

No. 1-15-1681

**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).

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

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In the INTEREST OF R.M., a minor,	)	Appeal from the
	)	Circuit Court of
Minor-Respondent-Appellee,	)	Cook County
	)	
(PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Petitioner-Appellee,	)	No. 14 JA 00493
	)	
v.	)	
	)	
MARILYN M.,	)	Honorable
	)	John Huff,
Respondent-Appellant.)	)	Judge Presiding.

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JUSTICE HARRIS delivered the judgment of the court  
Presiding Justice Liu and Justice Connors concurred in the judgment.

**ORDER**

¶ 1 *Held:* The circuit court's finding of neglect is affirmed where evidence showed defendant mother locked the minor out of their home and made no effort to find alternative residential options for the minor's care. There was no evidence that defendant was unable to care for the minor.

¶ 2 Respondent, Marilyn M., appeals the circuit court's finding of neglect due to lack of necessary care concerning minor R.M. On appeal, Marilyn contends that this finding of neglect was against the manifest weight of the evidence where the evidence shows that Marilyn was willing but unable to care for and discipline R.M. For the following reasons, we affirm.

¶ 3 JURISDICTION

¶ 4 After a finding of neglect, the trial court adjudicated R.M. a ward of the court on May 11, 2015. Marilyn filed this appeal on June 9, 2015. 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 R.M. was born on June 10, 1997, and adopted by Marilyn when she was two years old. Marilyn worked for the Illinois Department of Children and Family Services (DCFS) as a caseworker. On April 28, 2014, Marilyn locked R.M. out of their home. DCFS investigated the matter and determined that credible evidence existed of alleged abuse or neglect due to the lockout, inadequate supervision, and risk of harm. On May 8, 2014, 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 R.M. was neglected due to lack of care and due to an injurious environment. 705 ILCS 405/2-3(1)(a), (b) (West 2012). The petition also alleged that R.M. was abused pursuant to section 2-3(2)(ii) of the Act (705ILCS 405/2-3(2)(ii) (West 2012)) because she faced substantial risk of injury. The court held a hearing and found probable cause that R.M. was neglected, based on the fact that Marilyn refused to allow R.M. back into their home, failed to make alternative plans for R.M.'s care, and refused to participate in any services. It also noted that if called to testify, R.M. would have stated that she was

willing to return home to Marilyn, obey all of Marilyn's rules, and participate in any services she may need. The court granted temporary custody of R.M. to the DCFS guardianship administrator.

¶ 7 An adjudicatory hearing began on February 3, 2015. At the hearing, Theresa Jackson testified that she worked as a DCFS child protection investigator, and was assigned to R.M.'s case on April 29, 2014. She spoke with R.M. on April 30, 2014, and at the time R.M. was living in a shelter home. R.M. had been at the Bellwood police station as a lockout because she could not return home. R.M. admitted that she had been drinking and smoking marijuana while living with Marilyn, and that she took some of Marilyn's things.

¶ 8 Ms. Jackson spoke with Marilyn on May 1, 2014. Marilyn told her that R.M. could not return home because she discovered that toothpaste and perfume were missing from her cabinet, and that R.M. "had done so many things over the time she had been there, over the course of her living there, that it was just too much. She couldn't come back." Marilyn did not specify what R.M. had done. Although Ms. Jackson suggested some residential care facilities Marilyn could contact for R.M. to stay, there is no evidence that Marilyn contacted any of those places. Marilyn also did not apply for an Illinois Care Grant to aid in paying for alternative care. Ms. Jackson spoke again with Marilyn on May 5, 2014, and informed her that she would be indicated for the lockout of R.M. if she did not find an alternative place for R.M. to live. Marilyn did not provide any placements and told Ms. Jackson to "do what [she] had to do." Marilyn did not meet with Ms. Jackson on May 6, 2014, because she had to work. DCFS indicated Marilyn for locking out R.M. DCFS determined that Marilyn could care for R.M., but R.M. was at risk for harm due to her mental health diagnoses of bipolar disorder and ADHD, and Marilyn's refusal to find alternative placement for her.

¶ 9 On February 23, 2015, Marilyn filed a supplemental petition for adjudication of wardship, arguing for a finding of dependency under section 2-3(1)(c) of the Act (705 ILCS 405/2-3(1)(c) (West 2012)). She alleged that R.M. lacked the proper care necessary for her well-being through no fault, neglect or lack of care by Marilyn. The hearing was continued to May 11, 2015. At the hearing, the court noted that Marilyn had not filed her petition containing her allegations when she was first given the opportunity, but in fairness allowed her to present her evidence. The public guardian did not object to relevant evidence from the time the State filed its petition in 2014, but continued his objection to evidence more remote in time.

¶ 10 Marilyn called Officer Michael Adamski to testify. Officer Adamski stated that he worked at the Bellwood police department. On April 28, 2014, he spoke with Marilyn and R.M. Marilyn told him that R.M. had a problem with respect and was often absent from school. Marilyn informed Officer Adamski that R.M. had stolen jewelry from her and had taken alcohol from the home. Marilyn, however, did not provide proof that the items were stolen. She also stated that she did not feel safe with R.M. in the home. R.M. told Officer Adamski that she was unhappy in the home and did not want to return with Marilyn.

¶ 11 Marilyn next called Sylvia Coleman to testify. Ms. Coleman provided therapy to R.M. from 2006 to 2011. R.M. had been diagnosed with ADHD and was having problems at home and at school, where she exhibited aggressive and defiant behavior, poor anger management, and performed poorly academically. At home, she exhibited physical aggression as well as lying and being manipulative. She stated that Marilyn enrolled R.M. in supplementary life skills therapy, karate, and basketball, and monitored R.M.'s medication intake through a case manager. Ms. Coleman left her agency in 2011, and stated that R.M. had not made any marked

improvement when therapy ended in 2011. Ms. Coleman never recommended that R.M. be placed in alternative residential care, nor did she believe Marilyn was unable to care for R.M.

¶ 12 Marilyn testified that she adopted R.M. when she was two years old. When R.M. was five years old, she began exhibiting behavior problems. In third grade, R.M. would push Marilyn and slam doors. In 2009, R.M. was hospitalized for psychiatric reasons because she had come home late and she and Marilyn began pushing each other and yelling. Although R.M. was not taller or larger than Marilyn, Marilyn was concerned for their safety because R.M. would throw things and someone could get hurt. Marilyn stopped counseling sessions for R.M. during her sophomore year in high school because R.M. refused to attend the sessions. Marilyn also tried to get R.M. counseling for her anger issues and for running away, but R.M. refused to exit the car to attend the sessions. R.M. ran away at least twice a month from the age of 13. Marilyn tried to get R.M. to speak with her pastor, but she refused. Marilyn stated that "there wasn't anything else I could do."

¶ 13 Marilyn testified that R.M. was prescribed medication but acknowledged that after giving it to R.M., Marilyn would sometimes find the medicine on the floor or in the garbage can or behind the couch. Marilyn acknowledged that it was her responsibility to make sure R.M. took her medication. Marilyn stated that R.M. "was very aggressive when she didn't take her medication." On April 20, 2014, Marilyn confronted R.M. about some missing alcohol. R.M. admitted that she drank some of the alcohol, sold some of it, and gave some to friends. This confrontation led to an altercation in which R.M. pushed Marilyn. Marilyn took R.M. to the police station and told them \$1,000 worth of alcohol was missing from her home. She acknowledged that she did not lock up or secure the alcohol in her home.

¶ 14 R.M. told Marilyn that she did not want to live with her anymore. Marilyn testified that she had no relative that could care for R.M. Marilyn called Mercy Home and Lutherbrook to inquire about placement for R.M. but she did not complete any applications to these facilities. She did not inquire about any other residential facilities that could care for R.M. In April 2014, R.M. was not hospitalized for psychiatric issues, nor was she recommended for such hospitalization.

¶ 15 Marilyn testified that she worked for 33 years as a social worker for DCFS. She enrolled R.M. in public school so she could get the services she needed. She believed there was nothing else she could do for R.M. However, Marilyn did not contact DCFS in April 2014 for services or help. Although she received a monthly subsidy to help care for R.M.'s special needs, she testified that the amount she received was less than the amount it costs to care for R.M.

¶ 16 After hearing the evidence, the trial court noted that it was a close case and "[t]here is no question that [R.M.] is a very, very difficult child" and "a major source of aggravation" to Marilyn. However, Marilyn did not "cooperate with her former colleagues at DCFS to find a place for her daughter." Ms. Jackson testified that she never felt that Marilyn was unable to care for R.M. Also, R.M. indicated that she was willing to return home to Marilyn and to obey her rules. As an employee of DCFS, Marilyn understood the effect of her refusal to allow R.M. to return home, and her inaction in providing an alternative place for R.M. to reside. The court found that the State sustained its burden in showing by a preponderance of the evidence that R.M. was neglected pursuant to section 2-3(1)(a) of the Act. However, it made no finding regarding the State's allegations of neglect, injurious environment or abuse, or substantial risk of injury.

¶ 17 At the dispositional hearing, the court found that it was in R.M.'s best interest to be placed in the guardianship of the DCFS guardianship administrator. The court entered a goal of

substitute care pending independence, to which neither party objected. Marilyn does not challenge this finding on appeal.

¶ 18

ANALYSIS

¶ 19 Marilyn contends that the trial court erred in finding that R.M. was a neglected minor due to lack of care. She argues that the trial court should have found that R.M. was a dependent minor pursuant to section 2-3(1)(c) of the Act. 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.*

¶ 20 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). 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).

¶ 21 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). Marilyn argues that the trial court's finding of neglect based on lack of care regarding R.M. was error. She contends that the evidence shows she was concerned for R.M.'s safety and tried to get help for R.M.'s alcohol, mental and behavioral issues. She believed she did everything that could be done for R.M. As support, she cites *In re Christopher S.*, 364 Ill. App. 3d 76 (2006).

¶ 22 *Christopher S.* 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.

¶ 23 *Christopher S.* is 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. In contrast, Marilyn did not complete any applications to alternative residential care facilities, or apply for grants to help pay for R.M.'s alternative care. When Ms. Jackson informed Marilyn that she would be indicated for the lockout of R.M. if she did not find an alternative place for R.M. to live, Marilyn told Ms. Jackson to "do what [she] had to do." The minor in *Christopher S.* was also six feet one inch tall, displayed violently aggressive behavior toward the mother, and engaged in criminal activity. R.M. was not taller or larger than Marilyn. R.M. and Marilyn did engage in pushing and yelling during their confrontations, but there is no evidence that Marilyn was unable to keep the situation under control. In fact, after she and R.M. had their altercation in which Marilyn alleged R.M. pushed her, Marilyn was able to take R.M. to the Bellwood police station. Marilyn stated that sometimes R.M. threw objects, but there was no evidence of the violence and aggression Christopher exhibited toward his family.

¶ 24 Aside from these factual distinctions, there is a procedural distinction between *Christopher S.* 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 R.M. 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.

¶ 25 Here, R.M. was diagnosed with psychiatric health issues and she was not taking her prescribed medication consistently if at all. When Marilyn discovered alcohol missing from her home in April 2014, she confronted R.M. and eventually took her to the police station. She refused to allow R.M. to return home because R.M. "had done so many things over the time she had been there, over the course of her living there, that it was just too much. She couldn't come back." Furthermore, Marilyn made no effort to find alternative residential housing for R.M. Although Ms. Jackson suggested some residential care facilities Marilyn could contact for R.M. to stay, there is no evidence that Marilyn contacted any of those places. Marilyn also did not apply for an Illinois Care Grant to aid in paying for alternative care. Ms. Jackson informed Marilyn that she would be indicated for the lockout of R.M. if she did not find an alternative place for R.M. to live. However, Marilyn did not provide any placements and told Ms. Jackson to "do what [she] had to do." Ms. Jackson did not find Marilyn unable to care for R.M., and R.M. expressed a willingness to return home and obey Marilyn's rules. 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).

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

¶ 27 Affirmed.