

NOTICE
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2011 IL App (4th) 110362-U

Filed 9/6/11

NO. 4-11-0362

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: T.C., O.S., and D.R., Minors,)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
Petitioner-Appellee,)	Champaign County
v.)	No. 11JA4
SHARICE CASTON,)	
Respondent-Appellant.)	Honorable
)	Richard P. Klaus,
)	Judge Presiding.

JUSTICE McCULLOUGH delivered the judgment of the court.
Justices Appleton and Cook concurred in the judgment.

ORDER

¶ 1 *Held:* The State acted appropriately in initiating proceedings against respondent for educational neglect of her children and the trial court committed no error in finding her children neglected, removing them from respondent's care, and placing them in the custody and guardianship of DCFS.

¶ 2 Respondent, Sharice Caston, challenges the trial court's dispositional order, finding her three children to be neglected because they were not provided with the education that is required by law, removing the children from her custody, and placing them in the custody and guardianship of the Illinois Department of Children and Family Services (DCFS). She argues the matter should have been resolved as a truancy matter under section 3–33.5(a) of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/3–33.5(a) (West 2010)) and not by the initiation of neglect proceedings. We affirm.

¶ 3 Respondent is the mother of three children, T.C. (born March 1, 2000), O.S. (born

December 16, 2002), and D.R. (born November 23, 2004). On January 12, 2011, the State filed a petition for adjudication of neglect, alleging the children were neglected because (1) respondent did not provide them with the education that is required by law, (2) the children's environment was injurious to their welfare when residing with respondent due to inadequate supervision, and (3) the children's environment was injurious to their welfare when residing with respondent due to her failure to protect them from physical harm. In the State's petition, a putative father was named for D.R. but T.C.'s and O.S.'s fathers were listed as unknown.

¶ 4 On March 16, 2011, respondent entered a stipulation to count I of the petition, alleging educational neglect, and the State withdrew the two remaining counts. D.R.'s putative father waived his right to an adjudicatory hearing. The State presented its factual basis, consisting of the children's school attendance records. With respect to T.C., those records showed he had 48.5 absences out of 172 total attendance days while in kindergarten. In first grade, he was absent 33 out of 174 total attendance days. The State's exhibit does not contain T.C.'s attendance records for second grade. However, in third grade, he missed 63 out of 174 days of school. In fourth grade, during the 2009 to 2010 school year, T.C. was absent 103 out of 172 total attendance days and 102.5 of those absences were listed as unexcused. Finally, during the 2010 to 2011 school year, T.C. had to repeat fourth grade. As of March 2011, he had a total of 63 unexcused absences.

¶ 5 O.S.'s records showed he attended kindergarten during the 2008 to 2009 school year and missed 73.5 of 174 total attendance days. During the 2009 to 2010 school year, O.S. was in first grade and missed 110.5 days out of 174 total days of attendance. His unexcused absences for that year totaled 101 days. During the 2010 to 2011 school year, O.S. repeated first

grade. As of March 2011, he had a total of 67 unexcused absences.

¶ 6 D.R.'s attendance records show she was in Kindergarten during the 2010 to 2011 school year. As of March 2011, D.R. had a total of 78 unexcused absences.

¶ 7 On March 16, 2011, the trial court entered its adjudicatory order. It found the children were neglected, in that they suffered from a lack of support, education, or remedial care as defined by section 2–3(1)(a) of the Act (705 ILCS 405/2–3(1)(a) (West 2010)).

¶ 8 On April 1, 2011, the State filed an amended petition for adjudication of neglect, adding putative fathers for T.C. and O.S. to the petition. (The respondent fathers are not parties to this appeal). On April 20, 2011, the trial court conducted the dispositional hearing and entered its dispositional order. At the hearing, the court noted it reviewed the dispositional report. That report detailed the children's poor school attendance and stated that, although respondent acknowledged her children's truancy problem, she failed to cooperate with her DCFS caseworker. The report showed respondent failed to respond to, and avoided, the caseworker's attempts to contact her either by phone or in person. At the conclusion of the hearing, the court adjudged the minors neglected and made them wards of the court. It also removed them from the custody and guardianship of respondent and the respondent fathers and placed the children in the custody and guardianship of DCFS.

¶ 9 This appeal followed.

¶ 10 On appeal, respondent argues this matter should have been resolved as a truancy matter under Article III of the Act (705 ILCS 405/3–1 through 3–40 (West 2010)), dealing with minors that require authoritative intervention, rather than Article II of the Act (705 ILCS 405/2–1 through 2–34 (West 2010)), governing abused, neglected, or dependent minors. She maintains a

conflict exists between Article III's truancy provision and Article II's provision for educational neglect. Respondent also contends Article III's truancy provision is less drastic than the removal of custody that occurred in this case and was more likely to encourage the children to attend school.

¶ 11 Under Article III of the Act, proceedings may be instituted concerning children who require authoritative intervention, are truant minors in need of supervision, or are minors involved in electronic dissemination of indecent visual depictions in need of supervision. 705 ILCS 405/3-1 (West 2010). With respect to truancy, Article III provides as follows:

"A minor who is reported by the office of the regional superintendent of schools, or *** by the Office of Chronic Truant Adjudication, as a chronic truant *may* be subject to a petition for adjudication and adjudged a truant minor in need of supervision, *provided that* prior to the filing of the petition, the office of the regional superintendent of schools, the Office of Chronic Truant Adjudication, or a community truancy review board certifies that the local school has provided appropriate truancy intervention services to the truant minor and his or her family." (Emphasis added.) 705 ILCS 405/3-33.5(a) (West 2010).

"There is a rebuttable presumption that a chronic truant is a truant minor in need of supervision." 705 ILCS 405/3-33.5(a-1) (West 2010).

¶ 12 Proceedings may be instituted under Article II of the Act concerning children who are abused, neglected, or dependent. 705 ILCS 405/2-1 (West 2010). A neglected minor

includes "any minor under 18 years of age who is not receiving *** education as required by law." 705 ILCS 405/2-3(1)(a) (West 2010). Where the State alleges educational neglect, proof that a minor under the age of 13 is a chronic truant "shall be *prima facie* evidence of neglect by the parent or guardian." 705 ILCS 405/2-18(5) (West 2010). When the minor is 13 years of age or older, proof that he or she is a chronic truant "shall raise a rebuttable presumption of neglect by the parent or guardian." 705 ILCS 405/2-18(5) (West 2010).

¶ 13 Both Article II and Article III of the Act apply the definition of "chronic truant" that is found in the School Code. Under the School Code, a "chronic truant" is "defined as a child subject to compulsory school attendance and who is absent without valid cause from such attendance for 10% or more of the previous 180 regular attendance days." 105 ILCS 5/26-2a (West 2010).

¶ 14 Respondent argues that her children, as chronic truants, are subject to section 3-33.5's rebuttable presumption that they are in need of supervision. She acknowledges that the children's chronic truancy also constitutes *prima facie* evidence of neglect under section 2-3(1)(a). However, respondent contends sections 3-33.5 and 2-3(1)(a) present inconsistent presumptions and are in irreconcilable conflict. She argues social policy is better served by section 3-33.5 as it seeks to remedy the cause of the truancy and concludes that, in this instance, section 3-33.5 should have been applied over section 2-3(1)(a) of the Act. We disagree.

¶ 15 Here, respondent has failed to show that section 3-33.5(a) applies to the facts presented by this particular case. That section applies only where "the office of the regional superintendent of schools, the Office of Chronic Truant Adjudication, or a community truancy review board certifies that the local school *has provided* appropriate truancy intervention services

to the truant minor and his or her family." (Emphasis added.) 705 ILCS 405/3–33.5(a) (West 2010). The record in this case contains no such certification and fails to reflect that any services were provided to respondent or the children. Section 3–33.5(a) has no applicability where its necessary conditions have not first been met.

¶ 16 Moreover, the record clearly shows that application of section 2–3(1)(a) of the Act was appropriate and the trial court committed no error in adjudicating the children neglected and removing them from respondent's care. When the State initially filed its three-count petition, it alleged not only educational neglect but also neglect based upon an environment that was injurious to the children's welfare. Respondent stipulated to the allegation in the State's petition that claimed her children were not receiving an education as required by law and the remaining two counts were withdrawn. To support its educational-neglect claim, the State presented the children's school attendance records, showing significant, unexcused absences for each child. Each child easily met the definition of a "chronic truant" under the Act.

¶ 17 Although respondent acknowledged a truancy issue, she was entirely uncooperative with DCFS and failed to take advantage of opportunities to address the issue. Respondent never provided a reason for the children's excessive absences from school and the dispositional report showed she avoided her caseworker's attempts to contact her both in person and by telephone. We note, at the time the State filed its petition, respondent's children were ages 6, 8, and 10, and in kindergarten, first grade, and fourth grade, respectively. Based upon respondent's failure to take any action to deal with her children's truancy issues and the children's young ages, the matter was appropriately addressed under Article II's neglect provisions.

¶ 18 Under the circumstances presented, no error was committed by the initiation of

neglect proceedings rather than proceedings under section 3–33.5 of the Act. Further, the trial court committed no error in finding the children neglected, removing them from respondent's care, and placing them in the custody and guardianship of DCFS.

¶ 19 For the reasons stated, we affirm the trial court's judgment.

¶ 20 Affirmed.