

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2013 IL App (3d) 120986-U

Order filed October 16, 2013

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2013

<i>In Re A.S.,</i>)	Appeal from the Circuit Court
)	of the 10th Judicial Circuit,
a Minor)	Peoria County, Illinois,
)	
(The People of the State of Illinois,)	
)	
Petitioner-Appellee,)	Appeal No. 3-12-0986
)	Circuit No. 12-JA-139
v.)	
)	
Ashlee R.,)	Honorable
)	Mark E. Gilles,
Respondent-Appellant).)	Judge, Presiding.
)	

JUSTICE O'BRIEN delivered the judgment of the court.
Justice Holdridge concurred in the judgment.
Justice Carter dissented.

ORDER

¶ 1 *Held:* A trial court's finding that a minor was neglected due to an environment injurious to her welfare was against the manifest weight of the evidence when the minor's visits with her mother were supervised by the father, who was the minor's guardian, and, although the mother's visits were to be supervised by DCFS or its designee, there was no other evidence of any abuse or neglect.

¶ 2 The trial court adjudicated the minor, A.S., neglected on the basis of an environment injurious to her welfare. 705 ILCS 405/2-3(1)(b) (West 2010). The respondent, Ashlee R., the minor's mother, appealed the finding of neglect.

¶ 3 FACTS

¶ 4 The State filed a juvenile petition on June 29, 2012, alleging that A.S. was neglected in that the minor's environment was injurious to her welfare. The petition alleged that the minor had previously been made a ward of the court, and the mother had been found unfit in the prior case. The mother was not to have contact with the minor unless it was supervised by the Department of Children and Family Services (DCFS) or its designee, but the petition alleged that the father was allowing such unsupervised contact. The mother filed an answer to the juvenile petition, stipulating to contact with the minor, in the father's presence, on two occasions.

¶ 5 At the adjudicatory hearing, the father's grandmother testified that the minor and the minor's father resided in her home. The grandmother testified that on the morning of June 28, 2012, she found the mother in her home, in the father's bedroom with the father and the minor, and she reported it to DCFS. Andrea Duke, a child welfare specialist, testified that on May 30, 2012, the mother reported during her supervised visit with the minor that she was sneaking into the grandmother's house to see the father and the minor. The State also offered a certified copy of 11-JA-215, which was the prior juvenile case, in which the mother was found unfit, the father was found fit, and the father was named guardian of the minor. The court order in the juvenile case was also offered, which stated

that any contact between the mother and the minor was to be supervised by DCFS or its designee.

¶ 6 The trial court found that all of the allegations of the juvenile petition were proven, and entered an adjudication order reflecting that the State had proven that the minor was neglected. Thereafter, the trial court entered a dispositional order, finding the mother dispositionally unfit, the father fit, making the minor a ward of the court, and appointing DCFS as guardian. The mother appealed the finding of neglect.

¶ 7 ANALYSIS

¶ 8 The State argues that it proved by a preponderance of the evidence that the minor was neglected by reason of an environment injurious to her welfare. The mother argues that the trial court's finding of neglect was against the manifest weight of the evidence. She contends that the trial court found that her violation of the prior court order was neglect *per se*, and that the trial court relied on the prior finding of unfitness with no evidence of actual neglect.

¶ 9 Under the Juvenile Court Act of 1987, a neglected minor includes any minor under 18 years of age whose environment is injurious to his or her welfare. 705 ILCS 405/2-3(1)(b) (West 2010). Neglect is a term that varies with the context of the circumstances. *In re Arthur H.*, 212 Ill. 2d 441 (2004). It is generally defined as a failure to exercise the care demanded by the circumstances, or a disregard of duty. *Arthur H.*, 212 Ill. 2d at 463. Whether an environment is injurious to a minor's welfare also depends on the circumstances, but generally means the breach of a parent's duty to provide a safe shelter for his or her children. *Id.* The focus is on whether the minor was neglected, not

on the degree to which one or both parents was neglectful. *Id. at 467*. The State bears the burden of proving the allegations of neglect by a preponderance of the evidence. *In re A.P.*, 2012 IL 113875 (2012). We will not reverse a trial court's finding of neglect unless it is against the manifest weight of the evidence. *Id.*

¶ 10 Under the theory of anticipatory neglect, the State can protect children on the theory that there is a probability of neglect or abuse because they reside with an individual who has been found to have neglected or abused another child. *Arthur H.*, 212 Ill. 2d at 468. Although courts recognize the theory of anticipatory neglect, there is no *per se* rule and whether there has been neglect must be determined based upon the circumstances involving each child. *Id.* The focus should be on the current care and condition of the child in question and not merely the circumstances that existed at the time of the prior incident. *In re R.S.*, 382 Ill. App. 3d 453 (2008).

¶ 11 It is undisputed that there was a prior juvenile proceeding in which the mother was found unfit due to domestic violence and mental illness, and that a court order was entered at the close of that proceeding prohibiting contact between the mother and the minor unless supervised by DCFS or its designee. The mother's stipulation, and the testimony at the adjudicatory hearing, established that the mother had contact with the minor on more than one occasion, supervised only by the father, and not by DCFS or its designee. The mother argues that there was no showing of neglect because the mother's visits with the minor were always supervised, by the father, who was the minor's legal guardian and a fit parent. There was also no evidence of any domestic violence between the mother and the father during those visits.

the father was present when the respondent had contact with the minor, her "visits" constituted unsupervised contact prohibited by court order. Additionally, it is important to note that the respondent was an unfit parent at the time the contact occurred. I respectfully submit that the majority's ruling on this issue minimizes the importance of the court order in this case and also fails to appreciate the seriousness of allowing an unfit parent to have unsupervised contact with a minor. I would hold that the manifest weight of the evidence supports the circuit court's neglect determination.

¶ 20 For the foregoing reasons, I respectfully dissent.