

No. 2—10—1078
Order filed March 11, 2011

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

<i>In re</i> ABEL C., ANICIA C., ALISSA C., and ALEXIS M., Minors,)	Appeal from the Circuit Court of De Kalb County.
)	
)	Nos. 09—JA—32, 09—JA—33, 10—JA—9, 10—JA—10
)	
(The People of the State of Illinois, Petitioner- Appellee, v. Suzanne M., Respondent- Appellant).)	Honorable William P. Brady, Judge, Presiding.

JUSTICE SCHOSTOK delivered the judgment of the court.
Justices Zenoff and Burke concurred in the judgment.

ORDER

Held: (1) The trial court did not err in admitting certain hearsay statements; (2) the trial court's adjudication of the respondent's four children as neglected was not against the manifest weight of the evidence.

The respondent, Suzanne M., appeals from the October 14, 2010, order of the circuit court of De Kalb County finding that her children were neglected. On appeal, the respondent argues that (1) the trial court erred in admitting certain hearsay statements; and (2) the trial court's adjudication of her four children as neglected was against the manifest weight of the evidence. We affirm.

The respondent has four children: Alexis M. (born 12/4/1993); Alissa C (born 1/9/1996); Abel C. (born 6/4/2000); and Anicia C. (born 4/1/2003). The father of the youngest three children is George C. On February 3, 2010, the State filed petitions to have each of the four children adjudicated neglected pursuant to section 2–3 of the Juvenile Court Act of 1987 (the Juvenile Court Act) (705 ILCS 405/2—3(1)(b) (West 2008)). The petitions contained the following allegations: (1) George sexually abused Alexis when she was between the ages of 6 and 8 years old; (2) the respondent remained in a relationship with George even though George and Alexis told her about the abuse; (3) the respondent acknowledged that she had used crack cocaine in the presence of Alexis and Alissa; and (4) and Anicia and Abel had 24 unexcused absences in the past 180 days of school.

On July 15, 2010, the trial court conducted an adjudicatory hearing on the State’s petitions. Sue Zarlenga, a child protection investigator with the Department of Children and Family Services (DCFS), testified that she had spoken with the respondent on December 22, 2009. The respondent told Zarlenga that George had abused Alexis 10 years earlier. The respondent was aware of George abusing Alexis at the time it had occurred because George had told her about it. The respondent stayed with George and did not tell the police because she was afraid of George and George said that he would not do it again. The respondent also told her that George had gotten her on crack cocaine. However, she had been clean for three weeks and had lost 25 pounds.

Detective Michael Stewart of the De Kalb police department testified that the respondent and Alexis had come to the police department on December 18, 2009, to make a report that George had sexually abused Alexis several years ago. The respondent told Detective Stewart that she was making the report because she wanted to make a change in her life. The respondent explained that George had told her, when Alexis was five or six years old, that he had been abusing Alexis while

the respondent was at work. The respondent further stated that what George told her made her extremely upset and emotional. The respondent subsequently talked with Alexis, who confirmed that George had abused her.

Detective Stewart also testified that he talked with Alexis when she came to the police station with her mother. Alexis told him that George had sexually abused her when she was about six or seven years' old. Alexis also told him that she had informed her mother about the abuse during the period when the abuse was occurring.

Bill Colvin testified that he worked for the court-appointed special advocates program (CASA) and that he had spoken with the respondent on January 12, 2010. She indicated that she was going to talk with her two older children because they had been present during drug use, fighting and family conflict. Pat Cullen, a case manager at CASA, testified she was present at the meeting and confirmed that the respondent had stated that she had used drugs in front of her two older children.

Kathy Stoddard, a truancy intervention outreach worker, testified that she was familiar with Anicia and Abel because they had been referred to her because of numerous unexcused absences from school. The children had nine unexcused absences in the last 180 days of the 2008-09 school year. They were referred to her at the beginning of the school year for 2009-10. She had meeting with the respondent in September 2009, but the truancy issues continued. As of October 2009, the children had 24 unexcused absences during a 180-day period.

On July 22, 2010, the trial court adjudicated Abel, Anicia, Alissa and Alexis neglected. The trial court found Alexis neglected because she was sexually abused by George. The trial court found all four children neglected because the respondent knew about the abuse but did not do anything about it. The trial court also found all four children neglected because the respondent used crack

cocaine in the presence of Alexis and Alissa. The trial court found Abel and Anicia neglected for not receiving a proper education. Following the denial of her motion to reconsider, the respondent filed a timely notice of appeal.

The respondent's first contention on appeal is that the trial court erred in admitting the hearsay statements that Alexis was sexually abused because those statements were uncorroborated and not subject to cross-examination. As those statements were improperly admitted, the respondent argues that the findings of neglect that flowed from them—that the children were subject to an injurious environment because the respondent did not do anything about Alexis being sexually abused—must be reversed.

Section 2—18(4) of the Juvenile Court Act (705 ILCS 405/2—18(4)(c) (West 2008)) governs the use of a minor's hearsay statements in a civil adjudicatory hearing to determine whether the minor is abused or neglected. Section 2—18(4)(c) provides:

“Previous statements made by the minor relating to any allegations of abuse or neglect shall be admissible in evidence. However, no such statement, if uncorroborated and not subject to cross-examination, shall be sufficient in itself to support a finding of abuse or neglect.”

705 ILCS 405/2—18(4)(c) (West 2008).

In other terms, section 2—18(4)(c) requires either cross-examination of the minor who made the statement or corroboration of the minor's hearsay statement in order for that statement to be admissible. *In re A.P.*, 179 Ill. 2d 184, 196 (1997). A mother's statement to the police that her husband is sexually abusing her child corroborates a child's statement of abuse and can merit a finding of neglect. *In re Walter B.*, 227 Ill. App. 3d 746, 752-53 (1992). A trial court's decision to

admit a minor's statements into evidence will not be disturbed absent an abuse of discretion. *In re Alexis H.*, 401 Ill. App. 3d 543, 553 (2010).

In *Walter B.*, the State filed a petition alleging that Walter was neglected because his father sexually abused him and his mother did not remove him from that environment. *Walter B.*, 227 Ill. App. 3d at 750. The State's petition for neglect was based in part on Walter's mother telling the police that she had witnessed Walter being abused by his father and that she had not done anything about that. *Id.* at 748. The trial court found that the State had not proved that the defendant was neglected, but the reviewing court reversed. *Id.* at 751, 757. The reviewing court found that although Walter had not testified at the hearing, the State had presented ample evidence to establish that Walter was neglected. *Id.* at 752-53. The reviewing court explained:

“For whatever reasons, Walter's mother did nothing about restraining, reporting or rectifying the circumstances which clearly endangered and adversely affected her child's mental and physical health. Parents are not free to stand by as disinterested witnesses when such deleterious events materialize. It was the mother's obligation, both morally and legally, to intervene on Walter's behalf.

* * *

The voluntary statements made by Walter's mother to police demonstrated that she knew of and permitted the sexually abusive acts visited upon Walter, but did nothing about them. *** Clearly, she both knew of and permitted the endangerment to Walter. Under these circumstances, the statements given by Walter's mother were tantamount to admissions that she permitted the health of her child to be endangered and permitted acts of criminal sexual

abuse upon her child in contravention of the foregoing protective statutes. Those admissions constituted substantive evidence to be considered by the court.” *Id.*

Here, like the mother in *Walter B.*, the respondent knew that her child was being sexually abused by a person living in her household, but she did not do anything about it. The respondent’s statements to the police were tantamount to admissions that she permitted the health of her children to be threatened. The respondent’s statements corroborated Alexis’s allegations of abuse and therefore constituted substantive evidence to be considered by the court. *Id.* at 753. The trial court therefore did not abuse its discretion in considering Alexis’s hearsay statements. *Alexis H.*, 401 Ill. App. 3d at 553. As those statements were properly admitted, there was sufficient evidence that the respondent subjected her children to an injurious environment due to the sexual abuse of Alexis.

In so ruling, we find the respondent’s reliance on *In re Custody of Brunken*, 139 Ill. App. 3d 232 (1985) to be misplaced. In that case, the trial court adjudicated the child a ward of the court based on allegations that the child had been sexually abused by her father. *Id.* at 238. The child did not testify at the hearing; rather, her hearsay statements were admitted through other testimony, including that of her mother and maternal grandmother. *Id.* at 235. The reviewing court found that those statements did not sufficiently corroborate the child’s statements to be admitted under the Juvenile Court Act. *Id.* at 238-41. The trial court explained that the reliability of those statements were questionable because the father and mother had recently gone through a “stormy divorce” and the father testified that the proceedings were an attempt by the mother to interfere with his visitation rights. *Id.* at 240-41. Here, in contrast, the respondent’s statements were reliable because they were tantamount to admissions that the respondent had allowed her children to remain in an injurious environment. See *Walter B.*, 227 Ill. App. 3d at 752-53.

The respondent's second contention on appeal is that the trial court's finding that the children were neglected because the respondent used crack cocaine in front of two of the children was against the manifest weight of the evidence. The respondent argues that her children could be found neglected on that basis only if the evidence established that she used cocaine in front of her children more than once. As the State only presented evidence that such drug use occurred on only one occasion, the trial court's finding of neglect based on her drug use was improper.

In its petition for adjudication, the State alleged that the children were neglected pursuant to section 2-3(1)(b) of the Juvenile Court Act (705 ILCS 405/2-3(1)(b) (West 2008)) because the respondent used crack cocaine in front of two of her children. Section 2-3(1)(b) of the Juvenile Court Act provides that a minor is deemed neglected when the minor is under the age of 18 and the environment of the minor is "injurious to his or her welfare." 705 ILCS 405/2-3(1)(b) (West 2008). Neglect occurs when there is a failure to exercise the care that circumstances demand and includes both willful and unintentional disregard of parental duty. *In re Gabriel E.*, 372 Ill. App. 3d 817, 822 (2007). "The term 'injurious environment' is a broad and amorphous concept that cannot be defined specifically, but it includes the breach of a parent's duty to ensure a safe and nurturing shelter for the children. *In re A.W., Jr.*, 231 Ill. 2d 241, 254 (2008). Both "neglect" and "injurious environment" do not have fixed meanings, and instead are based on the circumstances of each case. *Gabriel E.*, 372 Ill. App. 3d at 823. A trial court's finding of neglect will not be disturbed unless its finding is contrary to the manifest weight of the evidence. *A.W. Jr.*, 231 Ill. 2d at 254.

We do not believe that the trial court's determination that the respondent's children were neglected because the respondent used drugs in front of two of them was against the manifest weight of the evidence. The respondent told both CASA representatives Colvin and Cullen that she had

used crack cocaine in the presence of Alexis and Alissa. The respondent told DCFS Investigator Zarlenga that she had been addicted to crack cocaine until December 2009. From this testimony, the trial court had ample evidence to conclude that the respondent's drug use in front of two of her children had subjected all of her children to an injurious environment.

In so ruling, we reject the respondent's argument that the State had to prove that she used drugs in front of her children on multiple occasions in order to prove that she had subjected them to an injurious environment. The respondent's argument appears to be based on section 2—18(2)(g) of the Juvenile Court Act (705 ILCS 405/2—18(2)(g) (West 2008)). That section provides:

(2) In any hearing under this Act, the following shall constitute prima facie evidence of abuse or neglect, as the case may be:

* * *

(g) proof that a parent, custodian, or guardian of a minor repeatedly used a controlled substance *** in the presence of a minor or a sibling of the minor is prima facie evidence of neglect. 'Repeated use', for the purpose of this subsection, means more than one use of a controlled substance." 705 ILCS 405/2—18(2)(g) (West 2008).

"*Prima facie* evidence" is defined as a quantum of evidence sufficient to satisfy the burden of production concerning a basic fact that allows an inference of a presumed fact. *People v. Escalante*, 309 Ill. App. 3d 994, 996 (2000). The effect of that evidence is to create the necessity of other evidence to meet the *prima facie* case created and, if no proof to the contrary is offered, it will prevail. *In re A.M.*, 358 Ill. App. 3d 247, 253 (2005).

We agree with the respondent that the State did not establish that her drug use occurred multiple times in front of the children. Thus, the State's evidence did not rise to the level of a *prima*

facie evidence. 705 ILCS 405/2—18(2)(g) (West 2008). Nonetheless, the evidence that the State did present—that the respondent used crack cocaine in front of two of her children—was un rebutted. Accordingly, the State’s evidence was sufficient to establish that the respondent had neglected her children by subjecting them to an injurious environment. Further, despite the respondent’s contentions to the contrary, the State was not required to have Alexis or Alissa testify that the respondent had used drugs in front of them. See *Walter B.*, 227 Ill. App. 3d at 752-53.

The respondent’s final contention on appeal is that the trial court’s findings of educational neglect were against the manifest weight of the evidence. The respondent points out that, due to the amount of school that her youngest two children missed, the State relied entirely on a statutory presumption that the children were educationally neglected rather than presenting any evidence that the children were not performing well in school. The respondent insists, however, that the State was not entitled to the application of the statutory presumption because the evidence it presented was “foundationally deficient, ambiguous and otherwise unreliable.”

A minor is deemed neglected if the minor is under the age of 18 and is not receiving the proper education as required by law. 705 ILCS 405/2—3(1)(a) (West 2008). Section 2—18(5) of the Juvenile Court Act sets forth a procedure in which to prove a minor educationally neglected:

“In any hearing under this Act alleging neglect for failure to provide education as required by law under subsection (1) of Section 2—3, proof that a minor under 13 years of age who is subject to compulsory school attendance under the School Code is a chronic truant as defined under the School Code shall be *prima facie* evidence of neglect by the parent or guardian in any hearing under this Act.” 705 ILCS 405/2—18(5) (West 2008).

The purpose of the compulsory attendance law is to ensure that all children receive a minimum education. *Chicago Board of Education v. Terrile*, 47 Ill. App. 3d 75, 78 (1977). A child is truant when the child is subject to compulsory school attendance and “is absent without valid cause from attendance for a school day or a portion thereof.” 105 ILCS 5/26—2a (West 2008). A child is deemed chronically truant when that child is absent without valid cause for ten percent or more of the previous 180 attendance days. 105 ILCS 5/26—2a (West 2008).

Here, Stoddard testified that Abel and Anicia had been absent 24 days out of the previous 180 days of school. This constituted *prima facie* evidence that the respondent neglected her two youngest children by not providing for their educational needs. 705 ILCS 405/2—18(5) (West 2008). As the respondent did not present anything to rebut the *prima facie* evidence presented by the State, the trial court’s determination that the respondent neglected the educational needs of Abel and Anicia was not against the manifest weight of the evidence. See *A.M.*, 358 Ill. App. 3d at 253.

In so ruling, we reject the respondent’s argument that the State was not entitled to rely on the statutory presumption because the evidence it presented was insufficient. In making her argument, the respondent points out that (1) the record is unclear as to the source of Stoddard’s information that the children had nine unexcused absences in the last 180 days at the time they were referred to her and (2) Stoddard made no attempt to distinguish Anicia’s attendance records from Abel’s records. However, the respondent failed to object to any of this evidence in the trial court. Her argument is therefore forfeited. See *In re Jaber W.*, 344 Ill. App. 3d 250, 256 (2003) (in order to preserve an issue for review, the respondent must raise an objection at the hearing to the testimony at issue).

For the foregoing reasons, the judgment of the circuit court of De Kalb County is affirmed.

Affirmed.