2015 IL App (2d) 150126-U
No. 2-15-0126
Order filed June 29, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re WILLIAM P. and TWONNA C., Minors	)	Appeal from the Circuit Court
	)	of Winnebago County.
	)	
	)	
	)	
	)	Nos. 14-JA-334 & 14-JA-335
	)	
	)	Honorable
(The People of the State of Illinois, Petitioner-Appellee v. Donna C., Respondent-Appellant).	)	Mary Linn Green,
	)	Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices Hutchinson and Spence concurred in the judgment.

ORDER

¶ 1 *Held*: This court affirmed the judgment of the trial court and held: (1) the trial court did not abuse its discretion in denying respondent a continuance of the dispositional hearing where her absence was unexplained; (2) the order finding that the minors were neglected was not against the manifest weight of the evidence; and (3) the dispositional order finding that guardianship and custody of the minors should remain with DCFS was not an abuse of discretion.

¶ 2 Respondent, Donna C., the mother of William P. and Twonna C., appeals from the trial court's orders: (1) finding William to be a neglected minor and Twonna to be an abused and neglected minor; and (2) adjudicating the minors wards of the court and granting custody to the Department of Children and Family Services (DCFS). We affirm.

¶ 3 Initially, we note that, in reviewing the record, this court determined that the trial court's failure to set forth a factual basis for its dispositional order prevented us from conducting a meaningful review of the finding of unfitness, so we retained jurisdiction and entered a limited remand for the purpose of allowing the trial court to make written findings. Those written findings were filed with this court, as ordered, on June 16, 2015, and, as discussed below, we review the evidence in light of those findings. Respondent requested supplemental briefing in the event of a remand for factual findings. However, the record is not complex, and respondent has adequately briefed the issues. Accordingly, we have determined that supplemental briefing is not necessary.

¶ 4 I. BACKGROUND

¶ 5 On September 19, 2014, DCFS was called to Twonna's school, where Twonna, age 9, told the DCFS worker that respondent had beaten her with an extension cord approximately 20 times. Respondent stated to DCFS that she struck Twonna with a purse strap because Twonna lost her house key. Previously, Twonna had appeared at school with a black eye after having been struck by respondent, which led to an indicated finding of physical abuse. On September 19, 2014, DCFS took Twonna and her brother William, age 5, into protective custody.

¶ 6 On September 23, 2014, the State filed a neglect petition as to both minors. With respect to William, the petition alleged that he was a neglected minor in that his environment was injurious to his welfare. With respect to Twonna, the petition alleged in count I that she was an abused minor in that her parent created a substantial risk of physical injury by striking her multiple times, causing injuries. Count II alleged that she was a neglected minor in that her environment was injurious to her welfare.

¶ 7 The court held an adjudicatory hearing on December 5, 2014. Officer Michael Battaglia

testified that he was the school liaison officer for the city of Rockford, Illinois, and responded to Walker Elementary School on the afternoon of September 19, 2014. DCFS case worker Teraza Stacy met him and informed him that DCFS was taking William and Twonna into protective custody. Then, Battaglia met with respondent. Respondent stated that when she arrived home the day before, neither child was there. She located them at a neighbor's home. Twonna said that she had lost her house key. Not believing Twonna, respondent hit her with a purse strap. Battaglia described the purse strap as being less than one-half inch thick.

¶ 8 Stacy testified that she responded to a hotline call from Walker Elementary School on September 19, 2014. She met with Twonna and the school principal. Twonna told Stacy that she got in trouble for losing her house key. Twonna stated that respondent "whupped" her with an electrical cord about 20 times. Twonna tried getting away, but respondent followed her all over the house, striking her and "cussing." Respondent told Twonna that she wished she had stayed in foster care. Twonna stated that respondent gave her a black eye a month ago. Respondent told Stacy that she hit Twonna with a purse strap. Respondent denied that she had given Twonna a black eye. Stacy identified photos that depicted bruises, cuts, and abrasions on Twonna's body, which Twonna said were the result of being struck with the electrical cord.

¶ 9 Respondent testified as follows. She went to Walker Elementary School on the afternoon of September 19, 2014, when she found out that her children had been taken back to the school after they rode the bus home. She wanted to know why they had been returned to the school. She saw William, but she was not allowed any contact with Twonna. Eventually, Battaglia spoke with her in his car, after he handcuffed her. She testified that Battaglia's testimony regarding their interview was accurate. She denied knowledge of how Twonna got the bruises and other marks that were depicted in the photographs. Respondent checked Twonna for injuries

the evening of the September 18, when she bathed, and saw none. Respondent checked for injuries again the next morning when Twonna dressed for school and saw none.

¶ 10 At the conclusion of the evidence, the court orally found that Twonna had "marks" on her body that were consistent with her complaint that respondent hit her with an electrical cord. The court found respondent's testimony that Twonna had no bruising when she left for school in the morning incredible. Further, the court found that respondent had admitted to hitting Twonna with a purse strap, but found that punishment severe enough to leave marks went beyond permissible corporal punishment. Consequently, the court found William and Twonna to be abused and neglected minors.

¶ 11 The matter proceeded to a dispositional hearing on January 8, 2015. Respondent was not present, although she had notice of the date. Her attorney had not heard from her. The court passed the case to allow counsel to check whether respondent had left a message. Respondent's attorney reported that she had received no message and that she did not know where respondent was.

¶ 12 Counsel then asked to continue the case. In addition to respondent's absence, she cited the fact that she had subpoenaed certain records from DCFS and from "the school," which had not yet been produced. The court asked counsel to explain why the subpoenaed material was "critical" to the dispositional hearing. Counsel replied that the information that she sought regarding William "had to do with placement at the Pavilion and records in regards to that." She further explained that "the other information regarding both minors were [*sic*] in regards to the medical evaluation and treatment when they were taken into protective custody." Further, she explained that she sought school attendance and disciplinary records, as well as notes documenting "behaviors and grades," parent-teacher conferences, and "things of that nature."

The court ruled that those documents were not germane to the dispositional hearing and denied the continuance.

¶ 13 DCFS caseworker Meliza Lester testified that she became involved in the case just over 30 days prior to the dispositional hearing. She testified that respondent had attended classes for parents who abuse their children in connection with the previous case and had begun individual counseling for the present case. She testified that the counselor reported that respondent showed no remorse and seemed to have no insight into abuse or what was taught in the classes. Respondent's attitude toward corporal punishment was a concern to DCFS, because respondent stated that she could "whoop" her children as much as she wants to as long as it does not leave marks. Respondent had supervised visits, as DCFS did not feel that the minors were safe around her. According to Lester, respondent was appropriate during visits, although she had little interaction with the minors, preferring to watch television instead. The minors had been removed from the grandmother's custody, because she was allowing respondent to have unsupervised visits. Lester testified that Twonna was getting into trouble at school and had a physical altercation with the principal. William was "doing better" since he left the hospital.[1] On cross-examination, Lester agreed that there were no safety hazards in respondent's home and no issues regarding respondent's ability to provide food, shelter, and other items to meet the children's needs. Respondent provided for their needs during her visits.

¶ 14 The court took judicial notice of the DCFS report that was prepared for the dispositional hearing, as well as the neglect petitions, the order of adjudication, the evidence presented at the adjudicatory hearing, and the prior DCFS history. As we noted, the trial court made written

[1] This is the only reference in the record to William's hospitalization. The reason for the hospitalization is unknown, other than a reference in a DCFS report that he had a behavior disorder.

factual findings, as follows. In 2011, the minors had been taken into care by DCFS because respondent had beaten Twonna with a belt and a broom, causing injuries. Respondent completed the Helping Abusive Parents class, but after completion, she had no insight into abuse or what she learned in the classes. Respondent's current attitude toward corporal punishment was still of concern to DCFS, as respondent believed that she should be able to strike her children as much as she wants, as long as there are no visible marks afterward. While the children were with the maternal grandmother, the grandmother "whooped" William, and she believed that respondent's "whoopings" were not abuse. Both minors have exhibited "severe" behavior issues "as recently as two or three weeks ago," and were recommended to begin specialized foster care. During visitations, respondent did not interact with the minors very much, but rather sat and watched television.

¶ 15 The court found that the State proved by a preponderance of the evidence that respondent was unfit and unable to appropriately care for the minors, and that it was in the minors' best interests to be made wards of the court, with guardianship and custody placed with DCFS. Respondent filed a timely notice of appeal.

¶ 16 II. ANALYSIS

¶ 17 Respondent first contends that the court abused its discretion in denying her motion to continue the dispositional hearing. She argues that her testimony and the records that her attorney subpoenaed would have aided the court. She further maintains that there was no emergency that would "trump" the value of the evidence that was not presented. It is well settled that a litigant does not have an absolute right to a continuance. *K & K Iron Works, Inc. v. Marc Realty, LLC*, 2014 IL App (1st) 133688, ¶ 22. The decision to grant or deny a motion for a continuance is within the sound discretion of the trial court and will not be disturbed on appeal

unless it results in a palpable injustice or constitutes a manifest abuse of discretion. *K & K*, 2014 IL App (1st) 133688, ¶ 22. Here, respondent's attorney asked for a continuance for two reasons: respondent's unexplained absence and the absence of records that she had subpoenaed. The record shows that the court gave counsel time to determine why respondent was absent. Respondent had notice of the hearing, but did not contact her attorney or her caseworker. With respect to the records, the court asked counsel why they were critical to the dispositional hearing, but counsel responded only in the vaguest terms.

¶ 18 Pursuant to section 2-21(2) of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/2-21(2) (West 2012)), a dispositional hearing must be set within 30 days following the finding of neglect. The 30-day requirement can be waived upon the consent of all parties and approval of the court, as determined to be consistent with the health, safety, and best interests of the minor. 705 ILCS 405/2-21(3) (West 2012). The parties waived the 30-day time limit following adjudication, and on January 8, 2015, when counsel asked for a continuance, the guardian *ad litem* objected, noting that the dispositional hearing had been set beyond the 30-day date. The only argument respondent makes is that her testimony and the materials she subpoenaed would have aided the court. She does not explain how, and we cannot discern how from trial counsel's nonspecific description of the missing records. Accordingly, the court did not abuse its discretion in denying the motion to continue.

¶ 19 Respondent next contends that the court's neglect finding was against the manifest weight of the evidence because there was no evidence pertaining to William, and the evidence showed that respondent merely disciplined Twonna for losing her key. The State must prove allegations of neglect by a preponderance of the evidence. *In re Abel C.*, 2013 IL App (2d) 130263, ¶ 19. This court will not reverse the trial court's finding of neglect unless it is against

the manifest weight of the evidence. *Abel*, 2013 IL App (2d) 130263, ¶ 19. In determining whether a judgment is against the manifest weight of the evidence, this court views the evidence in the light most favorable to the appellee, and where the evidence permits multiple inferences, we will accept those inferences that support the judgment. *Abel*, 2013 IL App (2d) 130263, ¶ 19. A judgment is against the manifest weight of the evidence only if the opposite conclusion is clearly evident. *Abel*, 2013 IL App (2d) 130263, ¶ 19.

¶ 20 A neglected minor includes a minor under 18 years of age whose environment is injurious to his or her welfare. 705 ILCS 405/2-3(1)(b) (West 2012). Our supreme court defined "neglect" as the failure to exercise the care that circumstances justly demand. *People ex rel. Wallace v. Labrenz*, 411 Ill. 618, 624 (1952). Generally, "injurious environment" includes the breach of a parent's duty to ensure a safe and nurturing shelter for his or her children. *In re N.B.*, 191 Ill. 2d 338, 346 (2000).

¶ 21 The State filed a two-count petition as to Twonna. Count I alleged abuse under section 2-3(2)(ii) of the Act, which provides that those who are abused include any minor under 18 years of age whose parent creates a substantial risk of physical injury to such minor by other than accidental means which would be likely to cause death, disfigurement, impairment of emotional health, or loss or impairment of any bodily function. 705 ILCS 405/2-3(2)(ii) (West 2012). Count II alleged neglect under section 2-3(1)(b) of the Act, which provides that those who are neglected include any minor under 18 years of age whose environment is injurious to his her welfare.

¶ 22 Here, respondent admitted that she struck Twonna with a purse strap as discipline for losing her house key, but she denied inflicting any marks on Twonna's body. She argues that she has the right to corporally discipline her child and cites *In re Interest of J.P.*, 294 Ill. App. 3d

991 (1998). In *J.P.*, the court recognized that a parent has the right to corporally punish his or her child, a right derived from the constitutional right to privacy. *J.P.*, 294 Ill. App. 3d at 1002. However, the court cautioned that this right must be exercised in a reasonable manner. *J.P.*, 294 Ill. App. 3d at 1002. Further, the court acknowledged that cases involving the adjudication of abuse, neglect, and wardship are *sui generis*, meaning that each case must be decided on its own distinct facts and circumstances. *J.P.*, 294 Ill. App. 3d at 1002. Contrary to respondent's testimony, Twonna told Stacy that respondent had struck her 20 times while she chased her throughout the house with an electrical cord. Respondent was "cussing" and saying that she wished that Twonna had stayed in foster care. The marks on Twonna's body were documented photographically. Respondent invites us to study the photographs and argues that they do not rise to the level of unreasonable corporal punishment. We have looked at the photos, and they depict exactly what Stacy described in her testimony: bruises on Twonna's arms and stomach and cuts behind her ear. The court found that these injuries were consistent with Twonna's account and inconsistent with respondent's story. The trial court is in the best position to assess witnesses' credibility, so we defer to the trial court's findings in that regard. *Abel*, 2013 IL App (2d) 130263, ¶ 19. Further, the evidence showed that respondent had previously inflicted a black eye on Twonna and beat her with a belt or a broom. Accordingly, we cannot say that the court's abuse and neglect findings were against the manifest weight of the evidence.

¶ 23 With respect to William, the State alleged neglect pursuant to section 2-3(1)(b), environment injurious to his welfare. The evidence showed that William was at home when respondent inflicted the beating on Twonna. Under the theory of anticipatory neglect, which is codified in section 2-18(3) of the Act (705 ILCS 405/2-18(3) (West 2012)), the State seeks to protect not only children who are directly abused or neglected, but also those who have a

probability of being subject to neglect or abuse because they reside with an individual who has neglected or abused another child. *In re Erin A.*, 2012 IL App (1st) 120050, ¶ 34. As we discussed above, the evidence amply supported the conclusion that respondent neglected Twonna within the meaning of the Act, so that the neglect finding as to William was not against the manifest weight of the evidence.

¶ 24 Respondent next asserts that the dispositional order placing guardianship and custody of the minors with DCFS was an abuse of discretion. She argues that Lester, the only witness at the dispositional hearing, really said nothing negative about her except that she did not show remorse, nor did she believe that she had done anything wrong. Dispositional hearings focus on "whether it is in the best interests of the minor and the public that [the minor] be made a ward of the court." 705 ILCS 405/2-22 (West 2012). The court can commit a minor to DCFS for care and service if the court finds that the parents are unfit, or are unable, for some reason other than financial circumstances alone, to care for, protect, train, or discipline the minor, or are unwilling do so, and that the health, safety, and best interest of the minor will be jeopardized if the minor remains in the custody of his or her parents. 705 ILCS 405/2-27(1) (West 2012). At the hearing, the State must prove the parents' inability to care for, protect, train, or discipline the children by a preponderance of the evidence. *In re Kelvion V.*, 2014 IL App (1st) 140965, ¶ 23. A dispositional order will be reversed only if the trial court's factual findings are against the manifest weight of the evidence or if it abused its discretion by selecting an inappropriate dispositional order. *In re Stephen K.*, 373 Ill. App. 3d 7, 25 (2007). An abuse of discretion occurs only where no reasonable person would accept the view adopted by the court. *In re Marriage of DeRossett*, 173 Ill. 2d 416, 422 (1996).

¶ 25 We now have the benefit of the trial court's written factual findings. The court found that the minors were initially taken into care by DCFS because respondent had beaten Twonna with a belt and a broom, causing injuries, and that respondent admitted to disciplining Twonna in this fashion. Respondent successfully completed all of the required services, and the minors were returned to her on February 22, 2013. Then, on September 19, 2014, respondent admitted that she "whooped" Twonna. Twonna had welts and bruises on her arms and torso and had cuts behind her ear. Respondent "saw no problems" with disciplining her children in this way. The minors were removed from respondent and were placed with their maternal grandmother, who "whooped" William and believed that the "whoopings" respondent administered to the children did not constitute abuse. DCFS removed the minors from the maternal grandmother due to "imminent safety concerns," and placed the minors in traditional foster care. The court further found that, at the time of the dispositional hearing, respondent had just begun individual counseling. In the previous 2011 case, she completed the Helping Abusive Parents class, but seemed to have no insight into abuse and what she was taught. Her current attitude toward corporal punishment was still of concern to DCFS, because she believed that she should be able to strike her children "as much as she wants," as long as there are no visible marks. Respondent was receiving supervised visitation during which she did not interact with the minors very much, but sat and watched television.

¶ 26 The DCFS records in evidence support the court's findings regarding the prior abuse. The photographs in evidence support the court's findings of the 2014 abuse. Lester testified that respondent failed to learn or to gain insight from the classes and that she still believed that she could beat her children as long as she left no marks. Accordingly, the court did not abuse its discretion in ruling (1) that it was in the "minors' best interests to be made wards of the court,"

with "guardianship and custody" placed with DCFS and (2) that DCFS had discretion to place the minors with a responsible relative or in traditional foster care.

¶ 27 III. CONCLUSION

¶ 28 For the reasons stated, we affirm the judgment of the circuit court of Winnebago County.

¶ 29 Affirmed.