

¶ 18 The State must prove an allegation of neglect by a preponderance of the evidence. *Arthur H.*, 212 Ill. 2d at 463-64; *K.B.*, 2012 IL App (3d) 110655, ¶ 16. In the instant case, the trial court’s finding that the children were neglected due to an injurious environment was not against the manifest weight of the evidence. The record established that Dushawn had been previously found unfit and had physically abused Q.A., was a repeat child sex offender with multiple victims, and had been indicated as sexually abusing Q.A. in the past. The record further established that the respondent had been admonished regarding Dushawn and had been directed not to allow the children to have contact with him, yet she permitted such contact, including actually residing with the children in Dushawn’s place of residence. The record also credibly established that Q.A.’s father, Terry A., had also been found unfit based on criminal sexual abuse and posed a threat to the children in light of the respondent’s inability to adequately protect the children.

¶ 19 The respondent argued that she had no choice but to reside temporarily with Dushawn and that any exposure of the children was brief. The trial court rejected that argument and we cannot say that such a decision was against the manifest weight of the evidence. The record established that the respondent had previously been living with the children in an income based housing facility, but chose to leave because “she did not like the rules there.” The record also established that the respondent declined other housing assistance that might have provided a viable alternative to seeking housing with Dushawn.

¶ 20 Based on the evidence presented, the trial court could have reasonably found that the respondent allowed Dushawn to have unsupervised contact with her children even though she knew that he posed a serious threat to the children’s safety. Moreover, the court could also have reasonably found that the respondent showed an inability to protect the children from harm by making decisions that ultimately led to their exposure to physical and sexual abuse and that her inability to comprehend the risks her housing decisions made placed the children at serious and substantial risk of harm. In sum, there was ample evidence supporting the trial court’s conclusion that the children were neglected due to an environment that was injurious to their welfare. An opposite conclusion is not clearly evident. We therefore affirm the trial court’s neglect finding.

¶ 21 2. Fitness

¶ 22 The respondent argues that the trial court’s finding that she was an unfit parent is against the manifest weight of the evidence. We do not find the respondent’s arguments persuasive.

¶ 23 At the dispositional stage, the trial court determines whether a minor child’s parent is fit to care for the child (705 ILCS 405/2-27(1) (West 2016)) and whether “it is consistent with the health, safety and best interests of the [child] and the public that the [child] be made a ward of the court.” 705 ILCS 405/2-21(2) (West 2016); *In re N.B.*, 191 Ill. 2d 338, 343 (2000). In cases that do not involve the complete termination of parental rights (like the instant case), the State

must prove that respondent is unfit by a preponderance of the evidence. *In re A.P.*, 2013 IL App (3d) 120672, ¶ 15; see also *In re April C.*, 326 Ill. App. 3d 245, 257 (2001). We will reverse the trial court's fitness findings only if such findings are against the manifest weight of the evidence. *In re J.C.*, 396 Ill. App. 3d 1050, 1060 (2009). A reviewing court will find that the trial court's determination is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or the determination is unreasonable, arbitrary, or not based on the evidence presented. *D.F.*, 201 Ill. 2d at 498. We give deference to the trial court's determination because the trial court has a higher degree of familiarity with the evidence and is in the best position to observe the witnesses' demeanor. *Id.* at 498-99.

¶ 24 The evidence in this case adequately supports the trial court's finding that the respondent is unfit. The evidence established that there had been a clear pattern of abuse and neglect of the children and that the respondent was aware of that pattern of abuse but continued to place the children in contact with the source of the abuse. The evidence further established that the respondent's choices and actions with regard to her housing situation actually exacerbated the exposure of the children to potential abuse. In addition, the evidence credibly established that the respondent was uncooperative with DCFS and violated an existing safety plan, which resulted in the children being taken into protective custody.

¶ 25 The respondent argues that the exposure of the children to Dushawn was brief and unavoidable due to her need for housing. As previously discussed, the court could reasonably conclude that the need for housing was simply the result of the respondent not wanting to "follow the rules" at her prior location. The court could also reasonably conclude that the respondent failed to consider other housing alternative before choosing to expose her children to Dushawn. The respondent further maintains that regardless of her past behavior, at the time of the hearing, she was cooperating with DCFS and was on waiting lists for appropriate treatment



and resources. However, as the trial court observed, based upon her past actions, it was questionable whether the respondent would actually engage in those services when they became available. Under these circumstances, the trial court could reasonably have concluded that future counseling services would not address the current fitness of the respondent to parent her children.

¶ 26

#### CONCLUSION

¶ 27 For the reasons sets forth above, we affirm the judgment of the circuit court of Peoria County.

¶ 28 Affirmed.