2015 IL App (3d) 140575-U

Order filed September 2, 2015

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

In re K.V., a Minor (THE PEOPLE OF THE STATE OF ILLINOIS, Petitioner-Appellee, v. JUDITH V., Respondent-Appellant).	)))))))))))	Appeal from the Circuit Court of the 10th Judicial Circuit, Peoria County, Illinois Appeal No. 3-14-0575 Circuit No. 13-JA-301 Honorable David J. Dubicki, Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.
Justices Lytton and Schmidt concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's finding that a minor child was neglected due to an injurious environment was not against the manifest weight of the evidence.

¶ 2 The State filed a juvenile petition in the circuit court of Peoria County alleging that K.V., a minor, was neglected due to an injurious environment. The trial court adjudicated K.V. neglected as alleged in the State's petition. The trial court subsequently entered a dispositional order finding the respondent, Judith V. (K.V.'s mother) unfit, making K.V. a ward of the court, and requiring the respondent to complete certain tasks before returning K.V. to her care. The

respondent appeals from the judgment of the circuit court of Peoria County finding that K.V. was neglected.

¶ 3 FACTS

¶ 4 On November 7, 2013, the State filed a two-count juvenile petition alleging that K.V. was abused and neglected. The State subsequently filed an amended, one-count petition which alleged that K.V. was neglected due to an injurious environment. In its amended petition, the State alleged that K.V. was almost 17 years old but was "mentally delayed." The State claimed that K.V.'s environment was injurious to her welfare in several respects. Specifically, the State alleged that: (1) when K.V. was 15 years old, the respondent allowed her to sleep in the same room with N.K., her 14-year-old male classmate, on an "almost weekly" basis; (2) K.V. became pregnant by N.K. and gave birth to a child, M.V., in May 2013; (3) when M.V. was born, the respondent and her husband, William L., sought to identify William L. as M.V.'s father on M.V.'s birth certificate in an effort to gain custody of M.V. and to block any relationship with M.V.'s actual father; (4) since May or June of 2013, K.V.'s father, who is a child sex offender, has resided part time in K.V.'s home; (5) at the time of shelter care in November 2013, K.V. resided with her mother (the respondent), her child (K.V.), her step-father, William L., and, at times, her father; (6) on November 17, 2011, the Illinois Department of Children and Family Services (DCFS) indicated the respondent and William L. for environmental neglect due to an extremely dirty house which included clutter and cat feces all over the floors and clothing; (7) on July 20, 2009, the respondent intentionally overdosed; (8) the respondent had a criminal history which included a 1999 conviction for depositing false transactions, a 2008 conviction for retail theft, and a 2010 felony conviction for retail theft; (9) William L. had a criminal history which included convictions for retail theft in 1997, 1999, and 2010; (10) K.V.'s father had a criminal history which included convictions for depositing a false transaction and domestic battery

(1999), battery (2008), indecent solicitation of a child (2009), and aggravated sexual abuse; (11) N.K. had a delinquency history, including convictions for residential burglary and retail theft in 2013.

¶ 5 In her answer to the State's petition, the respondent denied that she regularly allowed N.K. to sleep in the same bedroom with K.V. when K.V. was 15 years old. The respondent also denied that she had "intentionally overdosed" on July 20, 2009 and that K.V.'s father resided in the home with K.V. The respondent either stipulated to or did not demand strict proof of the other allegations in the State's petition.

¶ 6 During a hearing on the State's petition, the State introduced into evidence a report on K.V.'s neuropsychological condition that was prepared by St. Francis Hospital after an evaluation when K.V. was 16 years old. According to that report, K.V. had a history of attention deficit hyperactivity disorder (ADHD) and special education. K.V.'s I.Q. indicated that she was suffering from mild mental retardation "in the range of severe," and her intellectual abilities were equivalent to those of a seven to-nine-year-old child. The report recommended that K.V. have a medical surrogate because she did not have the cognitive capacity to make fully informed decisions about medical care or to plan for herself and her baby. The respondent was appointed K.V's medical surrogate.

¶ 7 Officer Craig Johnson, a detective with the Peoria Police Department who worked in the juvenile department, testified on the State's behalf. Officer Johnson testified that he began investigating K.V.'s case in June 2013, immediately after K.V. gave birth to a baby. He was called to the hospital at that time because K.V.'s stepfather, William L., tried to sign the baby's birth certificate. According to Officer Johnson, the respondent told him that K.V. (who was 16 years old at the time) was not ready to be a mother and that she and William L. would be raising K.V.'s baby.

¶ 8 Officer Johnson testified that he spoke with K.V. on June 25, 2013. He stated that K.V. told him that N.K. was the father of the baby. However, K.V. told Officer Johnson that the respondent did not want N.K. to be identified as the father because she feared that N.K.'s mother would gain custody of the baby and would try to obtain one of the baby's kidneys for N.K., who had a kidney disease. That is why K.V. initially said that she was pregnant by someone other than N.K. Officer Johnson further testified that K.V. told him that N.K. would spend the night at her house almost every weekend, and that N.K.'s little sister would sometimes spend the night with them. During those overnight visits, N.K. and his sister would sleep in K.V.'s bedroom. Officer Johnson did not ask K.V. whether the respondent or William L. knew that N.K. was spending the night in K.V.'s room. K.V. also told Officer Johnson that she had sex with N.K. on two occasions, once at his home and once at her grandmother's home.

¶ 9 Officer Johnson testified that he had a conversation with the respondent on the same day he spoke with K.V. (June 25, 2013). During that conversation, the respondent told Officer Johnson that K.V.'s biological father was at the family residence every day because he did not have a shower or refrigerator in the room he was renting. Officer Johnson stated that the respondent told him that K.V.'s father did not spend the night at the family home.[1]

¶ 10 Lonna Hayes, a child protection specialist with DCFS, also testified for the State. Hayes testified that she interviewed K.V. at the child advocacy center on November 8, 2013. Hayes stated that, during that interview, K.V. told Hayes that N.K. was the father of her baby. K.V. told Hays that N.K. would spend the night on weekends and sometimes during the week, and that N.K.'s sister would sometimes also spend the night at K.V.'s residence. K.V. said that there were

[1] When Officer Johnson spoke with K.V. on June 25, 2013, K.V. told him that she had seen her father the day before and that he did not spend the night in the family home.

two mattresses on the floor in the bedroom and that K.V. and N.K. would sleep together on one mattress while N.K.'s sister slept on the other mattress. Hayes testified that K.V. told her that she and N.K. would have sex after N.K.'s sister fell asleep. According to Hayes, K.V. also said that the respondent knew that K.V. and N.K. were staying in the same bedroom.

¶ 11 Bruce Bruns, a DCFS investigator, also testified on behalf of the State. Bruns testified that he had a conversation with K.V. on November 12, 2013. During that conversation, K.V. told Bruns that K.V.'s father stayed at their residence during weekends. On cross-examination, Bruns admitted that he did not ask K.V. whether her father was ever with her unsupervised or whether her father ever spent the night in the home.

¶ 12 The State introduced M.V.'s medical records from St. Francis Hospital into evidence. The records showed that M.V. was born on May 24, 2013. A paternity test included in M.V.'s records identified N.K. as M.V.'s father. M.V.'s records also reflected that the respondent told a nurse that both of K.V.'s grandfathers were residing at the respondent's house and that "both grandpas would be there with [K.V.]" when she returned home from the hospital with M.V.

¶ 13 The State also introduced K.V.'s medical records, which revealed that: (1) on May 14, 2013, a social worker at the hospital received information that K.V.'s biological father stayed all night at K.V.'s bedside while she was in the hospital; and (2) K.V.'s stepfather, biological father, and uncle came to drive K.V. home from the hospital and were in the room for K.V.'s discharge orders.

¶ 14 The State also introduced medical records relating to the respondent's overdose on July 20, 2009. Those records reflect that the respondent arrived by ambulance on that date due to an overdose. The respondent was diagnosed with depression, and the primary discharge diagnosis was "overdose, intentional ingestion, suicidal gesture." The respondent's medical records also

indicated that the respondent had a history of depression and a prior hospitalization for psychiatric problems.

¶ 15 The State introduced certified copies of the respondent's criminal convictions, William L.'s criminal convictions, and K.V.'s father's criminal convictions (including his conviction for indecent solicitation of a child). The State also introduced N.K.'s juvenile delinquency records.

¶ 16 During a proffer, the State stated that they would have presented DCFS indicated reports for environmental neglect with respect to both the respondent and Willliam L. The State also averred that Officer Johnson and Hayes would testify as to the dirty conditions of the house.

¶ 17 The respondent testified about the July 20, 2009, overdose incident. She stated that, at that time, she had been prescribed Tramadol, Tylenol with codeine, and a sleep medication. On July 20, 2009, she took her prescribed dosages of these medications plus two 800 milligram Ibuprofen tablets. The respondent testified that she went to the hospital later that day due to the combined effects of these medications and that she did not intentionally overdose or intend to cause the adverse effects that resulted. She stated that, although she had argued with her husband that day, she was not depressed.

¶ 18 The trial court found the State's allegations proven by a preponderance of the evidence and adjudicated the minor neglected due to an injurious environment. After a subsequent dispositional hearing, the trial court made K.V. a ward of the court, found the respondent unfit, and appointed DCFS as K.V.'s guardian with the right to place.

¶ 19 This appeal followed.

¶ 20 ANALYSIS

¶ 21 The respondent has appealed only the trial court's adjudication of neglect. She argues that the trial court's finding that K.V. was neglected due to an injurious environment was against the manifest weight of the evidence.

¶ 22 "Neglect" is the failure to exercise the care that circumstances justly demand, and encompasses both willful and unintentional disregard of parental duty. *In re K.B.*, 2012 IL App (3d) 110655, ¶ 16; *In re Gabriel E.*, 372 Ill. App. 3d 817, 822 (2007). Pursuant to section 2−3(1)(b) of the Act, a "neglected minor" includes any child under age 18 whose environment is injurious to his welfare. 705 ILCS 405/2-3(1)(b) (2012); *Gabriel E.*, 372 Ill. App. 3d at 822. An "injurious environment" is "an amorphous concept that cannot be defined with particularity 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." *K.B.*, 2012 IL App (3d) 110655, ¶ 16; see also *Gabriel E.*, 372 Ill. App. 3d at 822-23. Our courts have consistently recognized that a parent has a duty to keep her children free from harm. *Gabriel E.*, 372 Ill. App. 3d at 822-23; *In re Kamesha J.*, 364 Ill. App. 3d 785, 793 (2006).

¶ 23 The State must prove an allegation of neglect by a preponderance of the evidence. *In re Arthur H.*, 212 Ill. 2d 441, 463 (2004); *K.B.*, 2012 IL App (3d) 110655, ¶ 16. A trial court's finding of neglect will not be disturbed on appeal unless it is against the manifest weight of the evidence. *Arthur H.*, 212 Ill. 2d at 464; *K.B.*, 2012 IL App (3d) 110655, ¶ 16. A determination will be found to be against the manifest weight of the evidence only if the opposite conclusion is clearly evident or the determination is unreasonable, arbitrary, or not based on the evidence presented. *In re D.F.*, 201 Ill. 2d 476, 498 (2002); *K.B.*, 2012 IL App (3d) 110655, ¶ 16. "The reviewing court gives deference to the trial court's findings of fact as the trial court is in the best position to observe the conduct and demeanor of the parties and witnesses, assess their credibility, and weigh the evidence" presented at adjudicatory and dispositional hearings. *In re Sharena H.*, 366 Ill. App. 3d 405, 415 (2006).

¶ 24 In this case, the trial court's finding that K.V. was neglected due to an injurious environment was not against the manifest weight of the evidence. According to the

neuropsychological report that was admitted into evidence, K.V. is mentally retarded and has the intellectual capacities of a seven to nine-year-old child. The respondent was appointed as K.V's medical surrogate because K.V. lacked the cognitive capacity to make fully informed decisions about medical care or to plan for herself and her baby. Nevertheless, there was evidence that the respondent allowed K.V. to sleep in the same bedroom with N.K. (a 14-year-old with a juvenile delinquency history) without supervision on an almost weekly basis. Officer Johnson testified that K.V. told him that N.K. would spend the night at her house almost every weekend, and that N.K.'s little sister would sometimes spend the night with K.V. and N.K. in K.V.'s bedroom. Hayes testified that K.V. told her that N.K. would spend the night on weekends and sometimes during the week, and that N.K.'s sister would sometimes also spend the night at K.V.'s residence. K.V. told Hayes that there were two mattresses on the floor in her bedroom and that K.V. and N.K. would sleep together on one mattress while N.K.'s sister slept on the other mattress. Hayes testified that K.V. told her that she and N.K. would have sex after N.K.'s sister fell asleep, and that the respondent knew that K.V. and N.K. were staying in the same bedroom. K.V. became pregnant with N.K.'s child at age 15. Due to her cognitive limitations, K.V. needed more care and supervision than the average 15-year-old child. The trial court could have reasonably concluded that the respondent's decision to allow K.V. to spend the night in the same room with N.K. without supervision created an environment that was injurious to K.V.'s welfare and amounted to neglect.

¶ 25 In addition, there was evidence suggesting that the respondent allowed K.V.'s biological father, a convicted child sex offender, to spend a substantial amount of time at the family home and to visit K.V. without supervision while K.V. was in the hospital. Moreover, the respondent had a history of depression and psychiatric problems (including hospitalizations), and the State presented medical records suggesting that the respondent intentionally overdosed in an apparent

"suicidal gesture" in 2009. Further, DCFS had previously indicated the respondent and her husband for environmental neglect due to an extremely dirty house which included clutter and cat feces all over the floors and clothing, and both the respondent and her husband had criminal histories. Accordingly, there was ample evidence supporting the trial court's finding of neglect. See, *e.g.*, *In re J.Y.*, 2011 IL App (3d) 100727, ¶ 18 (affirming trial court's finding that parents' history of DCFS indicated findings for risk of harm to children and the father's criminal history were sufficient to sustain a finding of neglect).

¶ 26 The respondent argues that K.V.s alleged hearsay statements to Officer Johnson and Hayes regarding her sleeping in the same room with N.K. at the respondent's home cannot support a finding of neglect because the alleged statements were uncorroborated. We do not find this argument persuasive. Although out-of-court statements are generally inadmissible hearsay, the Act provides an exception for the admission of out-of-court statements made by minors pertaining to abuse or neglect. 705 ILCS 405/2−18(4)(c) (West 2012); *In re An.W.*, 2014 IL App (3d) 130526, ¶ 61; *In re R.M.*, 307 Ill. App. 3d 541, 555 (1999). Section 2−18(4)(c) provides:

> "Previous statements made by the minor relating to any allegation of abuse or neglect shall be admissible in evidence. However, no such statement if uncorroborated and not subject to cross-examination, shall be sufficient in itself to support a finding of abuse or neglect." *Id.*

"The underlying purpose of section 2−18(4)(c) is to provide a means of proving abuse or neglect in cases where a minor is reluctant or unable to testify." *In re A.P.*, 179 Ill. 2d 184, 196 (1997). In enacting section 2−18(4)(c), the legislature sought to balance the welfare interests of minors and the rights of those accused of abuse or neglect. *Id.* at 197; *An.W.*, 2014 IL App (3d) 130526, ¶ 61. The legislature stuck that balance by allowing a minor's out-of-court statements to establish abuse or neglect only if such statements are

corroborated by other evidence. *Id.* at 198-99. For purposes of section 2-18(4)(c), corroborating evidence of abuse or neglect is any "independent evidence which would support a logical and reasonable inference that the act of abuse or neglect described in the [minor's] hearsay statement occurred," *i.e.*, any evidence, "physical or circumstantial," that "makes it more probable that a minor was abused or neglected." *A.P.*, 179 Ill. 2d at 199; see also *An.W.*, 2014 IL App (3d) 130526, ¶ 63. The form of corroboration will vary depending on the facts of each case. *A.P.*, 179 Ill. 2d at 199; see also *An.W.*, 2014 IL App (3d) 130526, ¶ 63). Accordingly, "whether there is sufficient corroboration under section 2-18(4)(c) is a determination that must be made on a case by case basis." *A.P.*, 179 Ill. 2d at 198.

¶ 27 Here, K.V.'s alleged hearsay statements that she regularly slept in the same room with N.K. without adult supervision and had sex with him at the respondent's house were corroborated by the fact that she became pregnant and gave birth to N.K.'s baby. N.K.'s paternity of M.V. was established by a paternity test which was admitted into evidence. The fact that K.V. became pregnant by N.K. makes it more likely that the statements K.V. made about sleeping with N.K. at the respondent's house were true.

¶ 28 The respondent argues that K.V.'s pregnancy is not sufficiently corroborative of K.V.'s out-of-court statements because K.V. also told Officer Johnson that she had sex with N.K on two occasions outside of the respondent's home (once at N.K.'s home and once at K.V.'s grandmother's home). The respondent asserts that, because K.V. could have gotten pregnant during one of these episodes, the fact of her pregnancy does not corroborate her statements that she had sex with N.K. at the respondent's house. We disagree. The fact that other inferences could be drawn from the evidence presented at trial does not mean that K.V.'s statements were not corroborated. As noted, K.V.'s pregnancy made it more probable that her out-of-court

statements regarding her trysts with N.K. at the respondent's home were true. The State is not required to rule out all other possible inferences as to where and when K.V. became pregnant. We will not substitute our judgment for that of the trial court on the inferences to be drawn from the evidence. *In re D.F.*, 201 Ill. 2d at 498–99. In any event, given N.K.'s delinquency history and K.V.'s severe cognitive limitations, the fact that she was allowed to be with N.K. in *any* location without adult supervision could support a reasonable inference of neglect.

¶ 29 Moreover, K.V.'s out-of-court statements regarding her trysts with N.K. at the respondent's home were not the only evidence presented of neglect due to an injurious environment. As noted above, the State also presented evidence that the respondent had a history of depression and psychiatric problems, that the respondent and her husband both had criminal histories, and that the respondent and her husband were previously indicated by DCFS for environmental neglect.[2] All of this evidence was undisputed. The State also presented medical records indicating that the respondent had intentionally overdosed in 2009 as a "suicidal gesture."

¶ 30 The State also presented evidence suggesting that the respondent allowed K.V.'s biological father, a convicted child sex offender, to spend a substantial amount of time with K.V. at the family home and elsewhere. "The mere fact that an individual has been convicted of a sex offense against a minor, without more, is insufficient to create an injurious environment as a matter of law." *K.B.*, 2012 IL App (3d) 110655, ¶ 17; *In re T.B.*, 324 Ill. App. 3d 506, 508 (2001). However, "if a respondent allows a sex offender to watch over her children without

[2] Although the State only presented a proffer regarding the prior DCFS indication of the respondent for environmental neglect, the respondent did not challenge the State's allegations on this point.

supervision, a *prima facie* case of neglect is established." *K.B.*, 2012 IL App (3d) 110655, ¶ 17. The respondent then has the opportunity to present evidence that the minor was not at risk while in the sex offender's care. *Id.*

¶ 31 The respondent argues that the evidence presented by the State on this issue does not support an inference of neglect because there was no evidence that K.V.'s father resided in the family home or had unsupervised contact with K.V. We disagree. According to a note in K.V.'s medical records, a social worker at the hospital received information that K.V.'s biological father stayed all night at K.V.'s bedside while she was in the hospital. In addition, Bruns testified that K.V. told him that her father stayed at their residence during weekends. Moreover, M.V.'s medical records reflected that the respondent told a nurse that both of K.V.'s grandfathers were residing at the respondent's house and that "both grandpas would be there with [K.V.]" when she returned home from the hospital with M.V. This evidence supported a reasonable inference that K.V.'s father resided in the same home as K.V. for substantial periods of time and that K.V. was left alone with her father on at least one extended occasion while K.V. was in the hospital. We acknowledge that evidence supporting a contrary inference was presented at trial (including the respondent's testimony and her statements to Officer Johnson) and that Bruns admitted during cross-examination that he did not ask K.V. whether her father was ever with her unsupervised or whether her father ever spent the night in the home. However, the trial court was in the best position to assess the witnesses' credibility, draw reasonable inferences from the evidence presented, and weigh the evidence, and we defer to the trial court's judgment on these issues. *D.F.*, 201 Ill. 2d at 499; *Sharena H.*, 366 Ill. App. 3d 405, 415. We cannot say that the trial court's apparent inference that K.V. was left alone with her father on at least one occasion was unreasonable, arbitrary, or not based on the evidence. Moreover, the respondent presented no evidence suggesting that K.V. was not at risk while in her father's care.

¶ 32 In any event, as noted above, there was ample evidence of neglect due to an injurious environment in this case aside from K.V.'s contact with her father. Taken as a whole, the evidence was sufficient to support the trial court's finding of neglect. The opposite conclusion is not clearly evident. Accordingly, the trial court's finding of neglect is not against the manifest weight of the evidence, and we will not disturb the trial court's judgement.

¶ 33 CONCLUSION

¶ 34 For the reasons sets forth above, we affirm the judgment of the circuit court of Peoria County.

¶ 35 Affirmed.