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2013 IL App (3d) 120369-U

Order filed June 13, 2013

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2013

In re S.B. and E.B.,)	Appeal from the Circuit Court
Minors)	for the 10th Judicial Circuit,
)	Peoria County, Illinois,
THE PEOPLE OF THE STATE OF)	
ILLINOIS)	
)	
Petitioner-Appellee,)	
)	Appeal No. 3-12-0369
v.)	No. 11-JA-263 and 11-JA-264
)	
Diane B.,)	The Honorable
)	Mark E. Gilles,
Respondent-Appellant.)	Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.
Justice Lytton concurred in the judgment.
Justice McDade concurred in part and dissented in part.

ORDER

¶ 1 *Held:* The trial court's finding that each of the two minor children was neglected was not against the manifest weight of the evidence.

¶ 2 The trial court found S.B. neglected on the basis of medical neglect and an injurious environment and E.B. neglected based on an injurious environment. Respondent Diane B., the mother of the two children, appealed. For the reasons that follow, we affirm.

¶ 3 **FACTS**

¶ 4 Following surgery on his appendix on August 30, 2011, doctors determined that S.B. had a nonfunctioning gallbladder and scheduled surgery to have it removed; however, S.B.'s mother Diane canceled the surgery. S.B. returned to the emergency room with extreme abdominal pain on October 31, 2011. After discussing treatment options with Diane, a team of doctors determined that S.B. needed his gallbladder removed, but Diane refused to consent to the surgery. On November 7, 2011, DCFS took protective custody of S.B., and doctors performed the gallbladder surgery the next day.

¶ 5 On November 9, 2011, the State filed petitions alleging that both S.B. and his younger brother E.B. were neglected. The State alleged that S.B. was neglected as to medical care because Diane canceled the surgery scheduled for S.B.'s gallbladder, then later refused to give proper consent to the surgery. The petition stated that Diane believed that S.B.'s medical problems were due to demons and that Diane and her paramour pressed on S.B.'s stomach "to get the demons out."

¶ 6 The State also alleged that both S.B. and E.B. were neglected due to an injurious environment. In addition to the facts regarding medical neglect, the petition stated that: (1) Diane pressed on S.B.'s stomach following his appendix surgery; (2) Diane was involved in other juvenile cases and had previously been indicated for possible abuse or neglect by DCFS; (3) Glen D., Diane's paramour, had a criminal history which included a 1993 conviction for aggravated

battery and a 1988 involuntary manslaughter conviction; (4) the biological father, Samuel B., had past domestic battery convictions; and (5) DCFS had a pending investigation regarding S.B. for environmental neglect. The State's petition did not allege facts specifically pertaining to E.B.

¶ 7 Diane contested the allegations that S.B. was neglected as to medical care and also contested the allegations that she pressed on S.B.'s stomach after his surgery to expel demons. She stipulated as to the allegations regarding her involvement with DCFS and other juvenile cases, as well as the past convictions of Glen D. and Samuel B.

¶ 8 At the neglect hearing, the State admitted various records into evidence. First, the State admitted certified records of a 2000 juvenile adjudication where S.B. was found medically neglected for a "nonorganic failure to thrive." Diane was found to be an unfit parent in that proceeding, but that finding was reversed on appeal. Second, the State admitted records of past DCFS investigations of Diane. For its third and fourth exhibits, the State presented S.B.'s certified medical records. After admitting these records, the State rested without presenting any testimony. Diane then testified on her own behalf. The evidence introduced at the hearing showed the following:

¶ 9 On August 30, 2011, S.B. had an appendectomy at the Pediatric Subspecialty Clinic in Peoria. In a follow-up appointment on September 30, 2011, S.B. complained of abdominal pain. The doctors conducted tests which revealed that S.B.'s gallbladder was not functioning; they referred him to the pediatric surgery department, which scheduled a laparoscopic cholecystectomy procedure to remove S.B.'s gallbladder. The surgery was scheduled for October 26 but, on that morning, Diane canceled the operation. Diane testified that she canceled the surgery because she was never informed of the surgery until that morning. The medical records

indicate that on October 14, the clinic staff called S.B.'s family to inform them of the surgery time, although it is not clear whether the caller spoke with Diane.

¶ 10 On October 31, 2011, S.B. was treated for abdominal pain and nausea at the emergency department of St. Francis Medical Center. Tests taken at that time showed S.B.'s gallbladder had only five percent functionality, which indicated he had chronic cholecystitis or biliary dyskinesia. The doctors recommended surgery to remove S.B.'s gallbladder, but his parents would not immediately consent to surgery, saying they wanted to wait for the family pastor to arrive. Diane testified that she was never told S.B. had a life-threatening condition, and she told the doctors that she did not want S.B. to have the surgery unless it was absolutely necessary. According to Diane's testimony, the doctors stated that they would be comfortable treating S.B.'s gallbladder nonsurgically if tests showed his gallbladder was 30% functional. The hospital scheduled another test of S.B.'s gallbladder.

¶ 11 Upon his admission to the hospital, S.B. began discussing his family with the medical staff. On October 31, the treating physician noted that S.B. was currently living with his godmother and that S.B. stated that he was afraid of his parents. A nurse recorded that S.B. told her he was afraid of his mother and Glen and did not want them in the room. Diane and Glen were asked to leave S.B.'s room but refused, so a doctor asked that security stand in the room while they were present. On November 1, S.B. told a nurse that Diane and Glen believed that S.B. had demons inside of him and that God said they must beat him to get the demons out. S.B. also told a doctor that Diane pressed on his stomach before and after his appendix surgery to "get the demons out," which caused him to vomit from the pain. He also said both Glen and his

mother hit him with belts, cords, and switches. The doctor noted multiple marks on S.B.'s back, arm, and thigh that could be consistent with being struck by an object.

¶ 12 A test on November 2 indicated that S.B.'s gallbladder was functioning at 27%, which was improved but still abnormal and consistent with chronic cholecystitis or biliary dyskinesia. S.B. continued to report abdominal pain and stated that he wanted to have the operation to relieve his pain. However, following a meeting between the parents and medical staff, it was agreed to hold off on surgery. Diane testified that they agreed to treat S.B. with a low-fat diet and pain medication, and the doctors would reevaluate S.B. after the weekend to see if he improved.

¶ 13 On November 5, following a visit from Diane, S.B. reported that his mother said that the doctors were devils. S.B. also told the nurse that his mother urged him to tell the doctors that his pain was improving so he could be released. S.B. stated that he did not want Diane to visit him anymore.

¶ 14 On November 7, the doctors determined that, in light of S.B.'s continuing pain, it was in his best interest to have his gallbladder removed. The doctors summoned Diane to the hospital to obtain consent to the surgery. They informed Diane that if she did not consent to surgery, they would work to obtain consent from DCFS based on medical neglect. Diane testified she was never told the reason why the doctors decided surgery was necessary, and the doctors denied her request for a second opinion. She signed the consent form for surgery but wrote "under duress" below her signature. The hospital determined that the consent was not valid and called Diane to have her sign another consent form but, this time, she refused to give consent. The doctor then told her that this constituted medical neglect. DCFS took protective custody of S.B. and doctors performed the gallbladder surgery on November 8.

¶ 15 At the neglect hearing, Diane explained that she did not want S.B. to have his gallbladder removed because she had the same surgery in her twenties and experienced bowel problems as a result. Diane also said that S.B.'s condition was improving due to the test showing his gallbladder functioning at 27%, so she did not feel that S.B. needed surgery. She testified she did not believe S.B.'s medical problems were due to demons; she stated that she placed her hands on S.B.'s abdomen while praying for him but denied striking S.B. or pushing on his stomach.

¶ 16 After the court reviewed the records and heard arguments, it found that each allegation in the petitions was proven by a preponderance of the evidence. On March 20, 2012, it adjudicated S.B. neglected due to both medical neglect and an injurious environment and E.B. neglected due to an injurious environment. At the dispositional hearing on April 17, 2012, the court found Diane to be an unfit parent. Diane appealed from the finding that S.B. and E.B. are neglected.

¶ 17 ANALYSIS

¶ 18 Under the Juvenile Court Act, a minor is neglected if he does not receive "medical or other remedial care recognized under State law as necessary for a minor's well-being," or if the minor's environment is "injurious to his or her welfare." 705 ILCS 405/2-3(a), (b) (West 2010). "Neglect is defined as the failure to exercise the care that circumstances justly demand and encompasses both willful and unintentional disregard of parental duty." *In re M.W.*, 386 Ill. App. 3d 186, 197 (2008). Medical neglect encompasses situations where a child does not receive appropriate medical care or evaluations. *In re Erin A.*, 2012 IL App (1st) 120050, ¶ 7. The term "injurious environment" is an amorphous concept that cannot be defined with particularity but generally means "the breach of a parent's duty to ensure a 'safe and nurturing shelter' for his or her children." *In re N.B.*, 191 Ill. 2d 338, 346 (2000).

¶ 19 In a neglect proceeding, the State must prove an allegation of neglect by a preponderance of the evidence. *In re Arthur H.*, 212 Ill. 2d 441, 463-64 (2004). The trial court's determination of neglect will not be disturbed on appeal unless it is against the manifest weight of the evidence. *In re D.F.*, 201 Ill. 2d 476, 498 (2002). A determination is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or if the determination is unreasonable, arbitrary, or not based on the evidence presented. *In re D.F.*, 201 Ill. 2d at 498.

¶ 20 On appeal, Diane challenges that the trial court's neglect findings were against the manifest weight of the evidence. Because Diane only appeals from the neglect findings regarding S.B. and E.B., we confine our review to the evidence before the trial court at the neglect hearing.

¶ 21 The trial court found that Diane's refusal to consent to S.B.'s surgery was medical neglect. Any minor not receiving medical care recognized as necessary for the minor's well being is a neglected minor. 705 ILCS 405/2-3(a) (West 2010); *In re N.*, 309 Ill. App. 3d 996, 999 (1999). A parent has a constitutional right to deny consent for medical treatment; however, that right is not absolute and the parent's refusal to authorize treatment must be reasonable under the circumstances. *People ex rel. Wallace v. Labrenz*, 311 Ill. 618 (1952). Because our courts have consistently recognized that the concept of neglect has no fixed meaning, cases adjudicating neglect are *sui generis* and must be decided on the basis of their own particular facts. *In re F.S.*, 347 Ill. App. 3d 55, 62 (2004).

¶ 22 Here, the physicians treating S.B. determined that immediate surgery to remove her gallbladder was in her best interest. The evidence showed that S.B. suffered from extreme pain due to a severely malfunctioning gallbladder since June 2011. S.B.'s pain was even greater

during the week of hospitalization prior to surgery and the gallbladder was functioning at only 27% of functional capacity. The record also revealed that a number of diagnostic tests were performed and, based upon the results of these tests, the entire team of medical physicians treating S.B. agreed that surgery was the only option that would relieve S.B.'s severe pain. Nothing in the record contradicted the unanimous consensus of the treating physicians that surgery was medically necessary. No second medical opinions were sought by the parents. Without some contravening medical testimony or evidence to rebut the medical opinions of treating physicians, it would have been against the manifest weight of the evidence for the trial court to disregard the un rebutted medical opinion evidence that surgery was necessary. *In re Ashley K.*, 212 Ill. App. 3d 849, 890 (1991). Given the record herein, it would have been improper for the trial court to ignore the overwhelming medical evidence that the surgery was medically necessary.

¶ 23 We also affirm the independent finding by the trial court that S.B. was neglected due to an injurious environment where the evidence overwhelmingly established that Diane and Glen hit S.B. in the stomach and pressed on his stomach in order to "get the demons out." S.B. made many statements to the medical staff about Diane and Glen pushing on his stomach and hitting him because of demons. While these statements are hearsay, a child's hearsay statements are admissible and can sustain a finding of neglect if they are corroborated. 705 ILCS 405/2-18(4)(c) (West 2010); *In re A.P.*, 179 Ill. 2d 184, 198 (1997). A child's hearsay statement is corroborated if there is "independent evidence which would support a logical and reasonable inference that the act of abuse or neglect described in the hearsay statement occurred. In essence, corroborating evidence is evidence that makes it more probable that a minor was abused or neglected." *In re*

A.P., 179 Ill. 2d at 199. Corroboration includes direct, physical, or circumstantial evidence. *In re A.P.*, 179 Ill. 2d at 199.

¶ 24 Here, we find S.B.'s hearsay statements sufficiently corroborated to sustain the finding of an injurious environment. First, S.B. said that Diane and Glen beat him with various objects to get the demons out. This was corroborated by the doctor's observations of marks on S.B.'s back, arm, and thigh that were consistent with being struck by an object. Second, S.B. told doctors that, after his appendix surgery on August 30, Diane pressed on his stomach to expel demons, causing him to vomit. A nurse's report on August 31 indicates that the emergency light in S.B.'s room was pulled. When she responded, Diane met her in the hallway. When the nurse entered the room, she found S.B. vomiting in the bathroom, and Diane stepped in front of the staff members and prayed for "forgiveness for pushing him so far." Although the corroboration is circumstantial, the nurse's observation supports a logical inference that the incident described in S.B.'s hearsay statement occurred. Diane argues that other, benign inferences could also be drawn from the nurse's observation, but that does not mean that the statement is not corroborated. Furthermore, as the appellate court, we will not substitute our judgment for that of the trial court on the inferences to be drawn from the evidence. *In re D.F.*, 201 Ill. 2d at 498-99. Therefore, it was not against the manifest weight of the evidence for the trial court to find an injurious environment existed as to S.B.

¶ 25 We also affirm the trial court's finding that E.B. was neglected due to an injurious environment. While the record reveals no evidence specifically pertaining to the current care and conditions of E.B., evidence of S.B.'s injurious environment can be admitted as evidence that E.B. was exposed to the same injurious environment under the theory of anticipatory neglect.

705 ILCS 405/2-18(3) (West 2010). The admissibility of such evidence, however, does not constitute conclusive proof of the neglect of another minor, and each child's neglect adjudication must be reviewed according to its own facts. *In re Arthur H.*, 212 Ill. 2d at 478. "To determine whether a finding of anticipatory neglect is appropriate, the trial court should consider the current care and condition of the child in question and not merely the circumstances that existed at the time of the incident involving the child's sibling." *In re S.S.*, 313 Ill. App. 3d 121, 128 (2000). Ultimately, whether a child is subjected to the same injurious environment as his or her sibling is a question of fact to be determined by the circuit court. *In re Arthur H.*, 212 Ill. 2d at 478.

¶ 26 Here, the records established that E.B. was exposed to the same injurious environment as S.B. Although the evidence admitted at the neglect hearing addressed only S.B.'s stays in the hospital and the stomach punches administered by Diane and Glen, the record established that E.B. lived in the same household and was exposed to the same injurious environment. *In re Arthur H.*, 212 Ill. 2d at 476 (minor not present or living in the same household where neglect occurred was not neglected under an anticipatory neglect theory). Moreover, where it is reasonable to find that future abuse or neglect of a sibling could occur based upon the evidence of past abuse or neglect, it would not be contrary to the manifest weight of the evidence for the trial court to find that a minor was the subject of anticipatory neglect. See *In re S.S.*, 313 Ill. App. 3d at 128. Here, it was not against the manifest weight of the evidence for the trial court to find that E.B. was subject to an injurious environment based upon the circumstances to which S.B. was exposed. The record established that E.B. lived in the same household as S.B., and it would be reasonable to conclude that he would receive the same "treatment" should he become

seriously ill. It was, therefore, reasonable for the trial court to conclude that E.B. would be exposed to the same injurious environment to which S.B. had been subjected.

¶ 27 CONCLUSION

¶ 28 For the forgoing reasons, the judgment of the circuit court of Peoria County is affirmed.

¶ 29 Affirmed.

¶ 30 JUSTICE McDADE, concurring in part and dissenting in part.

¶ 31 Although I agree with the majority that S.B. was neglected due to an injurious environment, I do not agree that the State proved, by a preponderance of the evidence, that he was neglected as to medical care. In addition, I believe that the trial court's determination that E.B. was neglected due to an injurious environment is against the manifest weight of the evidence.

¶ 32 Regarding S.B., while the doctors treating S.B. thought that surgery was in his best interest, not every instance where a parent disagrees with a doctor about the best course of treatment for the child is medical neglect. As the majority acknowledges, a parent may deny consent for medical care if the denial is reasonable under the circumstances. Where a parent has a reasonable basis for believing that surgery (or immediate surgery) is not in her child's best interest, refusing to consent to the surgery should not automatically constitute medical neglect. I believe that Diane had a reasonable basis for refusing surgery, for three reasons.

¶ 33 First, the evidence submitted by the State does not indicate the possible long-term risks of avoiding surgery. While medical neglect does not require that a child be faced with a life threatening situation (see *In re N.*, 309 Ill. App. 3d 996, 1007-08 (1999)), it is significant here

that the State failed to prove *any* risks of withholding surgery. The medical records only indicate that S.B. was in continuing pain after eating fatty foods, but also indicate that his pain was being managed with medication, and the records do not speak to the risks of withholding surgery.

Second, Diane proffered a legitimate reason for thinking the surgery was not in her son's best interest—she had the same surgery, experienced long term complications as a result, and wanted her son to avoid those potential long term problems.

¶ 34 Finally, the medical records show the functioning of S.B.'s gallbladder was 5% on October 31, but only three days later on November 2, it was functioning at 27%. Over these three days, S.B. had been treated with a low fat diet and pain medication. Based on this improvement, Diane testified that she would not consent to the surgery because it was not necessary, as S.B.'s gallbladder functioning was near the range where she was told it could be treated non-surgically. The medical records do not indicate that the functioning of S.B.'s gallbladder degraded after November 2, thereby necessitating surgery.

¶ 35 I disagree with the majority's reliance on *In re Ashley K.*, 212 Ill. App. 3d 849 (1991), which the majority cites for the proposition that because Diane presented no medical testimony to contravene the medical opinions of the treating physician, the court could not help but conclude that the surgery was medically necessary. See *supra* ¶ 22. In *In re Ashley K.*, "[e]xpert medical testimony" and a medical report prepared by psychiatrists was contradicted by the testimony of a non-doctor opinion witness, and the trial court adopted the findings of the non-doctor witness, rejecting the findings of the psychiatrists. *In re Ashley K.*, 212 Ill. App. 3d at 889. The appellate court concluded that the trial court acted against the manifest weight of the evidence because "[t]he circuit court cannot disregard expert medical testimony that is not countervailed by other

competent medical testimony or medical evidence." *In re Ashley K.*, 212 Ill. App. 3d at 890. In the present case, the State presented no expert testimony to prove surgery was medically necessary, but merely admitted medical records, so I find *In re Ashley K.* is distinguishable and does not compel the conclusion reached by the majority.

¶ 36 Based on these reasons, I cannot conclude the State proved by a preponderance of the evidence that Diane's refusal to consent to the surgery constituted medical neglect of S.B.; however, I agree with the majority that S.B. was neglected due to an injurious environment.

¶ 37 Regarding E.B., I believe the trial court's finding that E.B. was neglected was against the manifest weight of the evidence because the State put forth no evidence regarding E.B. While the State may proceed under a theory of anticipatory neglect and admit evidence of S.B.'s neglect as evidence of neglect as to E.B., the court must still consider the current care and conditions of E.B. See *In re S.S.*, 313 Ill. App. 3d 121, 128 (2000). I believe the trial court failed to do so, because the State's petition alleging E.B. was neglected does not recite any facts about E.B.'s current care and conditions. The records the State admitted at the neglect hearing only deal with S.B.'s stays in the hospital, and they contain no information about E.B.'s welfare.

¶ 38 The majority has concluded that E.B. was neglected due to an injurious environment because he shared the same environment with S.B. *Supra* ¶ 26. However, the record is devoid of evidence showing that S.B. and E.B. shared the same injurious environment. According to the evidence presented at the neglect hearing, following his appendix surgery and discharge from the hospital on September 4, S.B. lived apart from his mother and Glen and instead was living with his godmother. The record does not reveal whether E.B. was living with S.B. during that time.

The record also does not reveal whether E.B. was present during any of the alleged instances of Diane and Glen pressing on S.B.'s stomach or striking S.B. to "get the demons out."

¶ 39 Furthermore, the State's neglect petition for E.B. does not allege that he shared the same injurious environment as S.B.; in fact, the petition's proposed order of protection would allow E.B. to continue to reside with his mother in her home, which seems inconsistent with the assertion that Diane's conduct has created an injurious environment. Based on the petition and the evidence presented at the neglect hearing, I fail to see what supports the conclusion that E.B. was subject to an injurious environment.

¶ 40 I am cognizant of the fact that "the juvenile court should not be forced to refrain from taking action until each particular child suffers an injury." (Internal quotation marks omitted.) *In re Arthur H.*, 212 Ill. 2d 441, 477 (2004). However, with no evidence presented regarding the current care and conditions of E.B., I believe the trial court accepted S.B.'s neglect as conclusive proof that E.B. was also neglected, which the supreme court has cautioned against. See *In re Arthur H.*, 212 Ill. 2d at 478 ("We stress that although section 2-18(3) of the Act [citation] provides that the proof of neglect of one minor "shall be admissible evidence" on the issue of the neglect of any other minor for whom the parent is responsible, the mere admissibility of such evidence does not constitute conclusive proof of the neglect of another minor."). Instead of relying solely on S.B.'s medical records, the State should have presented some independent evidence demonstrating a risk of harm to E.B. Because it did not do so, I respectfully dissent.