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2012 IL App (3d) 120804-U

Order filed February 19, 2013

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2013

<i>In re</i> I.K.,)	Appeal from the Circuit Court
)	of the 12th Judicial Circuit,
a Minor)	Will County, Illinois,
)	
(The People of the State of Illinois,)	
)	
Petitioner-Appellee,)	Appeal No. 3-12-0804
)	Circuit No. 10-JA-70
v.)	
)	
Michelle K.,)	Honorable
)	Paula Gomora,
Respondent-Appellant).)	Judge, Presiding.

JUSTICE CARTER delivered the judgment of the court.

Justice Schmidt concurred in the judgment.

Justice McDade, dissenting.

ORDER

¶ 1 *Held:* In a juvenile proceeding, the trial court's finding that the minor child was neglected was not against the manifest weight of the evidence. The appellate court, therefore, affirmed the judgment of the trial court.

¶ 2 The State filed a juvenile petition alleging that the minor child, I.K., was neglected and sought to make I.K. a ward of the court. After hearings, the trial court found that I.K. was

neglected but declined wardship, closed the juvenile case, and transferred the matter to paternity court to determine the permanent custody of I.K. The mother of I.K. appeals, challenging the adjudication of neglect. We affirm the trial court's judgment.

¶ 3

FACTS

¶ 4 The minor child, I.K., was born over two months premature on January 23, 2010. She weighed less than two pounds and had numerous medical problems, including a hole in her heart, partial blindness, and a pituitary gland deficiency, which was potentially fatal if not treated and required medication. Because of her fragile condition, I.K. remained in the hospital for about three months after she was born. During that time, I.K.'s mother, Michelle K. (respondent), was at the hospital on a daily basis, helping care for I.K. Respondent's mother, Rebecca A., whom respondent lived with, was also actively involved in caring for I.K. Upon discharge from the hospital, I.K. lived at Rebecca's residence with respondent. Because of I.K.'s medical problems, which she was likely to outgrow in time, daily medication was required.

¶ 5 On June 15, 2010, Rebecca and respondent got into an argument. Respondent tried to leave with I.K., and Rebecca tried to stop her. Allegedly, a physical confrontation ensued. Although the circumstances are not quite clear from the record, during the struggle, I.K. was dropped to the ground in her carrier. Respondent took I.K. to the hospital after the incident and confirmed that she was unharmed. Respondent did not return to Rebecca's residence and did not inform Rebecca of where she would be. It is also not clear from the record whether respondent took I.K.'s medications with her when she left the residence.

¶ 6 On June 21, 2010, Rebecca filed in the trial court an emergency petition for guardianship of I.K., alleging, among other things, that she suspected that I.K. was being neglected, that

respondent suffered from certain mental health problems and was not taking appropriate care of I.K., that respondent had left Rebecca's residence with I.K. after a fight, and that the whereabouts of respondent and I.K. were unknown. A guardian *ad litem* (GAL) was appointed. After meeting with Rebecca, the GAL reported the matter to the Department of Children and Family Services (DCFS). DCFS interviewed Rebecca and respondent as part of its investigation of the case. On June 22, 2010, after meeting with respondent for several hours and being unable to agree upon a safety plan for I.K., the DCFS investigator took protective custody of I.K. According to the investigator, respondent later acted aggressively toward the investigator.

¶ 7 Shortly thereafter, on June 24, 2010, the State filed the instant juvenile petition seeking to have I.K. adjudicated a neglected minor and made a ward of the court. The petition alleged that I.K. had been subjected to an injurious environment because respondent suffered from an untreated mental illness and as a result thereof, had failed to provide the necessary medical treatment to I.K.

¶ 8 After the petition was filed, DCFS continued its work on the case. Respondent had claimed that she was raped by her former boyfriend, Ryan A. and that I.K. was conceived as a result of that rape. Ryan had lived with respondent at Rebecca's house for a few months when respondent was pregnant but was eventually kicked out of the house, and the relationship between respondent and Ryan had ended. After taking custody of I.K., DCFS contacted Ryan and informed him that he was possibly the father. A paternity test confirmed that Ryan was the father, and Ryan filed a paternity action in the trial court to establish parentage. The paternity action was later consolidated with the juvenile neglect case.

¶ 9 After several continuances, an adjudicatory hearing was held on the juvenile petition.

The hearing was started in September 2011 and lasted for several days over an extended period. During the hearing, the trial court heard the testimony of Rebecca, respondent, the DCFS investigator, one of the case workers, Ryan, Ryan's mother, and the doctor that monitored I.K.'s pituitary gland deficiency. The trial court also had before it various exhibits. The evidence presented at the adjudicatory hearing, relevant to the issue presented in this appeal, can be summarized as follows.¹

¶ 10 Rebecca testified about her relationship with respondent and about the fight that they had on June 15, 2010. During that incident, Rebecca tried to stop respondent from leaving with I.K. by grabbing the carrier handle. A brief struggle ensued. Respondent bit Rebecca, and Rebecca struck respondent. During the struggle, the carrier dropped to the ground with I.K. inside of it. Rebecca was angry after the incident and was concerned over the whereabouts of I.K. and respondent, so she filed the emergency petition for guardianship of I.K. After DCFS got involved in the matter, Rebecca regretted filing the petition and testified in court that her statements in the petition were exaggerated.

¶ 11 Respondent also testified that she and Rebecca did not get along and that at the time, they fought a lot. Respondent denied that any of those fights turned physical but did admit that there was an incident where she and respondent struggled over the child and the child fell to the ground in her carrier. Respondent stated that she left the home because her ongoing relationship

¹ Much of the evidence presented pertained to whether respondent had provided appropriate medical care to the minor and whether respondent had certain mental-health issues. At the conclusion of the adjudicatory hearing, the trial court found that neither of those two allegations had been proven.

with Rebecca was too stressful.

¶ 12 The natural father, Ryan A., testified that he lived with respondent for about two months at Rebecca's house when respondent was pregnant with I.K. During that time, respondent and Rebecca got into several heated arguments, and Ryan witnessed approximately six physical confrontations between Rebecca and respondent. Ryan eventually left the residence because of the fighting. During his testimony, Ryan denied that he had raped respondent and claimed that their sexual encounter was consensual.

¶ 13 At the conclusion of the adjudicatory hearing, the trial court took the case under advisement. The trial court later found that I.K. was a neglected minor based upon an injurious environment. The injurious environment, however, was not a result of the two specific allegations listed in the neglect petition. The trial court found that those two allegations had not been proven. Rather, the injurious environment was the result of domestic issues between Rebecca and respondent and the incident where the two fought over the child and the child was dropped to the ground in her carrier.

¶ 14 After a dispositional hearing, the trial court decided not to make I.K. a ward of the court. The trial court noted that it was not practical for it to make custody orders as to I.K. and transferred the matter to the paternity court to determine permanent custody as part of Ryan's paternity action. The juvenile neglect proceeding was closed, and respondent appealed.

¶ 15 ANALYSIS

¶ 16 On appeal, respondent argues that the trial court erred in finding that I.K. was a neglected minor based upon an injurious environment. Respondent asserts that the trial court's finding is contrary to the manifest weight of the evidence presented at the adjudicatory hearing. The State

and Ryan argue that the trial court's ruling was proper and should be affirmed.

¶ 17 A trial court's finding of neglect will not be reversed on appeal unless it is against the manifest weight of the evidence. *In re N.B.*, 191 Ill. 2d 338, 346 (2000); *In re J.C.*, 396 Ill. App. 3d 1050, 1056 (2009). A ruling is against the manifest weight of the evidence only if it is clearly apparent from the record that the trial court should have reached the opposite conclusion or if the ruling itself is arbitrary, unreasonable, or not based upon the evidence presented. *In re N.B.*, 191 Ill. 2d at 346-47; *Best v. Best*, 223 Ill. 2d 342, 350 (2006). Under the manifest weight standard, deference is given to the trial court as finder of fact because the trial court is in the best position to observe the conduct and demeanor of the parties and the witnesses and has a degree of familiarity with the evidence that a reviewing court cannot possibly obtain. *Best*, 223 Ill. 2d at 350; *In re A.W.*, 231 Ill. 2d 92, 102 (2008). When the manifest weight standard applies, the reviewing court will not substitute its judgment for that of the trial court on such matters as witness credibility, the weight to be given evidence, and the inferences to be drawn from the evidence. *Best*, 223 Ill. 2d at 350-51; *In re A.W.*, 231 Ill. 2d at 102.

¶ 18 A wardship proceeding constitutes a significant intrusion into the sanctity of the family and should not be undertaken lightly. *In re Arthur H.*, 212 Ill. 2d at 441, 463 (2004). In any proceeding brought under the Act, including a juvenile neglect proceeding, the primary consideration is the best interest of the child involved. See *In re Arthur H.*, 212 Ill. 2d at 464. There is no fixed meaning for the term "neglect" in juvenile law but it has been generally defined as the failure to exercise the level of care that is required under the circumstances. *In re Arthur H.*, 212 Ill. 2d at 463. Neglect may be found where a minor's environment is injurious to his or her welfare. 705 ILCS 405/2-3(1)(b) (West 2010). In general, the term "injurious environment"

has been defined as 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 at 346. Like the term "neglect," however, the term "injurious environment" does not have a fixed meaning and must be determined from the unique facts of each particular case. *In re Arthur H.*, 212 Ill. 2d at 463; *In re J.C.*, 396 Ill. App. 3d at 1056.

¶ 19 When we review the unique facts of the present case, we find that the trial court's determination of neglect based upon an injurious environment was not against the manifest weight of the evidence. There is no dispute that respondent and Rebecca had a rocky relationship, which was very stressful for everyone involved, and that at least in the time frame leading up to the filing of the petition, respondent and I.K. primarily resided at Rebecca's residence. In addition, there was ample evidence from which the trial court could find that the relationship between Rebecca and respondent was a physical one. Ryan testified that during the two months he lived with respondent and Rebecca, he witnessed about six physical confrontations between the two of them and several heated arguments. Respondent testified as well that she and Rebecca fought frequently and that their relationship was very stressful. Rebecca gave similar testimony as to the nature of her relationship with respondent. Although on the witness stand, Rebecca and respondent denied, for the most part, that their confrontations had turned physical, each of them had given contrary statements to either DCFS or to the prior GAL. There was also evidence that on one incident where respondent and Rebecca fought over I.K., their physical confrontation escalated to a point where they accidentally dropped I.K. to the ground in her carrier. With I.K.'s significant medical problems at the time, such behavior could have caused serious injury to I.K. Based upon the totality of the evidence presented and the highly deferential standard of review that applies in this appeal, the trial court's finding of neglect

must be affirmed.

¶ 20

CONCLUSION

¶ 21 For the foregoing reasons, we affirm the judgment of the circuit court of Will County.

¶ 22 Affirmed.

¶ 23 JUSTICE McDADE, dissenting.

¶ 24 The majority has affirmed the decision of the circuit court of Will County finding the minor, I.K., to be neglected by her mother, respondent Michelle K, by virtue of an injurious environment. For the reasons that follow, I respectfully dissent.

¶ 25 The State filed a complaint on June 24, 2010, alleging neglect by respondent because her untreated mental illness and the resultant failure to provide necessary medical treatment to I.K. had created an injurious environment for her daughter. See ¶ 7, *supra*. Following an extended adjudicatory hearing, the trial court found that the State had failed to prove these allegations. Instead the court found the child neglected due to an "injurious environment [that] was the result of domestic issues between Rebecca and respondent and the incident where the two fought over the child and the child was dropped to the ground in her carrier." See ¶ 13, *supra*.

¶ 26 Because this had not been asserted as a basis for the alleged injurious environment, the respondent had no realistic opportunity – because there was no need – to defend against it. Had she perceived such a need, it seems clear that she would have prevailed.

¶ 27 The incident of dropping the carrier occurred because respondent was voluntarily removing herself and the child from her mother's home and her mother (the child's grandmother) was attempting to restrain her. Respondent succeeded in moving out and the adjudicated "injurious environment" was cured through *her* actions prior to the grandmother's petition for

guardianship, the filing of the State's neglect complaint, and the trial court's judgment. There were, therefore, no facts supporting the trial court's expressed finding and, absent alternative grounds, its decision was necessarily against the manifest weight of the evidence.

¶ 28 Accordingly, I believe the judgment of neglect entered by the trial judge must be reversed.