

NOTICE
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2013 IL App (4th) 130424-U

NO. 4-13-0424

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
September 23, 2013
Carla Bender
4th District Appellate
Court, IL

In re: X.B., a Minor,)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
Petitioner-Appellee,)	Champaign County
v.)	No. 13JA7
ROBERTO BARBOSA,)	
Respondent-Appellant.)	Honorable
)	John R. Kennedy,
)	Judge Presiding.

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

ORDER

¶ 1 *Held:* The appellate court affirmed, concluding the trial court's findings that X.B. (born September 9, 2009) was neglected and that it was in X.B.'s best interest to be made a ward of the court were not against the manifest weight of the evidence.

¶ 2 Following an April 2013 adjudicatory hearing, the trial court found X.B. (born September 9, 2009), the minor child of respondent, Roberto Barbosa, neglected due to an environment injurious to his welfare. 705 ILCS 405/2-3(1)(b) (West 2012). At a subsequent dispositional hearing, the court found respondent unfit and unable to care for X.B. and made X.B. a ward of the court.

¶ 3 Respondent appeals, arguing the trial court erred by removing X.B. from respondent's custody and making him a ward of the court.

¶ 4 We affirm.

¶ 5

I. BACKGROUND

¶ 6 In February 2013, the State filed a petition for adjudication of neglect and shelter care, alleging X.B. was neglected in that (1) his environment was injurious to his welfare (705 ILCS 405/2-3(1)(b) (West 2012)) when he resided with respondent because he was exposed to risk of physical harm (count I) and criminal activity (count III); (2) his environment was injurious to his welfare (705 ILCS 405/2-3(1)(b) (West 2012)) when he resided with either respondent or his mother because he was exposed to substance abuse (count II); and (3) X.B.'s mother had abandoned him (705 ILCS 405/2-3(1)(a) (West 2012)) (count IV). Following a February 28, 2013, shelter-care hearing, the trial court granted the Department of Children and Family Services (DCFS) temporary custody of X.B. In April 2013, the State filed a supplemental petition, asserting additional allegations of neglect as to X.B.'s mother.

¶ 7 In April 2013, the trial court held an adjudicatory hearing on the State's petition. X.B.'s mother stipulated to count V of the supplemental petition and is not a party to this appeal. Marcus Truss, a DCFS child-protection investigator, testified on January 14, 2013, DCFS received a hotline report about the safety of X.B. The report indicated that respondent went to a hospital while intoxicated, asking for medication. In addition, the report stated respondent suffered a heart attack from substance abuse with cocaine.

¶ 8 On February 25, 2013, DCFS received a second hotline report based on a home invasion at respondent's apartment. James Barnett testified he was a Rantoul police officer and was dispatched to respondent's apartment on February 24, 2013. Respondent told Barnett that he had been drinking alcohol with two friends "in the late evening hours and early morning hours." The two friends left but later returned, entering the apartment through an unlocked window in the

living room. Respondent and X.B. were asleep but respondent awoke when he heard his dog barking and saw the two individuals in his hallway. The individuals demanded \$6,000 of respondent's roommate's money. Respondent did not know if his roommate had \$6,000 and told Barnett his roommate "had been gone for several days on a possible crack binge." Respondent was able to go into the room where X.B. was sleeping and lock the door; however, one of the individuals kicked open the door, taking \$300 from a pillow and the battery from respondent's cell phone before leaving respondent's apartment.

¶ 9 On February 27, 2013, Truss went to respondent's apartment to speak to respondent about the hotline reports. When Truss knocked on respondent's door, he did not answer; however, when Rantoul police arrived later to assist Truss in opening the door, respondent opened it. Inside the apartment, X.B. was asleep on the couch. Respondent's friend, Nolan, was also present, and respondent explained Nolan had been staying at the apartment for about a week and was living there temporarily. Truss asked Nolan about drugs and asked if he would take a drop. Nolan refused, telling Truss he did not do drugs, and he then gathered his items and departed. After Nolan left, respondent told Truss that Nolan used crack cocaine. Respondent acknowledged Nolan had been living at respondent's apartment for two to three weeks.

¶ 10 Truss also spoke to respondent about respondent's substance-abuse and mental-health issues. Respondent reported he suffered from anxiety, depression, and bipolar disorder. Although respondent had been prescribed medication, he was not taking it at that time. Respondent told Truss he went to detox for five days in December 2012 but denied any other substance-abuse issues. Respondent stated he continued to drink alcohol but initially reported he

only drank on weekends. Later, however, he admitted consuming three beers and five shots of vodka the previous day, which was a Monday, because he "was stressed because he just got robbed at gunpoint." Respondent claimed X.B. was with a babysitter when respondent was drinking, but when Truss contacted the alleged babysitter, she denied watching X.B. the night before. When Truss confronted respondent, respondent admitted he had lied about the babysitter and that X.B. had been with him when he was consuming alcohol. Respondent agreed to submit to a blood-alcohol test, which revealed respondent's blood-alcohol level was almost twice the legal limit.

¶ 11 On March 11, 2013, Stephanie Barrett, a Rantoul police officer, received a domestic battery complaint from Christina Hunt. Barrett testified Hunt told her that Hunt's son, respondent, held a knife to her throat and repeatedly punched her in her upper body. Barrett observed Hunt had large bruising on her upper arm, chest area, and back shoulder area. Barrett also spoke to Lori Garcia, who received a phone call from Hunt about the incident. In that call, Hunt was crying and Garcia was able to hear respondent in the background yelling and making statements about killing Hunt. When Barrett spoke to respondent later that day, he denied harming his mother.

¶ 12 The trial court found the State proved counts I, II, and III of its petition by clear and convincing evidence. In May 2013, the parties appeared for the dispositional hearing. A dispositional report filed with the court indicated respondent was currently in jail pending a charge of aggravated battery with a deadly weapon. DCFS recommended custody and guardianship of X.B. be placed with DCFS. The court found respondent was unfit and unable to care for X.B. and that it was in X.B.'s best interests that he be made a ward of the court, with

custody and guardianship placed with DCFS.

¶ 13 This appeal followed.

¶ 14 II. ANALYSIS

¶ 15 On appeal, respondent argues the trial court erred by removing X.B. from respondent's custody and making him a ward of the court. We disagree.

¶ 16 In any proceeding initiated pursuant to the Juvenile Court Act of 1987 (Juvenile Act), "the paramount consideration is the best interests of the child." *In re A.P.*, 2012 IL 113875, ¶ 18, 981 N.E.2d 336. Proceedings under the Juvenile Act should not be undertaken lightly. *In re A.P.*, 2012 IL 113875, ¶ 18, 981 N.E.2d 336. At an adjudicatory hearing, the trial court decides whether the minor is abused, neglected, or dependent. 705 ILCS 405/2-18(1) (West 2012). The State must prove its allegations of neglect by a preponderance of the evidence. *In re A.P.*, 2012 IL 113875, ¶ 17, 981 N.E.2d 336. After a child is found to be abused, neglected, or dependant, the proceedings advance to a dispositional hearing, at which the court determines whether it is in the minor's and the public's best interests that the minor be made a ward of the court. 705 ILCS 405/2-21(2) (West 2012).

¶ 17 We review a trial court's finding of neglect and its best interests determination under a manifest weight of the evidence standard. *In re A.P.*, 2012 IL 113875, ¶ 17, 981 N.E.2d 336; *In re Austin W.*, 214 Ill. 2d 31, 51-52, 823 N.E.2d 572, 585 (2005). "A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident." *In re A.P.*, 2012 IL 113875, ¶ 17, 981 N.E.2d 336.

¶ 18 Here, the State's petition alleged X.B. was neglected in that his environment was injurious to his welfare. 705 ILCS 405/2-3(1)(b) (West 2012). "[T]he term "injurious

environment" has been interpreted to include "the breach of a parent's duty to ensure a 'safe and nurturing shelter' for his or her children." ' ' " *In re A.P.*, 2012 IL 113875, ¶ 22, 981 N.E.2d 336 (quoting *In re Arthur H.*, 212 Ill. 2d 441, 463, 819 N.E.2d 734, 747 (2004)).

¶ 19 We conclude the trial court's findings that X.B. was neglected and that it was in X.B.'s best interests to be made a ward of the court were not against the manifest weight of the evidence. The evidence presented at the adjudicatory hearing indicated that, on the day Truss visited respondent's apartment, respondent had consumed enough alcohol—while X.B. was in his care—to have a blood-alcohol level twice the legal limit. Respondent admitted he struggled with anxiety, depression, and bipolar disorder, but was not currently taking his medication. These mental-health issues made it difficult for respondent to control his behavior, as evidenced by the fact that at the time of the dispositional hearing, respondent was in jail on aggravated battery with a deadly weapon charges based on allegations he beat his mother and held a knife to her throat.

¶ 20 Respondent argues the State did not prove its allegations of neglect because in the dispositional report, the caseworker indicated respondent (1) spends all of his time with X.B. and does not utilize childcare, (2) utilizes time-outs to discipline X.B., (3) believes love is the most rewarding aspect of parenting, and (4) gives X.B. anything he wants. According to respondent, based on these observations, the trial court should have found respondent was not likely to inflict physical harm to X.B. or expose X.B. to criminal activity. However, the evidence also established respondent had allowed a known crack addict to live in his home for two to three weeks, a situation that resulted in two people breaking into respondent's apartment in search of respondent's roommate's money while X.B. was home. Thus, the trial court's finding that X.B.'s environment was injurious to his welfare was supported by the evidence.

¶ 21 Respondent also points out the dispositional report indicated respondent was not currently using alcohol and had taken steps to correct the conditions in his life at the root of the State's allegations by taking alcohol classes and completing detoxification. Nonetheless, we note the author of the dispositional report ultimately recommended guardianship of X.B. be placed with DCFS. In addition, despite completing detoxification, respondent admitted to Truss he continued using alcohol afterward, and the record is devoid of proof, other than respondent's own statements, that respondent in fact participated in alcohol classes. Finally, we note that, at the time of the best-interest hearing, respondent was incarcerated and was thus unable to care for X.B.

¶ 22 Based on the foregoing, the trial court's findings that X.B. was neglected and that it was in X.B.'s best interest to be made a ward of the court were not against the manifest weight of the evidence.

¶ 23 III. CONCLUSION

¶ 24 For the reasons stated, we affirm the trial court's judgment.

¶ 25 Affirmed.