2019 IL App (4th) 190269-U

NOS. 4-19-0269, 4-19-0270 cons.

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
September 17, 2019
Carla Bender
4th District Appellate
Court, IL

In re L.C., a Minor	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Macon County
Petitioner-Appellee,	)	No. 18JA252
v. (No. 4-19-0269)	)	
Meghan C.,	)	
Respondent-Appellant).	)	
----------	)	
In re L.C., a Minor	)	
	)	
(The People of the State of Illinois,	)	
Petitioner-Appellee,	)	
v. (No. 4-19-0270)	)	Honorable
Tommy C.,	)	Thomas E. Little,
Respondent-Appellant).	)	Judge Presiding.

JUSTICE CAVANAGH delivered the judgment of the court.
Justices Turner and Harris concurred in the judgment.

ORDER

¶ 1 *Held*: (1) By finding the minor to be neglected, the circuit court did not make a finding that was against the manifest weight of the evidence.

(2) The disposition the circuit court decided on was not an abuse of discretion.

¶ 2 Respondents, Meghan C. and Tommy C. (to whom we will refer as the mother and the father, respectively), have a daughter, L.C., born October 13, 2018. In an adjudicatory hearing, the Macon County circuit court found L.C. to be neglected and abused, and in a subsequent dispositional hearing, the court made L.C. a ward of the court and awarded custody

and guardianship of L.C. to the Illinois Department of Children and Family Services (DCFS). Respondents appeal.

¶ 3 We are unable to say the finding of neglect is against the manifest weight of the evidence (see *In re Faith B.*, 216 Ill. 2d 1, 13-14 (2005)) or that the disposition the court chose was an abuse of discretion (see *In re Al. S.*, 2017 IL App (4th) 160737, ¶ 41). Therefore, we affirm the judgment.

¶ 4 I. BACKGROUND

¶ 5 A. The State's Amended Petition to Make L.C. a Ward of the Court (November 21, 2018)

¶ 6 The State's amended petition had three counts.

¶ 7 Count I alleged that L.C. was neglected within the meaning of section 2-3(1)(b) of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/2-3(1)(b) (West 2018)) in that her environment was injurious to her welfare. Specifically, according to count I, the father "ha[d] a history of substance abuse and mental health illness that [made] him delusional and abusive[,] and [the] mother *** [was] unwilling or unable to separate from [the father]."

¶ 8 Count II alleged that, for the reasons set forth in count I, L.C. was abused within the meaning of section 2-3(2)(ii) of the Act (*id.* § 2-3(2)(ii)).

¶ 9 Count III alleged that L.C. was dependent within the meaning of section 2-4(1)(b) of the Act (*id.* § 2-4(1)(b)). The State withdrew count III, however, in the adjudicatory hearing.

¶ 10 B. The Adjudicatory Hearing (January 28, 2019)

¶ 11 1. *The Testimony of the Maternal Grandmother*

¶ 12 During the eight years the mother and father had been together, L.C.'s maternal grandmother noticed that the mother was accumulating scars: There was scarring on her arms and a large scar on her back. Also, on two or three occasions, the mother had black eyes. She did

not have any those injuries before "getting involved with" the father. The grandmother inferred, therefore, that the father had been physically abusing the mother. Whenever the grandmother, however, questioned the mother about her injuries, the mother would never admit the father had been abusing her. She claimed, instead, that the injuries were "consensual," and she assured the grandmother that the father was "a wonderful husband" and that they had "a wonderful marriage."

¶ 13 Because it was a marriage that supposedly entailed the mother's voluntary submission to physical mutilation at the hands of the father, the grandmother was not so sure of its wonderfulness. At least, the mother had sustained no additional physical injuries after L.C.'s birth, as far as the grandmother knew. All the injuries the grandmother had seen predated the child's birth.

¶ 14 Even so, because of the history of scarring and mutilation and because the father was receiving supplemental security income for a psychological disorder (as he had informed the grandmother) and was reported to drink a lot, DCFS ultimately insisted on a safety plan whereby L.C. would live with the grandmother and the parents could have unlimited visitation at her residence. The father's visitation, however, had to be supervised not by the mother but by the grandmother or DCFS.

¶ 15 During these supervised visitations, both parents held the baby, L.C., and the grandmother encouraged the parents to feed and bathe her and change her diapers and clothes. In such basic caretaking activities, the parents showed willingness and competence.

¶ 16 2. *The Testimony of Leandra Tate*

¶ 17 Leandra Tate was a child protection specialist in the Decatur office of DCFS, and on October 14, 2018, the day after L.C.'s birth, she went to the hospital to investigate some

hotline reports that the father had been violent toward the mother. Tate found the father and the mother together in a hospital room. Tate requested that the father step out of the room for a little while so that Tate could talk with the mother because it was customary to interview an alleged victim of domestic abuse in private. The father refused.

¶ 18 Tate proceeded with the interview as best as she could. She began by explaining to the mother and the father why she was there, recounting to them the allegations in the hotline reports: The mother, it was reported, had scarring on her body and a "burned Superman symbol on her back," and she had "been nailed to the wall by the inner webbing between her fingers." Such rough treatment, Tate explained to the parents, was disquieting to the reporters; they were worried the newborn child might come to harm.

¶ 19 The assistant state's attorney asked Tate "what was the parents' response to this." Tate answered that the mother "didn't know what to say or didn't say a lot"—and not only that, but the mother refused to allow Tate to photograph or even see her hands. The mother "got upset[,] and she cried[,] and she hid her hands and said, ['']I'm not going to allow any pictures, and I'm not going to, you know, I'm not being abused.['] "

¶ 20 As for the father, when he heard Tate's summary of the hotline reports, he responded "that this, you know, could be from sexual things" and "that [DCFS] didn't have any proof of that." The mother "just agreed with him."

¶ 21 On cross-examination, the mother's attorney asked Tate if she had been able to confirm what had been alleged in the hotline reports to DCFS. Tate answered that "[t]he hospital staff did have concerns." The mother's attorney asked whether the hospital staff had "any evidence." Tate answered, without eliciting any objection, that "[a] nurse had seen marks on [the

mother's] body that they thought were suspicious and were concerned about the fact that [the father] seemed to be overbearing to her."

¶ 22 In addition to talking with hospital staff, Tate had interviewed "family members" (she further testified on cross-examination), who, although "[t]hey [had not] see[n] the physical acts happen," saw "the marks on [the mother] afterwards."

¶ 23 On cross-examination by the father's attorney, Tate agreed that one of the concerns the hotline reporters had was about the father's mental health. The father's attorney asked Tate if it were true that she lacked details about the father's mental health problem. "The only details I had," Tate answered, "was that they stated he was on [supplemental security income] for mental health but was untreated and was using alcohol and drugs off and on in place of that."

¶ 24 The father appeared to be intoxicated when Tate did a home visit the morning after interviewing the parents in the hospital. L.C. had not yet been discharged from the hospital, but the father was willing to meet Tate at the residence. He looked as if he were under the influence: His eyes were red and glassy, and he was talking a lot.

¶ 25 Subsequently, in her conversations with the mother, whenever Tate raised the question of abuse, the mother would avert her eyes from Tate and would weep and deny having been abused.

¶ 26 3. *The Testimony of Sandra Puhlman*

¶ 27 Sandra Puhlman testified she was the intact supervisor for the Youth Advocate Program and that during the brief time (11 days) that her agency had the case, she met with the father twice. On both occasions, he appeared to be under the influence of alcohol. In the first meeting, he smelled of alcohol, and Puhlman asked him if he had been drinking. He answered in

the negative and explained he had a cold and had been taking cold medicine. In the second meeting, the father smelled of alcohol again, and he was talking rapidly and "was getting defensive with his comments coming back instead of seeing that we were there to help."

¶ 28 Despite his prickliness in these meetings, the father never threatened Puhlman. Nor had Puhlman ever felt personally apprehensive of him.

¶ 29 4. *The Testimony of Ali Collins*

¶ 30 Ali Collins was a child protection supervisor with DCFS, and on November 7, 2018, when the parents came in to sign a modified safety plan, Collins perceived that the father was intoxicated. Although she did not recall that he was stumbling around or slurring his words, he smelled of alcohol, his eyes were glassy, and his blood alcohol content tested as 0.094.

¶ 31 5. *The Testimony of Deanna Willis*

¶ 32 Deanna Willis is an investigator for DCFS, and she substituted for Tate one day while Tate was off work because of a car accident. Willis's supervisor had told Willis that L.C.'s parents would be coming into the office to sign a safety plan. Upon their arrival, the parents refused to sign. Willis explained to them that it was the same safety plan as before, but the father stated that, on the advice of counsel, he was refusing to sign; he preferred that the matter go before a judge. Willis asked the mother, " ['I]s that how you feel as well?['] " She answered, " ['']I agree.['] "

¶ 33 The father then told Willis he wanted to speak with her supervisor. As Willis was leaving the room to fetch her supervisor, she smelled a strong odor of alcohol. She asked the father if he had been drinking. He replied that he had not.

¶ 34 The assistant state's attorney asked Willis if she noticed anything else out of the ordinary besides the odor of alcohol. Willis answered that the father had been doing all the

talking and that when Willis had tried to engage the mother in the conversation, the mother "would either just nod her head or say that she agreed." The mother "never went in depth or argued over whether or not she felt her child should be brought into care."

¶ 35 Because of the parents' refusal to sign the safety plan, the supervisor authorized Willis to take protective custody of L.C. From then on, it was no longer an "intact" case.

¶ 36 6. *The Circuit Court's Decision in the Adjudicatory Hearing*

¶ 37 On January 28, 2019, at the conclusion of the adjudicatory hearing, the circuit court found the testimony of the State's witnesses to be credible, and the court decided the State had proven counts I and II of its petition by a preponderance of the evidence. Thus, the court found L.C. to be both neglected and abused.

¶ 38 On January 29, 2019, the circuit court entered an adjudicatory order to that effect, in which the court found L.C. to be (1) neglected within the meaning of section 2-3(1)(b) of the Act (*id.* § 2-3(1)(b)) in that L.C. was "in an environment that [was] injurious to [her] welfare" and (2) abused within the meaning of section 2-3(2)(ii) (*id.* § 2-3(2)(ii)) in that L.C. was at "substantial risk of [being] physically abused." Those findings were "based on the following facts: mental health, domestic violence, substance abuse issues[, and the] [m]other['s] not [being] protective of [the] child."

¶ 39 C. The Dispositional Hearing (April 10, 2019)

¶ 40 1. *The Testimony of Roger Michael Fitzgerald-Jackson*

¶ 41 Roger Michael Fitzgerald-Jackson was a child welfare specialist for Lutheran Child and Family Services (Lutheran), and he was one of the authors of the dispositional hearing report. When asked why he had recommended, in the report, that guardianship of L.C. remain with DCFS, he explained that the father "had a continued problem with *** substances,

primarily alcohol," and that Lutheran had "not been able to properly assess his use of alcohol." When asked what evidence supported the conclusion that the father had a problem with alcohol or substances, Fitzgerald-Jackson noted that at 1:45 p.m. (on a date he could not recall) the father "failed" an alcohol test. Also, Fitzgerald-Jackson noted, the father had reeked of liquor when visiting L.C. and attending meetings with caseworkers.

¶ 42 On cross-examination, Fitzgerald-Jackson admitted that on the single occasion when the father tested "over the legal limit" for alcohol, L.C. was not in his care.

¶ 43 2. *The Testimony of Tamica Hatchett*

¶ 44 Tamica Hatchett was a child welfare supervisor at Lutheran. She testified that she had helped write the dispositional report and that her primary reasons for recommending, in the report, that guardianship remain with DCFS was that (1) every time she saw the father, he smelled of alcohol and (2) the mother took her cues from the father and, in her extreme deference to him, seemed more protective of him than of the child. For instance, the mother had violated the safety plan by allowing the father to visit the child without the supervision of the grandmother or DCFS.

¶ 45 The reason for the safety plan, Hatchett explained on cross-examination, was not the father's excessive consumption of alcohol. The reason, instead, was that he had been abusing the mother and "abuse ha[d] [an] effect on children, period."

¶ 46 Hatchett was asked whether she had "ever heard from any person, including the mother, that [such abuse had] occurred." She answered that "[d]uring [a] child and family team meeting, it was said that it was consensual." Consensual burning and mutilation, Hatchett agreed, were not "abuse." Also, she admitted that as far as she knew, "none of this [had] occurred in front of the child."

¶ 47 3. *The Mother's Testimony*

¶ 48 The State rested, and the mother testified on her own behalf. (The father was not present for the dispositional hearing; the reason, according to his attorney, was that a bullet had been discovered in his brain.) The mother testified that the father was over 21 and, therefore, of legal drinking age and that although he had "a couple of beers now and then," she had never seen him intoxicated. Nor, after having a drink or two, had the father ever mistreated L.C. in any way. The mother further denied that the father had ever abused her physically or mentally.

¶ 49 The mother's attorney asked her:

> "Q. *** You have certain areas of your body that have been altered, right?
>
> A. What people say, like piercings, tattoos.
>
> Q. Right. You have those?
>
> (Nodded head in the affirmative.)
>
> Q. And those are all voluntary?
>
> A. Yes.
>
> Q. Is there anything unusual or in any way threatening about this of—this consensual act on your part?
>
> A. No."

¶ 50 4. *The Dispositional Hearing Report*

¶ 51 At the State's request and without objection by any of the other parties, the circuit court took judicial notice of the dispositional hearing report.

¶ 52 Under the heading "Agency Investigation and Intervention," the report reads in part as follows:

> On 10/14/18, a report was made to the State Central Registry *** indicating that [the mother] gave birth to a daughter, [L.C.], on 10/13/18. The child's father *** reportedly has untreated mental illness, 'believes he is Superman,' and consumes alcohol to excess. Additionally, [the father] was described as very controlling of [the mother]. He has allegedly engaged in physical mutilation toward [the mother], including allegedly burning the Superman symbol onto the skin of her back and mutilating one of her nipples.
>
> During the DCFS investigation, [the mother] alleged that all tattoos and scars were consensual and further alleged that her missing left nipple occurred when she was accidentally burnt upon a heater during sexual activity."

¶ 53 5. *The Dispositional Order*

¶ 54 On April 10, 2019, the circuit court entered a dispositional order, in which the court found it would be consistent with the health, welfare, and safety of L.C. to make her a ward of the court. See 705 ILCS 405/2-22(1) (West 2018).

¶ 55 Having made L.C. a ward of the court, the circuit court considered "the proper disposition best serving the health, safety[,] and interests of the minor and the public." *Id.* Relevant to that consideration were the parents' fitness and ability to take care of L.C. The court found both parents to be unfit and unable, for reasons other than financial circumstances alone, to care for, protect, educate, supervise, or discipline L.C. and further found that placing L.C. with either parent would be contrary to L.C.'s health, safety, and best interests. See *id.* § 2-27(1). The court provided the following factual basis for those findings: "mental health, domestic violence, failure to protect, lack of cooperation with service providers." See *id.* Although DCFS, the court decided, had made reasonable efforts, and had provided appropriate services, to keep the child in

the home, those efforts and services had not eliminated the necessity of removing the child from the home. See *id.* § 2-27(1.5)(a). Leaving L.C. in the home would be, in the court's opinion, contrary to her health, welfare, and safety, and as a factual basis for that finding, the court wrote: "See above [referring to the factual basis for the findings of unfitness and inability] and Dispositional Report filed March 27, 2019."

¶ 56 Accordingly, the circuit court granted the State's petition, adjudged L.C. to be both neglected and abused, made her a ward of the court, and placed custody and guardianship of L.C. with the guardianship administrator of DCFS, "with the right to place the minor and to consent to medical treatment."

¶ 57 These appeals followed.

¶ 58 II. ANALYSIS

¶ 59 A. The Adjudication That L.C. Was a Neglected Minor

¶ 60 No two cases are exactly the same in their facts; as the appellate court remarked in *In re A.D.R.*, 186 Ill. App. 3d 386, 390 (1989), "cases concerning parental rights are *sui generis*." Nevertheless, despite the inevitable difference in facts, the present case is similar enough to *A.D.R.* that we find *A.D.R.*, in its basic rationale, to be dispositive of the outcome in the present case.

¶ 61 In *A.D.R.*, the child's mother, Rhonda Rankin, made 62 emergency room visits from April 1981 to April 1988, and it was fairly inferable that the emergency room visits were owing to domestic violence at the hands of her spouse, Lloyd Rankin. See *id.* at 389. Most of the beatings predated the child's birth—the child was born in about December 1987—and although it appears the child was present in the home on the two occasions in March 1988 when Lloyd beat Rhonda, it is unclear that the child, being only three months old at the time, would have

understood what was happening. See *id.* at 388-89. There was no evidence that the child had suffered any harm or trauma as of yet; witnesses described the child as "in very good health" (*id.* at 388) and "happy" (*id.* at 390).

¶ 62 Nevertheless, on the following rationale, the Fourth District upheld the circuit court's adjudication of neglect:

> "[I]t is not unreasonable for a trial judge to conclude continuing physical abuse by one parent to another will cause emotional damage to a child and thus constitute neglect. Here, there were seven years of physical abuse by Lloyd of Rhonda. The court need not wait until A.D.R. herself becomes the victim of physical abuse nor wait until the repeated beatings of her mother cause so much emotional damage that A.D.R. is permanently affected." *Id.* at 393-94.

¶ 63 As in *A.D.R.*, there is a history of physical abuse in this case. The parties effectively admitted the abuse. Granted, the father did not say outright, "I burned a Superman symbol onto her back," and the mother did not say outright, "He nailed me to the wall by the webbing of my fingers." Even so, as the supreme court has observed:

> "The principle is well recognized that admissions may be implied from conduct as well as expressed by words, and may sometimes be presumed from mere silence. The circumstances which will justify the inference of an omission from acquiescence in the conduct or language of another *** must be such as not only to afford an opportunity to act or speak, but also to properly and naturally call for such action or reply from men similarly situated." *Bell v. McDonald,* 308 Ill. 329, 339 (1923).

¶ 64 Significantly, the expected replies were not forthcoming in this case. Instead, according to Tate's testimony, the mother "didn't know what to say or didn't say a lot," and she refused to allow Tate to see her hands. The mother "got upset[,] and she cried[,] and she hid her hands and said, ['']I'm not going to allow any pictures, and I'm not going to, you know, I'm not being abused.['] " The statement " 'I'm not being abused' " appeared calculated to avoid meeting head-on the specific allegations in the hotline reports.

¶ 65 The father was similarly evasive: Instead of directly denying the specific allegations that Tate recounted to him, he responded "that this *** could be from sexual things" and "that [DCFS] didn't have any proof of that." A further tacit admission, arguably, was his refusal to leave the room when Tate requested to interview the mother in private about the suspected domestic violence. This refusal could be interpreted as an admission by conduct—that he had a compelling reason to influence and supervise the mother's statement, to dissuade her from revealing too much.

¶ 66 Not all the admissions were entirely tacit: "During the DCFS investigation," the dispositional hearing report says, "[the mother] alleged that all tattoos and scars were consensual[,] and [she] further alleged that her missing left nipple occurred when she was accidentally burnt upon a heater during sexual activity." Thus, the mother admitted she had scars and that her left nipple had been burned off. This admission fits in with the nurses' observations: They saw scars on the mother and were troubled by what they saw.

¶ 67 Even if the circuit court believed the party line that these mutilations were consensual, they still would represent violence by one parent toward another; they still would be abuse, *i.e.*, cruel or violent treatment. A child would be emotionally traumatized by the sight of such injuries on her mother, even if the injuries (reputedly) were consensual and were inflicted

outside the child's presence; the child would soon figure out that it was the father who was inflicting the injuries. The child's environment would be injurious not only in this psychological sense but also in the practical sense that whatever physically endangers the mother is injurious also to the child's welfare because the child is dependent on both parents.

¶ 68 Granted, there appears to be no evidence of any additional injuries to the mother after L.C.'s birth, but her birth was recent, and the question is not whether L.C. has as of yet been traumatized or injured; the question, instead, is whether, when living with her parents, L.C. was in an environment injurious to her welfare. Her environment or surroundings were injurious if her parents refused to acknowledge that anything was wrong with their relationship or, more specifically, that the father's burning a Superman symbol onto the mother's back, burning off her nipple, scarring her, and nailing her hand to the wall were in any way problematic. The first step to alleviating a problem is, typically, acknowledging the problem's existence, and the parents have not yet taken that first step. Therefore, we are unable to say it is clearly evident, from the evidence in the adjudicatory hearing, that the State failed to carry its burden of proof on count I of the petition, the count alleging neglect. See *In re Natalia O.*, 2019 IL App (2d) 181014, ¶ 53. (Given that conclusion, we need not reach count II, the allegation of abuse.)

¶ 69 In sum, then, although we agree with the parents that there must be a proven nexus between a psychological disorder or a drinking problem and neglect of the child (see *In re Faith B.*, 349 Ill. App. 3d 930, 933 (2004); *In re T.W.*, 313 Ill. App. 3d 890, 892 (2000)) and that no such nexus was proven in the present case, it is irrelevant, for purposes of an adjudication of neglect, *what* caused the father to burn and cut the mother, whether a psychological disorder, drinking problem, or anything else. A reasonable trier of fact could find that the physically

abusive relationship was an environment injurious to L.C.'s welfare, regardless of the underlying cause of the relationship and regardless of whether the physical injuries were consensual.

¶ 70 And, for that matter, the circuit court reasonably could have found it to be implausible that the injuries were consensual. The mother said they were, but the court did not have to believe her. The court could have inferred that the mother was covering for the father, somewhat as the mother did in *A.D.R.* by insisting to the police that she had deserved to be beaten (see *A.D.R.*, 186 Ill. App. 3d at 389). In a word, the court could have found an environment of genuinely nonconsensual domestic violence, an environment injurious to L.C.'s welfare. See 705 ILCS 405/2-3(1)(b) (West 2018).

¶ 71 B. The Disposition

¶ 72 In opposition to the disposition, the parents make substantially the same arguments they make against the adjudication of neglect. They argue there was no evidence the father had a mental illness or a drinking problem, let alone evidence of a nexus between either of those conditions and neglect of L.C. Also, they argue that the mutilations of the mother were with her consent and, hence, legal. We already have addressed those arguments. The circuit court could reasonably take the view that because the history of violence in the parents' relationship is unacknowledged by them, one should not assume the violence has simply gone away. With the domestic violence unaddressed, leaving L.C. in the home arguably would be contrary to her health, safety, and best interests. See 705 ILCS 405/2-27(1) (West 2018).

¶ 73 III. CONCLUSION

¶ 74 For the foregoing reasons, we affirm the circuit court's judgment.

¶ 75 Affirmed.