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2011 IL App (3d) 100935-U
Consolidated with 2011 IL App (3d) 100930-U

Order filed September 26, 2011

IN THE
APPELLATE COURT OF ILLINOIS
THIRD JUDICIAL DISTRICT

A.D., 2011

<i>In re</i> L.S. and A.S.,)	Appeal from the Circuit Court
)	of the 10th Judicial Circuit,
Minors)	Peoria County, Illinois,
)	
(The People of the State of Illinois,)	
)	Appeal Nos. 3-10-0930 and 3-10-0935
Petitioner-Appellee,)	Circuit Nos. 10-JA-219 and 10-JA-220
)	
v.)	
)	
Aaron S. and Nicole H.,)	Honorable
)	Richard D. McCoy,
Respondents-Appellants).)	Judge, Presiding.

JUSTICE WRIGHT delivered the judgment of the court.
Justices Holdridge and McDade concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's findings that the minors were neglected due to an injurious environment and that the mother, Nicole H., was dispositionally unfit were not against the manifest weight of the evidence.

¶ 2 Aaron S. and Nicole H. are the parents of the minor children, L.S. and A.S. On October 25, 2010, the trial court entered an order finding that the State proved the minors were

neglected as alleged in the juvenile petitions. On November 22, 2010, the court entered an order adjudicating the minors wards of the court and finding the parents dispositionally unfit. Mother filed a timely notice of appeal challenging the court's findings of neglect and dispositional unfitness. Father also filed an appeal arguing that the trial court erred by finding mother unfit. We affirm.

¶ 3

FACTS

¶ 4 On August 10, 2010, the State filed juvenile petitions in cause Nos. 10-JA-219 and 10-JA-220 alleging L.S. and A.S., respectively, to be neglected minors due to an injurious environment. The petitions contained allegations that the minors' environment was injurious to their welfare because: (a) the minors were previously declared wards of the court in Tazewell County due to domestic violence, drug use and mental health issues, with the cases closed in August 2009; (b) mother and father were using methamphetamine in the home; (c) father was currently in the Tazewell County jail for violating probation; (d) father had indicated reports by the Department of Children and Family Services (DCFS) for substantial risk/injurious environment in 2003 and for cuts, welts, abrasions and oral injury in 2008; (e) mother had an indicated report by DCFS for substantial risk of physical injury and injurious environment in 2007; (f) mother had previous convictions for possession of a controlled substance in 2002 and retail theft in 2007; (g) father had previous convictions for possession of cannabis in 1992, armed robbery in 1993, burglary in 1997, aggravated battery in 2001, intimidation in 2004, possession of a controlled substance in 2005 and 2006, retail theft in 2007, resisting a police officer in 2008, and a pending criminal case for possession of anhydrous ammonia with intent to manufacture from 2009; (h) on August 3, 2010, the Peoria police entered the minors' home and found the

home in disarray, with debris and clothing throughout the floors making it difficult to walk; (i) on August 3 and 4, 2010, DCFS requested the parents to submit to a drug test, but both refused; and (j) DCFS went to the minors' home on six occasions between August 5 and 9, 2010, in order to take temporary custody of the minor children, but mother could not be located.

¶ 5 On August 11, 2010, the trial court conducted a shelter care hearing. The court entered a temporary shelter care order which found that there was probable cause to believe the allegations contained in the petitions were true and that it was a matter of immediate and urgent necessity to place the minors in shelter care for their own protection. The court granted DCFS temporary custody of the minors.

¶ 6 On September 20, 2010, mother filed an answer to the juvenile petitions in which she denied only the allegation contained in paragraph (b) and stated that she lacked personal knowledge to answer paragraph (d), but did not demand strict proof thereof. Mother did not deny, and in fact stipulated to the accuracy of the allegations contained in the remaining paragraphs of the petitions.

¶ 7 On October 25, 2010, the court conducted an adjudicatory hearing with all parties present. The State called Michael Seward, a Tazewell County probation officer, who testified that he monitored father's probation. On August 6, 2010, he met with father and had father submit to a drug test. He testified that father tested positive for methamphetamine and amphetamines. Father initially stated that he believed the positive test was the result of a prescription medication. Later, father said that he was upset and that he knew "today would be a bad day." Father then admitted to Seward that, after spending 100 days in jail, he began living with mother and the minors in late July 2010. Father said that upon returning to the residence, he found

mother using “crystal meth” with her brother and another subject. Initially, father tried to resist using the illegal substances but eventually “caved in.”

¶ 8 Seward also testified before the court that, on August 4, 2010, he noticed a strong chemical odor, when standing in the front yard of the minors’ residence, but this odor was not an odor Seward associated with methamphetamine production. He entered the residence on that day, but did not observe any evidence of drugs or drug production.

¶ 9 By agreement of the parties, the State tendered a proffer as to the evidence relating to the other allegations in the petitions. Following Seward’s testimony, the State rested.

¶ 10 Mother testified on her own behalf. Mother denied using methamphetamine and stated that she had been “clean” for almost four years. Mother acknowledged that on August 3, 2010, DCFS asked her to take a drug test, but she refused. Later in her testimony, when asked about refusing to take the drug test, mother said that she “didn’t even know who the lady was.”

¶ 11 Father testified that he did not tell Seward that mother was using or manufacturing methamphetamine in the house. He said that Seward was persistent that drug use or manufacturing was occurring in the house. Father said that he told Seward that mother’s family was involved with methamphetamine production and that he did not like mother’s family being around because he believed it would cause him to relapse. Father acknowledged that he relapsed on one occasion after being released from jail in late July 2010, but stated he did not use drugs at the house, and mother was unaware of this relapse.

¶ 12 The court found that father admitted to Seward that he used methamphetamine in the home with mother. The court also found that mother used methamphetamine in the home. The court focused upon father’s admission and mother’s refusal to take a drug test and “ducking

DCFS for several days.” In regard to mother’s explanation that she refused to take a drug test because she did not know the person who was requesting the test, the court said to mother, “[w]ith your extensive history with DCFS, you know what their protocols are, and I don’t buy that explanation.”

¶ 13 Based upon those findings and the proffer of the parties as to the other allegations in the petitions, the court found that the petitions had been proven in their entirety. The trial court entered an order finding that the minors were neglected. The court set the cause for a dispositional hearing on November 22, 2010.

¶ 14 On November 22, 2010, Family Core filed a dispositional hearing report and social history with the court. According to the report, mother was previously indicated by DCFS in 2007 for risk of physical harm and neglect in regard to A.S. In addition, the report documented that L.S. was hospitalized on March 25, 2008, due to suspicious bruising to his head, neck and body, as well as possible retinal hemorrhaging. DCFS indicated both mother and father for this incident. After DCFS intervention in 2008, mother participated in services and regained fitness. DCFS involvement ended on August 24, 2009, when the court terminated DCFS guardianship over DCFS’s objection.

¶ 15 The report revealed that DCFS received a hotline report on August 3, 2010, claiming that mother and father were manufacturing methamphetamine in the basement of their home. On August 18, 2010, DCFS indicated the current allegation of substantial risk of physical injury due to neglect.

¶ 16 According to the report, DCFS representatives met with mother on September 2, 2010, and described mother as having “very little emotion, which included a flat affect (with occasional

tearfulness), limited eye contact, vacant look in her eyes and no extraneous detail when answering the interview questions.” Mother denied having a “meth lab” in the basement of her home.

¶ 17 Also according to the report, mother described her relationship with father as “doing well” since the return of the children in 2009 and denied any domestic violence disputes. She acknowledged that father relapsed by using illegal substances and stated that she was “highly disappointed.” Mother intended to maintain a relationship with father.

¶ 18 Mother stated that she had lived in Peoria, Illinois, in a three bedroom home for the previous 2½ years. Mother reported that she had been sober for four years, but acknowledged a history of opiate addiction. Mother also reported that she had participated in a drug program for three or four years and attended Alcoholics Anonymous and Narcotics Anonymous meetings. She also stated that she was under the care of a psychiatrist who prescribed her psychotropic medications and methadone. Mother reported a prior diagnosis of major depression and anxiety but had been treating these issues with medication and therapy for over four years.

¶ 19 The report indicated mother had been arrested 10 times between 2001 and 2007 which included arrests for possession of LSD and drug paraphernalia, ordinance violations, possession of a controlled substance, contributing to the delinquency of a minor, battery and retail theft. Mother had three criminal convictions, including “one conviction for dangerous drugs and two convictions for larceny.” Mother stated that she “took the blame for [her] boyfriend” and pled guilty to possession of methamphetamine. She successfully completed probation in 2006. Mother had not been arrested since November 22, 2007.

¶ 20 The report indicated that mother had a limited understanding of how her life

circumstances had impacted her mental health. The report also indicated that mother had a history of using illegal substances as a means of denial and distraction in order to alleviate stress and depression. The report went on to say that “[p]roviding her children and herself with a safe home environment that is free of questionable associations with others prone to criminality, substance abuse and ongoing risk of harm will need to be a top priority for her as she engages in services and works toward reunification with her children.”

¶ 21 DCFS and its representatives indicated that their prognosis for the minors to achieve safety, well-being and permanence with mother during the next 5 to 12 months was guarded. The workers went on to say that the primary issue for mother was “her ability and capacity to parent her children independently, free from enabling, controlling and codependent relationships in order to demonstrate that she is able to place the safety, permanence and well-being of her children first.” DCFS and its representatives recommended mother participate in individual therapy, a relapse prevention program and psychiatric monitoring while actively participating in supervised visitation with the minors.

¶ 22 Attached to the dispositional report were drug detail reports for samples collected from mother on August 12, August 16, and September 21, 2010. According to the report, mother tested negative for all substances except methadone. Also attached to the report were drug detail reports for samples collected from mother on August 24, September 10, and October 28, 2010, which indicated that mother tested positive for the presence of benzodiazepines, an alprazolam metabolite, and methadone. Mother was negative as to all other substances.

¶ 23 At the dispositional hearing on November 22, 2010, the State requested the court make the minors wards of the court and find both parents unfit “based on the allegations in the petition

and drug use that's continued to plague these parents as well as effect the children." The guardian *ad litem* agreed that both parents were unfit based on the proven petitions.

¶ 24 Mother testified on her own behalf. She stated that she attended the Human Service Center for mental health counseling, took medication prescribed by her psychiatrist, and attended drug treatment for the past four years. Mother told the court that she was submitting to drug tests, that she was currently taking prescription medications of methadone, Wellbutrin, and Alprazolam, and that she passed all of her drug tests.

¶ 25 Mother said that she currently lived in a two bedroom apartment with father. The apartment also had a foldout bed in the living room. Mother explained that she was participating in parenting classes, with four classes left. Father's attorney advised the court that father was willing and could immediately move out of mother's residence. The State did not offer any additional evidence.

¶ 26 The court found both parents unfit and also found it was in the minors' best interest that they be made wards of the court. The trial court reiterated, "[Mother], your unfitness today is for reasons that have come to light subsequent to the closing of the Tazewell County case." On that same day, the trial court entered a dispositional order finding that it was in the best interest of the minors that they be made wards of the court and that mother and father were dispositionally unfit based upon the allegations contained in the petitions and drug issues.

¶ 27 Mother and father filed timely notices of appeal.

¶ 28 ANALYSIS

¶ 29 On appeal, mother asserts that the court's findings were against the manifest weight of the evidence. Father does not contest the trial court's findings with regard to his own fitness, but he

argues that the trial court erred when it found mother to be unfit.

¶ 30 In this case, the State alleged that the minors were neglected because their environment was injurious to their welfare. See 705 ILCS 405/2-3(1)(b) (West 2010). The State must prove the allegations in a juvenile petition by a preponderance of the evidence. *In re Arthur H.*, 212 Ill. 2d 441, 463-64 (2004); 705 ILCS 405/2-18(1) (West 2010). A trial court's finding of neglect will not be disturbed on appeal unless the finding is against the manifest weight of the evidence. *Arthur H.*, 212 Ill. 2d at 464. A finding is against the manifest weight of the evidence when the opposite conclusion is clearly evident. *In re D.F.*, 201 Ill. 2d 476, 498 (2002).

¶ 31 Our supreme court has found that an injurious environment, within the meaning of the Juvenile Court Act of 1987 (705 ILCS 405/1-1 *et seq.* (West 2010)), is an amorphous concept which cannot be defined. *In re N.B.*, 191 Ill. 2d 338, 346 (2000). As a result, each juvenile case involving an allegation of injurious environment must be decided on the basis of its unique circumstances. *N.B.*, 191 Ill. 2d at 348.

¶ 32 In support of its claim that the minors were neglected due to an injurious environment, the State set forth 10 different allegations in the juvenile petitions. Mother stipulated to all the allegations but one. Although mother denied that she or the minors' father used methamphetamine in the home, the State offered evidence from father's probation officer that contradicted mother's assertion. According to father's probation officer, father tested positive for methamphetamine and admitted to using methamphetamine with mother in the minors' home in late July 2010. Given the contradictory testimony, the trial court was called upon to make credibility determinations and ultimately concluded that the State proved the allegation.

¶ 33 Moreover, the court found that mother's subsequent behavior in refusing to take a drug

test and in “ducking DCFS for several days” was further evidence that mother was using illegal substances and knew that she would test positive if she submitted to a drug test at that time. The court specifically stated on the record that it did not believe mother’s explanation that she refused to take a drug test in early August 2010 because she did not know the person who was requesting the test. This court must give deference to the trial court’s findings because the trial court is in a better position to observe the conduct and demeanor of the witnesses and assess their credibility. *In re Edward T.*, 343 Ill. App. 3d 778, 794 (2003).

¶ 34 In addition, mother stipulated to the allegation that on August 3, 2010, the Peoria police found the minors’ home in disarray with debris and clothing throughout the floors making it difficult to walk. Given these circumstances, combined with mother’s prior illegal drug use and the previous involvement with the juvenile system, the trial court’s finding of neglect was not arbitrary or unsupported by this record.

¶ 35 Next we turn to the issue of whether the trial court erred by finding mother dispositionally unfit. At a dispositional hearing, the trial court is called upon to determine whether the minor’s parent is fit to care for the minor. *In re E.S.*, 324 Ill. App. 3d 661, 667 (2001). The State must prove parental unfitness for dispositional purposes pursuant to section 2-27 (705 ILCS 405/2-27 (West 2010)) by a preponderance of the evidence. *In re April C.*, 326 Ill. App. 3d 245, 256-57 (2001) (citing *In re Lakita B.*, 297 Ill. App. 3d 985, 994 (1998)).

¶ 36 A trial court's determination regarding dispositional unfitness will be reversed “only if the findings of fact are against the manifest weight of the evidence or if the trial court committed an abuse of discretion by selecting an inappropriate dispositional order.” *In re T.B.*, 215 Ill. App. 3d 1059, 1062 (1991) (citing *In re Jackson*, 81 Ill. App. 3d 136 (1980); *In re Nitz*, 76 Ill. App. 3d 15

(1979)). A reviewing court will not overturn a trial court's findings merely because the reviewing court would have reached a different result. *T.B.*, 215 Ill. App. 3d at 1062.

¶ 37 In this case, the trial court clearly considered mother's long battle with substance abuse. In light of the court's finding that mother had used methamphetamine in the minors' home in late July 2010, combined with the evidence that the minors' home was in disarray and filled with debris in early August 2010, and that mother had not completed parenting classes at the time of the dispositional hearing, the court had ample evidence of mother's lack of fitness to care for the minors at this juncture. Based upon this record, the trial court's finding that mother was dispositionally unfit was not against the manifest weight of the evidence.

¶ 38 CONCLUSION

¶ 39 The judgment of the circuit court of Peoria County is affirmed.

¶ 40 Affirmed.