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2013 IL App (3d) 130020-U

Order filed September 11, 2013

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2013

<i>In Re</i> J.G.,)	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. 3-13-0020
)	Circuit No. 12-JA-82
v.)	
)	
Michael G.,)	Honorable
)	Mark E. Gilles,
Respondent-Appellant).)	Judge, Presiding.
)	

JUSTICE O'BRIEN delivered the judgment of the court.
Presiding Justice Wright and Justice Carter concurred in the judgment.

ORDER

¶ 1 *Held:* A trial court's conclusion that a minor was neglected because of an injurious environment was affirmed as supported by the manifest weight of the evidence where it was found proven that the father had sexually abused the minor's half-sister while the minor was living in the same house and both of the minor's parents violated orders of protection that prohibited unsupervised contact between the father and the minor.

¶ 2 The trial court adjudicated the minor, J.G., neglected pursuant to section 2-3(1)(b) of the Juvenile Court Act of 1987 (the Act). 705 ILCS 405/2-3(1)(b) (West 2010). At the dispositional hearing, the trial court found both her parents to be unfit, made the minor a ward of the court, and named the Department of Children and Family Services (DCFS) as guardian with the right to place. The respondent father, Michael G., appealed, arguing that the trial court's finding of neglect was against the manifest weight of the evidence. We affirm.

¶ 3 **FACTS**

¶ 4 J.G. was almost two years old when the State filed a petition, and then an amended petition, alleging that she was neglected due to an environment injurious to her welfare. The amended petition alleged that: (1) Michael G. had sexually abused J.G.'s half-sibling (A.S.-D.) on multiple occasions; (2) Michael G. was controlling of J.G.'s mother; (3) Michael G. had a criminal history; and (4) both parents violated orders of protection requiring agency-supervised contact between Michael G. and J.G.

¶ 5 At the adjudication hearing, the State offered into evidence certified copies of a 2011 order of protection proceeding between the mother and Michael G., a pending 2011 criminal proceeding involving Michael G., and a 2002 proceeding between the mother and the father of J.G.'s half-sibling (A.S.-D.). The State also asked the trial court to take judicial notice of the order of protection entered in the present in case on May 24, 2012. The 2011 plenary order of protection provided that J.G. was a protected person, included a stay away order, and reserved visits between J.G. and Michael G. Agency supervised visits were allowed by subsequent orders. The 2012 order of protection provided that J.G. would reside with the mother, and all contact between Michael G. and J.G. had to be supervised by an agency.

¶ 6 A.S.-D. testified in chambers. She testified that she was currently 10 years old, and living with her father, step-mother, and sister. She had previously resided with her mother, Michael G., and J.G. She testified that Michael G. had, on more than one occasion, touched and rubbed her chest, back, and privates, and had tried to get A.S.-D to touch between his front legs. She testified that he had tried to put his thing in her private part, but she kicked him off. He had also asked her to suck his thing, but she refused. A.S.-D testified that she, her mother, and J.G. met Michael G. at the mall to buy earrings for her birthday in April 2012. A.S.-D. and her mother went in to get her ears pierced, and Michael G. remained in the car with J.G. Also, A.S.-D. testified that her mother drove to Michael G.'s residence in July 2012, and Michael G. came over to the van to talk to J.G. while the mother was out of the van.

¶ 7 Detective Marilyn Robinson testified that she had a conversation with A.S.-D. at the Children's Advocacy Center on October 19, 2011. Robinson testified that A.S.-D. told her that Michael G. would rub her with his hand, and he tried to put his "thing" inside of her. A.S.-D. was clear that "thing" meant penis. She told Robinson that one time Michael G. was unsuccessful, but he was successful a second time, and it hurt.

¶ 8 Raelyn Galassi, a child protection investigator with DCFS testified that she interviewed the mother at the CAC on October 19, 2011. The mother told Galassi that the family had a trailer in the backyard of the house that they would sometimes sleep in when it was hot outside. Also, the mother told Galassi that Michael G. would wake up at night and go downstairs, but he did not allow the mother to leave the bedroom at night, unless it was to care for J.G.

¶ 9 Michael G. testified that he never touched or assaulted A.S.-D. He never took A.S.-D. from the trailer to the house and sexually touched or assaulted her. He denied ever requiring the

mother to stay in her room or not leave the house, and denied kicking the mother out of the house. He testified that, during the time period that A.S.-D. lived with them, she made allegations of a sexual nature on two or more occasions against a neighbor and her father.

¶ 10 The mother testified that she had custody of A.S.-D. until the end of the school year in 2010. At that time, A.S.-D.'s father was granted custody, and the mother had every-other weekend visitation. The mother testified that she exercised her visitation, and A.S.-D. never revealed anything inappropriate was going on with Michael G. According to the mother, A.S.-D. made allegations of a sexual nature against her own father, stating that he made her watch inappropriate movies and forced her to lie in bed with him with a nightgown on. However, when J.G. was taken into shelter care, the mother asked A.S.-D.'s father to be J.G.'s foster parent. The mother testified that A.S.-D. never made allegations of a sexual nature against anyone else. She denied telling Galassi that Michael G. was controlling and would lock her out of the house or ever prevented her from going downstairs.

¶ 11 The trial court found that it was proven that Michael G. sexually assaulted A.S.-D. on separate occasions, and that all of the other allegations in the petition had been proven. During closing arguments, the mother's attorney argued that A.S.-D's testimony was most inconsistent when she testified that there was no penetration, while the detective testified that A.S.-D. had reported that there was penetration and that it hurt. The State objected, not recalling the detective's testimony, and the trial court also stated that it did not recall the testimony. Thus, the trial court requested transcripts of testimony of the detective, the investigator, and A.S.-D. to review before making its ruling. J.G. was found to be neglected due to an environment injurious to her welfare.

¶ 12 At the dispositional hearing, the trial court found both Michael G. and the mother to be unfit, made J.G. a ward of the court, and named DCFS guardian of J.G. Michael G. appealed the finding of neglect.

¶ 13 ANALYSIS

¶ 14 Michael G. argues that the trial court's finding that J.G. was neglected by reason of an injurious environment was against the manifest weight of the evidence. He does not challenge the finding that he was dispositionally unfit.

¶ 15 The trial court found the minor neglected because her environment was injurious to her welfare. A trial court's finding of neglect will not be reversed on appeal unless it was against the manifest weight of the evidence. *In re Faith B.*, 216 Ill. 2d 1 (2005). A ruling is against the manifest weight of the evidence only if the opposite conclusion is clearly evident. *Faith B.*, 216 Ill. 2d 1.

¶ 16 The primary allegation in this case was that J.G.'s half-sibling, A.S.-D., had been sexually abused by Michael G. Michael G. argued that A.S.-D.'s testimony had been severely impeached, his testimony had not been impeached, and A.S.-D.'s testimony was the only evidence of sexual assault. There was no evidence that J.G. had ever been assaulted or abused by Michael G.

¶ 17 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 had been neglected, not on the degree to which one or both parents was neglectful. *In re Arthur H.*, 212 Ill. 2d 441 (2004).

¶ 18 Under the theory of anticipatory neglect, the State seeks to protect not only children who were the direct victims of abuse or neglect, but also those who have a probability of neglect or abuse because they reside with an individual who has been found to have neglected or abused another child. *In re Arthur H.*, 212 Ill. 2d 441 (2004). 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. *Arthur H.*, 212 Ill. 2d at 468.

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 incident involving the child's sibling. *In re R.S.*, 382 Ill. App. 3d 453 (2008).

¶ 19 In this case, the trial court found that all of the allegations of the amended petition had been proven, except that it was not proven that Michael G. placed his penis in or on the vagina of A.S.-D. Thus, the trial court found that it was proven that Michael G. sexually abused A.S.-D., and, subsequently, that the mother allowed Michael G. to have unsupervised contact with J.G. on at least two separate occasions in violation of the orders of protection. Considering the circumstances of the allegations of sexual abuse of J.G.'s sibling, along with the parents' continuing violations of the orders of protection, particularly leaving J.G. alone with Michael G. in the car, we find that the evidence established that J.G. was at a probable and substantial risk of suffering harm. J.G. was living in the home during the time that Michael G. was abusing A.S.-D., and the mother claimed to have no knowledge of the abuse. While abuse of a sibling does

not conclusively establish that J.G. will be similarly abused, it is admissible as evidence of the potential, and the courts are not required to wait for that abuse to occur. *In re T.S-P.*, 362 Ill. App. 3d 243 (2005). Thus, we find that the trial court's conclusion that J.G. was neglected because her environment was injurious to her welfare was not against the manifest weight of the evidence. We affirm the finding of neglect, but make no ruling with respect to Michael G.'s unfitness because that finding was not challenged on appeal.

¶ 20

CONCLUSION

¶ 21 The judgment of the circuit court of Peoria County is affirmed.

¶ 22 Affirmed.