

No. 1-14-3819

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).

**IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT**

In the INTEREST OF STEVEN W., a minor,)	Appeal from the
)	Circuit Court of
(PEOPLE OF THE STATE OF ILLINOIS,)	Cook County
)	
Petitioner-Appellee,)	
)	No. 04 JA 334
v.)	
)	
BEVERLY W.,)	Honorable
)	Nicholas Geanopoulos,
Respondent-Appellant.)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court
Justices Cunningham and Connors concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court's finding of neglect is affirmed where evidence showed defendant mother made little to no effort to find alternative residential options for the minor's care, did not follow through with therapies and treatment because she believed they "were not helping," and refused to allow the minor to return home even after being offered the services of an in-home therapist.

¶ 2 Respondent, Beverly W., appeals the circuit court's finding of neglect and adjudication of wardship concerning minor Steven W. On appeal, Beverly contends that the finding of neglect was against the manifest weight of the evidence where Steven suffers from mental health issues, threatened to kill his mother Beverly and his brother Shane, and has exhibited aggressive behavior in a way that Beverly can no longer control him. For the following reasons, we affirm.

¶ 3 JURISDICTION

¶ 4 After a finding of neglect, the trial court adjudicated Steven a ward of the court on December 12, 2014. Beverly filed this appeal on December 16, 2014. Accordingly, this court has jurisdiction pursuant to Illinois Supreme Court Rules 301 and 303 governing appeals from final judgments entered below. Ill. S. Ct. R. 301 (eff. Feb. 1, 1994); R. 303 (eff. May 30, 2008).

¶ 5 BACKGROUND

¶ 6 Steven was born on January 30, 2002. When he was two years old, he was placed in the child welfare system due to abuse and neglect by his biological mother. Steven was placed with Beverly, who subsequently adopted him when he was eight years old. In March of 2014, the Department of Children and Family Services (DCFS) became involved when Beverly refused to allow Steven to return home after he was discharged from Garfield Park Hospital. Beverly stated that she did not feel safe with Steven in the home "until he got the help he needed." Petitioner State of Illinois filed a petition for adjudication of wardship pursuant to sections 2-3(1)(a) and 2-3(1)(b) of the Juvenile Court Act of 1987 (the Act), alleging that Steven was neglected due to lack of care and due to an injurious environment. 705 ILCS 405/2-3(1)(a), (b) (West 2012). The public guardian agreed with the State, arguing for a finding of neglect based

on Beverly's refusal to allow Steven to return home, and her reluctance to work with DCFS to create a care plan for him. Beverly, however, argued for a finding of dependency under section 2-3(1)(c) of the Act. 705 ILCS 405/2-3(1)(c) (West 2012). Meanwhile, Steven was placed in the temporary custody of DCFS.

¶ 7 An adjudicatory hearing was held on October 16, 2014. At the hearing, DCFS investigator Stacy Sims testified for the State. Sims stated that she was assigned Steven's case in March, 2014, to investigate an alleged "lockout." On March 5, 2014, Sims spoke with Beverly on the phone about her refusal to take Steven home from Garfield Park Hospital. Beverly told her that she was afraid of Steven and did not feel safe with him in the home. Sims informed Beverly that post-adoption services, including an in-home therapist, would be provided but Beverly insisted that Steven could not come home until "he got the help he needed."

¶ 8 The next day, Sims spoke in person to Beverly. Steven's 14 year old brother, Shane, who is also adopted, was present. Sims stated again that DCFS would provide services if Steven returned home, but Beverly refused the offer. Beverly believed that Steven was a threat to her and to Shane. She told Sims of an incident in which Steven held a pair of scissors and a weight in his hands, and threatened to kill her and Shane. Beverly did not recall whether she called the police and she did not state that anyone was injured in the incident. When Sims asked Shane if he was afraid of Steven, Shane stated that he was not because Steven was younger than him.

¶ 9 Sims spoke with Steven at the hospital. Steven denied that he picked up the weight and told Sims he did not want to return home. He stated that Beverly and Shane abused him and that Shane, who was bigger and taller than Steven, would hold him down while "he would get whoopings."

¶ 10 At a clinical staff meeting on March 14, 2014, Beverly again refused to allow Steven to return home. She stated that although Steven had received services in the past, the services did not work. After Steven's hospitalization in June, 2013, he was assigned a therapist. Beverly stopped those sessions after several months because they did not seem to be effective. The therapy agency did not follow up after Beverly stopped the sessions. Beverly also stated that Steven had been prescribed medication for attention deficit hyperactivity disorder (ADHD) but she did not give him the medication until he began misbehaving in school. Sims took protective custody of Steven on March 31, 2014, because Beverly refused to allow him to return home and no other relatives could take care of him.

¶ 11 On cross-examination, Sims stated that Shane told her Steven had anger issues. In addition to the scissors and weight incident, Steven also hit a storm door in anger and broke the door. Shane also stated that Beverly disciplined them by revoking privileges, and that she never used physical punishment. Sims visited the home and found it safe and appropriate. She also stated that Steven admitted he often ran away from home and that he was in the hospital for anger issues. Steven told Sims that he was angry with Beverly because she yelled at him. Steven also admitted that he broke the storm door window.

¶ 12 Before resting its case, the State introduced psychiatric hospital records from Steven's stays in June, 2013, at Hartgrove Hospital, and from February to May of 2014, at Garfield Park Hospital. The public guardian and Beverly also published reports from the hospital records.

¶ 13 The Hartgrove Hospital records showed that Steven was admitted on June 4, 2013, and discharged June 29, 2013. He was admitted after drawing pictures in school of killing people in the school. He also admitted to suicide ideation. He was defiant towards the teacher and shouted profanities. He was diagnosed with intermittent explosive disorder and ADHD.

When asked at the hospital to draw something happy, Steven drew a picture of a "guy kicking a cheerleader." For a sad picture, Steven drew a family member being shot. When asked to draw something depicting anger, he drew pictures of himself killing a patient on the unit. Beverly also complained of oppositional defiant behavior in Steven and stated that he "needs to work on [his behavior] himself." The records showed that Steven hit himself in the face and punched himself in his chest. Steven stated that his mother tried to choke him, but Beverly responded that she was trying to control him and his aggressive behavior. No marks were found on Steven. Social worker records on June 19, 2013, revealed that Steven thought his mother was trying to kill him. Beverly denied any abuse and stated that she used corporal punishment only after other methods of discipline failed. She stated, "Nothing works. He does not care about anything." However, during a family session two days before his discharge, Steven was found to be less guarded and more cooperative than in previous sessions and he stated that he was ready to return home. He told Beverly that he would go to therapy and take his medications. Beverly stated that she loved Steven and would do anything to support him.

¶ 14 The Garfield Park Hospital records showed that Steven was anxious and sad about returning home. He had a bruise near his left eye and scars on his arm. He felt sad because he was getting yelled at every day, although he denied being depressed or irritable, or having any trouble sleeping. He denied wanting to harm himself, but acknowledged wanting to kill his brother because his brother teases him when Beverly beats him. Steven claimed that Beverly banged his head against the wall while he was sleeping. He stated that he had flashbacks of being held down and choked. Steven "does not feel supported by family members or peers and finds others to be unavailable when he needs them." He wanted to live in a group home. On

March 3, 2014, the hospital planned to discharge Steven the following day but Beverly raised concerns about him returning home. She denied abuse and stated that Steven "just does not like the limits and consequences at home." The social worker noted that Steven's mood was stable and he had a viable home safety plan in place. However, Beverly continued to have concerns and Steven's case was noted as "a potential lockout." On March 11, 2014, the physician noted under length of stay that Steven's case was a "lockout." The records also stated that Steven's worsening behavior was likely due to his extended hospitalization. Records showed that on March 18, 2014, Steven was disoriented, crying, and having dissociation episodes. He was diagnosed with post-traumatic stress disorder due to his experiences at home.

¶ 15 The Garfield Park Hospital records also showed that Beverly reported an incident after school when she asked Steven to clean up the ice and snow outside. Steven responded that he did not know how to do it so Shane cleaned up the ice and snow. Beverly then asked Steven to break down boxes to fit into the garbage cans. Steven started kicking the boxes, pacing and swearing, and "[s]not was coming out of his nose." Beverly told Steven to go to his room and when she checked on him, he was going into Shane's room with a weight and a pair of scissors in his hands. After he calmed down, Steven explained that he felt that he does not get privileges for doing chores, although Shane does get those privileges. Beverly told Steven he did not get privileges because he was always being suspended from school.

¶ 16 The records of March 25, 2014, found that Steven can "become somewhat aggressive and intimidating" and that he requires redirection. Steven also had two altercations with a developmentally challenged peer who was annoying him and talking too much. Steven needed "stronger medication to help control his anger."

¶ 17 After the hospital records were published, Beverly testified on her own behalf. She stated that Steven came to live with her when he was two years old, and that she never noticed behavioral problems until he started school. She began to volunteer at the school and thought Steven was "just being a kid" and he "would grow out of it." When testifying about the scissors and weight incident, Beverly stated that she asked Steven to chop the ice near the screen door but "he just barely touched it." Shane then chopped the ice. Steven started pacing back and forth, swearing and talking to himself. His nose was dripping and he was spitting. Shane went upstairs. Beverly heard the glass at the top of the screen door break and saw Steven standing next to the door. She told Shane to get some tape and scissors to mend the glass and then she heard Steven walk up the stairs to Shane's room saying, "I'm going to kill Shane, I'm going to kill Shane." Beverly saw Steven going up the stairs carrying a weight in one hand and scissors in the other. Shane was in his room and when she saw Steven going to Shane's room, she told him to "[g]ive me that stuff." Although Steven "resisted a bit," they did not struggle and Beverly managed to snatch the scissors and weight away from Steven. When she asked Steven why he broke the glass on the door he responded, "[w]hy should I do anything for you when you don't do nothing for me?" Beverly then called Garfield Park Hospital to hospitalize Steven.

¶ 18 Beverly testified that after Steven's hospitalization at Hartgrove Hospital, she took him to therapy although sometimes the therapist came to the house. She did not recall how long Steven participated in therapy. She also stated that at first she did not monitor Steven's medication intake but she noticed at some point that he was putting his medication in the bathroom vent. After this discovery Beverly began to watch Steven take his medication.

¶ 19 Beverly denied that she ever banged Steven's head against the wall. Rather, she would go into his room and see him hitting his own head against the wall. Beverly also denied that

she choked Steven, stating that she had grabbed him by the shoulders instead when he was coming after her. Beverly testified that Steven's behavior was getting worse as he has gotten older. She also did not think that therapy was "doing anything for him." She recalled one person coming to the house and they sat around the table playing Monopoly together. Beverly stated, "That's not services to me."

¶ 20 On cross-examination, Beverly stated that when Steven was discharged from Hartgrove Hospital, he was on medication and therapy. After he was discharged, however, she stopped therapy because it was not "helping." When he was ready for discharge from Garfield Park Hospital, Beverly knew the same agency that provided therapy services before would again provide Steven services and those services "did not help him before." She acknowledged that she never asked for another service provider. Beverly stated that she did not ask anyone else to take care of Steven because "[e]verybody that I knew was afraid of him" and told her that she "should have gotten rid of him a long time ago."

¶ 21 After closing argument, the trial court found Steven neglected and not dependent. It found that according to the medical records, Steven "is not a big child." It noted that in lockout cases where dependency is found, "it's generally always with an extreme level of violence on behalf of the minor physically threatening family members, police being called *** And in this case, we really don't have any of that." In the one incident involving violence, the incident with the scissors and weight, the trial court noted that Beverly was able to diffuse the situation "with no issue" and Steven listened to her and stayed away from Shane. The trial court found that the State proved lack of care and an injurious environment by a preponderance of the evidence, "and that the abuse and neglect is that inflicted by a parent."

¶ 22 At the disposition hearing on December 12, 2014, Beverly was not present. Steven's caseworker, Megan Pool, testified on behalf of the State. She stated that Beverly was assessed for services and recommended for individual therapy, a psychological evaluation, and participation in Steven's treatment. Beverly has not yet begun services and although it was recommended she visit with Steven twice a month, she has not visited Steven. They do speak regularly over the phone.

¶ 23 Steven currently resides at a treatment facility called Onarga Academy. He participates in therapy, medication monitoring, and life skills and art groups. At present, he is making "minimal progress" because he is adjusting to the placement and is "rebellious against the treatment." He is making progress academically, but struggles with the rules and regulations of school. He has had seven unusual incidents involving suicidal ideations or threats, being physically aggressive toward staff or peers, and refusing medication.

¶ 24 Pool recommended that Steven be adjudged a ward of the court since he is not ready to return home and Beverly has stated that she is not able to meet his needs presently. They are willing to work toward reunification, however. Pool also stated concerns regarding Shane's situation with Beverly. She noted that three hotline calls were made regarding incidents between Shane and Beverly and that Shane has been hospitalized for psychiatric reasons. Steven was adjudged a ward of the court and placed in the custody and guardianship of DCFS. Beverly does not contest the determination to make Steven a ward of the court. However, Beverly now appeals the trial court's finding of neglect.

¶ 25 ANALYSIS

¶ 26 Beverly contends that the trial court erred in finding that Steven was a neglected minor due to lack of care and due to an injurious environment. She argues that the trial court should

have found that Steven was a dependent minor. The State must prove neglect by a preponderance of the evidence. *In re Christina M.*, 333 Ill. App. 3d 1030, 1034 (2002). A reviewing court will not reverse the trial court's determination unless it is against the manifest weight of the evidence. *In re Christopher S.*, 364 Ill. App. 3d 76, 86 (2006). A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly apparent from the record. *Id.*

¶ 27 The Act defines a neglected minor as one "who is not receiving the proper or necessary support, education as required by law, or medical or other remedial care recognized under State law as necessary for a minor's well-being, or other care necessary for his or her well-being, including adequate food, clothing and shelter." 705 ILCS 405/2-3(1)(a) (West 2012). A minor may also be neglected under the Act if his or her "environment is injurious to [his or her] welfare." 705 ILCS 405/2-3(1)(b) (West 2012). In contrast, a dependent minor is one "who is without proper medical or other remedial care recognized under State law or other care necessary for his or her well being through no fault, neglect or lack of concern by his parents, guardian or custodian." 705 ILCS 4-5/2-4(1)(c) (West 2012).

¶ 28 Neglect is defined as the failure to exercise care as circumstances justly demand, and includes both willful and unintentional lapses of parental duties. *In re Christopher S.*, 364 Ill. App. 3d at 88. It is not a fixed or measured term, and each case must be determined on the basis of its specific circumstances. *Id.* A determination of neglect in this context focuses on whether the minor is neglected and not on whether the parents are neglectful. *In re Arthur H.*, 212 Ill. 2d 441, 467 (2004).

¶ 29 To support its claim that Steven was neglected due to lack of care, the State presented evidence that in March 2014, Beverly refused to allow Steven to return home upon his discharge

from Garfield Park Hospital because she was afraid of Steven and did not feel safe with him in the home. Although DCFS investigator Sims explained that Beverly would have post-adoption services available to her, including an in-home therapist, Beverly refused to allow Steven to return home unless "he got the help he needed." Beverly, however, did not search for or provide any alternatives for Steven. She also did not ask anyone else to take care of Steven because "[e]verybody that I knew was afraid of him" and told her that she "should have gotten rid of him a long time ago." However, the evidence did not show that Steven posed a real threat to Beverly or Shane. As the trial court observed, Steven has a slight build. Shane stated that he was not afraid of Steven because he was younger than Shane. In the one incident on record in which Steven acted aggressively toward Beverly and Shane, the weight and scissors incident, Beverly was able to diffuse the situation without difficulty and calm Steven. There is no evidence that Beverly called the police in response to Steven's actions.

¶ 30 Additionally, although Steven participated in therapy after he was discharged from Hartgrove Hospital, Beverly stopped therapy because it was not "helping." She recalled one person coming to the house and they sat around the table playing Monopoly together. Beverly stated, "That's not services to me." When Steven was ready for discharge from Garfield Park Hospital, Beverly knew the same agency that provided therapy services before would again provide Steven services and those services "did not help him before." She acknowledged that she never asked for another service provider. Beverly also acknowledged that Steven had been prescribed medication for attention deficit hyperactivity disorder (ADHD) but she did not give him the medication until he began misbehaving in school. The trial court's finding of neglect due to lack of care was not against the manifest weight of the evidence.

¶ 31 Regarding the finding of neglect due to an injurious environment, the evidence showed that the Sims found the home safe and appropriate. Shane stated that Beverly never used corporal punishment, and only revoked privileges as a method of discipline. Beverly also stated at the hearing that she did not use corporal punishment. She stated that she never banged Steven's head against the wall and denied that she choked Steven, stating that she had grabbed him by the shoulders instead when he was coming after her. The trial court, however, did not find her testimony entirely credible.

¶ 32 The evidence also showed that Steven told Sims that he did not want to return home. He told hospital staff that he thought Beverly was trying to kill him. He stated that Beverly and Shane abused him and that Shane, who was bigger and taller than Steven, would hold him down while "he would get whoopings." The Garfield Park Hospital records showed that Steven was anxious and sad about returning home. He had a bruise near his left eye and scars on his arm. He felt sad because he was getting yelled at every day, although he denied being depressed or irritable, or having any trouble sleeping. He denied wanting to harm himself, but acknowledged wanting to kill his brother because his brother teases him when Beverly beats him. Steven also alleged that Beverly banged his head against the wall while he was sleeping. He stated that he had flashbacks of being held down and choked. Steven did not "feel supported by family members or peers." Hospital records showed that on March 18, 2014, Steven was disoriented, crying, and having dissociation episodes. The record also showed that Steven's worsening behavior was likely due to his extended hospitalization, and he was diagnosed with post-traumatic stress disorder due to his experiences at home. The trial court's finding that Steven was neglected due to an injurious environment was not against the manifest weight of the evidence.

¶ 33 Beverly disagrees, arguing that Steven suffers from mental health issues, anger management issues, has threatened his brother and others, and is in need of intensive treatment. She contends that when a parent recognizes she can no longer control "a severely mentally disturbed and threatening child," it is not neglect. As support, she cites *In re S.W.*, 342 Ill. App. 3d 445 (2003), and *In re Christopher S.*, 364 Ill. App. 3d 76 (2006).

¶ 34 In *S.W.*, the defendant mother took her daughter to the hospital because she was out of control and hitting defendant. *S.W.*, 342 Ill. App. 3d at 447-48. Hospital records indicated that prior to this hospitalization, S.W. was hospitalized for "aggressive destructive behavior and attempting to kill her mother." *Id.* at 449. She was diagnosed with intermittent explosive disorder, attention deficit hyperactivity disorder, pervasive developmental disorder, and mild to moderate mental retardation. *Id.* Approximately four months prior to S.W.'s first hospitalization in June 2001, defendant indicated she had difficulty caring for S.W. due to her aggression, behavior issues and her developmental delays, and a direct care staff person from Little City Foundation came to work in the home 15 hours per week. *Id.* at 449. After S.W.'s most recent hospitalization, defendant refused to allow her to return home and S.W. was taken into protective custody by DCFS. *Id.* at 448.

¶ 35 While at Maryville Academy, a residential facility, S.W.'s case manager observed her aggressive behavior toward staff and other residents, and S.W. had to be restrained. S.W. also put her own safety at risk and was unable to care for her own hygiene needs. The case manager opined that S.W. required residential care. *Id.* at 449. At a dispositional hearing, the trial court adjudged S.W. a dependent through no fault of the mother and removed her from the custody of her parent. *Id.* at 450.

¶ 36 *Christopher S.* also involved a lockout as a result of his adoptive parents' refusal to allow him to return home after his discharge from a psychiatric hospital. *Christopher S.*, 364 Ill. App. 3d at 79. His parents told a DCFS investigator that he was out of control and threatened violence against the family. *Id.* Christopher, who was approximately six feet one inch tall, punched holes in the walls, screamed at his mother, and threw objects. *Id.* at 80. In one incident, Christopher was screaming and swearing at his mother and he threw a telephone at her head. *Id.* at 80. Although it missed her, the telephone broke a light fixture above her head and pieces of glass fell to the floor. *Id.* His parents attempted to find alternative living arrangements for Christopher at Mercy Home and stated that they were willing to pay for his care. However, Mercy Home denied Christopher admission. *Id.* His parents then made arrangements for Christopher to stay short-term with a biological aunt. However, while he was living with her she called the police twice and stated that she was afraid of Christopher because he was manipulative and intimidating. *Id.* His parents continued to search for alternative housing arrangements and therapies, including military school. Even after the lockout, they researched 43 residential treatment facilities. *Id.* at 80-83. However, due to his longstanding problems with aggression, violence, and criminal conduct, no treatment center would admit him. *Id.* at 83. Christopher's parents stated that they were willing to pay as much as they could afford for his care. *Id.* The trial court found Christopher was dependent through no fault of the parents. *Id.* at 84.

¶ 37 Unlike the minor in *S.W.*, Steven did not attempt to kill Beverly. Also, although he has displayed aggression, there is no evidence that he actually struck his mother or his brother. There is no indication in the record that Steven is developmentally delayed or suffers from mild to moderate retardation, which hindered *S.W.*'s ability to care for her hygienic needs.

Christopher S. is also distinguishable because the parents in that case searched diligently, and were willing to pay, for alternative housing arrangements when they felt they could no longer care for their son. Due to his past conduct and issues, however, they could not find an affordable facility that would take him. The minor was also six feet one inch tall, displayed violent behavior toward the mother, and engaged in criminal activity. Steven, as the trial court noted, was not a large child and although he displayed aggression, Beverly had no problem diffusing the situation. His brother Shane stated that he was not afraid of Steven.

¶ 38 Aside from these factual distinctions, there is a procedural distinction between the cases cited by Beverly and the case at bar. The trial court in those cases found that the minor was dependent through no fault of the parents. Here, in contrast, the trial court found Steven neglected. The standard of review is whether the trial court's findings are against the manifest weight of the evidence, a deferential standard. Therefore, in order to reverse the trial court, the opposite conclusion must be "clearly evident from the record." *Christopher S.*, 364 Ill. App. 3d at 86.

¶ 39 Although Beverly points to Steven's mental health issues and aggressive behavior, the record shows that she did not follow through with recommended therapy because she believed it did not help Steven. Sims offered to provide an in home therapist for Steven after the lockout, but Beverly did not accept the offer because she did not believe the provider, which gave her therapy services in the past, was effective. However, Beverly did not ask for another provider. She was not consistent in giving him prescribed medication. Furthermore, Beverly made little to no effort in finding alternative residential housing for Steven and stated that she did not ask anyone else to take care of Steven because "[e]verybody that I knew was afraid of him" and told her that she "should have gotten rid of him a long time ago." Although denied by Beverly,

Steven alleged she was physically aggressive toward him and that he had flashbacks of being held down and choked. He did not "feel supported by family members or peers." Hospital records showed that during his most recent hospitalization, Steven was disoriented, crying, and having dissociation episodes. The record also showed that Steven's worsening behavior was likely due to his extended hospitalization, and he was diagnosed with post-traumatic stress disorder due to his experiences at home. While we may have reached a different conclusion, the trial court's finding of neglect was not against the manifest weight of the evidence. See *In re Diamond M.*, 2011 IL App (1st) 111184, ¶¶28-32 (neglect finding affirmed where parent displayed total lack of concern for daughter's welfare by locking her out and failing to obtain necessary psychological services for her or find alternative options for her health and care); *In re Rayshawn H.*, 2014 IL App (1st) 132178, ¶¶ 29-31 (neglect finding upheld where, following the lockout, defendant did not make sufficient efforts to find necessary care or shelter for minor and showed no interest in engaging in support services offered by DCFS).

¶ 40 For the foregoing reasons, the judgment of the circuit court is affirmed.

¶ 41 Affirmed.