

No. 1-11-3027

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

<i>In re</i> WILLIAM S., RYAN S., and HANNAH S.,)	
)	
Minors-Respondents-Appellees,)	Appeal from the
)	Circuit Court of
(The People of the State of Illinois,)	Cook County.
)	
Petitioner-Appellee,)	Nos. 10 JA 1128
)	10 JA 1129
v.)	10 JA 1130
)	
De'Borah R.,)	Honorable
)	Robert Balanoff,
Mother-Respondent-Appellant).)	Judge Presiding.
)	

JUSTICE PUCINSKI delivered the judgment of the court
Justices Fitzgerald Smith and Sterba concurred in the judgment.

ORDER

HELD: Adjudicatory and dispositional orders in juvenile case upheld where the trial court's adjudicatory finding that respondent's minor children were neglected and abused was not against the manifest weight of the evidence and where this court lacked jurisdiction to review respondent's challenge to the trial court's dispositional findings.

¶1 Following an adjudication hearing under the Juvenile Court Act of 1987 (Act) (705 ILCS 405/1-1 et seq. (West 2008)), the trial court found that William S., Ryan S., and Hannah S. were neglected and abused minors. In the disposition hearing that followed, the trial court concluded that their mother, respondent De'Borah R., was unable and unwilling to properly care for her children and adjudicated the minors wards of the court. De'Borah appeals the trial court's findings, arguing that they are against the manifest weight of the evidence. For the reasons set forth herein, we affirm the judgment of the trial court.

¶2 BACKGROUND

¶3 De'Borah is the natural mother of William, born January 8, 2008, Ryan, born December 9, 2008, and Hannah, born November 19, 2009. On December 23, 2010, De'Borah placed a call to child welfare authorities and stated that she was mentally ill, could not care for William, Ryan and Hannah, and that she would hurt her children if they were left in her care. Cedra Shultz, an investigator with the Department of Child Protection (DCP), responded to De'Borah's call. When Shultz met with De'Borah in person, De'Borah reiterated that she was mentally ill, needed treatment and was unable to care for her three children. De'Borah was crying and screaming at her children and refused to engage in conversation with a police officer, covering her ears when the officer attempted to engage her in conversation. Shultz also observed De'Borah push Hannah to the ground when her daughter attempted to give her a hug.

¶4 Petition for Adjudication of Wardship

¶5 On December 30, 2010, the State filed a petitions for adjudication of wardship on behalf of William, Ryan and Hannah. In the petitions, the State alleged that the children were

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"neglected" as that term is defined in the Act (705 ILCS 405/2-3 (West 2008)). Specifically, the State alleged that the minors were neglected because they were not receiving the necessary care and support that they required (705 ILCS 405/2-3(1)(a) (West 2008)) and were subjected to an environment that was injurious to their welfare (705 ILCS 405/2-3(1)(b) (West 2008)). The State further alleged that the children were "abused" as that term is defined in the Act because they were at "substantial risk" for physical injury (705 ILCS 405/2-3(2)(ii) (West 2008)). To support its claims of neglect and abuse set forth in each of the petitions, the State alleged:

"On or about December 23, 2010, mother stated that she no longer wanted to care for [William, Ryan and Hannah]. Mother failed to create a care plan for these minors.

Mother states that she currently has mental health issues and needs to be hospitalized. On or about December 23, 2010, mother was observed to push [Hannah] to the floor when she tried to hug mother. On or about December 24, 2010, mother failed to complete a mental health assessment in order to evaluate her need for services. Putative father's whereabouts are unknown. Paternity has not been established."

¶6 The State also filed motions for temporary custody for each of the children, requesting the court to enter a temporary custody order appointing D. Jean Ortega-Piron, a Guardianship Administrator with DCFS, as the temporary guardian for William, Ryan and Hannah. In lieu of a hearing on the State's motions for temporary custody, the parties stipulated to the following facts:

"If called to testify, DCP Investigator Cedra Shultz would state: (1) that she is a DCP investigator employed by DCFS; (2) that she is assigned to minors' case; (3) that on December 23, 2010 mother stated that she no longer wanted to care for minors; (4)

mother failed to create a care plan for minors; (5) that mother states she currently has mental health issues and needs [to be] hospitalized; (6) on or about December 23, 2010, mother was observed pushing minor Hannah to [the] floor when minor tried to hug mother; (7) on or about December 24, 2010, mother failed to complete a mental health assessment in order for her services; (8) putative father's whereabouts are unknown; (9) paternity has not been established; (10) [De'Borah] Roberson is the natural mother of all minors, William [S.], Ryan [S.] and Hannah [S.]; (11) William [S.] is a male minor born on January 8, 2008, who resides or may be found in Cook County, Illinois; (12) Ryan [S.] is a male minor born on December 9, 2008 who resides or may be found in Cook County, Illinois; (13) Hannah [S.] is a female minor born on November 19, 2009 who resides or may be found in Cook County, Illinois; [and] (14) James [S.] is the putative father. "

Based on the stipulation, the trial court found probable cause that William, Ryan and Hannah were abused and neglected, granted the State's motion for temporary custody and placed the children in the care of a DCFS Guardianship Administrator.

¶7 The Adjudication Hearing

¶8 At the adjudication hearing that followed, Octavia Lindsay, a DCFS Child Protection Supervisor, testified that she oversaw Cedra Schultz, the caseworker assigned to Ryan, William, and Hannah.¹ Lindsay conversed with Schultz at least once per week about the status of Schultz's investigation. During the course of Schultz's investigation, Lindsay indicated that

¹ The record reveals that Cedra Shultz was unable to testify at the adjudication hearing because she was on medical leave.

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Schultz spoke to a number of people including De'Borah and De'Borah's aunt, brother and father. De'Borah reported that she had mental health problems and was unable to care for her three children. De'Borah also indicated that she had no money or permanent place to stay. During her investigation, Shultz also learned that in 2009, William, Ryan and Hanna were taken into protective custody in the State of Indiana because De'Borah told Indiana child welfare authorities that she unable to care for her children and that she would hurt them. The case was resolved when the children were placed in the custody of De'Borah's father and her step-mother.

¶9 Following Schultz's investigation, DCFS requested that De'Borah undergo a mental health evaluation because she had reported that she had mental health issues and could not care for her children. DCFS also attempted to implement a "safety plan" to allow the children to be placed with a relative until De'Borah received the requisite evaluation. When De'Borah failed to undergo a mental health assessment and the safety plan provider returned the children to her care, DCFS took the children into protective custody. Lindsay explained: "At that point then, natural mom could not take care of her children; the children had nowhere to go; we had to take protective custody." Lindsay indicated that she believed it was in the children's best interests to be taken into protective custody based on a number of factors, including: De'Borah's repeated acknowledgment that she believed she was unable to care for her children; De'Borah's failure to undergo a mental health assessment despite reporting that she suffered from mental illness; the fact that De'Borah had no money or permanent place to stay; and that the children had previously been removed from De'Borah's care by the State of Indiana. At the time the children were taken into protective custody, DCFS had investigated other family members as potential placement

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options, but De'Borah's father was in the hospital receiving medical treatment and was not an available placement option at the time.

¶10 After hearing Lindsay's testimony, the trial court adjudged William, Ryan and Hannah neglected, finding that they did not receive necessary care (705 ILCS 405/2-3(1)(a) (West 2008)) and were subjected to an injurious environment (705 ILCS 405/2-3(1)(b) (West 2008)). The court further found that the minors were abused because they were at "substantial risk of physical injury" due to De'Borah's behavior. The court explained the basis of its ruling, stating: "The fact is that there was a prior report in relation to the mother and her statements regarding injuring the children and her inability to care for them. At the time [protective custody] was taken, the mother was not able to care for the minors. There was no other safety plan. There was nowhere where the children could be placed." In a written order, the trial court further specified the reasons for the findings of neglect and abuse, stating: "Mother failed to create a care plan for minors. Mother had prior Indiana report. Mother admits to mental health issues. Mother failed to complete mental health assessment."

¶11 The Disposition Hearing

¶12 After finding that William, Ryan and Hannah were neglected and abused, the trial court presided over a disposition hearing. Ieshia Harris, a caseworker with Child Serv, testified that she was assigned to be the caseworker for William, Ryan and Hannah in December 2010. At that time, Harris assessed De'Borah, who was pregnant with her fourth child. De'Borah admitted that she had been smoking and drinking through her pregnancy and detailed her prior mental health history. Specifically, De'Borah indicated that she had been diagnosed with Obsessive

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Compulsive Disorder and had been receiving disability benefits since 2003. She also suffered from anxiety and was diagnosed with post-partum depression following Hannah's birth. Based on this initial assessment, Harris found De'Borah in need of several services, including: a psychiatric assessment, a substance abuse assessment, personal finance assistance, prenatal management and medication monitoring, and individual therapy.

¶13 Harris explained that she made an initial referral for De'Borah to receive therapy in January or February of 2011; however, she did not follow through with the referral to receive individual therapy. In August 2001, De'Borah was assigned another therapist. At the time of the disposition hearing, De'Borah had attended three sessions, but had missed several other scheduled sessions. Harris indicated that De'Borah also underwent a substance abuse assessment. Based on that assessment, it was recommended that De'Borah participate in an inpatient program during her pregnancy; however, she was subsequently placed on bed rest and was unable to participate. Harris further testified that De'Borah was compliant with her prenatal care, but that she had not received financial counseling at the time of the hearing. De'Borah also participated in a psychiatric assessment, and attended one counseling session.

¶14 In addition to making referrals for De'Borah, Harris also attempted to locate James S., the man De'Borah identified as her children's father. Although Harris conducted a diligent search for James and sent letters to various addresses, she never received any response. Harris explained that the children had been placed in a foster home together on June 29, 2011. The foster family passed a background check and Harris observed no signs of abuse, neglect or corporal punishment when she visited them. Harris indicated De'Borah has been permitted weekly

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visitation ever since her children were placed in foster care and that she has been "consistent" in attending the visitation sessions. De'Borah, however, did miss several visitation opportunities around the time that she gave birth to her fourth child. Harris was told that De'Borah gave birth in Iowa and indicated that she has not seen or had any contact with the baby. De'Borah has been "living back and forth" between Chicago and Iowa since the birth. With respect to William, Ryan and Hannah, Harris testified that she did not have any concerns about the minors' current placement and recommended it was in the best interest of each child to be adjudicated wards of the court. Harris explained that the minors needed safe and appropriate placement and that De'Borah needed to obtain additional services before she would be able to care for them again. With respect to the issue of permanency, Harris recommended that the children be "return[ed] home pending" De'Borah's completion of the recommended services. In her opinion, De'Borah had not demonstrated sufficient progress with the recommended services at the time of the hearing to be able to appropriately care for her children.

¶15 At the conclusion of Harris' testimony, the State and Public Guardian requested the trial court to make a finding that De'Borah was unable and unwilling to care for her children based on her failure to fully participate in the services that were available to her. In contrast, De'Borah's attorney requested the court to make a finding that she was simply unable at the present time to care for William, Ryan and Hannah. De'Borah's attorney further requested that the court set a 12-month permanency goal for the children to return to De'Borah's care. After hearing the arguments, the trial court found that De'Borah was unable and unwilling to provide her children with proper care, adjudged William, Ryan and Hannah wards of the court, and placed them in the

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guardianship of the DCFS guardianship administrator. With respect to the issue of permanency, the court held that the goal would be to return the minors to De'Borah's care "pending status," explaining that De'Borah needed to fully comply with the recommended services and attend all of her therapy sessions, assessments and visitations before the court would permit the children to be returned to her care. This appeal followed.

¶16 ANALYSIS

¶17 On appeal, De'Borah contests the trial court's adjudicatory and dispositional findings. She first argues that the trial court erred in finding that her children were neglected and abused. Despite her purported mental health issues, De'Borah maintains that there is no evidence that her problems resulted in a risk of harm to her children. Because the State failed to establish a "nexus" between her mental illness and the risk of harm her children, De'Borah contends that the court's adjudicatory finding of neglect and abuse is against the manifest weight of the evidence.

¶18 The State and Public Guardian respond that the trial court's adjudicatory finding that the children were neglected and abused is not against the manifest weight of the evidence because the record clearly reflects that De'Borah has mental health issues, exhibited erratic behavior, threatened to injure her children, and failed to fully cooperate with DCFS and obtain mental health services.

"The Juvenile Court Act is a statutory scheme, created by the legislature, the purpose of which is to secure for each minor subject thereto the care and guidance which will best serve the minor's safety and moral, emotional, mental and physical welfare, and the best interests of the community." *In re Austin W.*, 214 Ill. 2d 31, 43 (2005); 705 ILCS 405/1-2(1) (West 2008). The

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best interest of the child is the standard applicable to proceedings under the Juvenile Court Act. *In re Z.L.* 379 Ill. App. 3d 353 (2008). In a juvenile proceeding, the intent is to determine the status of a minor child on whose behalf proceedings have been brought, not to assign criminal or civil liability to any party. *In re R. B.*, 336 Ill. App. 3d 606, 614 (2003). Specifically, in an adjudicatory hearing, the issue is to determine whether or not a minor is abused, neglected or dependent. *In re Austin W.*, 214 Ill. 2d at 43; 705 ILCS 405/2-21(1) (West 2008). It is the State's burden to prove allegations of neglect, abuse or dependency by the preponderance of the evidence. *In re L.H.*, 384 Ill. App. 3d 836, 841 (2008). A preponderance of the evidence is the amount of evidence that leads the trier of fact to find that a condition is "more probable than not." *In re Arthur H.*, 212 Ill. 2d 441, 464 (2004); *In re N.B.*, 191 Ill. 2d 338, 343 (2000). A trial court's determination, in turn, will not be reversed unless it is against the manifest weight of the evidence. *In re Arthur H.*, 212 Ill. 2d at 464; *In re L.H.*, 384 Ill. App. 3d at 841. A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly apparent. *In re Arthur H.*, 212 Ill. 2d at 464; *In re Christopher S.*, 364 Ill. App. 3d 76, 86 (2006).

¶19 The Act seeks to protect neglected and abused minors. 705 ILCS 405/2-3 (West 2008). Pursuant to the Act, an abused minor includes any child "under 18 years of age whose parent *** (ii) creates a substantial risk of physical injury to such minor by other than accidental means which would be likely to cause death, disfigurement, impairment of emotional health, or loss or impairment of any bodily function." 705 ILCS 405/2-3(2)(ii) (West 2008). The Act specifies that a neglected minor includes any child "under 18 years of age who is not receiving the proper or necessary support, education as required by law, or medical or other remedial care recognized

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under State law as necessary for a minor's well-being, or other care necessary for his well-being, including adequate food, clothing and shelter, or who is abandoned by his or her parent or parents * * * ." 705 ILCS 405/2-3(1)(a) (West 2008). The term neglect also encompasses "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). Although the phrase "injurious environment," is a "broad and amorphous concept," it "is understood to include 'the breach of a parent's duty to ensure a safe and nurturing shelter for the children.'" *In re Alexis H.*, 401 Ill. App. 3d 543, 557 (2010), quoting *In re A.W.*, 231 Ill. 2d at 254. The overall term "neglect" is similarly broad, but has generally been "defined as the failure to exercise the care that circumstances justly demand and includes both willful and unintentional disregard of parental duties." *In re L.H.*, 384 Ill. App. 3d at 841; *see also In re Gabriel E.*, 372 Ill. App. 3d 817, 822 (2007); *In re In re Christina M.*, 333 Ill. App. 3d 1030, 1034 (2002). Cases involving allegations of neglect and abuse are *sui generis* and must be resolved by evaluating the unique facts and circumstances present in each case. *In re Arthur H.*, 212 Ill. 2d at 463.

¶20 In many cases, children of parents who suffer from mental illness may be found neglected and abused under the Act. *See, e.g., In re R.S.*, 382 Ill. App. 3d 453, 463-64 (2008) (upholding the trial court's neglect finding where the mother "suffer[ed] from ongoing and well-documented mental health issues" which "limited" her ability to effectively parent her child); *In re John Paul*, 343 Ill. App. 3d 865, 880 (2003) (affirming the trial court's finding of neglect where there was evidence that the mother suffered from "severe borderline personality disorder, which impair[ed] her ability to parent"). However, it is important to note that "the mere fact that a parent has a

mental illness does not lead inevitably to the conclusion that children in his or her care are neglected or that their environment is injurious. In order for a parent's mental illness to form the basis of a finding of an injurious environment, there must be a nexus between the illness and a risk of harm to the children." *In re Faith B.*, 349 Ill. App. 3d 930, 933 (2004).

¶21 Here, the record reflects that De'Borah contacted child welfare authorities and informed them that she was unable to care for William, Ryan and Hannah because she was mentally ill and would hurt the children if they remained in her care. When Cedra Shutlz, a DCP investigator with DCFS, met with De'Borah, she exhibited signs of distress by crying and screaming and refusing to converse with police officers. De'borah reiterated that she would hurt her children and pushed Hannah to the ground when the child attempted to give her mother a hug. When De'Borah was initially asked to undergo a psychiatric assessment, she failed to do so. Moreover, De'Borah did not attempt to implement or cooperate with a care plan for her children.

¶22 Based on the record, we reject De'Borah's argument that the State failed to establish a nexus between her mental health issues and a risk of harm to her children; rather, the evidence supports a finding that De'Borah's mental health issues impacted her ability to successfully parent her children. See, e.g., *In re R.S.*, 382 Ill. App. 3d at 463-64; *In re Faith B.*, 349 Ill. App. 3d at 933; *In re John Paul*, 343 Ill. App. 3d at 880. Indeed, the record reflects that De'Borah displayed erratic and violent behavior, admitted that she would hurt her children, and failed to cooperate with child welfare authorities and obtain mental health services. Based on this evidence, we are unable to conclude that the trial court's finding that William, Ryan and Hannah lacked care (705 ILCS 405/2-3(1)(a) (West 2008)), were exposed to an injurious environment (705 ILCS 405/2-

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3(1)(b) (West 2008)), and were at substantial risk for injury (705 ILCS 405/2-3(2)(ii) (West 2008)) is against the manifest weight of the evidence and affirm the trial court's adjudicatory order.

¶23 De'Borah next contests the trial court's disposition order. She argues that the court's finding that she was unable and unwilling to parent her children is against the manifest weight of the evidence because she made efforts to comply with the services recommended by Child Serv and was "consistent" in visiting with her children at their foster home.

¶24 Initially, the State responds that this court has no jurisdiction to review the disposition order because De'Borah indicated in her *pro se* notice of appeal that she was only appealing the adjudication finding and failed to state that she was also challenging the court's disposition order. The Public Guardian does not challenge this court's jurisdiction, but argues that De'Borah has nonetheless forfeited her challenge to the court's disposition order. The Public Guardian observes that the Act provides that a child may be placed in the custody of DCFS if a parent is found unfit, unwilling or unable to care for the child. Because De'Borah conceded at the disposition hearing that she was unable to care for her children, and only disputed the State's assertion that she was unwilling to provide them with necessary care, the Public Guardian argues that De'Borah's challenge to the court's dispositional order is moot. On the merits, both the State and the Public Guardian maintain that the trial court's findings are not against the weight of the evidence because De'Borah has not completed the recommended services and needs to make progress in therapy before she can properly care for her children.

¶25 We first address the issue of jurisdiction. The purpose of a notice of appeal is to inform

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the prevailing party that the unsuccessful party is seeking review of the judgment. *In re Stephen K.*, 373 Ill. App. 3d 7, 24 (2007); *In re F.S.*, 347 Ill. App. 3d 55, 68 (2004). Accordingly, Supreme Court Rule 303 requires that a party seeking relief from a trial court judgment file a notice of appeal, which "shall specify the judgment or party thereof or other orders appealed from and the relief sought from the reviewing court." 155 Ill. 2d R. 303(b). In the interest of fairness, however, courts have held that notices of appeal are to be liberally construed. *In re F.S.*, 347 Ill. App. 3d at 68. Given that notices of appeal are to be liberally construed, a party's failure to indicate that she is appealing a specific order in the notice of appeal does not preclude appellate review of an unspecified order "so long as the order that is specified *directly relates back* to the judgment or order from which review is sought." (Emphasis in original.) *Id.* at 68-69, *quoting Perry v. Minor*, 319 Ill. App. 3d 703, 708-09 (2001). With respect to cases involving juvenile proceedings, this court has held that an adjudication order cannot relate back to a disposition order because adjudication and disposition orders involve separate hearings and an adjudication order always precedes a dispositional finding. See, e.g., *In re Stephen K.*, 373 Ill. App. 3d at 24; *In re F.S.*, 347 Ill. App. 3d at 69-71; but see *In re D.R. & T.R.*, 254 Ill. App. 3d 468 (2004) (where the Third District found that it had jurisdiction to review the respondent's challenge to the trial court's adjudicatory findings even though her notice of appeal only specified that she was challenging the court's dispositional findings because the adjudicatory order related back to the dispositional order). Accordingly, where the appellant specifies in the notice of appeal that she is appealing only the adjudication order or only the disposition order, a reviewing court is without jurisdiction to review the order not specified in the notice of appeal. See *In re F.S.*, 347 Ill. App.

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3d at 71 (finding that the court lacked jurisdiction to review a disposition order where the respondent indicated in her notice of appeal that she was only seeking review of the adjudication order); *In re J.P.*, 331 Ill. App. 3d 220, 234 (2002) (finding that the court was without jurisdiction to review the mother's challenge to the adjudicatory order where her notice of appeal specified that she was only appealing the court's disposition order).

¶26 Here, in De'Borah's notice of appeal, she indicated that she was challenging the trial court's "[f]indings after an adjudication hearing of NCN [neglect, lack of care], NEI [neglect injurious environment] and ASRI [abuse, risk of harm]." Nowhere in the notice of appeal did De'Borah indicate that she would also be seeking review of the court's disposition finding that she was unable and unwilling to provide necessary care to her children. Because this court has held that a disposition order does not relate back to an adjudicatory order in juvenile proceedings, and De'Borah's notice of appeal only indicated she was appealing the trial court's adjudicatory judgment, we lack jurisdiction to consider her arguments concerning the trial court's disposition order. *In re F.S.*, 347 Ill. App. 3d at 71. Accordingly, we need not address the Public Guardian's assertion of mootness or review the underlying merits of the trial court's dispositional finding.

¶27 CONCLUSION

¶28 For the reasons set forth herein, we affirm the order of the trial court.

¶29 Affirmed.