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2013 IL App (3d) 130248-U

Order filed December 6, 2013

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2013

<i>In Re</i> M.S. and K.H.,)	Appeal from the Circuit Court
)	of the 10th Judicial Circuit,
Minors)	Peoria County, Illinois,
)	
(The People of the State of Illinois,)	
)	Appeal No. 3-13-0248
Petitioner-Appellee,)	Circuit Nos. 12-JA-315 & 12-JA-316
)	
v.)	
)	
Kendra H.,)	Honorable
)	Mark E. Gilles,
Respondent-Appellant).)	Judge, Presiding.
)	

JUSTICE O'BRIEN delivered the judgment of the court.
Justices Carter and Lytton concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's determination that two minors were neglected because of an environment injurious to their welfare was upheld on appeal as not against the manifest weight of the evidence when one minor was born with cannabinoids in his system. The parents' criminal backgrounds, the mother's mental health, the father's intoxication, and the mother's actions while pregnant were relevant to the finding that the other minor was also neglected.

¶ 2 The trial court adjudged the minors, M.S. and K.H., to be neglected because of an environment injurious to their welfare under section 2-3(1)(b) of the Juvenile Court Act of 1987 (the Act). 705 ILCS 405/2-3(1)(b) (West 2008). At the dispositional hearing, the trial court found the respondent mother, Kendra H., to be unfit. The mother appeals the finding of neglect. We affirm.

¶ 3 **FACTS**

¶ 4 The State filed juvenile petitions on December 27, 2012, alleging that the minors, M.S. and K.H., were neglected. The petitions, as later amended, alleged that both minors were neglected due to an environment injurious to their welfare because M.S. tested positive for cannabinoids upon his birth on December 20, 2012. The petitions also alleged that, on March 20, 2012, the minors' father was found by the police to be holding K.H. while he was very intoxicated. In addition, on April 21, 2008, the mother attempted suicide. Lastly, the petitions alleged that the minors were neglected due to the varied criminal histories of the mother and the father, which included retail theft, prostitution, and possession of drug paraphernalia.

¶ 5 The mother's answer to the petition stipulated that the State could call witnesses to support all the allegations except the allegation that the father was holding K.H. while intoxicated.

¶ 6 At the adjudicatory hearing, the State made a proffer to the trial court of hospital records that showed the M.S. tested positive for cannabinoids at birth and certified copies of both parents' criminal convictions. Craig Williams, a police officer with the Peoria Police Department, testified that on March 20, 2012, he responded to a call and found the father intoxicated and holding K.H., who appeared to be about a year old. The father was swaying back

and forth, slurring his speech, and yelling and pointing at a woman on the front porch. Felicia Bonds, a detective with the Peoria Police Department, testified that she was called to the scene to check the welfare of a child. The father told her that he had been drinking, and that he was homeless. Bonds took K.H. and the father to meet the mother, and dropped K.H. off with the mother.

¶ 7 The mother testified that she overdosed on pills on April 21, 2008. Subsequently, the mother had been seeing a psychiatrist and taking medication for depression. She testified that she had not made any further suicide attempts since that day. The trial court found that all of the allegations of the amended petitions had been proven, except that the father was proven to be intoxicated on March 20, 2012, but not “very intoxicated.” The trial court found that the minors were neglected due to an environment injurious to their welfare.

¶ 8 At the dispositional hearing, the trial court found that it was in the best interest of the minors that they be made wards of the court and granted guardianship to the Department of Children and Family Services. The trial court found both the mother and the father to be unfit. The mother appealed the finding of neglect, arguing that the trial court’s finding that the minors were neglected by reason of an injurious environment was against the manifest weight of the evidence.

¶ 9 ANALYSIS

¶ 10 The trial court found that the minors were neglected because their environment was injurious to their welfare, which is grounds for neglect under the Juvenile Court Act. 705 ILCS 405/2-3(1)(b) (West 2010). Cases involving allegations of neglect must be decided on the basis of their unique circumstances. *In re A.P.*, 2012 IL 113875. The State must prove the allegations

of neglect by preponderance of the evidence, which means that the allegations of neglect were more probably true than not. *In re A.P.*, 2012 IL 113875, ¶17. 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 at 13-14.

¶ 11 The mother argues that the Juvenile Court Act did not authorize a finding of neglect based solely on a newborn testing positive for cannabinoids because they were not listed under the Illinois Controlled Substances Act, 720 ILCS 570/100 et seq. Absent the rebuttable presumption established by the Juvenile Court Act upon the finding of a controlled substance in a newborn, the mother contends that the trial court's finding of neglect was against the manifest weight of the evidence.

¶ 12 Cannabis, and cannabinoids, are not included in the schedules of controlled substances in the Illinois Controlled Substances Act. See 720 ILCS 570/201 et seq. (West 2010). However, possession of cannabis is unlawful under the Cannabis Control Act, 720 ILCS 550/1 et seq. (West 2010). 720 ILCS 550/4 (West 2010). The General Assembly, in enacting the Cannabis Control Act, has acknowledged the physical, psychological, and sociological damage from the use of cannabis. 720 ILCS 220/1 (West 2010).

¶ 13 As stated earlier, 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). After the petitions were amended, this is the only provision under which the State alleged that the minors were neglected. The fact that one of the minors was born with an illegal substance in his system was evidence to be considered by the trial court in determining whether the minors' environment

was injurious to their welfare.

¶ 14 The mother argues that the evidence supporting the other allegations in the petition did not show by a preponderance of the evidence that M.S.'s environment was injurious to his welfare. The allegation that the father was intoxicated and holding K.H. pre-dated M.S.'s birth by nine months. The mother's suicide attempt was four years prior to M.S.'s birth, and she presented evidence that she was addressing her mental health. Also, the criminal convictions for both the mother and the father were all prior to M.S.'s birth. Although the other allegations in the petition were prior to M.S.'s birth, considered in conjunction with the presence of cannabinoids in his system at birth, we find that the trial court's finding that M.S. was neglected was not against the manifest weight of the evidence.

¶ 15 As for K.H., the mother argues that there was no evidence that K.H. was ever exposed to an illegal substance. Except for the birth of M.S. and the intoxication allegation regarding the father, all of the other allegations were prior to K.H.'s birth. However, the parents' criminal backgrounds, the mother's mental health, and the mother's actions while pregnant were also relevant to determining whether K.H. was neglected. The trial court was not required to refrain from acting until K.H. was injured. See *In re Arthur H.*, 212 Ill. 2d 441 (2004) (under the theory of anticipatory neglect, the State can protect children from probable neglect because they reside with an individual who has been found to have neglected or abused another child). The evidence heard by the trial court, among other things, included evidence that the mother was in sufficient proximity to cannabis (an illegal substance) during her pregnancy so as to cause the minor child, M.S., to test positive for the presence of cannabinoids at birth. There was also evidence that the father was engaged in some sort of disturbance outside of another person's residence while

intoxicated to some degree with the minor child, K.S., in tow. This disturbance resulted in a police contact as well as a police escort for the minor child, K.S., back to the mother. It appears the father stated he was homeless. There was also the introduction of a number of criminal convictions for both parties, but specifically among the father's recent convictions were several for possession of drug paraphernalia and illegal consumption of alcohol. The State could have done a better job in showing the relevance of each piece of evidence to prove the petition. However, when the evidence is considered all together, we cannot say the findings of neglect as to both minors were against the manifest weight of the evidence.

¶ 16

CONCLUSION

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

¶ 18 Affirmed.