2019 IL App (4th) 190303-U

NOS. 4-19-0303, 4-19-0304 cons.

FILED
September 25, 2019
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re J.R., a Minor,	)	Appeal from
	)	Circuit Court of
(The People of the State of Illinois,	)	Sangamon County
Petitioner-Appellee,	)	No. 19JA10
v. (No. 4-19-0303)	)	
Lori M.,	)	
Respondent-Appellant).	)	
----------	)	
In re A.R., a Minor,	)	No. 19JA11
	)	
(The People of the State of Illinois,	)	
Petitioner-Appellee,	)	
v. (No. 4-19-0304)	)	Honorable
Lori M.,	)	Karen S. Tharp,
Respondent-Appellant).	)	Judge Presiding.

JUSTICE DeARMOND delivered the judgment of the court.
Presiding Justice Holder White and Justice Knecht concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, finding the trial court's adjudication of neglect is not against the manifest weight of the evidence.

¶ 2 In January 2019, the State filed a petition for adjudication of neglect with respect to J.R., born in 2011, and A.R., born in 2008, the minor children of respondent, Lori M. In May 2019, respondent stipulated to one of the counts of the petition, and the trial court made the minors wards of the court, placing guardianship with Robert R., the father of the minors.

¶ 3 On appeal, respondent argues the trial court erred in finding the minors were neglected. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In January 2019, the State filed a petition for adjudication of neglect, alleging J.R. and A.R. were neglected pursuant to section 2-3(1)(a) and section 2-3(1)(b) of the Juvenile Court Act of 1987 (705 ILCS 405/2-3(1)(a), (b) (West 2018)) as the minors were in an injurious environment due to the unsanitary conditions of the home (paragraph I) and they were not receiving the proper care and supervision necessary because respondent failed to make a proper care plan for them (paragraph II). In April 2019, respondent stipulated to paragraph I of the petition, and the State dismissed paragraph II. The trial court fully advised respondent of the rights she was giving up, such as a right to a trial and "the State's burden to prove either of the allegations" by a preponderance of the evidence. The court stated:

> "I just want to go over what a stipulation is so that everybody's clear on what that is. It is different than an outright admission. I'm not going to be asking you, [respondent], if you admit that that allegation is true. It's a little bit different. In a few moments, I'm going to ask the State to stand up and give a factual basis.
>
> Now, what that is, [the State's] going to state somewhat in summary form what [it] believes witnesses would say if they came in here and testified. After [it] does that, I'm going to ask you if you agree or disagree that the State could call witnesses who would say those things; again, not that you are agreeing that it's

true, but just do you believe yes, witnesses could come in here, and that's what they would testify about. Does that make sense?"

Respondent said she understood. For the factual basis, the State said:

> "[O]n or about January 15 of 2019, the DCFS hotline received a report alleging unsanitary conditions at the home of [respondent] and her three children, [Q.M.], [J.R.], and [A.R.].
>
> Investigator Gallagher went into the home and confirmed that the home was in an unlivable condition with garbage, old food, animal feces, and other hazardous items piled on the floor throughout the apartment. Investigator Gallagher determined that there was no walkway through the trash on the floor, and she had to step on trash to get through the apartment. Trash and food containers were found on all surfaces of the kitchen as well. All three children were present in the home and appeared to be very dirty, wearing dirty clothes and having a strong odor.
>
> When the children were evaluated by a medical professional, the medical professional was concerned about the state of hygiene involving the children."

¶ 6 The trial court accepted the stipulation, finding it was knowingly and voluntarily given. It found the factual basis sufficient and entered a finding of neglect based on the first allegation. In May 2019, the court entered a dispositional order granting Robert R. custody and guardianship of the minors, J.R. and A.R.

¶ 7 This appeal followed.

¶ 8 II. ANALYSIS

¶ 9 Respondent argues the trial court's finding of neglect was against the manifest weight of the evidence. Specifically, respondent contends "the State failed to prove neglect by a preponderance of the evidence" and characterizes respondent's admission to a count of neglect as "only stipulat[ing] the State could call witnesses whose testimony would support the allegation in paragraph 1 of the petitions." We disagree.

¶ 10 Initially, we note the State argues respondent should be estopped from now arguing sufficiency of the evidence subsequent to a stipulation to the factual basis before the trial court—a position clearly supported by the law. Respondent entered into the stipulation freely, voluntarily, and with the advice of counsel. The stipulation was not merely to a factual basis, but to the ultimate finding of neglect based on an "injurious environment." See *In re Stephen K.*, 373 Ill. App. 3d 7, 25, 867 N.E.2d 81, 98 (2007) ("A party is estopped from taking a position on appeal that is inconsistent with a position the party took in the trial court."). It is unclear from the State's brief whether it is contending respondent waived this issue. "Waiver is the intentional relinquishment of a known right, whereas forfeiture is the failure to make a timely assertion of a known right." *People v. Hibler*, 2019 IL App (4th) 160897, ¶ 51, 129 N.E.3d 755 (quoting *People v. Bowerns*, 407 Ill. App. 3d 1094, 1098, 943 N.E.2d 1249, 1256 (2011)). This issue was never raised in the trial court by way of objection or motion at the subsequent dispositional hearing or at any time thereafter and is raised for the first time on appeal. Further, respondent, through counsel, entered into an agreement with the State whereby she agreed to stipulate to paragraph I—neglect. "Where a defendant acquiesces to the actions taken by the trial court, he waives his right to challenge those actions on appeal." *People v. Scott*, 2015 IL App (4th) 130222 ¶ 24, 25 N.E.3d 1257.

¶ 11 However, since this issue is, in part, a result of the procedure utilized by the trial court which may recur, we decline to decide the case on the procedural bases discussed above and elect to discuss the substantive issue raised. *Ballinger v. City of Danville*, 2012 IL App (4th) 110637, ¶ 13, 966 N.E.2d 594 ("[T]he forfeiture rule is an admonition to the parties and does not affect this court's jurisdiction.").

¶ 12 "A finding of abuse, neglect or dependence is a necessary predicate to an adjudication of wardship of a child." *In re N.B.*, 191 Ill. 2d 338, 343, 730 N.E.2d 1086, 1088 (2000). The State is required to "prove abuse, neglect, or dependence by a preponderance of the evidence" before a minor can be adjudicated a ward of the court. *In re M.H.*, 196 Ill. 2d 356, 365, 751 N.E.2d 1134, 1141 (2001). This can be done by way of an admission of the party as long as the admission is entered knowingly and voluntarily. *M.H.*, 196 Ill. 2d at 365-66. It must be apparent from the record the parent making the admission understands the consequences. *In re Johnson*, 102 Ill. App. 3d 1005, 1012-13, 429 N.E.2d 1364, 1371 (1981).

¶ 13 A stipulation is an agreement between parties or their attorneys with respect to an issue before the court. Courts look with favor upon stipulations because they promote the disposition of cases, simplification of issues, and the saving of expense to litigants. See 2 R. Steigmann, Illinois Evidence Manual, § 17:19 (4th ed. 2018). They are normally conclusive with regard to all matters included in them and preclude the need for further proof of stipulated facts. They have the effect of eliminating the need for proof otherwise required. *People v. Woods*, 214 Ill. 2d 455, 469, 828 N.E.2d 247, 256 (2005); *Lee v. Chicago Transit Authority*, 152 Ill. 2d 432, 462, 605 N.E.2d 493, 505-06 (1992).

¶ 14 Admissions of unfitness, however, require a finding by the trial court of a sufficient factual basis to justify a conclusion the parent is unfit before the court can accept the

admission in termination proceedings. *M.H.*, 196 Ill. 2d at 365. As the court noted in *M.H.*, when the result of an admission of unfitness, such as that in termination proceedings, is to deprive a parent of the fundamental rights attached to parenthood, "[a] factual-basis requirement ensures that the State has a basis for its allegation of unfitness. In addition, a factual-basis requirement makes certain that a parent's admission of unfitness is knowing and voluntary." *M.H.*, 196 Ill. 2d at 365-66. Adjudications of abuse, neglect, or dependency do not involve termination of parental rights, and the proof required is different. Proof of unfitness in a termination proceeding must be shown by "clear and convincing evidence." 705 ILCS 405/2-29(2) (West 2018). The standard of proof in a section 2-27 (705 ILCS 405/2-27 (West 2018)) finding of unfitness after adjudication is a preponderance of the evidence. *In re Lakita B.*, 297 Ill. App. 3d 985, 994, 697 N.E.2d 830, 836 (1998).

¶ 15 Because of this substantive distinction between termination proceedings and adjudications of wardship, this court in *In re C.J.*, 2011 IL App (4th) 110476, ¶ 31, 960 N.E.2d 694, adopted the rationale of the Fifth District in *In re A.A.*, 324 Ill. App. 3d 227, 239-40, 754 N.E. 2d 826, 836 (2001), which found parental due process rights adequately protected by a parental admission and a sufficient factual basis to justify removal of the children. "[I]f an adjudication is proper with only a preponderance of the evidence, then a lower level of proof, by way of a parental admission together with facts of record demonstrating the factual basis for the initial removal, is sufficient to protect the parents' due process rights at that stage of the proceedings." (Emphasis omitted.) *C.J.*, 2011 IL App (4th) 110476, ¶ 31 (quoting *A.A.*, 324 Ill. App. 3d 239-40). In fact, this court laid out a basic procedural guideline for trial courts to follow, patterned after Illinois Supreme Court Rule 402(c) (eff. July 1, 1997) admonishments for a factual basis at the time of a plea of guilty. This included (1) a brief factual recitation by the State

or other evidence already of record (such as facts presented at the time of the shelter-care hearing, which the court could even reference *sua sponte*) and (2) an acknowledgment by counsel of a sufficient factual basis for a finding. *C.J.*, 2011 IL App (4th) 110476, ¶¶ 51-56.

¶ 16 More recently, we expanded on the rationale for the necessity of a factual basis before accepting an adjudicatory hearing admission by noting " '[t]he factual basis allows the parent to hear the State describe the alleged facts relating to fitness and gives the parent an opportunity to challenge or correct any facts that are disputed.' " *In re Dal. D.*, 2017 IL App (4th) 160893, ¶ 46, 74 N.E.3d 1185 (quoting *M.H.*, 196 Ill. 2d at 366). In addition, at the adjudication, the basis for the finding "gives the parents 'fair notice of what they must do to retain their rights to their child' in the face of any future termination proceedings." *In re April C.*, 326 Ill. App. 3d 225, 237, 760 N.E.2d 85, 95 (2001) (quoting *In re G.F.H.*, 315 Ill. App. 3d 711, 715, 734 N.E.2d 519, 523 (2000)). Where a respondent parent factually stipulated to a count of neglect in *In re A.L.*, 2012 IL App (2d) 110992, ¶ 24, 969 N.E.2d 531, the Second District, distinguishing *C.J.*, concluded a factual basis to support an admission in a juvenile adjudication under 705 ILCS 405/2-21(1) (West 2000) did not have to meet the requirements of a guilty plea under Supreme Court Rule 402(c). The court said adjudications under section 2-21(1) required a determination "whether the child is abused, neglected, or dependent, not whether the parents are guilty of some conduct." *A.L.*, 2012 IL App (2d) 110992, ¶ 24. Instead, it concluded that "so long as the respondent's stipulation did not violate her right to due process, and the trial court specified that it found the minors neglected pursuant to respondent's stipulation to count I of the amended petitions, the trial court had a sufficient factual basis to accept that stipulation." *A.L.*, 2012 IL App (2d) 110992, ¶ 24. However, in that case, the court conducted a hearing prior to the shelter-care hearing wherein the parties presented substantial evidentiary proffers as well as a

written report by the appointed guardian *ad litem*. *A.L.*, 2012 IL App (2d) 110992, ¶ 25. As a result, the appellate court found a factual basis for the allegations to which respondent stipulated was satisfied by the representations and report from the guardian *ad litem*. *A.L.*, 2012 IL App (2d) 110992, ¶ 25.

¶ 17 In this case, the written stipulation signed by respondent and entered into the record read: "I voluntarily and of my own free will stipulate to the allegation that: the minor's environment is injurious to their welfare as evidenced by the unsanitary conditions of the house." Respondent's brief states, " [t]he mere fact that a home is unclean or that hygiene is a concern does not give rise to parental neglect or to a finding that their environment is injurious to their welfare." This ignores completely the State's representation of respondent's stipulation at the outset of the hearing, to which both respondent's counsel and respondent agreed. The State said, "It's my understanding that mother will be stipulating to paragraph number 1 in the petition that was filed January 17, 2019, that allegation reading the minor's environment is injurious to their welfare as evidenced by the unsanitary conditions of the home." The State then outlined the remainder of the agreement whereby paragraph II was going to be dismissed and the matter would be set for a dispositional hearing. The court then asked respondent's counsel, "Is that correct, Ms. Hall?" to which she responded, "It is Your Honor." Further, it ignores the neglect stipulation signed by respondent, dated, and entered into the record the same day, which read as outlined. As a result, the record indicates respondent stipulated both to the finding of neglect and the facts as represented by the State.

¶ 18 The trial court scrupulously honored respondent's due process rights by informing her of the procedure and her individual rights under the Juvenile Court Act. The court also inquired into her knowledge and understanding of the process and provided a complete

disclosure of the effects of her stipulation and the procedure which would follow before accepting her stipulation. The court also asked questions to ensure respondent was competent to enter an admission and whether she was doing so intelligently and voluntarily. The matter became somewhat confused and arguably opened the door to respondent's allegations as a result of the court's comments, which suggested it was going to conduct something more akin to a stipulated bench trial. The State clearly indicated at the outset of the proceedings "the mother will be stipulating to paragraph number 1 in the petition *** that allegation reading the minors' environment is injurious to their welfare as evidenced by the unsanitary conditions of the home." "Injurious environment" is a legal conclusion and defines neglect—also a legal conclusion. As further support for this observation, the written abuse/neglect/dependency stipulation signed by respondent on the same date says the same thing. The stipulation was an admission to the actual finding of neglect.

¶ 19 Instead, the trial court noted the stipulation was "different than an outright admission" and then told respondent, after hearing the State's proffer of evidence, she would be asked "if you agree or disagree that the State could call witnesses who would say those things; again, not that you are agreeing that it's true, but just do you believe yes, witnesses could come in here, and that's what they would testify about." This, however, is not what respondent agreed to do in her stipulation. Her intention was to admit paragraph I of the petition alleging neglect and that "the minors' environment is injurious to their welfare as evidenced by the unsanitary conditions at the home." By doing so, she was agreeing to admit the facts were not only true, but were sufficient to constitute the legal basis for a finding of neglect. By characterizing her stipulation as merely an acknowledgment the State's witnesses may testify as outlined, the door was left open to the claim we see here, *i.e.*, that the facts as set forth were not sufficient to

constitute a finding of injurious environment and therefore not sufficient to enter a finding of neglect. This undoubtedly was not the State's intent when entering into the agreement. It noted respondent was stipulating to paragraph I and read the language contained therein. What the court described was something entirely different. There is nothing to prevent a respondent from agreeing to a stipulated bench trial—that is a matter between respondent, counsel, and the State.

¶ 20 In the case of a stipulated bench trial, a respondent would simply acknowledge the State's witnesses will testify as represented, leaving the court to decide whether those facts form the legal basis for the finding of neglect, abuse, or dependency. Where, however, the State and respondent have entered into an agreement to stipulate to a finding of neglect as alleged in the petition, it would seem less confusing or subject to a claim of error if the trial court would inform a respondent a stipulation worded like the one here is an admission to the finding and therefore the facts as alleged. This hybrid of two alternatives permits a respondent to argue he or she was not admitting to the petition but merely acknowledging the State could produce certain witnesses, as respondent does here.

¶ 21 As we noted, all that was required was some evidence before the court to support a factual basis for the admission. Respondent's stipulation coupled with the State's factual basis was more than sufficient. A respondent's " 'stipulation alone is sufficient to support the finding of neglect by the court and its adjudication of wardship.' " *In re R.B.*, 336 Ill. App. 3d 606, 618, 784 N.E.2d 400, 409 (2003) (quoting *Johnson*, 102 Ill. App. 3d at 1014. Here, the facts provided were enough to establish neglect even if no stipulation had been entered. Although "neglect" has no strictly delineated meaning, it is generally defined as the " ' "failure to exercise the care that circumstances justly demand." ' " *In re Arthur H.*, 212 Ill. 2d 441, 463, 819 N.E.2d 734, 746 (2004) (quoting *N.B.*, 191 Ill. 2d at 346, quoting *People ex rel. Wallace v. Labrenz*, 411 Ill. 618,

624, 104 N.E.2d 769, 773 (1952)). Cases involving allegations of neglect are *sui generis*, taking into consideration the totality of the facts and circumstances presented in the record. *Arthur H.*, 212 Ill. 2d at 463. Neglect can be intentional or unintentional. *N.B.*, 191 Ill. 2d at 346. Children are neglected if their environment is injurious to their welfare. 705 ILCS 405/2-3(1)(b) (West 2018). Although "injurious environment" is an amorphous concept and dependent upon the facts of each case, it is based on the premise "[p]arents have the duty to protect their children from harm, and their refusal to provide their children with a safe and nurturing shelter *** [constitutes] neglect." *In re M.K.*, 271 Ill. App. 3d 820, 826, 649 N.E.2d 74, 79 (1995). On review, a trial court's finding of neglect will not be reversed unless it is against the manifest weight of the evidence, *i.e.*, "the opposite conclusion is clearly evident." *In re A.P.*, 2012 IL 113875, ¶ 17, 981 N.E.2d 336.

¶ 22 From the factual basis, there is no question the children were kept in a home with deplorable conditions. Animal feces, old food, and garbage were on the floor with no available walkway through the home that did not include stepping on trash. According to the investigator, the home was "in an unlivable condition," the City having declared the residence uninhabitable. Trash and food containers were piled on all kitchen surfaces and all three children appeared "very dirty, wearing dirty clothes and having a strong odor." There was evidence the environment was detrimental to the health of the children since, when they were examined, the doctor expressed concern about the condition of their hygiene. According to the investigator, this had been an ongoing problem with respondent since 2009. When asked how to remedy the problem, respondent said the children, age 5, 8, and 10, should help her clean the house. Based on this evidence, respondent did not exercise the necessary care and concern needed for the

minors. Therefore, we cannot say the trial court erred by finding the stipulation and factual basis supported an adjudication of neglect for the minors.

¶ 23 III. CONCLUSION

¶ 24 For the reasons stated, we affirm the trial court's judgment.

¶ 25 Affirmed.