2015 IL App (1st) 151626-U

SECOND DIVISION
October 27, 2015

No. 1-15-1626

IN THE INTEREST OF KEVONTE C.,	)	Appeal from the
	)	Circuit Court of
Minor-Respondent-Appellee,	)	Cook County
	)	
(THE PEOPLE OF THE STATE OF ILLINOIS	)	
	)	
Petitioner-Appellee	)	No. 14 JA 116
v.	)	
	)	
TAMEKA C.,	)	Honorable
	)	Peter Vilkelis,
Mother-Respondent-Appellant.)	)	Judge Presiding.

PRESIDING JUSTICE PIERCE delivered the judgment of the court.
Justices Simon and Hyman concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's finding that Kevonte was abused and neglected was not against the manifest weight of the evidence.

¶ 2 Respondent Tameka C. appeals from an order of the circuit court of Cook County adjudicating her minor child Kevonte C.[1], abused and neglected. The sole issue on appeal is

[1] Kevonte's brother Jaquann is not a party to this appeal.

whether the trial court's finding of abuse and neglect was against the manifest weight of the evidence. For the following reasons, we affirm the judgment of the circuit court.

¶ 3 BACKGROUND

¶ 4 Kevonte C. was born on April 6, 2007, to respondent Tameka C. Kevonte's father, known only as Jerome, is not a party to this appeal.

¶ 5 On February 4, 2014, the State filed a petition for adjudication of wardship with respect to Kevonte, wherein the State alleged that Kevonte was neglected pursuant to section 2-3(1)(b) of the Juvenile Court Act (Act). 705 ILCS 405/2–3(1)(b) (West 2012). Kevonte was also alleged to be abused because he was at substantial risk of physical injury, pursuant to section 2-3(2)(ii) of Act. 705 ILCS 405/2–3(2)(ii) (West 2012). In support to these assertions, the State alleged the following facts:

> "This minor's sibling [Jaquann] states that on January 31, 2014 mother threatened to harm him with a knife. This minor's sibling states that mother pushed and choked him during this incident. This minor's sibling was observed to have a healing burn and older scars on his arm. In addition, this minor's sibling was observed to have a swollen lump on his shoulder. This minor's sibling states that mother caused the injuries observed on him. Medical personnel state that this minor's sibling's explanation is consistent with what was observed. DCFS has been unable to locate mother and this minor. This minor's sibling states that this minor was with mother as of January 31, 2014. The identity and whereabout of putative father are unknown. Paternity has not been established."

¶ 6 On January 7, 2015, the trial court held an adjudication hearing. Illinois Department of Children and Family Services (DCFS) Child Protection Investigator Ware testified that she was assigned to Kevonte's brother Jaquann's case on January 31, 2014. Ware testified that she was assigned to investigate allegations of cuts, bruises and welts on Jaquann's body. At the time, Jaquann was 13-years-old and Kevonte was 6-years-old.

¶ 7 Ware met with Jaquann at Mount Sinai Hospital where Jaquann had been admitted. Upon observing Jaquann, she noticed that he had a lump on his right shoulder and numerous other marks and bruises that were older, some of which appeared to be scars and burn marks. Jaquann told Ware that he was kidding around with his brother and told his brother that he was going to hit his mother. In response, his mother grabbed him and hit him with an iron. He then ran from the room but his mother started to choke him. Jaquann ran out of the house when his mother grabbed a knife and told him that she was going to kill him.

¶ 8 Ware testified that she made efforts to establish contact with respondent by visiting the address listed on the report. She was unable to establish contact. The focus then became on finding respondent and Kevonte. Ware testified that she was unable to locate respondent or Kevonte. Kevonte had not yet been located at the time of the adjudication hearing.

¶ 9 The State entered two exhibits into evidence. The first exhibit was certified records from Holy Cross Hospital pertaining to Jaquann. Records from November 19, 2013 showed that on that date, Jaquann presented himself at the hospital after running away from home. During that visit, Jaquann told hospital personnel that he got in trouble at school and was threatened by his mother and ran away. Later, Jaquann told hospital personnel that after he got suspended from

school, his mother picked him up from school and tried to choke him. Later on, after a nurse spoke with Jaquann's father, Jaquann admitted that his mother did not try to choke him but that he just did not want to be spanked. The records also documented Jaquann's admission to Holy Cross Hospital on January 31, 2014, after being brought in by a Chicago police officer. According to those documents, Jaquann told the personnel in the emergency department that he ran from his house after his mother chased him with a knife. He stated that he had suffered abuse from his mother for several years.

¶ 10 The second exhibit was certified records from Mount Sinai Hospital. In those records was a history presented by Jaquann and a notation by hospital staff of the observed marks, bruises, and swelling on Jaquann's body. The records also showed that when the hospital contacted respondent, she said that Jaquann did not require treatment and denied consent for treatment.

¶ 11 After hearing the evidence and reviewing the exhibits, the trial court found that the State had proven by a preponderance of the evidence that Kevonte was both neglected based on an injurious environment and abused based on a substantial risk of physical injury. The court stated that it was troubling that there was no direct evidence of Kevonte's treatment at home, but found that Kevonte was living in the same injurious environment as Jaquann. The court also noted that respondent either had no idea where Kevonte was at the time of the hearing or "she's not telling us."

¶ 12 On June 2, 2015, the court entered a disposition order finding that respondent was unable to care for, protect, train or discipline Kevonte. Kevonte was adjudicated a ward of the court and

was placed in the guardianship of DCFS. Given that Tameka only appeals from the finding of abuse and neglect at the adjudication hearing, we need not discuss the evidence presented at the dispositional hearing. We do note, however, that after hearing the evidence presented at the dispositional hearing, the court adjudged Kevonte a ward of the court and placed him in the custody and guardianship of the DCFS guardianship administrator with the right to place the minor.

¶ 13 ANALYSIS

¶ 14 Advancing a single issue on appeal, Tameka argues that the trial court's finding of abuse and neglect are against the manifest weight of the evidence because according to respondent, there was no evidence that Kevonte was ever abused or neglected.

¶ 15 The Act "sets forth the procedures and criteria to be used in deciding whether a minor should be removed from his parents' custody and made a ward of the court." *In re A. W.*, 231 Ill. 2d 241, 254 (2008) (citing 705 ILCS 405/1-1 et seq. (West 2012)). At an adjudicatory hearing, the circuit court must determine whether the minor is abused, neglected, or dependent before conducting a dispositional hearing on wardship. 705 ILCS 405/2-21 (West 2012); 705 ILCS 405/2-18(1) (West 2012) ("At the adjudicatory hearing, the court shall first consider only the question whether the minor is abused, neglected, or dependent."); *In re Arthur H.*, 212 Ill. 2d 441, 462 (2004). The court must consider the status of the minors at the time the adjudication petition was filed and not their status at the time of the hearing. *In re C.W.*, 199 Ill. 2d 198, 217 (2002); *In re Kenneth D.*, 364 Ill. App. 3d 797, 804 (2006).

¶ 16 It is the burden of the State to prove allegations of neglect and abuse by a preponderance

of the evidence. *In re Arthur H.*, 212 Ill. 2d at 463. The trial court has broad discretion when determining the existence of neglect or abuse as it has the best opportunity to observe the demeanor and conduct of the parties and witnesses and is therefore in the best position to determine the credibility and weight to be given to the witnesses' testimony. *In re Stephen K.*, 373 Ill. App. 3d 7, 20 (2007). We review a trial court's finding of abuse and neglect under the manifest weight of the evidence standard. *In re Alexis H.*, 401 Ill. App. 3d 543, 551 (2010). "A finding is against the manifest weight of the evidence only if the opposite result is clearly evident." *In re A. W.*, 231 Ill. 2d at 254.

¶ 17 Here, Tameka argues that the State failed to meet its burden to establish that Kevonte was at risk of any neglect or abuse as a result of his brother Jaquann's situation. Section 2-3(1)(b) of the Act states that a neglected minor includes "any minor under 18 years of age whose environment is injurious to his or her welfare." *Id.* (citing 705 ILCS 405/2–3(1)(b) (West 2012)). "The term 'injurious environment' is a broad and amorphous concept that cannot be defined specifically, but it includes the breach of a parent's duty to ensure a safe and nurturing shelter for the children." *Id.*

¶ 18 While there was no direct evidence of Kevonte's abuse or neglect, the theory of anticipatory neglect protects not only children who are direct victims of abuse or neglect, but also those who have a probability to be subject to abuse or neglect because they reside, or in the future may reside, with an individual who has been found to have neglected or abused another child. *In re Arthur H.*, 212 Ill. 2d at 468. This anticipatory theory flows from the concept of "injurious environment" set forth in the Act. *Id.* While there is no *per se* rule that the neglect of

one child conclusively establishes the neglect of another child in the same household (*In re S.R.*, 349 Ill. App. 3d 1017, 1021, (2004)), section 2-18(3) of the Act (705 ILCS 405/2–18(3) (West 2012)) provides that the proof of neglect of one minor "shall be admissible evidence" on the issue of the neglect of any other minor for whom the parent is responsible (*In re S.R.*, 349 Ill.App.3d 1017, 1021 (2004)). However, the mere admissibility of evidence does not constitute conclusive proof of the neglect of another minor. "Such neglect should be measured not only by the circumstances surrounding the sibling, but also by the care and condition of the child in question." *In re Edward T.*, 343 Ill. App. 3d 778, 797 (2003); see also *In re Edricka C.*, 276 Ill. App. 3d 18, 26 (1995) ; *In re M.D.H.*, 297 Ill. App. 3d 181, 188–89 (1998). Cases involving an adjudication of abuse, neglect, dependency and wardship are in effect *sui generis*, and each case must be decided on its own particular facts. *In re Brooks*, 63 Ill. App. 3d 328, 337 (1978).

¶ 19 Based on the record before us, we find that the court's adjudicatory findings were not against the manifest weight of the evidence. On January 31, 2014, Kevonte's brother Jaquann ran out of his house because respondent hit him with an iron and choked him. Respondent then picked up a knife and threatened to kill him. Investigator Ware spoke with Jaquann at the hospital and observed a lump on his right shoulder, as well as other marks, scars and bruises. Jaquann indicated that these injuries had been inflicted by respondent. Later, Jaquann told hospital personnel that respondent had burned him with an iron, and Jaquann had a burn on his arm consistent with that of being burned with an iron. The hospital records showed that Jaquann had told hospital personnel that he suffered years of abuse by respondent. The hospital records also showed a burn mark on Jaquann's forearm, lacerations on his other forearm, healing burns

and healed lacerations. Furthermore, when respondent was contacted by hospital personnel, she was irritated and refused to give consent for treatment, stating that Jaquann did not need any treatment. In addition, Jaquann's explanation of what happened was consistent with his injuries.

¶ 20 As a result of her abuse of Jaquann, respondent placed Kevonte in an injurious environment and at substantial risk of physical injury. We specifically note that at the time of the adjudication hearing, respondent either did not know where six-year-old Kevonte was or refused to tell DCFS and the court where he was located. We therefore find that the court's finding that Kevonte was abused and neglected was not against the manifest weight of the evidence.

¶ 21 We similarly reject respondent's argument that there was no evidence that Kevonte was with Jaquann when Jaquann was abused or neglected. Jaquann himself stated that the January 31, 2014 incident began when Jaquann and Kevonte were playing around. Kevonte was at the very least present in the house when the abuse occurred. Even if that were not so, there is no requirement that Kevonte be present when Jaquann was abused or neglected. *In re David D.*, 202 Ill. App. 3d 1090 (1990).

¶ 22 CONCLUSION

¶ 23 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 24 Affirmed.