2013 IL App (2d) 130613-U
No. 2-13-0613
Order filed November 22, 2013

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re K.T., a Minor	)	Appeal from the Circuit Court
	)	of De Kalb County.
	)	
	)	No. 10-JA-0049
	)	
	)	Honorable
(The People of the State of Illinois, Petitioner-Appellee, v. Mark T., Respondent-Appellant).	)	Melissa S. Barnhart,
	)	Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Presiding Justice Burke and Justice Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held*: Because the trial court took judicial notice of respondent's criminal convictions, and because respondent failed to provide a transcript of the adjudicatory hearing, the trial court's adjudication that the minor's environment was injurious to his welfare was not against the manifest weight of the evidence. In addition, the trial court's dispositional finding that respondent was unfit was not against the manifest weight of the evidence. Thus, we affirmed.

¶ 2 Following a hearing, the trial court found respondent, Mark T., unfit and placed guardianship of the minor, K.T., with the Department of Children and Family Services (DCFS). On appeal, respondent contends that (1) the trial court erred in finding the minor neglected on the basis that

respondent's alleged sexual abuse of, Kh.R., the minor's stepsister, created an injurious environment; and (2) the trial court erred in finding respondent unfit. We affirm.

¶ 3 I. Background

¶ 4 The record reflects that respondent and Cindy T. are K.T.'s biological parents. Cindy T. is also the biological mother of Kh.R. and Ka.R. Respondent was Kh.R.'s stepfather.

¶ 5 On September 1, 2010, the State filed a petition for an adjudication of neglect with respect to K.T. As amended, the petition alleged that K.T. was neglected because his environment was injurious to his welfare as a result of respondent sexually assaulting Kh.R. Respondent had impregnated Kh.R when she was 13 years of age. Thereafter, respondent was convicted of 14 criminal charges, including aggravated criminal sexual assault, criminal sexual assault, and aggravated criminal sexual abuse.

¶ 6 On April 12, 2013, the trial court entered an adjudicatory order taking judicial notice that respondent was found guilty in case No. 10-CF-0579. The trial court adjudicated K.T. neglected in that his environment was injurious to his welfare.

¶ 7 On May 17, 2013, the trial court conducted a dispositional hearing. Erica Cabrera, a placement supervisor with DCFS, testified on the State's behalf. Cabrera testified that DCFS had created a service plan for respondent to follow, which involved him completing a sex offender evaluation and a substance abuse evaluation. Cabrera testified that respondent had not made any progress toward completing those tasks. The State rested after Cabrera's testimony, and respondent did not present any evidence.

¶ 8 The trial court again took judicial notice of respondent's conviction in case No. 10-CF-0579 and concluded that respondent's actions "pose[d] a substantial risk of harm to the remaining children

as well." The trial court entered a dispositional order finding respondent unfit resulting from his sexual abuse of Kh.R. Respondent timely appealed.

¶ 9 II. Discussion

¶ 10 Before addressing the merits, we first address the timeliness of our disposition. Illinois Supreme Court Rule 311(a)(5) (eff. Feb. 26, 2010) provides that, in appeals from final orders in child custody cases, "[e]xcept for good cause shown, the appellate court shall issue its decision within 150 days after the filing of the notice of appeal *** ." In this case, respondent filed his notice of appeal on June 12, 2013. However, we believe that good cause has been shown. On September 20, 2013, the State filed a motion for an extension of time to file its response brief. We granted that motion in part and extended the time frame for the State to file its response brief until October 4, 2013. As a result, the State's brief was not filed until October 2, 2013, and respondent's reply brief was not filed until October 10, 2013.

¶ 11 Turning to the merits, respondent contends that the trial court erred in finding both that K.T. was neglected on the basis of respondent's alleged sexual abuse of Kh.R. creating an injurious environment for K.T. and that respondent was unfit.

¶ 12 The Juvenile Court Act of 1987 (the Act) provides a step-by-step framework for determining whether a minor shall be removed from her or his parents and made a ward of the state. 750 ILCS 405/1 *et seq.* (West 2010). Following a temporary custody hearing pursuant to section 2-10 of the Act (750 ILCS 405/2-10 (West 2010)), the trial court must first make a finding of abuse, neglect, or dependence before it conducts an adjudication of wardship. Section 2-3(1)(b) defines a "neglected minor" to include any minor under 18 years of age whose environment is injurious to his or her welfare. 750 ILCS 405/2-3(1)(b) (West 2010). While our supreme court has noted that the term

"injurious environment" is an "amorphous concept that cannot be defined with particularity," it generally includes " 'the breach of a parent's duty to ensure a "safe and nurturing shelter" for his or her children.' " *In re Arthur H.*, 212 Ill. 2d 441, 463 (2004) (quoting *In re N.B.*, 191 Ill. 2d 338, 346 (2000)). Because of the "fact-driven nature" of neglect and injurious environmental rulings, a reviewing court will reverse a finding of neglect only if it is against the manifest weight of the evidence. *N.B.*, 191 Ill. 2d at 346. A ruling is against the manifest weight of the evidence only if the opposite conclusion is clearly evident; and given the delicacy and difficulty of child custody determinations, the discretion vested with the trial court is even greater than an ordinary appeal applying the against-the-manifest-weight-of-the-evidence standard of review. *In re R.S.*, 382 Ill. App. 3d 453, 459-60 (2008).

¶ 13 Section 2-21(1) of the Act provides that, if the court finds that the minor is abused, neglected, or dependent, the trial court shall "then set a time *** for a dispositional hearing." 705 ILCS 405/2-21(2) (West 2010). At the dispositional hearing, the trial court determines whether it is consistent with the health, safety, and best interests of the minor and the public that the minor be made a ward of the court. 705 ILCS 405/2-21(2) (West 2010); *In re Alexis H.*, 401 Ill. App. 3d 543, 551-52 (2010). To make a child a ward of the court, the trial court must determine that the parent is dispositionally unfit to care for the child. *In re K.L.S.-P*, 381 Ill. App. 3d 194, 195 (2008). A trial court's finding must be supported by the preponderance of the evidence; that is, the amount of evidence that leads a trier of fact to find that the fact at issue is more probable than not. *In re D.W.*, 386 Ill. App. 3d 124, 139 (2008). A reviewing court will reverse a trial court's dispositional determination only if its findings of fact were against the manifest weight of the evidence or the trial court abused its discretion by selecting an inappropriate dispositional order. *Id.*

¶ 14 Guided by these principles, we will address each of respondent's contentions.

¶ 15 A. Adjudication of Neglect

¶ 16 With respect to the trial court's determination that K.T. was neglected as a result of an injurious environment, respondent stresses that there were no allegations that he abused the minor, who was his biological son, or evidence that any other minor was aware of his alleged abuse toward Kh.R. According to respondent, "[t]he unique circumstances in this case *** are that until the subsequent investigation or criminal trial there does not appear to be evidence that [the minor] resided in anything other than a safe and nurturing environment."

¶ 17 In this case, the trial court's finding of neglect due to an injurious environment was not against the manifest weight of the evidence. Initially, we note that respondent has failed to provide a report of proceedings or a bystander's report for the adjudicatory hearing. Respondent, as the appellant, had the burden of filing an adequate record on appeal (*In re Edward T.*, 343 Ill. App. 3d 778, 793 (2003)), and any doubts which may arise from the incompleteness of the record will be resolved against respondent (*Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984)).

¶ 18 Nonetheless, despite the incompleteness of the record on appeal, we believe that the record contains sufficient evidence to support the trial court's determination. In *In re A.W.*, 231 Ill. 2d 92 (2008), our supreme court held that the State's evidence establishing that the respondent had a history of sexually abusing minors in his care supported the trial court's neglect finding. *Id.* at 103. Here, the trial court took judicial notice of respondent being found guilty on all counts in case No. 10-CF-0579, which involved allegations of sexual abuse toward his stepdaughter Kh.R. Respondent being found guilty of sexually abusing Kh.R. was sufficient to support the trial court's neglect finding as to K.T.

¶ 19 We are cognizant, as respondent notes, that there is no *per se* rule that abuse or neglect of one child conclusively establishes the neglect of another child. See *Arthur H.*, 212 Ill. 2d at 468. However, to review the trial court's findings made at the adjudication hearing, we would need to review the transcript of that hearing. See *Edward T.*, 343 Ill. App. 3d at 793. Respondent failed to provide us with a transcript of that hearing, despite the trial court's written order, which specified that the case was "called for a hearing" on the State's petition for adjudication of wardship. Therefore, we will presume that the trial court's order finding the minor to be neglected as a result of an injurious environment "was in conformity with the law and was properly supported by evidence." See *Foutch*, 99 Ill. 2d at 393.

¶ 20 B. Dispositional Finding of Unfitness

¶ 21 Regarding unfitness, respondent contends that there was "insufficient evidence to determine that [he] is unfit on the grounds that he failed to protect [the minor] from an injurious environment." Respondent again notes that there was no evidence that either K.T. or Ka.R. were victims of sexual abuse or were present at the home when any of the alleged abuse occurred. Respondent further argues that he was "essentially prevented" from participating in the DCFS service plan to safeguard his fifth amendment right against self-incrimination.

¶ 22 In this case, the trial court's determination that respondent was unfit was not against the manifest weight of the evidence. In addition to the trial court noting that respondent had been found guilty of sexually abusing Kh.R., Cabrera testified that respondent had not made any progress toward completing the client service plan. In light of respondent's failure to make progress toward completing the client service plan, the trial court's finding that respondent was unfit was not against the manifest weight of the evidence. See *In re R.R.*, 409 Ill. App. 3d 1041, 1047 (2011) (holding that

unexplained injuries to a minor combined with the respondent's failure to complete required services, including counseling, was sufficient to uphold a trial court's finding of unfitness).

¶ 23 In reaching our determination, we reject respondent's argument that his participation in the client service plan would have necessarily infringed on his fifth amendment right against self-incrimination. In *A.W.*, the State filed a petition alleging that the minor was neglected because the minor's environment was injurious to his welfare as a result of DCFS "indicating" the respondent for sexual molestation of another minor, among other allegations. *A.W.*, 231 Ill. 2d at 96. At the dispositional hearing, reports indicated that the respondent had made minimal progress toward completing sex offender counseling. *Id.* at 98. The respondent testified that he had attended sex offender counseling, but the counselor would not continue the program until the respondent admitted to committing a sex offense; and the respondent was unwilling to incriminate himself. *Id.*

¶ 24 In reviewing whether the trial court violated the respondent's fifth amendment right against self-incrimination, our supreme court concluded that a trial court may order a service plan that requires a parent to engage in effective counseling or therapy, "but may not compel counseling or therapy requiring the parent to admit to committing a crime." *Id.* at 108. Nonetheless, the supreme court concluded that the respondent failed to prove a constitutional violation because it was "undisputed" that the trial court did not specifically require the respondent to admit any wrongdoing or order him to complete a specific program requiring him to admit abuse. *Id.* The court emphasized that the respondent presented no evidence that "there [were] no other treatment programs available offering sex offender counseling without requiring an admission of sexual abuse" and that the record was devoid of any indication that the trial court's order of completing a service plan had the effect of requiring the respondent to incriminate himself. *Id.*

¶ 25 We find the reasoning in *A.W.* applicable to this case. Although respondent argues that he would have had "no way of guaranteeing the results of the evaluation *** would not be used to incriminate him," the record is devoid of any indication that the trial court ordered him to complete a counsel program that would have required him to admit to committing a crime. See *id.* Further, we find no basis in the record to conclude that completing the service plan would have effectively required respondent to incriminate himself. See *id.* Finally, as in *A.W.*, respondent has not presented any evidence that no other treatment programs were available that would have offered sex offender counseling without requiring respondent to incriminate himself. See *id.* Accordingly, we reject respondent's argument that he was prevented from participating in the service plan to safeguard his fifth amendment right against self-incrimination.

¶ 26 III. Conclusion

¶ 27 For the foregoing reasons, we affirm the judgment of the circuit court of De Kalb County.

¶ 28 Affirmed.