

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).

NO. 4-11-0115

Filed 6/8/11

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: J.T., a Minor,)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
Petitioner-Appellee,)	Champaign County
v.)	No. 10JA69
JASON TYLOR,)	
Respondent-Appellant.)	Honorable
)	John R. Kennedy,
)	Judge Presiding.

JUSTICE COOK delivered the judgment of the court.
Presiding Justice Knecht and Justice Turner concurred in the judgment.

ORDER

Held: As the trial court's findings were not contrary to the manifest weight of the evidence, the court's judgment finding the respondent minor was neglected and dependent is affirmed.

Jason Tylor, respondent father of J.T., a minor born March 7, 2010, appeals from the trial court's January 12, 2011, adjudication that J.T. was neglected and dependent and its January 25, 2011, judgment removing J.T. from the custody and guardianship of her parents and placing her in the custody of the Department of Children and Family Services (DCFS). The father argues the court erred by finding J.T. was neglected and dependent. The State maintains the court's findings were not erroneous. We affirm.

I. BACKGROUND

On November 16, 2010, the State filed a neglect and dependency petition regarding J.T. The petition alleged J.T. was neglected as she was not receiving adequate shelter.

See 705 ILCS 405/2-3(1)(a) (West 2008). Further, it alleged J.T. was neglected as her environment was injurious to her welfare. See 705 ILCS 405/2-3(1)(b) (West 2008). Namely, it alleged she was neglected when residing with her mother in that her mother left her in the care of an inappropriate caregiver; and it alleged she was neglected if she resided with her father in that the environment would expose J.T. to substance abuse and other criminal activity. Finally, the petition alleged J.T. was dependent as she had no parent, guardian, or custodian who was able and willing to care for her. See 705 ILCS 405/2-4(1)(a) (West 2008).

On January 12, 2011, the trial court held a hearing on the petition. Respondent father did not attend but was represented at the hearing by counsel. The father stipulated that witnesses, if called, would testify in accordance with DCFS's shelter-care report. Aside from this report, no other evidence was presented at the hearing.

The shelter-care report stated that, on November 9, 2010, DCFS received a hot-line report indicating J.T. was exposed to an environment injurious to her health. The hot-line report alleged the home in which J.T. resided was filthy and infested with cockroaches. Further, it alleged J.T. was in the care of her grandmother as her mother was in jail and indicated the grandmother's brother, a sex offender, had been "hanging around the house."

On November 10, 2010, a child-protection investigator for DCFS responding to the hot-line report found the home unfit for J.T. Numerous animals were found outside and inside the house. One dog had no fur on his body and was covered with scabs due to his scratching at fleas. A cat on the stove was licking a pan. Another cat was found in the baby stroller. A large wire cage in the living room contained a ball python.

A foul, sour odor could be detected from outside the home. Piles of "dry clutter"

were found in every room. A pile approximately five feet tall was observed in the living room. Dirty dishes and pans were piled in the kitchen; dirty clothes were piled in the bathroom.

The house was infested with cockroaches. The "pack 'n' play" where J.T. slept was full of living cockroaches. Cockroaches were found in the bed and blankets. They fell from the ceiling onto the child-protection investigator.

J.T. was taken to the Crisis Nursery while her family tried to clean the house and rid it of cockroaches. On November 15, 2010, the DCFS investigator returned to the house to observe the progress. Much of the trash had been moved into the yard and porch. Much of it remained in the house. While the grandmother reported having used two roach bombs and nine cans of bug spray, cockroaches were still found in the kitchen cabinets and on the walls and floors. Some of the other animals had been removed, but several large cats and two dogs remained in the house. The house still smelled sour.

On that occasion, the grandmother reported her daughter, J.T.'s mother, had left J.T. in her care when the mother was incarcerated. The grandmother thought J.T.'s mother was in jail for prostitution. She reported J.T.'s father lived in Chicago and described him as a "drug pushing pimp" who had never been involved in J.T.'s life. When the grandmother visited the mother recently, the mother was prostituting on behalf of the father to support his two sons who lived with him.

That same day, J.T. was taken into protective custody. Her immunizations were updated but no other medical concerns were noted. Respondent father was notified later that day of an anticipated shelter-care hearing. He reported he was unable to attend the hearing but "wanted his daughter in his care." He reported he had last seen J.T. 7 months earlier and had last

spoken with J.T.'s mother 2 1/2 months earlier.

The DCFS report contained each parent's criminal history. Respondent father had been arrested in March 2010 for manufacture of a controlled substance and unlawful possession of a weapon by a felon. Prior to that arrest, he had been charged with larceny, obstruction of justice, damage to property, weapons offenses, dangerous-drug offenses, assault, obstruction of peace, invasion of privacy, and traffic offenses. He had been involved in an "intact family case for neglect," which had been open from April 2008 through September 2009.

Finally, the shelter-care report contained DCFS's recommendations. It recommended (1) "[t]he Court find probable cause, immediate and urgent necessity and reasonable efforts in this matter" and (2) "[t]he Court grant temporary custody of [J.T.] to [DCFS] with the right to consent to routine medical and dental care."

At the January 12, 2011, adjudicatory hearing, the trial court found J.T. was neglected and dependent. The court specifically found J.T. was 10 months old. She had resided with her mother until her mother went to jail. The mother remained incarcerated as of the adjudicatory hearing. J.T.'s father had had "little relationship with" J.T. since her birth. J.T.'s mother had left J.T. with her grandmother. The grandmother's home was inadequate as J.T. was exposed to a heavy cockroach infestation and animal feces. "At times," J.T.'s care was given to an inappropriate custodian. According to the grandmother, J.T.'s mother was engaged in prostitution. Respondent father had been arrested numerous times for drug-related and other offenses. The court concluded the State had proved all counts of the petition by a preponderance of the evidence and by clear and convincing evidence.

On January 25, 2011, the trial court held a dispositional hearing. The court found

J.T.'s parents unfit and unable to care for, protect, train, and discipline J.T. It removed J.T. from the custody and guardianship of her parents and placed her in the custody of DCFS.

This appeal by respondent father followed.

II. ANALYSIS

On appeal, J.T.'s father argues the trial court erred by finding J.T. was neglected and dependent. The State maintains the court's findings were supported by the evidence. We agree with the State.

A trial court's finding on whether a minor is neglected or dependent will not be disturbed on appeal unless contrary to the manifest weight of the evidence. *In re L.H.*, 384 Ill. App. 3d 836, 841, 894 N.E.2d 883, 888 (2008). A judgment is against the manifest weight of the evidence when "the opposite conclusion is clearly evident from the record." *Id.* We review a trial court's order disposing of an issue from the posture of the record at the time the court entered the order. *Mid-City National Bank of Chicago v. Mar Building Corp.*, 33 Ill. App. 3d 1083, 1088, 339 N.E.2d 497, 502 (1975).

Sections 2-3 and 2-4 of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/2-3, 2-4 (West 2008)) define when a minor is neglected and dependent, respectively. Under section 2-3(1)(a), a minor who receives inadequate shelter is neglected (705 ILCS 405/2-3(1)(a) (West 2008)); under section 2-3(1)(b), one "whose environment is injurious to his or her welfare" is neglected (705 ILCS 405/2-3(1)(b) (West 2008)); and under section 2-4(1)(a), one "who is without a parent, guardian or legal custodian" is dependent (705 ILCS 405/2-4(1)(a) (West 2008)). Generally, in this context, "neglect" has been defined as "the failure to exercise the care that circumstances justly demand and includes both unintentional and willful disregard of

parental duties." *L.H.*, 384 Ill. App. 3d at 841, 894 N.E.2d at 888. Under section 2-3 of the Act, the issue is "whether the minor is neglected, not whether one or both of the minor's parents are responsible for the neglect." *In re A.W.*, 231 Ill. 2d 92, 103, 896 N.E.2d 316, 323 (2008).

The trial court's findings of neglect and dependency in this case are not against the manifest weight of the evidence. The evidence available to the court at the January 12, 2011, adjudicatory hearing showed J.T. resided in a house where she was exposed to a cockroach infestation. She slept in a "pack 'n' play," not an appropriate sleeping structure. The house was generally filthy and emitted an unhealthy odor. It was frequented by a sex offender. These facts are sufficient to establish that J.T. was deprived of adequate shelter and left in the care of an inappropriate caregiver. That J.T.'s mother, not her father, left J.T. in her grandmother's care is irrelevant to the determination of whether J.T. was neglected under the Act.

Further, the evidence showed respondent father was involved in illicit drugs and prostitution. The shelter-care report indicated the father had been arrested numerous times, convicted on drug charges on three occasions, and had been arrested on drug and weapons charges approximately two weeks after J.T. was born. Further, J.T.'s grandmother indicated respondent father was a drug dealer and a pimp who encouraged J.T.'s mother to prostitute herself. This evidence establishes that, if she resided with her father, J.T. would be in an environment where she would be exposed to substance abuse and other criminal activity.

Finally, the evidence available to the trial court showed J.T.'s parents were unavailable to care for J.T. J.T.'s mother was incarcerated. Respondent father was frequently arrested. He was unable to attend the adjudicatory hearing in person. He had been out of contact with J.T. since shortly after her birth. Specifically, as of November 2010, when J.T. was eight

months old, J.T.'s father had not seen her in seven months. These facts were sufficient to establish that J.T. was without a parent or guardian available to care for her. The court's findings that J.T. was neglected and dependent were thus not contrary to the manifest weight of the evidence.

III. CONCLUSION

For the foregoing reasons, we affirm the trial court's judgment.

Affirmed.