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NOS. 4-11-0913, 4-11-0914 cons.

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: R.M., a Minor,)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
Petitioner-Appellee,)	Champaign County
v. (No. 4-11-0913))	No. 11JA37
VERONICA LATTIMORE,)	
Respondent-Appellant.)	
-----)	
)	
In re: R.M., a Minor,)	
THE PEOPLE OF THE STATE OF ILLINOIS,)	
Petitioner-Appellee,)	
v. (No. 4-11-0914))	Honorable
DEMETRIUS MASON,)	John R. Kennedy,
Respondent-Appellant.)	Judge Presiding.

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

ORDER

- ¶ 1 *Held:* (1) The State sufficiently proved that the minor was neglected due to her injurious environment when she resided with her mother because her mother had failed to correct the conditions that were the basis for the removal of other children from her care.
- ¶ 2 (2) The State sufficiently proved that it was in the minor's best interests to be made a ward of the court, as her mother was unfit, unable, and unwilling for reasons other than financial circumstances alone to care for, protect, train, and discipline the minor.
- ¶ 3 (3) The trial court did not err in suspending father's visitation rights to the minor when he had allegedly sexually abused two children in the mother's care and he had

not participated in any services.

¶ 4 The circuit court of Champaign County adjudicated R.M. a neglected minor and made her a ward of the court. Respondent mother, Veronica Lattimore, and respondent father, Demetrius Mason, separately challenge the trial court's adjudicatory and dispositional orders in these neglect proceedings. Specifically, respondent mother claims that the court's findings that R.M. was a neglected minor and it was in her best interest to be made a ward of the court were against the manifest weight of the evidence. Respondent father claims the court's decision to suspend his visitation rights with R.M. was against the manifest weight of the evidence. We have consolidated these appeals and, for the reasons that follow, we affirm the court's judgment.

¶ 5 I. BACKGROUND

¶ 6 On June 28, 2011, Carle Hospital notified the Illinois Department of Children and Family Services (DCFS) that Veronica had given birth to R.M. on June 18, 2011. Veronica had four other children and six siblings, for whom she had custodial responsibility, who had been removed from her care in March 2010 after police responded to a domestic-violence incident between Veronica and Demetrius. DCFS began neglect proceedings on these children due to Veronica allowing the children to have contact with Demetrius after he had been indicated for sexual abuse of two of Veronica's siblings in November 2009. The ten other children were the subject of two open juvenile cases in Champaign County. At the time of R.M.'s birth, Veronica had made no progress toward having those children returned to her care, and according to the shelter-care report in this case, DCFS intended to pursue termination of Veronica's parental rights because she continued to maintain contact with Demetrius. In fact, the two were again involved in a domestic-violence incident in October 2010.

¶ 7 Soon after the October 2010 domestic-violence incident, Veronica informed the caseworker that she had secured an order of protection and, in January 2011, she even testified to that fact in a permanency-review hearing. However, it was later discovered that Veronica lied about obtaining an order of protection and had altered a court document to make it appear she had been awarded the order. Veronica was arrested in February 2011 on perjury charges related to this conduct.

¶ 8 In July 2011, the State filed a two-count petition for adjudication of neglect, alleging R.M. was neglected because her environment was injurious to her welfare when she resided with Veronica and/or Demetrius "in that said parents have failed to correct the conditions which resulted in a prior adjudication of parental unfitness" in Champaign County case Nos. 10-JA-19 (count I) and 10-JA-52 (count II). See 705 ILCS 405/2-3(1)(b) (West 2010). After a temporary-custody hearing on July 5, 2011, R.M. was placed in a traditional foster home.

¶ 9 In August 2011, the trial court conducted an adjudicatory hearing. Demetrius did not appear personally but did appear through counsel. Jessica Lee, a child-protection investigator for DCFS, testified first for the State. She stated that when she learned Veronica had given birth to R.M., she contacted Ruth Lee, Veronica's caseworker at Lutheran Social Services of Illinois (LSS) in her two other DCFS cases, to check on Veronica's progress. On June 29, 2011, Jessica met with Veronica at A Woman's Fund, also known as A Woman's Place, the shelter where Veronica and R.M. resided. Veronica had resided there since April 2011. Veronica told Jessica that Demetrius was R.M.'s father but, the last contact she had with him was October 30, 2010, the date of the domestic-violence incident. Jessica did a diligent search for Demetrius and was unable to locate him at the two locations discovered during the search. However, on July 6, 2011, she made contact with

him at the Champaign County jail. (No further testimony was presented about this meeting.)

¶ 10 On cross-examination, Jessica admitted she did not see any evidence that R.M. was being neglected or abused. It appeared that Veronica was meeting R.M.'s basic needs at the shelter. Because there was no immediate risk to R.M., Jessica did not remove her from Veronica's care during their meeting on June 29, 2011. Jessica learned that (1) Veronica was participating in individual counseling, (2) she had completed a domestic-violence program at Cognition Works, and (3) she was participating in counseling and parenting at Community Resource and Counseling Center. Veronica informed Jessica that in April 2011, she had been awarded an order of protection against Demetrius that remained in effect.

¶ 11 Next to testify was Ruth Lee from LSS. She testified she became the caseworker in Veronica's other two cases in December 2010. In April 2011, Ruth asked Veronica to notify her when her baby was born, but she failed to do so. Instead, Ruth learned of the birth from Jessica. Veronica told Ruth she was moving from the shelter on September 1, 2011, to a residence in Rantoul but she did not know the address. Ruth also testified that she had been unable to contact Demetrius. (He is the father of one of Veronica's other children.)

¶ 12 On cross-examination, Ruth acknowledged that Veronica had completed a parenting course and the "Options" program, and was participating in individual counseling at A Woman's Place. She had not been successfully discharged from counseling.

¶ 13 At the close of the State's case, the prosecutor asked the trial court to take judicial notice of all prior orders entered in case Nos. 10-JA-19 and 10-JA-52. Veronica was a party respondent in both cases, whereas Demetrius was a party respondent in case No. 10-JA-52 only.

¶ 14 Veronica asked the trial court to take judicial notice of case No. 11-OP-148, the

emergency order of protection obtained against Demetrius in April 2011, extensions of which remained in effect. No other evidence was presented.

¶ 15 After considering counsels' arguments, the trial court found the State had proved the allegations in the petition by a preponderance of the evidence. The court found as follows:

"the evidence is absolutely clear that [Demetrius] has not rectified any conditions that have been—that led to the prior finding in regard to his unfitness. He is the father of the child, and clearly has not taken steps or has not corrected conditions.

In regard to [Veronica], *** [an issue is her] refusal to accept that there was a need for things to be corrected in the home ***. [I]t's clear that [Veronica] has made some progress in rectifying conditions. However, the absence of completion of particularly the counseling program that is necessary, has been deemed necessary by the prior orders, and although she is in progress with that, the court is convinced that the failure to complete that program shows that she has not rectified conditions which give her all of the understanding she needs to protect this particular child from harm that could be caused by [Demetrius]."

The court entered a written order on September 11, 2011.

¶ 16 The trial court *sua sponte* conducted a hearing regarding Veronica's visitation. Ruth Lee testified that she spoke with Veronica during a court recess and discovered that she was moving into an apartment with her sister, Bianca, in Rantoul. Ruth was familiar with Bianca and had no

issues of concern about the living arrangement. After considering this evidence and the recommendations of the parties, the court modified Veronica's visitation to allow unsupervised visitation at DCFS's discretion. Demetrius' visitation was not affected and remained supervised.

¶ 17 On October 4, 2011, the trial court conducted a dispositional hearing. All parties were present. The court acknowledged receipt of the dispositional report filed September 29, 2011, by LSS. Veronica presented as exhibits a letter from her counselor at A Woman's Place and a copy of the plenary order of protection she was awarded on September 26, 2011. No other evidence was presented.

¶ 18 According to the dispositional report, Veronica's and Bianca's apartment "appeared safe and free from observable hazards." Veronica had been employed full time as a certified nursing assistant, earning \$11 per hour in Paxton. She was offered a position at Prairie Village (presumably a facility closer to her residence) however, she was "waiting to see what [was] going to happen with her criminal charges before accepting the position." Veronica reportedly stated that every service "offered ha[d] been helpful" to her. She now believes that Demetrius sexually abused her siblings and she does not want him around her children.

¶ 19 The report indicated that Veronica's pending criminal charges include one count of perjury and two counts of forgery. She reportedly visits with R.M. weekly for two hours. She "responds to [R.M.]'s needs and shows appropriate affection." She has participated in all visits and the caseworker had no concerns. Despite moving from the shelter, Veronica continues to participate in counseling and had "completed the majority of services that are typically required in a placement case. *** She reports that she is willing to do whatever it takes to have [R.M.] return to her care."

¶ 20 The caseworker indicated she had been unable to meet with Demetrius before

preparing her report and therefore, she had no updated information from him. He had not participated in any services or visitation with R.M.

¶ 21 The report further indicated that R.M. was doing well in her current placement. She was "a happy, healthy baby." The caseworker recommended that custody and guardianship of R.M. be removed from the parents and placed with DCFS.

¶ 22 In the counseling report prepared in anticipation of the dispositional hearing, the counselor, Matilda Smith, noted that Veronica had made "significant progress" toward "processing her abuse and recognizing that [Demetrius]'s damaging behaviors were abusive." She further reported that Veronica had "been consistent and persistent in changing her life to create an adaptive, positive lifestyle free from abuse and danger" but, she recommended that Veronica continue counseling "to ensure optimal insight into her abuse history."

¶ 23 After considering the dispositional report, the exhibits, and the parties' recommendations, the trial court found Veronica was "unfit for reasons other than financial circumstances alone to care for, protect, train, or discipline the minor and it would be contrary to the minor's health, safety, and best interest to be in her custody." The court noted that Veronica's pending criminal charge caused some concern because she may be facing incarceration. Also of concern was the fact that she had not successfully completed individual counseling. According to the court, Veronica "needs to learn additional strategies and be able to deal with [Demetrius] even with the order of protection, should he decide that that doesn't govern his activities and violates it or attempts to have some contact with her or unallowed contact with [R.M.]"

¶ 24 Further, the trial court found Demetrius was "unfit, unable, and unwilling for reasons other than financial circumstances alone to care for, protect, train, and discipline the minor. It would

be contrary to the minor's health, safety, and best interest to be in his custody."

¶ 25 The trial court adjudicated R.M. neglected and made her a ward of the court, removing custody and guardianship from respondent parents in favor of DCFS. Veronica was awarded "a regular course of visitation" with R.M. However, with regard to Demetrius's contact with the child, the court found:

"that he has perpetrated acts of violence in the past on the respondent mother. Those have occurred regardless of presence of children. And also currently the record is he has not availed himself of any remedial services, has not been in substantial contact with caseworkers in order to provide an environment in which he could visit safely with the child. Therefore, I think he's currently an imminent risk to the health, safety, and welfare of the child. His right of visitation is suspended until further order of court."

The court entered a written dispositional order on October 5, 2011. These consolidated appeals followed.

¶ 26 II. ANALYSIS

¶ 27 Veronica contends the trial court erred in adjudicating R.M. a neglected minor and finding it was in her best interests to be made a ward of the court. Demetrius contends the court erred in suspending his visitation rights to R.M. after the court found he posed a threat to R.M.'s safety and welfare. Both claim the challenged court decisions were contrary to the manifest weight of the evidence.

¶ 28 Generally, "neglect" is defined as the "failure to exercise the care that circumstances

justly demand.'" *In re N.B.*, 191 Ill. 2d 338, 346 (2000) (quoting *People ex rel. Wallace v. Labrenz*, 411 Ill. 618, 624 (1952)). However, this is not the only meaning attached to the term. Rather, it has a fluid meaning. As our supreme court has previously explained:

" '[Neglect] embraces wilful as well as unintentional disregard of duty. It is not a term of fixed and measured meaning. It takes its content always from specific circumstances, and its meaning varies as the context of surrounding circumstances changes.'" *In re Arthur H.*, 212 Ill. 2d 441, 463 (2004) (quoting *N.B.*, 191 Ill. 2d at 346) (quoting *Labrenz*, 411 Ill. at 624).

In this case, the State alleged R.M. was neglected due to her injurious environment (705 ILCS 405/2-3(1)(b) (West 2010)). On this subject, our supreme court noted:

"Similarly, the term 'injurious environment' has been recognized by our courts as an amorphous concept that cannot be defined with particularity. [Citations.] In general, however, the term 'injurious environment' has been interpreted to include 'the breach of a parent's duty to ensure a "safe and nurturing shelter" for his or her children.' [(quoting *N.B.*, 191 Ill. 2d at 346 (quoting *In re M.K.*, 271 Ill. App. 3d 820, 826 (1995)))]

Accordingly, cases involving allegations of neglect and adjudication of wardship are *sui generis*, and must be decided on the basis of their unique circumstances. [Citations.] This analytical principle underscores the 'fact-driven nature of neglect and injurious

environment rulings.' [(quoting *N.B.*, 191 Ill. 2d at 346)].

A proceeding for adjudication of wardship 'represents a significant intrusion into the sanctity of the family which should not be undertaken lightly.' [(quoting *In re Harpman*, 134 Ill. App. 3d 393, 396-97 (1985))]. It is the burden of the State to prove allegations of neglect by a preponderance of the evidence. [Citation.] In other words, the State must establish that the allegations of neglect are more probably true than not. [Citations.] On review, a trial court's ruling of neglect will not be reversed unless it is against the manifest weight of the evidence. [Citation.] A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident." *Arthur H.*, 212 Ill. 2d at 463-64.

¶ 29 At the adjudicatory stage in a juvenile-neglect proceeding, the trial court must focus exclusively on the status of the child, giving no consideration to an evaluation of the acts and/or omissions of the child's parents. *Arthur H.*, 212 Ill. 2d at 466. "It is only after the circuit court has adjudicated the child neglected that the statute directs the court to consider the actions of the parents. Even then, however, section 2-21 [of the Juvenile Court Act] provides that the court need consider such actions only 'to the extent possible.'" *Arthur H.*, 212 Ill. 2d at 466 (quoting 705 ILCS 405/2-21 (West 2000)).

¶ 30 Having established the framework that will support our analysis, we now address the issues presented in this appeal: (1) whether, under the facts of this case, the trial court's finding that R.M. is a neglected minor is against the manifest weight of the evidence; (2) whether the court's

finding that R.M. be made a ward of the court was against the manifest weight of the evidence; and (3) whether the court erred in suspending Demetrius's visitation rights.

¶ 31

A. Adjudication of Neglect

¶ 32 Veronica challenges the trial court's finding of neglect based on R.M.'s injurious environment. She claims no evidence was presented to indicate that R.M. was at risk of harm while in her care and custody. The court acknowledged that Veronica was meeting R.M.'s basic physical needs at the time she was placed in shelter care. However, the court's concern and the basis for its finding of neglect centered on Veronica's continued participation in individual counseling. The State had alleged that R.M.'s environment was injurious to her welfare because Veronica had not corrected the conditions that resulted in the adjudication of neglect as to her other children of whom she had custody. The court noted Veronica's "abject refusal to accept that there was a need for things to be corrected in the home." Because Veronica had yet to complete the counseling process addressing this "abject refusal," R.M. continued to be at risk.

¶ 33

Veronica had substantial issues relating to her relationship and interaction with Demetrius, a known threat to her and the children. Because Veronica's counseling was ongoing, the court was unable to determine whether she had attained the skills necessary to make strong decisions relating to her interaction with Demetrius. Although the court acknowledged that Veronica was making progress toward her goal, it found she had not successfully completed counseling, and therefore, she had not fully corrected the conditions which resulted in the children's removal from her care. Given the status of the circumstances at the time of the hearing, we find the court's determination that R.M. was a neglected minor, based on her injurious environment when she resided with Veronica, was not against the manifest weight of the evidence.

¶ 34

B. Wardship Determination

¶ 35

Proceeding to the trial court's dispositional order, we likewise find no error. When analyzing the circumstances presented in this case, in light of the best-interest-of-the-child standard that we must apply, we find the trial court's decision was not against the manifest weight of the evidence. Because Veronica continued to associate with Demetrius after the children were removed from her home, she obviously struggled with understanding how to protect her children and how to provide a safe environment for them. At the time of the dispositional hearing, the court was not convinced that she had corrected this issue. Further, her criminal charges of perjury and forgery for lying and falsifying court documents regarding a nonexistent order of protection remained pending. For these reasons, we find the court did not err in determining that it was in R.M.'s best interests to be made a ward of the court.

¶ 36

C. Decision To Withhold Father's Visitation

¶ 37

Finally, we address Demetrius' claim on appeal, noting that he does not challenge the trial court's finding of neglect or wardship determination as it relates to him. Rather, he claims the court erred in suspending his visitation rights to R.M. We will reverse a trial court's dispositional determination only if the court abused its discretion by selecting an inappropriate dispositional order. *In re Taylor B.*, 359 Ill. App. 3d 647, 650 (2005). First, we note that the court is authorized to suspend a parent's visitation rights should the facts support such a determination. See *Taylor B.*, 359 Ill. App. 3d at 652; 705 ILCS 405/2-23(3) (West 2010).

¶ 38

Demetrius' prior conduct in this case, coupled with the fact that he had not participated in any services, served to support the court's order. Despite orders to stay away from the children and Veronica after DCFS discovered, in an indicated report, that he had sexually abused

two children in Veronica's care, Demetrius continued contact, fathering R.M. and abusing Veronica. Additionally, it was only at the dispositional hearing that Demetrius provided the caseworker with his contact information, as prior to that date, the caseworker was unable to locate him. According to the dispositional report, Demetrius had an extensive criminal record, had been repeatedly incarcerated, and had not participated in visits with R.M. Given the court's duty to act in the best interests of the child, based on these circumstances, we find the court properly balanced the safety and welfare of the child against Demetrius' rights to visit. We find no error in the court's order.

¶ 39

III. CONCLUSION

¶ 40 For the foregoing reasons, we affirm the trial court's judgment as it relates to both parents.

¶ 41 Affirmed.