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2014 IL App (3d) 130354-U

Order filed March 20, 2014

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2014

<i>In re</i> M.S.,)	Appeal from the Circuit Court
)	of the 10th Judicial Circuit,
a Minor)	Peoria County, Illinois,
)	
(The People of the State of Illinois,)	
)	Appeal No. 3-13-0354
Petitioner-Appellee,)	Circuit No. 12-JA-307
)	
v.)	
)	
Darryl S.,)	Honorable
)	Mark E. Gilles,
Respondent-Appellant).)	Judge, Presiding.

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

ORDER

¶ 1 *Held:* The trial court did not err when it concluded that M.S. was a neglected minor. Further, the trial court's determination that respondent remained unfit was not against the manifest weight of the evidence.

¶ 2 On December 18, 2012, a neglect petition relating to M.S. was filed in the circuit court of Peoria County. Following an adjudicatory hearing, the trial court found that M.S. was neglected. Thereafter, a dispositional order was entered finding that respondent, Darryl S., was unfit. M.S.

was made a ward of the court, and the Department of Children and Family Services (DCFS) was named guardian. Respondent appeals, arguing that the trial court erred when it: (1) concluded that M.S. was neglected; and (2) found respondent remained unfit. We affirm.

¶ 3

FACTS

¶ 4

The State filed a juvenile petition on December 18, 2012, alleging that M.S. was a neglected minor. The petition stated that respondent, the father of M.S., had been previously found unfit in Peoria County case Nos. 11-JA-141 and 11-JA-144, and that there had not been a subsequent finding of fitness. Further, it alleged that respondent had not completed services that would result in either a finding of fitness or a return home of the minors involved in the previous cases. Respondent stipulated that a juvenile court had previously found him to be unfit and there had not been a subsequent finding of fitness.

¶ 5

At the adjudicatory hearing in this case, the State offered the certified pleadings from Peoria County case Nos. 11-JA-141 and 11-JA-144. In case No. 11-JA-141, it had been alleged that the minor, D.S., was diagnosed with nonorganic failure to thrive and was medically neglected. The petition listed one occasion where, after learning that D.S. had blood in his urine, respondent and the child's mother waited one week before taking D.S. to the doctor. It was further alleged that respondent had past encounters with DCFS where he had been cited for, among other things, the inadequate supervision of children. The petition also noted that respondent had tested positive for cocaine and cannabis, and that two of respondent's children had already been made wards of the court and placed in the guardianship of DCFS in two separate Tazewell County cases.

¶ 6

At the conclusion of case No. 11-JA-141, D.S. was found neglected, and respondent was found unfit. The dispositional order in that case mandated that respondent complete certain tasks before he could be restored to fitness. Those tasks included: (1) performance of two random

drug drops per month; (2) submission to a psychological examination; (3) the attainment of stable housing; (4) completion of scheduled visitation with the children; (5) use of best efforts to obtain employment; and (6) participation and successful completion of counseling, a parenting course or class, and a domestic violence course or class.

¶ 7 During the adjudicatory hearing in this case, respondent testified that he had substantially completed the tasks mandated by case No. 11-JA-141. Respondent said he had submitted his psychological examination and completed his parenting and domestic violence classes. He further noted that he had obtained housing and had attended all of the scheduled visits with his children. However, he stated that he had not been able to find employment, his counseling sessions were still ongoing, and he had missed one drug drop.

¶ 8 At the conclusion of the hearing, the trial court stated that after "[c]onsidering the allegations in the petition, the answers of the parties, the evidence presented today, and arguments of counsel, I find that the State has proved all of the allegations in the petition." Based on that conclusion, the court found that M.S. was a neglected minor. The court then addressed respondent, saying, "there wasn't enough based on your testimony today for me to make a finding other than the one I made today even though the burden was on the State."

¶ 9 At the dispositional hearing following the court's finding of neglect, respondent's attorney argued that respondent should be found fit because he had substantially completed the tasks mandated by case No. 11-JA-141. The State argued that respondent had been making efforts, but still needed to complete certain tasks before he would be considered fit. At the conclusion of the hearing, the trial court determined that M.S. should be made a ward of the court and appointed DCFS as the minor's guardian. The court also found that respondent remained unfit. Despite this finding, the court noted that respondent was getting closer to a restoration of his fitness. Respondent appeals.

ANALYSIS

I

¶ 10 Respondent first contends that the trial court's finding of neglect was error. Respondent
¶ 11 claims that: (1) there was no direct evidence that M.S. was a neglected minor; and (2) the trial
¶ 12 court erred when it failed to articulate the standard it used in making its determination. We will
reverse a trial court's determination regarding neglect only if we find it to be against the manifest
weight of the evidence. *In re Arthur H.*, 212 Ill. 2d 441 (2004).

¶ 13 Respondent argues that the State failed to produce any direct evidence that M.S. was a
neglected minor. Under section 2-3(1)(b) of 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 2012). The terms "neglect" and "injurious environment" do not
have fixed meanings, but vary with the facts and circumstances of a particular case. *In re J.C.*,
396 Ill. App. 3d 1050 (2009). Thus, each case must be decided on the basis of their individual
facts. *Id.* In order for a trial court to find neglect, the State must prove its allegations by a
preponderance of the evidence. *Arthur H.*, 212 Ill. 2d 441.

¶ 14 In proving neglect, the State can proceed on a theory of anticipatory neglect. Under that
theory, the State seeks to protect not only children who are the direct victims of neglect or abuse,
but also those who have a probability to be subject to neglect or abuse because they reside, or in
the future may reside, with an individual who has been found to have neglected or abused
another child. *Id.* Evidence of neglect of one minor is admissible on the issue of the neglect of
any other minor for whom the respondent is responsible. 705 ILCS 405/2-18 (West 2012).
However, there is no *per se* rule that the neglect of one child conclusively establishes the neglect
of another child in the same household. *J.C.*, 396 Ill. App. 3d 1050. Still, when faced with

evidence of prior neglect by parents, the juvenile court should not be forced to refrain from taking action until each particular child suffers an injury. *Arthur H.*, 212 Ill. 2d 441.

¶ 15 After reviewing the facts in this case, we conclude that it was not against the manifest weight of the evidence for the trial court to determine that M.S. was neglected based on the theory of anticipatory neglect. We agree with respondent that the State did not produce any direct evidence that M.S. was neglected. However, we find this case analogous to *J.C.*, where a minor was found neglected based solely on evidence that the respondent's other children had been found neglected. *J.C.*, 396 Ill. App. 3d 1050. Important in that decision was the fact that, while the respondent had completed domestic violence training and a psychological evaluation, other required services pending from previous cases were still ongoing. *Id.*

¶ 16 Here, children had been found neglected in two previous cases involving respondent. By respondent's own admission, certain requirements from those cases, such as the completion of counseling, remained unfulfilled at the time of the adjudicatory hearing in this case. Respondent also admitted to missing a mandatory drug drop. Therefore, at the adjudicatory hearing in this case, respondent remained incapable of discharging his parental duties. We conclude that *J.C.* is analogous and supports a finding that the trial court's determination of neglect without any direct evidence regarding M.S. was not against the manifest weight of the evidence.

¶ 17 Respondent also argues that his due process rights were violated when the trial court failed to articulate the standard it was using in making its neglect determination. It is not disputed that the basic requirements of due process and fairness must be satisfied in juvenile court proceedings. *In re E.D. Mc.*, 216 Ill. App. 3d 896 (1991).

¶ 18 Here, respondent took issue with the trial court's statement that, "there wasn't enough based on your testimony today for me to make a finding other than the one I made today even though the burden was on the State." According to defendant, that statement made it impossible

to determine what the court considered in concluding that the State met its burden. However, the above statement was taken out of context. Prior to making that statement, the trial court stated, "Considering the allegations in the petition, the answers of the parties, the evidence presented today, and arguments of counsel, I find that the State has proved all of the allegations in the petition." The trial court's oral judgment stated the factors the court considered and did not violate respondent's due process rights. Therefore, we find no violation.

¶ 19

II

¶ 20

Respondent next contends that the trial court erred when it found that he remained unfit. Specifically, respondent argues that: (1) due process required the wardship petition allege that he remained unfit; and (2) the trial court's determination was likely based solely on his financial circumstances. We will only reverse a trial court's determination that a parent is unfit if that determination was against the manifest weight of the evidence. *In re K.R.*, 356 Ill. App. 3d 517 (2005).

¶ 21

First, we conclude that respondent's due process rights were not violated by the petition's lack of a declaration that respondent remained unfit. This court has recently held that a juvenile petition places both parents on notice that their fitness will be at issue at a dispositional hearing. *In re A.P.*, 2013 IL App (3d) 120672. Therefore, a parent may be found unfit even if the juvenile petition contains no allegations against him. *Id.* Based on this reasoning, we conclude that respondent's due process rights were not violated.

¶ 22

Respondent next argues that the trial court's determination that he remained unfit was against the manifest weight of the evidence. Respondent contends that the court's finding was based solely on financial circumstances. We disagree. Although respondent's failure to secure employment and his housing difficulties may have been a factor in the court's determination, other factors also existed. Those factors included respondent's failure to complete all required

drug drops and his noncompletion of required counseling. See *J.C.*, 396 Ill. App. 3d 1050 (a finding of unfitness was not against the manifest weight of the evidence where respondent had completed some of her required services but counseling and visits were still ongoing). The combination of these factors leads us to conclude that the trial court's finding of respondent's continued unfitness was not against the manifest weight of the evidence.

¶ 23

CONCLUSION

¶ 24

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

¶ 25

Affirmed.