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No. 3–10–0358
(Consolidated with Nos. 3–10–0359 and 3–10–0360)

Order filed May 16, 2011

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2011

In re C.T., M.T., and J.T., Minors	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
THE PEOPLE OF THE STATE OF	)	Peoria County, Illinois.
ILLINOIS,	)	
Petitioner-Appellee,	)	
	)	
v.	)	Nos. 08-JA-49, 08-JA-50,
	)	08-JA-51
	)	
TALITHA T.,	)	Honorable Chris L. Fredericksen
	)	and Richard D. McCoy,
Respondent-Appellant.	)	Judges, Presiding.

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

ORDER

Held: The circuit court's findings that the respondent's three children were neglected due to an injurious environment and that the respondent was an unfit parent were not against the manifest weight of the evidence.

After conducting an adjudication hearing, the circuit court ruled that C.T., M.T., and J.T, the respondent's three minor children, were neglected by reason of an environment that was

injurious to their welfare. The circuit court subsequently issued a dispositional order finding the respondent to be an unfit parent, declaring the children wards of the court, and appointing the Department of Children and Family Services (DCFS) as their guardian. The respondent appeals the circuit court's findings of neglect and unfitness.

BACKGROUND

On March 11, 2008, the State filed a juvenile petition under the Juvenile Court Act of 1987 (the Act) (705 ILCS 405/2-3(1)(b) (West 2008)) alleging that C.T., M.T., and J.T were neglected due to an injurious environment. The petition alleged that the children's environment was injurious because: (A) the respondent was indicated by DCFS for environmental neglect prior to November 12, 2007, when Lutheran Social Services (LSS) was assigned to the family's case; (B) the respondent was indicated again by DCFS for environmental neglect on November 26, 2007, and a safety plan was set up. However, the safety plan was terminated the day after it was established because the respondent moved to the Salvation Army with the children. The respondent left the Salvation Army after a few days because the shelter's rules interfered with her job. Following this, the respondent reported that she was moving her children to the South Side Mission but did not do so because she did not want to follow the program established by the Mission. She then moved with the children into the home of an ex-paramour; (D)[1] Rebecca Janssen, the LSS caseworker assigned to the respondent's case in 2008, had a "number of difficulties providing services" to the respondent. Specifically, Janssen alleged that she had seen the children only once since the respondent moved them to her ex-boyfriend's house, that she left five voicemail messages for the respondent between January 10 and January 23, 2008, that

[1] There was no paragraph "C" in the State's juvenile petition.

"repeated attempts at visits have not been successful," and that the respondent was "failing to cooperate" with LSS or DCFS; (E) the respondent was previously indicated by DCFS in 2006 for environmental neglect;[2] and (F) the children's father had a criminal history which included convictions for theft, violation of an order of protection (2 counts), possession of drug paraphernalia, possession of cannabis, possession with intent to deliver cannabis, and domestic battery.

On April 12, 2008, the respondent failed to appear for the adjudication hearing on the State's petition, and the circuit court entered a default judgment against her. The respondent filed a motion to vacate the default judgment, which the circuit court denied. After conducting a dispositional hearing (which the respondent attended), the circuit court found the respondent unfit, declared the children wards of the court, and ordered the respondent to perform services. On August 27, 2009, this court reversed the circuit court's default order and remanded the cause for further proceedings.

On March 22, 2010, the respondent filed an answer to the State's petition which stipulated that: (1) the respondent was indicated by DCFS for environmental neglect on November 26, 2007; (2) DCFS subsequently established a safety plan for the respondent; (3) the

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[2] The State presented the circuit court with certified reports of the three DCFS indications of environmental neglect. The respondent did not include these reports in the record on appeal. However, according to a social history report prepared for the dispositional hearing by social workers, the respondent's home on Garden Street in Peoria was found to be an unsafe environment because it was "unclean with rotten food, roaches, and clothes throughout the residence."

safety plan was terminated the day after it was established because the respondent and her children had moved to the Salvation Army; (4) the respondent and the children left the Salvation Army a few days later because its rules interfered with the respondent's job responsibilities; (5) the respondent later told DCFS that she intended to move with her children to the South Side Mission but she did not do so because she did not want to follow the Mission's program; and (6) the respondent subsequently moved in with an ex-paramour. The respondent stated in her answer that she lacked sufficient information to confirm or deny the remaining allegations of the State's petition. The respondent demanded strict proof of the State's allegations that a caseworker was having difficulty locating the children and providing services to the respondent and that the caseworker had only seen the children once since the respondent's last move despite leaving several voicemail messages for the respondent.

Janssen testified for the State at the adjudication hearing. Janssen began working with the respondent's family in November 2007 as an "intact family case." Janssen explained that, in intact family cases, a caseworker is expected to visit the family home once per week to observe the children and the home environment during the first 45 days of involvement. Janssen testified she was unable to visit the respondent's home on a weekly basis because the respondent moved several times and repeatedly canceled or failed to keep scheduled appointments. After she was indicated a second time for environmental neglect at her Garden Street address, the respondent moved with her children to the Salvation Army, then to a residence on Park Avenue, then to a residence on Widenham Street, and then to a motel in East Peoria. All of these moves took place within a period of approximately four months. During that time, Janssen set up several appointments with the respondent to visit the family, but when she arrived at the residence there

would be nobody home or the respondent would call to reschedule. Janssen testified that this happened numerous times. Janssen was able to visit the family once at the Garden Street residence, once at the Salvation Army, and once at the Park Avenue address. However, she was not able to visit them at the Widenham Street residence or at the East Peoria motel. Although Janssen left five voicemail messages for the respondent between January 10 and January 23, 2008, she was unable to see the children after January 3, 2008.

To prove counts 1(A), (B), and (E) of the petition, the State offered certified reports prepared by DCFS which showed that the respondent was indicated for environmental neglect on November 9, 2007, November 26, 2007, and also in 2006.

The respondent also testified at the adjudication hearing. She stated that she had completed a parenting class and a domestic violence class after her children were taken away in 2008.

The court found that the State had proven by a preponderance of the evidence that the children were neglected due to an injurious environment. Although the court found that the State had failed to prove its allegation that Janssen "had difficulty locating" the children, it found that the State had proven the allegations in Paragraph D of its petition in material part. Specifically, the court found that the State had proven that Janssen "couldn't get the mom's *** cooperation and get[] in to check on the residences or the children" and that this "in and of itself constitute[d] a failure to cooperate and engage in services at *** the pertinent times." The court found it significant that there was "absolutely no testimony by the [respondent] which conflict[ed] with" Janssen's testimony that she was unable to run checks on the residences and the children. The court found that the State had proven all of the remaining allegations in its petition and

concluded that those allegations supported a finding of neglect. The court scheduled a dispositional hearing for April 26, 2010.

The social workers assigned to the respondent's case prepared a "Social History/Court Report" for the dispositional hearing. According to that report, the respondent's Garden Street home was found to be an unsafe environment for the children in November 2007 because it was "unclean with trash, rotten food, roaches, and clothes strewn throughout the residence." The report noted that, after respondent was indicated twice for environmental neglect at the Garden Street residence, the respondent moved with the children to the Salvation Army and then to a residence on Park Avenue. The respondent stated that she could not get public housing because she and her husband were previously evicted from public housing after her husband was arrested on drug charges.

The report detailed the respondent's pattern of canceling scheduled visitations with Janssen, rescheduling, and then failing to show up for the rescheduled visits. According to the report, Janssen left five voicemail messages for the respondent between January 10 and January 23, 2008, but she was not able to see the children after January 3, 2008. In March 2008, the respondent reported that she and the children were living on Widenham Street in Peoria. When Janssen saw the respondent at a court appearance on March 28, 2008, she asked the respondent to call her with a date and time when she could meet with the children. On March 31, 2008, the respondent called Janssen and scheduled a home visit for April 4, 2008. However, the respondent called Janssen on April 4 and canceled because she had to work. The visit was rescheduled for April 7, 2008. However, when the respondent attempted a home visit on that date, no one was home. Janssen left a note for the respondent asking her to call and reschedule.

Janssen attempted another visit on April 14, 2008, but no one was home. Janssen left another note asking the respondent to call and reschedule a visit, and she left a voicemail message the following day repeating that request. On April 15, the respondent called Janssen and told her that she and the children were living at the Motel 6 in East Peoria. She agreed to allow Janssen to meet with the children at the motel the following day, April 16, at 11:00 a.m. However, when Janssen arrived at the respondent's motel room at the scheduled time, no one answered when she knocked on the door. Janssen went to the front desk and called the room, but the line was busy. The hotel clerk confirmed that the respondent was staying in Room 207, the same room that Janssen had called and attempted to visit. Janssen then went back to the room and knocked again. Again, there was no answer. Janssen left a note on the door telling the respondent that she had tried to meet with her.

The report also noted that the respondent had various health problems. For example, the respondent suffered a head injury in a car accident which has caused brain swelling, tunnel vision, and episodes of bilateral vision loss. In addition, after undergoing a psychological evaluation, the respondent was diagnosed with an unspecified personality disorder. The doctor who evaluated and diagnosed the respondent noted that "[m]edication treatment is going to be a dead end at this point, due to [the respondent's] noncompliance." He recommended that the respondent "should not regain custody of her children until she is more open with the social service process and successfully addresses the issues she is concealing from the professionals who are trying to help her." The doctor also recommended that the respondent undergo "in-home, nontraditional therapy" and "[p]eriodic, random drug drops."

The social workers who prepared the report stated it was difficult to determining a prognosis for the respondent's family because of the respondent's "lack of cooperation and her health concerns." The report concluded that, in order for her to be successful, the respondent would have to obtain a job to support her family, establish long-term and stable housing, allow social workers to complete background checks on anyone living in her home, "complet[e] services she does not want to complete, such as life skills classes and counseling," and "commit to allowing the [social] worker to have access to her residence."

The report also provided detailed information about the children's father. For example, the report noted that the children's father was convicted of domestic violence against the respondent in 2003. It also stated that the father had a history of drug abuse and mental health issues. According to the "diagnostic impressions" that a doctor provided in a psychological evaluation report, the children's father had a "major depressive disorder," a "history of psychotic symptoms," and "possible schizoaffective disorder." He was also diagnosed with cannabis, cocaine, and alcohol dependence for which he attended inpatient treatment in March 2009. However, he was "discharged from treatment unsuccessfully" because he left the program after a few days. The father was found to be an unfit parent in a prior case and had not performed services that would have allowed the children to be returned to his care, such as drug testing, parenting classes, and domestic violence classes. In addition, the father told a caseworker that he understood he was not able to parent his children and that he would like for them to live with his mother.

During the dispositional hearing, the respondent denied that there had been any incidents of domestic violence between her and the children's father since she had completed a domestic

violence class in 2008. However, the children's paternal grandmother, who was serving as the children's foster mother at the time of the hearing, testified that her son was "still violent," that he had threatened to shoot her, and that he had "domestic violence altercations" with the respondent throughout the past year.

The report recommended that both parents be declared unfit and that DCFS be appointed the children's guardian. It also recommended that the parents undergo counseling, submit to random drug drops, maintain stable housing conducive to the children's safety and welfare, cooperate with DCFS, take certain classes,[3] and perform various other services. The court adopted these recommendations and found both parents unfit, declared the children wards of the court, and appointed DCFS as their guardian.

This appeal followed.

ANALYSIS

Neglect Finding

The respondent contends that the court's finding that C.T., M.T., and J.T. were neglected was against the manifest weight of the evidence. We disagree.

A child may be found neglected under the Act if his or her environment is injurious to his or her welfare. 705 ILCS 405/2-3(1)(b) (West 2008). The State has the burden of proving allegations of neglect by a preponderance of the evidence. *In re Faith B.*, 216 Ill. 2d 1, 13 (2005). The terms "neglect" and "injurious environment" do not have fixed definitions but, rather, take their meaning from the particular circumstances of each case. *In re K.L.S-P.*, 383 Ill.

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[3] The report recommended that the respondent repeat a domestic violence victim's class and that the father take an anger management class.

App. 3d 287, 292 (2008); *In re Gabriel E., Jr.*, 372 Ill. App. 3d 817, 823 (2007). Thus, cases involving such allegations are *sui generis* and must be decided on the basis of their individual facts. *K.L.S-P.*, 383 Ill. App. 3d at 292; *Gabriel E.*, 372 Ill. App.3d at 823. Generally, the neglect of a juvenile is defined as a failure to exercise the care that the circumstances warrant. *In re Arthur H., Jr.*, 212 Ill. 2d 441, 463 (2004); *In re R.W.*, 401 Ill. App. 3d 1100, 1105 (2010). Neglect includes willful as well as unintentional disregard of duty and takes its meaning from the context of the surrounding circumstances. *Arthur H.*, 212 Ill. 2d at 463; *In re R.W.*, 401 Ill. App. 3d at 1105. Although an injurious environment does not have a fixed definition, it includes the breach of a parent's duty to ensure a safe and nurturing environment for the minor. *Arthur H.*, 212 Ill. 2d at 463; *R.W.*, 401 Ill. App. 3d at 1105.

A circuit court's finding of neglect will not be reversed unless it is against the manifest weight of the evidence. *Faith B.*, 216 Ill. 2d 1, 13-14 (2005); *R.W.*, 401 Ill. App. 3d 1100, 1105 (2010). A court's ruling is against the manifest weight of the evidence only if the opposite conclusion is clearly evident. *Faith B.*, 216 Ill. 2d at 13-14; *R.W.*, 401 Ill. App. 3d at 1105. When reviewing the circuit court's decision, we must give deference to the circuit court as the finder of fact because it is in the best position to observe the conduct and demeanor of the parties and the witnesses and has a degree of familiarity with the evidence that a reviewing court cannot possibly obtain. *In re A.W.*, 231 Ill. 2d 92, 102 (2008). Accordingly, we may not substitute our judgment for that of the circuit court regarding the credibility of witnesses, the weight to be given to the evidence, or the inferences to be drawn. *A.W.*, 231 Ill. 2d at 102. Moreover, "due to the delicacy and difficulty of child custody cases, *** wide discretion is vested in the trial judge to

an even greater degree than any ordinary appeal to which the familiar manifest weight principle is applied." (Internal quotation marks omitted.) *In re R.S.*, 382 Ill. App. 3d 453, 459-60 (2008).

Applying this deferential standard of review, we cannot conclude that the circuit court's finding of neglect was against the manifest weight of the evidence. The respondent was indicated by DCFS three times for environmental neglect. The final two indications occurred in a two-week period. However, when social workers subsequently attempted to schedule regular visits to ensure that the respondent was providing a safe and stable environment for the children, the respondent failed to cooperate with them. She repeatedly canceled or failed to show up for scheduled appointments. Moreover, she moved the children at least four times in a period of approximately four months. As a result, the social worker assigned to the respondent's case was unable to check the children or evaluate their home environment with any regularity. In fact, after the respondent moved from the Garden Street residence in late 2007, the social worker was able to see the children only twice, and one of those visits occurred while the respondent and her children were temporarily living at the Salvation Army. Under the particular circumstances presented in this case, the circuit court could have reasonably found that the respondent failed to exercise proper care to ensure a safe and nurturing environment for her children.

The respondent argues that the circuit court erred in basing its finding of neglect primarily on the prior indicated findings of environmental neglect made by DCFS. Although an indicated finding must be based upon "credible evidence," (see *Lyon v. The Department of Children and Family Services*, 209 Ill. 2d 264, 279-80 (2004)), such a finding, standing alone, does not necessarily prove neglect by a preponderance of the evidence. Thus, the respondent argues that the State cannot satisfy its burden in this case by proof of the prior indicated findings alone, and

she suggests that the circuit court violated her due process rights when it based its finding of neglect on the prior indicated findings.

We disagree. Contrary to the respondent's assertion, the circuit court did not base its neglect finding entirely on the prior indicated findings of environmental neglect. Rather, it based its decision largely on the respondent's conduct *after* the indicated findings. Specifically, the court emphasized that the respondent failed to cooperate with the social workers and prevented them from confirming that she was providing a stable and safe environment for the children. Because of the respondent's failure to keep scheduled appointments, the social workers were able to see the children only twice after the respondent moved them from the Garden Street residence. Thus, they were unable to determine whether the respondent had rectified the unsafe and unacceptable living conditions that led to the prior findings of environmental neglect.[4]

Unfitness Finding

At the dispositional stage of proceedings, the court must determine whether it is in the best interests of the public and the child that the child be made a ward of the court. 705 ILCS 405/2-22(1) (West 2008); *In re J.C., Jr.*, 396 Ill. App. 3d 1050, 1059 (2009). If the child is made a ward of the court, the court shall then determine the proper disposition of the child. 705 ILCS 405/2-22(1) (West 2008). If the court determines that a parent, guardian or legal custodian is

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[4] The respondent notes that Janssen testified that the children appeared to be fine when she visited them at the Salvation Army and that she did not see any safety hazards on the sole occasion that she visited the Park Avenue residence. However, this does not change the fact that the respondent's failure to cooperate with Janssen made it impossible for Janssen to determine whether the respondent was proving a safe and stable home environment on a continuing basis.

"unfit or [is] unable, for some reason other than financial circumstances alone, to care for, protect, train or discipline the [child] or [is] unwilling to do so," and that the best interest of the child will be jeopardized if the minor remains in the custody of his or her parents, guardian or custodian, the court may, *inter alia*, commit the minor to DCFS for care and service. 705 ILCS 405/2-27(1) (West 2008); *J.C.*, 396 Ill. App. 3d at 1059-60.

We will reverse a circuit court's finding of unfitness only if the finding is against the manifest weight of the evidence. *A.W.*, 231 Ill. 2d at 104. A finding is against the manifest weight of the evidence only if "the opposite conclusion is clearly evident." *A.W.*, 231 Ill. 2d at 104; *Arthur H.*, 212 Ill. 2d at 464. We give deference to the circuit court as the finder of fact, and will not substitute our judgment for that of the circuit court on the credibility of witnesses, the weight given the evidence, or inferences drawn from the evidence. *A.W.*, 231 Ill. 2d at 104; *In re D.F.*, 201 Ill. 2d at 498-99.

Here, there was ample evidence to support the circuit court's finding that the respondent was unfit. As noted above, the respondent was indicated three times for environmental neglect. DCFS found her house on Garden Street to be an unsafe environment because it was unclean with trash, rotten food, roaches, and clothes strewn throughout the residence. Nevertheless, the respondent did not cooperate with the social worker assigned to her case. Instead, she canceled or failed to show up for several scheduled appointments, thereby preventing the social worker from determining whether she was providing a clean, stable, and safe environment for the children. In addition, the respondent moved with the children at least four times in approximately four months, and she stayed at each residence for only a short period of time. The safety plan set up by DCFS after the respondent's third indication for environmental neglect had

to be terminated the day after it was established because the respondent moved the children to the Salvation Army. The circuit court could have found the respondent unfit on the basis of these facts alone. *Cf. In re T.D.*, 268 Ill. App. 3d 239, 246 (1994) (ruling that a parent's noncompliance with a service plan established by DCFS after an adjudication of neglect "may be evidence of unfitness").

Moreover, after undergoing a psychological evaluation, the respondent was diagnosed with an unspecified personality disorder. The doctor who evaluated and diagnosed the respondent noted that treating the respondent's psychological problems with medication would be "dead end at this point" because of the respondent's "noncompliance," and he recommended that the respondent should not regain custody of her children until she "successfully addresse[d] the issues she [was] concealing" from the social service professionals who were trying to help her.

Taken together, this evidence suggests that the respondent was unwilling to cooperate with social workers and unfit, incapable, or unwilling to properly care for her children. The circuit court's finding of unfitness was not against the manifest weight of the evidence.

CONCLUSION

For the foregoing reasons, we affirm the judgement of the circuit court of Peoria County finding C.T., M.T., and J.T. neglected and finding the respondent to be an unfit parent.

Affirmed.