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2013 IL App (4th) 120942-U
NO. 4-12-0942
IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

FILED
March 7, 2013
Carla Bender
4th District Appellate
Court, IL

In re: S.W., E.C., K.M., G.C., and L.C., Minors,)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
Petitioner-Appellee,)	Champaign County
v.)	No. 12JA24
LAVONDA MILES,)	
Respondent-Appellant.)	Honorable
)	Richard P. Klaus,
)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Justices Pope and Turner concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court's finding that respondent was "unfit" for purposes of section 2-27(a) of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/2-27(a) (West 2010)) is not against the manifest weight of the evidence, and the dispositional order making her children wards of the court and placing custody and guardianship of them with the Department of Children and Family Services (DCFS) is therefore affirmed.
- ¶ 2 Respondent, Lavonda Miles, has five children, whose initials and dates of birth are as follows: S.W., February 2, 1997; E.C., March 22, 2000; K.M., October 4, 2005; G.C., August 21, 2006; and L.C., May 11, 2009. She appeals from a dispositional order of September 28, 2012, making these children wards of the court. Specifically, she challenges the finding, in the dispositional order, that she is "unfit" for purposes of section 2-27(1) of the Act (705 ILCS 405/2-27(1) (West 2010)) ("unfit or *** unable, for some reason than financial circumstances alone, to care for, protect, train or discipline the minor"). Because that finding is not against the manifest weight

of the evidence, we affirm the trial court's judgment.

¶ 3

I. BACKGROUND

¶ 4

A. The Petition for Adjudication of Neglect

¶ 5

In July 2012, the State filed a petition to adjudicate respondent's five children as "neglected" within the meaning of section 2-3(1)(b) of the Act (705 ILCS 405/2-3(1)(b) (West 2010) ("Those who are neglected include *** any minor under 18 years of age whose environment is injurious to his or her welfare ***.")).

¶ 6

Count I of the petition alleged that the children were neglected in that, when they resided with respondent, they were "expose[d] *** to [the] risk of criminal activity."

¶ 7

Count II alleged that, when the children resided with respondent, they were "expose[d] *** to [the] risk of use of illegal substances."

¶ 8

B. The Adjudicatory Hearing (August 2012)

¶ 9

1. *Preston James*

¶ 10

Preston James, an Urbana police officer, testified that on March 26, 2012, he was dispatched to the scene of a domestic disturbance: reportedly, a man was standing over a girl, yelling at her after having knocked her down. Upon arriving, James talked with the girl, 15-year-old S.W. According to S.W.'s statement to James, her uncle, Eric Miles, had smacked her to the ground for "being hard headed," as he told her, after which he had jumped into a gold-colored vehicle and driven away. S.W. had some swelling under her eye.

¶ 11

Upon running S.W.'s identifying information through the Law Enforcement Agencies Data System (LEADS), James learned that she was listed as a runaway. At his request, S.W. gave him her mother's cell phone number, *i.e.*, respondent's cell phone number. He dialed the number.

A woman answered. James identified himself as a police officer and asked for respondent. The woman told him respondent was not there. When James explained why he was calling, the woman admitted she was in fact Lavonda Miles, but she told him she did not want her daughter S.W. returned to her; instead, she wanted him to "lock her ass up" (referring to S.W.). That was not an option, James replied, and he insisted on bringing S.W. to respondent's address.

¶ 12 When James pulled up in front of respondent's residence with S.W. in the squad car, he saw a "gray Charger" approaching. The Charger turned around—it pulled into a driveway two houses away, backed into the street, and drove the other way at a high rate of speed. James could not see the driver of the Charger, but S.W. told him it was her mother. He dialed respondent's cell phone again, and she answered. He asked her why she was driving away. He explained that he had her daughter with him and that he needed to return her to respondent. Respondent hung up, and his calls thereafter went to her voice mail.

¶ 13 So, James took S.W. to the police station and called DCFS. S.W. was distraught that her mother did not want her back. She told James that, whenever her mother and her mother's boyfriend got in a fight, her mother turned on her and told her to leave the house and that, when S.W. did not return, her mother reported her as a runaway.

¶ 14 While James was on the telephone with DCFS, S.W.'s aunt, named Sharonika, arrived at the police station. Then respondent arrived, only to reiterate that she did not want S.W. back. James noticed some injuries on Sharonika, and he asked her what had happened to her. S.W. provided the answer: She told James she was with Sharonika when Sharonika incurred these injuries. It happened the night before. S.W. telephoned her mother at about 10 p.m. and told her she would be spending the night at Sharonika's house. Around 1:30 a.m., when everyone in Sharonika's house

was asleep, S.W. was awakened by rapping on the window. It was respondent telling S.W. to either come out or let her in. S.W. was too afraid to do either. Then there was a banging on the door. No one was brave enough to open it. Respondent forced the door open and came in, with a brick in one hand and a knife in the other, and battered both S.W. and Sharonika. During this attack, respondent called S.W. a "bitch" and told her never to come home again. James questioned respondent about this incident, and respondent's statement was that "whatever they said happened happened." He arrested respondent for domestic battery, home invasion, and neglect of a child.

¶ 15

2. Harold Hazen

¶ 16 Another Urbana police officer, Harold Hazen, testified that on June 30, 2012, around 1:30 p.m., he received a suspicious-vehicle call. The suspicious vehicles were a silver Chevrolet Camaro and a black Dodge Durango, and they were suspicious because, reportedly, they were involved with gunfire the night before, or at least the Camaro was.

¶ 17

Hazen drove to the location, the area of Pointe Apartments, and pulled into a parking lot, with his overhead emergency lights flashing. The Camaro and Durango were parked next to each other. He saw two people in the Camaro. He could not tell exactly how many people were in the Durango, because its windows were darker, but it appeared to be full of people. He decided to deal with the Camaro first. The Durango looked as if it were about to drive away, so he approached the passenger side of the Durango and told its female driver not to leave and that he would be with her in just a minute, raising his hand and making eye contact with her. When he walked over to the Camaro and began speaking with the people in that car, the Durango drove away, heading north. Hazen radioed that the Durango was fleeing. He heard, on the radio, that the Durango was refusing to stop.

¶ 18

3. *Matthew Bain*

¶ 19 Another Urbana police officer, Matthew Bain, heard Hazen's message on the radio and saw the Durango speeding east on Florida Avenue. He turned on his emergency lights and pursued the Durango but lost sight of it after it turned onto Bermuda Drive. Other police officers, however, stopped the Durango at the intersection of Hunter Street and South Lierman Avenue.

¶ 20 Upon arriving at that intersection, Bain saw two African-American females in custody. The driver was respondent. He learned that two African-American males apparently had exited the vehicle somewhere between Pointe Apartments and the intersection.

¶ 21 On the front passenger seat of the Durango, Bain found four pills wrapped in the corner of a plastic bag. A field test showed a positive reaction for methylenedioxymethamphetamine (MDMA), also known as "ecstasy."

¶ 22

4. *Demetria Candler*

¶ 23 Demetria Candler was a child-protection specialist with DCFS, and she testified that on June 30, 2012, she went to the Champaign County jail and notified respondent that all her children had been taken into protective custody. Respondent "didn't understand *** why her other children were being taken, because they were not involved."

¶ 24

This visit to the jail was not Candler's first encounter with respondent. She went to respondent's residence on October 7, 2011, to investigate domestic violence allegedly perpetrated the day before by Peter Campbell, the father of some of the children. S.W. told Candler she was asleep on the couch, the night of October 6, 2011, when Campbell kicked in the door, hit respondent, and knocked a telephone out of her hand. S.W. attempted to push him out the door, and he fled when respondent told him she already had called the police. The other children were asleep at the

time of this incident.

¶ 25 Respondent told Candler that Campbell lived with them, that he was a user of cannabis, and that he battered her on two occasions on October 6, 2011. The first time, he punched her in the face, took her keys, and tried to take her car, but she called the police, and he fled. Later that night, after everyone went to bed, he returned and knocked on the door. She refused to let him in, and she called the police. Then she called her mother. While she was on the telephone with her mother, he kicked in the door and proceeded to batter her.

¶ 26 *5. Jessica Lee*

¶ 27 Jessica Lee, a child-protection investigator with DCFS, testified that on June 30, 2012, she assumed protective custody of S.W. from the Urbana police and that she also located S.W.'s four siblings and took them into protective custody.

¶ 28 S.W. told Lee what happened earlier that day. She was in a car with her mother, respondent, and they stopped to speak with her mother's friend, whose name was Ashley. Two men, whom S.W. did not know and whom she could not identify, got into the car and requested a ride. A police officer then arrived and ordered respondent to remain where she was. The two men insisted, however, that respondent drive away. Too frightened of the men to disobey them, respondent drove away. Eventually, the two men bailed out of the car, and soon afterward, the police pulled respondent over. S.W. was unaware of any pills in the car.

¶ 29 Lee testified that, after she took S.W. from the police station to the office of DCFS, S.W. fled. Lee had not been able to find her. As of the date of the hearing, S.W.'s whereabouts were still unknown.

¶ 30 *6. Respondent*

¶ 31 After the State rested, respondent testified in her own behalf, but before she did so, the trial court made some observations from its records. The court observed that the charges against respondent stemming from the incident of March 26, 2012, had been dismissed whereas the charges stemming from the incident of June 30, 2012, remained pending. Respondent's attorney agreed.

¶ 32 After the trial court admonished respondent that, by taking the stand, she would be waiving her fifth-amendment right not to testify and that anything she said could be used against her in a criminal proceeding, respondent chose to testify.

¶ 33 She testified that she resided at 2308 East Vermont Avenue in Urbana and that she was the mother of S.W., E.C., K.M., G.C., and L.C. Until June 30, 2012, all five children lived with her, and no one else lived with them.

¶ 34 She owned a black Durango and was driving that car on June 30, 2012. Her daughter was in the car with her. Respondent saw a friend, Ashley, whose last name respondent did not know. Ashley was driving a silver Camaro, and respondent stopped to speak with her.

¶ 35 During respondent's interaction with Ashley, two men, who appeared to be in their 20s and who were standing around with Ashley and her boyfriend, asked respondent to give them a ride to the Home Run gas station. Respondent agreed to do so, and the two men climbed into her Durango, one in the front passenger seat and the other in the middle row of seats. S.W. moved to the backseat. A police officer came onto the scene and ordered respondent to remain parked there, but the two men told her, "in a demanding way," to drive off. Because she did not know the two men, she was scared of them and did as they demanded: she drove away. As she was driving down Florida Avenue, the two men "jumped out" of the Durango.

¶ 36 Respondent decided not to go back to where the police officer was. Eventually,

though, the police located her and pulled her over.

¶ 37 She did not know where the pills came from. They were not hers. Nor did she have any knowledge of a shooting incident.

¶ 38 She had no knowledge of S.W.'s whereabouts.

¶ 39 *7. The Trial Court's Decision in the Adjudicatory Hearing*

¶ 40 After hearing this testimony, the trial court decided that "[r]espondent mother's story [did] not hold water." Even given her testimony, "all the elements of fleeing and resisting" were established with respect to the incident of June 30, 2012. Also, "the testimony of Officer James for the March incident [was] un rebutted." Therefore, the court found that the State had met its burden of proof as to both counts of the petition for adjudication of neglect. The court followed up with a written order detailing the factual bases of its findings of neglect.

¶ 41 *C. The Dispositional Hearing (September 2012)*

¶ 42 *1. Respondent Mother's Exhibit No. 1*

¶ 43 At the beginning of the dispositional hearing, respondent's attorney told the trial court, "Your Honor, I would like to offer a lab report which I believe is related to my client's felony case, which shows that the substance that was found in the car in this incident is not a controlled substance." None of the other parties had any objection to the lab report, and the court admitted it as respondent mother's exhibit No. 1, although this exhibit does not appear to be in the record.

¶ 44 *2. The Testimony of Respondent and Terrelle Williams*

¶ 45 Only two witnesses testified in the dispositional hearing: respondent and Terrelle Williams.

¶ 46 The State called respondent merely to elicit her testimony that Yojoval Sturkey was

K.M.'s father.

¶ 47 Terrelle Williams's attorney called him to elicit his testimony that he was the father of S.W. and that, at this time, he was unwilling to take S.W. into his home "[d]ue to the run-away situations and the complications with her mental health." She also was "involved in *** fights and gang activities." If S.W. obtained mental-health services, however, "to the point where she would stay put," he "would love for her to come back." She lived with him several years ago, when she was in between sixth and seventh grades in school.

¶ 48 *3. The Home and Background Report*

¶ 49 The "Home and Background Report," dated September 11, 2012, was mostly positive regarding respondent. There was no evidence she had a drug problem; the drug tests were all negative. She did not appear to have any significant psychological problem that would interfere with the performance of her responsibilities as a parent. Her weekly visitations with the children went well. She was extremely cooperative with DCFS, and she was adamant that she would complete any services necessary for the return of her children. She usually was gainfully employed, and she had a stable residence.

¶ 50 The only criticism the report made was that respondent seemed to lack sufficient "insight and judgment regarding the safety of her children." She "reported uncertainty regarding the reason for DCFS taking protective custody of her children," and she "showed little insight into the reason for involvement."

¶ 51 The report recommended that the trial court award custody and guardianship of the children to DCFS and that respondent participate in any recommended services.

¶ 52 *4. The Closing Argument By Respondent's Attorney*

¶ 53 At the conclusion of the evidence in the dispositional hearing, respondent's attorney told the trial court (referring to the "Home and Background Report"):

"Your Honor, obviously this is a glowing report about my client's level of cooperation with the case worker and the services and service providers. I could almost make my entire closing argument with the first paragraph of the summary. Every sentence in there is positive about my client, as is the body of the report essentially. She is doing everything that's being asked of her and she is doing it proactively.

That having been said, we recognize there are still things to do, and therefore we would accept the recommendations at this time."

¶ 54 *5. The Dispositional Order*

¶ 55 On September 28, 2012, the trial court entered a dispositional order making the children wards of the court, removing custody and guardianship from the parents, and placing custody and guardianship with DCFS. The paragraph pertaining to respondent said:

"The respondent mother, Lavonda Miles, is unfit and unable for reasons other than financial circumstances alone, to care for, protect, train or discipline the minors and the health, safety, and best interests of the minors will be jeopardized if the minors remain in custody of such parent. The court adopts and incorporates herein its findings rendered orally and in writing at all prior hearings including the temporary custody and adjudicatory hearing. The court further finds that Respondent mother has cooperated with DCFS, but she still

does not understand the consequences of her criminal activity as it relates to her children."

¶ 56 This appeal followed.

¶ 57 II. ANALYSIS

¶ 58 In this appeal, the only part of the dispositional order that respondent challenges is the finding that she was "unfit" for purposes of section 2-27(1) of the Act (705 ILCS 405/2-27(1) (West 2010)). As respondent acknowledges, this finding must stand unless it is against the manifest weight of the evidence. See *In re Stephen K.*, 373 Ill. App. 3d 7, 25 (2007).

¶ 59 Respondent argues that, for three reasons, the finding of unfitness is against the manifest weight of the evidence. First, she asserts that "every sentence" in the "Home and Background Report" was positive about her. (Internal quotation marks omitted.) That assertion is false. Every sentence in the report was positive about her except for the sentences to the effect that she lacked sufficient "insight and judgment regarding the safety of her children" and that she "showed little insight into the reason for involvement."

¶ 60 Second, respondent disputes the trial court's statement that she "does not understand the consequences of her criminal activity as it relates to her children." She argues that her and S.W.'s statements, as well as the police reports, "cast serious doubts over whether Respondent willingly engaged in any criminal activity the day of her arrest." Therefore, she reasons, her "supposed inability to understand the consequences of her criminal activity should have been [*sic*] little or no weight, as the existence of criminal activity on the part of Respondent was not established." Actually, fleeing a lawful investigatory stop would seem to qualify as resisting or obstructing a peace officer (720 ILCS 5/31-1(a) (West 2010)), and breaking into Sharonika's house and inflicting bodily

harm upon her would seem to qualify as home invasion (720 ILCS 5/12-11(a)(2) (West 2010)). That the State, in its discretion, has chosen not to prosecute the latter offense is irrelevant.

¶ 61 Third, respondent argues, referring to the incident of June 30, 2012: "The facts of this case show a mother who was caught in the wrong place at the wrong time." But this "wrong place," so to speak, was of respondent's devising. She let two men into her vehicle whom she did not know, even though her 15-year-old daughter was in the vehicle. (Because respondent evidently was only superficially acquainted with Ashley, not even knowing her last name, the fact that these men were acquaintances of Ashley or her boyfriend is not very reassuring.) Arguably, this behavior shows insufficient insight and judgment regarding her children's safety.

¶ 62 In sum, the State had to prove respondent's unfitness by a preponderance of the evidence. See *Stephen K.*, 373 Ill. App. 3d at 25. The trial court found the State had done so. A review of the record does not "clearly demonstrate" that the court erred by that finding. *Id.*

¶ 63 III. CONCLUSION

¶ 64 For the foregoing reasons, we affirm the trial court's judgment.

¶ 65 Affirmed.