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2013 IL App (3d) 130299-U

Order filed December 20, 2013

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2013

<i>In re</i> O.B.,)	Appeal from the Circuit Court
)	of the 10th Judicial Circuit,
a Minor)	Tazewell County, Illinois,
)	
(The People of the State of Illinois,)	
)	
Petitioner-Appellee,)	Appeal No. 3-13-0299
)	Circuit No. 11-JA-32
v.)	
)	
Johnnie B.,)	Honorable
)	Albert L. Purham,
Respondent-Appellant).)	Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Justices Holdridge and O'Brien concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court's finding that the minor was neglected due to an injurious environment was not against the manifest weight of the evidence.
- ¶ 2 The trial court found that the minor, O.B., was neglected due to an injurious environment, and that respondent, Johnnie Bankston, was dispositionally unfit. On appeal, respondent argues that the trial court's finding of neglect was against the manifest weight of the evidence. We affirm.

FACTS

¶ 3

¶ 4 On April 21, 2011, the State filed a juvenile petition, alleging that O.B. was neglected as a result of an injurious environment. The petition alleged that O.B. was neglected because on or about September 18, 2009, her parents were found unfit in McLean County case 05-JA-59 and there had been no subsequent finding of fitness, and the parents could not provide minimal parenting. The trial court entered an order finding probable cause to believe that O.B. was neglected and transferring temporary custody and guardianship to the Department of Children and Family Services (DCFS).

¶ 5 On December 15, 2011, Amanda B., mother of O.B., filed an answer to the juvenile petition, admitting all allegations. On April 20, 2102, respondent filed an answer to the petition in which he admitted that he had been found unfit without a subsequent finding of fitness but denied that he could not provide minimal parenting.

¶ 6 At the adjudicatory hearings, Officer Troyer of the Tremont police department testified that Amanda had reported a domestic incident that occurred between her and respondent on or about November 11, 2010, where respondent had slapped Amanda across the face. Amanda also told the officer that respondent had struck her with a belt in September of 2010. Troyer testified that Amanda asked him not to confront respondent about the incident because she was afraid respondent would retaliate against her.

¶ 7 The State admitted into evidence an unfitness finding in McLean County case 05-JA-59, wherein Amanda and respondent's parental rights to another child, B.B., were terminated on October 28, 2009. The State also admitted into evidence five of respondent's felony convictions. Respondent's last conviction occurred on May 17, 2007, and he was sentenced to six years in the Department of Corrections.

¶ 8 Amy Still was the caseworker in the McLean County case beginning in 2008. She testified that respondent was in prison in 2008, when she became the caseworker. Respondent was paroled from prison in April 2009, but returned to prison in August 2009. Still testified that respondent was ordered to attend anger management counseling, parenting classes and substance abuse classes and that respondent had completed some of those tasks while he was incarcerated.

¶ 9 Brenda Ennis, an investigator for DCFS, testified that on April 20, 2011, she was called to investigate a report that Amanda had delivered a baby after previously being found unfit. Ennis testified that Amanda indicated that she had not complied with any services since her parental rights to B.B. were terminated. Ennis testified that she was unable to interview respondent because he refused to speak with her.

¶ 10 Angie Latham, the caseworker for O.B. since the end of October 2011, testified that Amanda and respondent were married and living together, but they separated in January 2012. Latham testified that she had asked respondent and Amanda to have mental health assessments, and they both refused. Latham also testified that O.B.'s parents had lived in numerous places since the case began, and that respondent had lived in four different cities in the last 18 months.

¶ 11 Respondent testified that he had been living in a trailer for approximately five months, had obtained employment that he believed was a permanent job for him, and had a car and a valid driver's license. Respondent testified that he last visited O.B. on November 2, 2012. He explained that he stopped visiting O.B. because he believed the caseworker might "twist" the visits against him. Respondent also testified that he had completed all necessary services to regain his fitness. He denied any involvement in the alleged domestic violence incidents that reportedly occurred between him and Amanda in 2010.

¶ 12 Amanda testified that respondent forced her to write and sign an affidavit stating that she had lied to police about the November 2010 domestic violence incident. She testified that the police report was correct, and the affidavit was a lie. She testified that respondent had forced her to sign the affidavit because respondent did not want the domestic incident brought up in the adjudication proceeding. Amanda further testified that in November 2012, after an argument with respondent, respondent broke a baby crib into pieces.

¶ 13 As a rebuttal witness, Latham testified that respondent told her that he was not visiting O.B. because he did not feel that he was the reason O.B. came into DCFS care, and that he did not think he should have to complete any services. Latham testified that respondent told her that he had been working and had no financial problems, but he had never provided her any paycheck stubs. Latham also testified that respondent's car had been repossessed, and that respondent had stated in a motion for a continuance that he did not have reliable transportation and could not afford a rental car. Latham testified that she provided respondent and Amanda with bus passes for six months in 2012, and respondent did not find a job until July 2012. Latham further testified that respondent did not complete a mental health assessment, and he continued to have anger issues.

¶ 14 The trial court found the juvenile petition to be proven by a preponderance of evidence. The court found that the respondent and Amanda were previously found unfit and there was no subsequent finding of fitness. The court also found that respondent had completed some services, but he did not utilize the skills from the programs he completed, he continued to have anger issues, he stopped visiting his child, he was not cooperating with DCFS or its designee, and he was involved in one or more domestic violence incidents with Amanda.

¶ 15 At the dispositional hearing on April 11, 2013, respondent was found dispositionally unfit, unable to meet the minimal parenting standards, and O.B. was made a ward of the court.

¶ 16 ANALYSIS

¶ 17 Respondent argues that the trial court's finding that O.B. was neglected was against the manifest weight of the evidence. Specifically, respondent contends that trial court based its finding of neglect solely on the fact that respondent and Amanda had been found unfit previously and there had been no subsequent finding of fitness.

¶ 18 It is the State's burden to prove allegations of neglect by a preponderance of the evidence. In re Arthur H., 212 Ill.2d 441, 464 (2004). On appeal, a trial court's ruling of neglect will not be reversed unless it was against the manifest weight of the evidence. Id. A finding is against the manifest weight of the evidence only when the opposite conclusion is clear evidence. Id.

¶ 19 Under section 2-3(1)(b) of the Juvenile Court Act of 1987 (Act), 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 2008). Generally, "neglect" is defined as a failure to exercise the care that the circumstances warrant. Arthur H., 212 Ill.2d at 463. The term "injurious environment" is generally "interpreted to include the breach of a parent's duty to ensure a safe and nurturing shelter for his or her children." Id.

¶ 20 The terms "neglect" and "injurious environment" do not have fixed meanings, but rather the meanings vary with the facts and circumstances of a particular case. Id. Accordingly, cases involving allegations of neglect * * * are sui generis, and must be decided on the basis of their unique circumstances. Id.

¶ 21 At the adjudicatory hearing, the court is to determine whether the child is neglected, and not whether the parents are neglectful. *Id.* at 467. The court should not consider the acts and/or omissions of the child's parents in arriving at the determination of neglect. *Id.* at 466. Proof of neglect of one minor is admissible evidence on the issue of neglect of any other minor for whom the parent is responsible. *Id.* at 468. There is no *per se* rule that the neglect of one child conclusively establishes the neglect of another child in the same household. *Id.* Rather, such neglect should be measured not only by the circumstances surrounding the sibling, but also by the care and condition of the child in question. *Id.*

¶ 22 Our review of the record indicates that the trial court's finding of neglect was not against the manifest weight of the evidence. Respondent argues that the trial court applied a *per se* rule of neglect and reached the adjudication solely because he and Amanda were previously found unfit. However, the record contains ample evidence of the neglect of O.B.

¶ 23 Respondent and O.B.'s mother continue to have a rocky relationship, with domestic violence incidents occurring between them. Moreover, respondent continues to have anger issues. The record indicates that respondent broke a baby crib after an argument with Amanda. Furthermore, respondent stopped visiting O.B. five months after O.B.'s custody and guardianship was temporarily transferred to DCFS and refused to cooperate with DCFS or its designee. Even though respondent had completed some programs since his initial finding of unfitness, he failed to utilize the skills from the program to cure the conditions leading to O.B.'s removal. Respondent argues that he has suitable housing and full-time employment. Yet, the record shows that respondent had lived in four different cities in the last 18 months, and he failed to provide any pay stubs to the casework to substantiate his employment and

income. Based on the totality of the evidence, the trial court's finding of neglect due to an injurious environment was not against the weight of the evidence.

¶ 24 Respondent also argues that the trial court erred in rendering the dispositional order since the State's petition should have been dismissed at the adjudicatory stage of hearing. Since we find that the trial court's finding of neglect was not against the manifest weight of evidence, we affirm the trial court's dispositional order.

¶ 25 **CONCLUSION**

¶ 26 The judgment of the circuit court of Tazewell County is affirmed.

¶ 27 Affirmed.