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2011 ILL App (3d) 100736-U

Order filed August 2, 2011

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2011

In re J.Y.,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
a Minor,	)	Peoria County, Illinois,
	)	
(The People of the State of	)	
Illinois,	)	
	)	Appeal No. 3--10--0736
Petitioner-Appellee,	)	Circuit No. 10--JA--170
	)	
v.	)	
	)	
A.Y., Jr.,	)	
	)	Honorable Richard D. McCoy,
Respondent-Appellant).	)	Judge, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court.
Justices Lytton and O'Brien concurred in the judgment.

ORDER

¶ *1* *Held*: The trial court did not err in finding the State proved the allegations of neglect or abuse in its juvenile petition.

¶ 2 Respondent, A.Y., Jr., appeals from a finding by the circuit court of Peoria County that he is an unfit parent and that his minor son, J.Y., is a neglected minor. Respondent claims the evidence adduced at the adjudication hearing failed to sufficiently prove the fracture in his son's leg occurred as a result of abuse or neglect. As such, respondent argues the trial court's finding is against the manifest weight of the evidence. We affirm.

¶ 3 FACTS

¶ 4 The allegedly neglected minor in this matter, J.Y., was born on April 4, 2010. On June 10, 2010, the Department of Children and Family Services (DCFS) filed a petition alleging that the minor is neglected. Specifically, count A of the petition alleged that between May 31, 2010, and June 2, 2010, J.Y.'s leg became fractured "and this injury could not have occurred absent abuse and/or neglect on the part of the mother and/or father." The petition identified J.Y.'s mother as A.S. and father as A.Y., Jr., the respondent herein.

¶ 5 Count B of the petition further alleged that the respondent father had been found unfit in two previous Tazewell County cases with no subsequent findings of fitness. Count C of the petition alleged that the respondent father "has a criminal history which includes: '04 criminal damage to property; '04 DUI; '05 dangerous animal at large (ov); '05 endangering the life/health of a child (2 counts); '05 dangerous dog (ov); '05 disorderly conduct; '05 disorderly conduct' '05 disorderly conduct; '07 criminal damage to property; '08 forgery." Count D of the petition alleged that the respondent father had or has a substance abuse problem. Finally, count E of the petition alleged that the respondent father and the mother of J.Y. have been previously indicated by DCFS for risk of harm and inadequate supervision.

¶ 6 The respondent father filed an answer to the petition denying that the fracture of J.Y.'s leg was the result of neglect or abuse. The respondent father admitted the allegations contained in counts B, C and E. Finally, he further admitted that he had a substance abuse problem "in the past" but denied having one upon the filing date of his answer.

¶ 7 The matter proceeded to an adjudicatory hearing in which Detective Marilyn Robinson from the Peoria police department testified. Detective Robinson noted that on Wednesday, June 2, 2010, she interviewed respondent and the minor's mother at St. Francis Hospital regarding the minor's broken leg. Respondent stated the incident occurred at approximately 3 to 3:30 p.m. on Monday, May 31, 2010. The story relayed by the minor's parents indicated that they put both the minor and their three-year-old daughter into the backseat of their vehicle. The daughter "took off running" and immediately thereafter, the mother heard J.Y. begin to cry. She exited the vehicle and noticed the family dog, a pit bull/mastiff mix, jump out of the vehicle. Both respondent and J.Y.'s mother informed the detective that the dog jumped on J.Y.

¶ 8 The detective continued her testimony by noting that the minor's mother stated she checked J.Y. over but did not observe anything wrong. The family continued their trip, returning home around 9 to 9:30 p.m. that night. J.Y. was a little fussy and put his legs up to his stomach. The parents believed J.Y. had a stomachache so they gave him peppermint water. The parents indicated to the detective that J.Y. slept all night.

¶ 9 Detective Robinson continued her testimony indicating that the parents informed her that J.Y. awoke crying on the morning of June 1, 2010, at approximately 8:30 a.m. The minor continued to pull his leg to his chest area and stomach area. J.Y. cried when respondent touched his leg so he took J.Y. to the hospital.

¶ 10 The detective could not examine J.Y. at the hospital as he was covered up. Later that day, she observed the dog involved in the incident. Detective Robinson described the dog as a 115-pound pit bull mix.

¶ 11 Following the detective's testimony, the State moved to enter certified records from the Pediatric Resource Center as well as records from St. Francis Hospital into evidence. Respondent did not object to the hospital records, but did object to some of the records from the Pediatric Resource Center (PRC). Respondent narrowed his objection to a single letter dated July 14, 2010, from the PRC. Following initial arguments, the trial court sustained respondent's objection and refused to admit the July 14, 2010, letter. The State then moved for a continuance to call the doctor who authored the letter to come testify. Both respondent and J.Y.'s mother agreed to the continuance. The trial court continued the matter and allowed both the State and respondent time to file authority concerning the admissibility of the letter.

¶ 12 Three days later, on August 12, 2010, the trial court issued an order vacating its previous evidentiary ruling which barred the letter. The trial court admitted the letter and noted that, as such, there was no need for the State to produce the author or establish additional foundation. The State then rested.

¶ 13 When the hearing resumed, respondent called J.Y.'s mother to testify. She testified consistent with the story recalled by Detective Robinson. The mother indicated the dog is an Italian mastiff/pit bull mix that is usually unleashed in the house and yard. The mother described the dog as friendly. The incident involved the dog landing on the minor's feet and right leg. The dog pushed off the minor with its front paws, causing J.Y. to cry. She checked J.Y. after the dog jumped on him but did not see anything wrong. The mother described J.Y. as "really fussy" after

the incident but claimed he "was fine after we shushed him and put him in the car seat and proceeded to my mother's." Finally, J.Y.'s mother noted that doctors at the hospital informed her that an x-ray revealed J.Y. to have a broken bone in his leg.

¶ 14 During questioning from the trial court, J.Y.'s mother indicated that she was located in the front seat of the vehicle when the three-year-old girl ran toward the house. Thereafter, on re-cross examination, the State questioned the mother as to how she could have seen exactly where the dog jumped upon J.Y. if her attention was directed at the three-year-old running toward the house. The mother stated that the little girl running toward the house and the car seat with J.Y. in it were "in the same view."

¶ 15 J.Y.'s mother and Detective Robinson were the only two witnesses called to testify at the adjudication hearing. At the conclusion of the hearing, the trial court found the State put forth "more than enough" evidence "to sustain a finding by a preponderance of the evidence that this broken leg was the result of abuse or neglect." The trial court specifically found that the allegations of count A of the petition were "proven by the most difficult burden of proof." The trial court specifically found the evidence put forth by the minor's mother as to how J.Y.'s leg became broken, to be "incredible in large part." Ultimately, the trial court found "the petition proven in its entirety", entered an adjudication order finding the minor neglected and scheduled the matter for a dispositional hearing.

¶ 16 Following a dispositional hearing, the trial court entered an order finding both the respondent mother and respondent father unfit. The trial court ordered the minor be made a ward of the court and placed guardianship with DCFS. The respondent father, A.Y., Jr., appeals.

¶ 17 ANALYSIS

¶ 18 The sole issue raised by respondent is whether the trial court erred in finding that the State proved by a preponderance of the evidence that the minor's leg was fractured as a result of abuse and/or neglect.

¶ 19 The process to determine whether a child should be removed from his parents and made a ward of the court is set forth in the Juvenile Court Act of 1987 (the Act). 705 ILCS 405/1-1 *et seq*. (West 2008). Following placement of a child in temporary custody, the circuit court must make a finding of abuse, neglect, or dependence before it conducts an adjudication of wardship. 705 ILCS 405/2-21 (West 2008); *In re Arthur H.*, 212 Ill. 2d 441, 462 (2004). The Act defines a "neglected minor" as "any minor under 18 years of age whose environment is injurious to his or her welfare." 705 ILCS 405/2-3(1)(b) (West 2008).

¶ 20 The term neglect "embraces wilful as well as unintentional disregard of duty. It is not a term of fixed and measured meaning. It takes its content always from specific circumstances, and its meaning varies as the context of surrounding circumstances changes." *In re N.B.*, 191 Ill. 2d 338, 346 (2000). Similarly, the term "injurious environment" has been recognized as an amorphous concept that cannot be defined with particularity. *Id.* at 346. The term has been interpreted to include "the breach of a parent's duty to ensure a 'safe and nurturing shelter' for his or her children." *Id.* at 346 (quoting *In re M.K.*, 271 Ill. App. 3d 820, 826 (1995)). As such, cases involving allegations of neglect and adjudication of wardship are *sui generis* and must be decided on the basis of their unique circumstances. *Arthur H.*, 212 Ill. 2d at 463.

¶ 21 In a proceeding for adjudication of wardship, the State must establish that the allegations of neglect or abuse are more probably true than not. *Id.* at 464. We will not reverse the trial court's finding of neglect or abuse unless it is against the manifest weight of the evidence. *Id.* at

464. A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident. *Id.* at 464.

¶ 22 Turning to the matter before us, respondent contends that the trial court's finding that the State proved count A of its petition is against the manifest weight of the evidence. Respondent claims Detective Robinson's testimony mirrored that of the minor's mother proving that the fracture to J.Y.'s leg was nothing more than accidental. Respondent argues that the "only other evidence offered to support the allegation that the injury was non-accidental was the hearsay report authored by Pediatric Resource Center." Respondent continues that the trial court's "hesitation in admitting the documents were well founded, however after their admittance into evidence, afforded them too much weight in its analysis." We must note that nowhere in respondent's brief to this court does he make the specific argument that it was error for the trial court to admit the PRC records or consider them. Respondent does not ask us to reverse the trial court's findings based upon the consideration of improperly admitted evidence and cites to no authority from which one could conclude that the PRC reports were inadmissible. Respondent simply claims that the trial court improperly weighed the evidence before it which resulted in an erroneous finding that the minor was neglected. We disagree.

¶ 23 Included in the records put forth by the State and admitted into evidence were notes from Dr. Channing S. Petrak dated June 1, 2010. Those notes indicate that the minor suffered a bucket handle fracture of the distal metaphysis of the right tibia. Dr. Petrak's notes indicate that the tibial fracture is of high specificity for non-accidental trauma, that the history provided by the parents of the minor is not consistent with the injury, and that J.Y.'s fracture is highly suspicious for non-accidental trauma. These notes were contained within the St. Francis Hospital records to

which respondents raised no objection at the adjudication hearing.

¶ 24 The trial court specifically found that it did "not at all buy the theory that the dog jumped on the minor and broke the minor's leg." It found the mother's testimony not credible and that her testimony "actually strengthens" the State's case suggesting no reasonable person would believe testimony that an infant with a broken leg slept soundly through the night. The trial court noted that "although we don't know exactly what happened, we don't know exactly who's – at whose hand or failure to protect in a reasonable way that all of this occurred, the court can easily conclude that the injury was caused by some sort of abuse or neglect as it relates to this child, thus producing an injurious environment ***." We agree. We cannot say that a conclusion opposite to that of the trial court is clearly evident. As such, we find the trial court's holding that the State proved the allegations in the petition by a preponderance of the evidence is not against the manifest weight of the evidence.

¶ 25 As noted by this court in *In re K.R.*, 356 Ill. App. 3d 517 (2005), a trial court need not have exact "proof of who or what was causing injuries to the minor before it found him neglected." *Id.* at 523 (citing *Arthur H.*, 212 Ill. 2d 441). Evidence, even assuming its truth, has respondent placing or allowing an unrestrained 115-pound dog in the backseat with an eight-week-old infant. Clearly, whether the break in this minor's leg came from being jumped upon by a 115-pound dog or from other non-accidental means as suggested by the trial court and medical reports, the State met its burden of proving that respondent breached his duty to ensure a safe and nurturing shelter for the child and, therefore, provided an injurious environment.

¶ 26 CONCLUSION

¶ 27 For the foregoing reasons, the judgment of the circuit court of Peoria County is affirmed.

¶ 28 Affirmed.