

**NOTICE**

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2014 IL App (4th) 140025-U

NO. 4-14-0025

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**  
May 7, 2014  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

In re: J.J., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Sangamon County
v.	)	No. 13JA79
SHAUNDA JOHNSON,	)	
Respondent-Appellant.	)	Honorable
	)	Matthew Maurer,
	)	Judge Presiding.

PRESIDING JUSTICE APPLETON delivered the judgment of the court.  
Justices Knecht and Steigmann concurred in the judgment.

**ORDER**

¶ 1 *Held:* The State presented sufficient evidence to find the minor neglected based upon his injurious environment when he resided with respondent mother due to the effect that her mental illness and alcohol use had on the care of the minor.

¶ 2 Respondent, Shaunda Johnson, appeals from the trial court's order adjudicating her child, J.J., born March 1, 2013, a neglected minor pursuant to section 2-3(1)(b) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(1)(b) (2012)). She claims the court erred in finding J.J.'s environment was injurious to his welfare due to respondent's use of alcohol and her mental illness. Because the court's decision was not against the manifest weight of the evidence, we affirm.

¶ 3 **I. BACKGROUND**

¶ 4 On May 29, 2013, the State filed a petition for the adjudication of neglect, claiming J.J., a three-month-old infant, was neglected pursuant to section 2-3(1)(b) of the

Juvenile Court Act (705 ILCS 405/2-3(1)(b) (West 2012)) "in that the minor's environment is injurious to his welfare as evidenced by the alcohol use of the mother" (count I) and "by mental illness of the mother" (count III). (Count II alleged an injurious environment based upon the father Michael Prescott's drug use.) The trial court, the Honorable Steven H. Nardulli presiding, entered a shelter care order, granting temporary custody and guardianship of the minor to the Illinois Department of Children and Family Services (DCFS). After an investigation into Prescott's home environment, his background, and after random negative drug screens, on September 10, 2013, the minor was placed in Prescott's home. He is not a party to this appeal.

¶ 5 On November 7, 2013, the trial court, the Honorable Matthew J. Maurer presiding, conducted an adjudicatory hearing. First, the State asked the court to take judicial notice of Sangamon County case Nos. 13-OP-467, 13-OP-624, and 10-P-650. (Neither the relevance, nor the specifics, of these cases are clear to this court.) Without objection, the court agreed and took judicial notice of the court files.

¶ 6 The State presented the following evidence. Tammy Lynn, a Springfield police officer, testified that on May 23, 2013, she responded to a call of an elderly female being kicked out of her home by her daughter (later identified as respondent). The officer found respondent at her home drinking alcohol. She described respondent as "very \*\*\* verbally aggressive." Lynn did not want to leave respondent and her mother together, fearing a physical altercation would occur. Lynn said, based on respondent's behavior, she suspected respondent suffered from a mental illness. Lynn made arrangements with a neighbor for respondent's mother to stay overnight at the neighbor's house, away from respondent.

¶ 7 Jennifer Howard, a Springfield police officer specializing in elder-abuse calls, testified she responded to respondent's home at approximately 8 a.m. the next morning, May 24,

2013, to follow up on the situation from the night before. According to Howard, respondent's behavior was alarming in that she was unable to stay focused on Howard's questions. Respondent was drinking beer from a clear plastic cup. Howard surmised from her "training and experience" that "there was some kind of an illness going on, and [respondent] was on medication." Howard was concerned about J.J.'s welfare. According to respondent, J.J. was being cared for by respondent's friend, John Wilson. Howard went upstairs to check on the infant's welfare.

¶ 8 Howard said she was concerned about the care Wilson was providing the child. The child was dressed too warmly for the weather, and he was lying on a bed with no side protection with bottles of prescription medication everywhere. She said Wilson "didn't seem comfortable with a small baby." Howard told Wilson to change the infant's diaper, but he acted like he did not know what to do. Howard guided him through the process. In her opinion, the child was not safe in the home.

¶ 9 Howard testified she remained at respondent's home from 8 a.m. to 4 p.m. During that time, Howard did not see the child being fed and did not see respondent care for the child at all. Howard said respondent drank alcohol the entire day. Howard called DCFS.

¶ 10 Andrea Burns, a DCFS child protection investigator, testified she was called to respondent's home at approximately 1 p.m. on May 24, 2013, regarding issues of supervision and "allegations having to do with [respondent's] alcohol use, and misuse, and also delusional behaviors of [respondent]." Burns said respondent was angry when Burns first arrived and would not let her into the home. Respondent agreed to speak with Burns on the front porch and, by the time they sat down, respondent was "smiling and saying what did [she] need." She said respondent's mood varied "back and forth." Burns smelled alcohol on respondent's breath.

Respondent explained to Burns that either Wilson or her 18-year-old son was caring for J.J. while she drank. Respondent called for Wilson to come downstairs to speak with Burns, but when he arrived, Burns told him she would speak to him later. In Burns' opinion, Wilson "appeared possibly somewhat delayed." Respondent advised Burns she was taking Risperidone and said her doctor was Dr. Reddy; however, respondent refused to sign a release. Respondent told Burns she has historically suffered from depression, and most recently, from postpartum depression. Burns was concerned about respondent's mental health, her truthfulness, and her drinking. Burns said respondent did not have a "consistent train of thought." At 2:55 p.m., Burns decided to take J.J. into protective custody. According to Burns, J.J. was dressed in an outfit too warm for the day's weather.

¶ 11 Burns said she contacted Prescott, who advised he was concerned about respondent's mental state and her drinking problem. J.J. was initially placed in a traditional foster home. For the next several days, respondent telephoned Burns asking about J.J.'s welfare and inquiring about having him returned to her care. However, according to Burns, based on respondent's questioning and comments, it was apparent she was not thinking clearly. She "was juggling from one topic to another topic." Burns said respondent had told her that her mother has schizophrenia and her whole family "has problems." Respondent also told Burns she was "the lucky one" because she did not suffer from any mental illness.

¶ 12 On cross-examination, Burns testified she was at respondent's home for approximately two hours on May 24, 2013. During that time, Burns said, she did not see respondent drink.

¶ 13 Michael Prescott, J.J.'s father, testified for the State. He said he was in a short-term relationship with respondent before she got pregnant with J.J. They separated within a few

months. He said he cared for J.J. after he was born because respondent was on medication. He stayed for approximately two weeks until he "couldn't stand it in anymore because of the drinking." Respondent had told Prescott she suffered from depression. Prescott said "her attitude was on and off, happy, sad, angry. It was jumpy, it was here and there." According to Prescott, respondent would sometimes appear at his apartment in the middle of the night yelling and screaming. He said he was aware she was taking medication for mental-health issues, and in his opinion, respondent was not a stable individual. After one of the late-night incidents, Prescott called the police, filed a petition for an order of protection, and also filed a petition to establish paternity.

¶ 14 The State rested and respondent did not present any evidence. After considering the testimony presented, the trial court found as follows:

"I do find the State has met those allegations with respect to paragraphs one and three, relative to the mother's use of alcohol that the environment is injurious to the minor child evidenced by the alcohol use of the mother, as well as the minor being neglected in the environment evidenced by the mental illness of the mother testified to erratic behavior of the mother, she couldn't stay focused on tasks, noted by [Officer] Harmon[.]

At no time did she ever care for the child, there were times when she had to have direction for the care of the child to change the baby's diaper, and so forth."

The court found the State had met its burden, and on November 7, 2013, entered a written order of adjudication, finding J.J. to be a neglected minor.

¶ 15 On December 27, 2013, DCFS filed a dispositional report, which indicated J.J. was doing well placed with Prescott. He was addressing all of the minor's needs. However, according to the report, respondent "has bounced around since case opening, so her housing has not been maintained." Although respondent did not have a job, she insisted she had been diligently searching. She told the caseworker she had been approved for unemployment benefits. Respondent eventually signed consents for referral of services. She had three mental-health counseling sessions and had been referred for a substance-abuse assessment.

¶ 16 Respondent had been inconsistent with her visits with J.J., and her mental-health was "questionable, as she would bring up information out of the blue and jump from topic to topic and seemed to talk to the worker supervising her visit more than visit with her son." However, according to the report, since the adjudicatory hearing, respondent seemed to "be in a much better mental state of mind."

¶ 17 On January 2, 2014, the trial court entered a dispositional order, finding (1) it in the best interest of the minor that he be made a ward of the court; (2) respondent unfit, unable, or unwilling for some reason other than financial circumstances alone to care for, protect, train, educate, supervise, or discipline the minor; and (3) reasonable efforts have been unsuccessful in rectifying the conditions which led to the finding of unfitness and the minor's best interest would be jeopardized if custody remained with respondent. This appeal followed.

¶ 18 II. ANALYSIS

¶ 19 Respondent appeals only from the trial court's adjudicatory order, claiming the State failed to prove by a preponderance of the evidence that J.J. was a neglected minor pursuant to section 2-3(1)(b) of the Juvenile Court Act (705 ILCS 405/2-3(1)(b) (2012)). She claims the court's decision was "based almost exclusively on an isolated incident and no medical

documentation as to any psychiatric illness." She claims, although the State may have proved respondent suffered from a mental illness and/or "a drinking problem," the State failed to demonstrate J.J.'s environment was injurious to his welfare.

¶ 20 In a petition for adjudication of wardship under the Juvenile Court Act, the best interest of the child is the paramount consideration. *In re J.W.*, 386 Ill. App. 3d 847, 856 (2008). The State must prove its allegation of neglect or abuse by a preponderance of the evidence. *In re Arthur H.*, 212 Ill. 2d 441, 463-64 (2004). Preponderance of the evidence is that amount of evidence that the State must present to establish the allegations of neglect are more probably true than not. *Arthur H.*, 212 Ill. 2d at 464. Upon review, the trial court's decision will not be disturbed unless it is against the manifest weight of the evidence, which means it will be reversed "only if the opposite conclusion is clearly evident." *Arthur H.*, 212 Ill. 2d at 464.

¶ 21 "Neglect" is generally viewed as a failure to exercise the regard that circumstances justly demand. *Arthur H.*, 212 Ill. 2d at 463. It could encompass either a willful or unintentional disregard of parental duties. *Arthur H.*, 212 Ill. 2d at 463 (quoting *In re N.B.*, 191 Ill. 2d 338, 346 (2000)). An "injurious environment" is " 'an amorphous concept which cannot be defined with particularity' " (*N.B.*, 191 Ill. 2d at 346 (quoting *In re M.Z.*, 294 Ill. App. 3d 581, 593 (1998)) but has been interpreted "to include the breach of a parent's duty to ensure a 'safe and nurturing shelter' for his or her children" (*N.B.*, 191 Ill. 2d at 346 (quoting *In re M.K.*, 271 Ill. App. 3d 820, 826 (1995))).

¶ 22 Based on the evidence presented, we cannot say the trial court's decision was against the manifest weight of the evidence. That is, the opposite conclusion was not clearly evident from the testimony presented. Officer Howard and DCFS worker Burns both testified consistently regarding the circumstances at respondent's home on May 24, 2013. Howard

testified respondent was drinking at the time she arrived at 8 a.m. and continued all day. Burns smelled alcohol on respondent's breath though she did not see her actually drink in the two hours she was at the home. Neither witness saw respondent perform any caretaking responsibilities of J.J. while each was at the home. Howard went upstairs to check the child's welfare and found Wilson, whom she described as mentally disabled, with the child though Howard had to ask the man to change the child's diapers. While Howard watched him perform this task, she was not certain he was capable of properly caring for the infant. She had to prompt him on how to change a diaper. She had to tell him what to do next and correct him when she found him doing something incorrectly. According to Howard and Burns, the infant was not dressed in weather-appropriate attire, and neither saw the child get fed all day.

¶ 23 Both of these witnesses also described respondent's mental state as confused or rambling, frequently alternating between various thoughts and emotions. According to their testimony, it was clear to both witnesses that respondent's environment was not suitable for the proper care and nurturing of a three-month-old child based upon respondent's alcohol consumption and poor mental health.

¶ 24 Prescott, J.J.'s father, also provided the trial court with evidence that respondent had unresolved issues with alcohol. He testified he tried to care for his son while living with respondent but he was unable to cope with her drinking. Further, Officer Lynn testified the night before she was called to respondent's home investigate a claim of elder abuse. According to the dispatch, respondent had kicked her mother out of her home. When Lynn spoke to respondent, respondent was verbally aggressive and was drinking alcohol. Lynn arranged for respondent's mother to stay overnight at a neighbor's home. Lynn did not mention J.J., but it is likely the child was in the home with respondent that evening. From Lynn's brief encounter with

respondent on the evening of May 23, 2013, she presumed respondent suffered from a mental illness because respondent "was very erratic" and "very aggressive." In fact, respondent admitted she suffered from a mental illness.

¶ 25 We conclude the evidence presented at the adjudicatory hearing amply supports the trial court's finding that J.J. was a neglected minor based upon the fact he resided in an environment that was injurious to his welfare when he was with respondent based upon her mental illness and her alcohol consumption. We find the court's order adjudicating J.J. a neglected minor was not against the manifest weight of the evidence.

¶ 26 III. CONCLUSION

¶ 27 For the reasons stated, we affirm the trial court's judgment finding J.J. a neglected minor under a theory of an injurious environment.

¶ 28 Affirmed.