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2015 IL App (3d) 140682-U
(Consolidated with 140683 and 140684)

Order filed September 2, 2015

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

In re A.P., B.A., and B.P., Minors	)	Appeal from the Circuit Court
(THE PEOPLE OF THE STATE	)	of the 10th Judicial Circuit,
OF ILLINOIS,	)	Peoria County, Illinois
)	
Petitioner-Appellee,	)	Appeal Nos. 3-14-0682, 3-14-0683, and
	)	3-14-0684 (consolidated)
v.	)	Circuit Nos. 13-JA-285, 13-JA-286, and
	)	13-JA-287 (consolidated)
)	
SHARI P.,	)	Honorable
	)	David J. Dubicki,
Respondent-Appellant).	)	Judge, Presiding.

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

ORDER

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

¶ 2 The State filed juvenile neglect petitions in the circuit court of Peoria County alleging that A.P., B.A., and B.P., three minor children (the children), were neglected due to an environment that was injurious to their welfare. The trial court adjudicated the children neglected due to an injurious environment. After conducting a dispositional hearing, the trial court found

the respondent unfit, made the children wards of the court, appointed the Illinois Department of Children and Family Services (DCFS) the children's temporary guardian, and placed the children outside of the respondent's home. This appeal followed.

¶ 3

FACTS

¶ 4 The respondent is the children's mother. On October 28, 2013, the State filed juvenile neglect petitions in this matter which were subsequently amended on February 4, 2014. In its amended petitions, the State alleged that the children's environment was injurious to their welfare in several respects. First, the State alleged that Dustin A., the father of one of the children, was released from incarceration in December 2012 (and then again on June 2013 after he was reincarcerated) under the condition that he have no contact with the respondent.

Nevertheless, when police entered the children's home by force on August 22, 2013, they found Dustin A. with the respondent and the children. The State claimed that both Dustin A. and the respondent had visible marks on their bodies at the time. The State also alleged that Dustin A. had abused and injured the respondent on two prior occasions. Specifically, the State alleged that, on May 16, 2006, Dustin A. pulled the respondent's hair, slapped her, and pushed her into a wall. The State also claimed that, on April 15, 2006, Dustin A. kicked the respondent, punched her in the back, and shoved her head into a wall. Both of these incidents caused injuries to the respondent that were observed by police. The State also alleged that Dustin A. had a criminal history ending in 2012 and that J.D., the father of the other two children, had a criminal history ending in 2006.

¶ 5 In her Answer, the respondent stipulated that the State would call witnesses at the adjudicatory hearing that would support the State's allegations regarding Dustin A.'s incarcerations, his release from prison under the condition that he have no contact with the respondent, and the August 22, 2013 incident (except for the State's allegations that the

respondent had injuries at that time and that the police heard yelling or crying at the home when they arrived). The respondent subsequently amended her answer to reflect that she did not demand strict proof of the State's allegations regarding Dustin A.'s abuse of the respondent on two prior occasions in 2006.

¶ 6 During the adjudicatory hearing, the parties stipulated to the criminal history of the children's fathers. The State introduced a certified copy of an order of protection entered by respondent against Dustin A which was admitted into evidence without objection. The State also introduced a copy of another petition for an order of protection that the respondent filed against Dustin A. The trial court admitted the application over the respondent's objection.

¶ 7 Steven Peters, a parole officer with the Illinois Department of Corrections (IDOC), testified on behalf of the State. Peters was Dustin A.'s parole officer. Peters testified that Dustin A. was released from IDOC custody on August 24, 2012, returned to IDOC on September 9, 2012, and was released again on December 21, 2012. Upon Dustin A.'s release on December 21, 2012, Peters instructed Dustin A. to have no contact with the respondent, who was one of Dustin A.'s victims. Dustin A. signed a paper acknowledging the no-contact order. Dustin A. returned to IDOC again on March 7, 2013, and was released again on June 12, 2013. Dustin A.'s parole continued at that time, including the no-contact order. He was placed on electronic monitoring with a bracelet around his ankle. According to Peters, Dustin A. was required to keep his electronic monitoring device on and abide by a "movement schedule" until the end of his parole in November or December of 2013.

¶ 8 Robert Purcell, a Chillicothe Police Officer, also testified for the State. Purcell testified that, on August 22, 2013, he was dispatched to 1414 Bayberry, Apartment C, in response to a domestic disturbance call. When Purcell and other officers arrived on the scene, they knocked on the door, but no one answered. The officers tried calling the respondent's cell phone after

obtaining her phone number from a neighbor. Purcell testified that "[s]omeone answered at first and then hung up." Based upon what witnesses had told the officers, Purcell felt that the officers needed to check on the children's welfare, so the officers kicked in the door and entered the residence.¹ At that time, the respondent and Dustin A. came out from one of the back bedrooms. The children were in the apartment at the time. Purcell stated that the respondent was "hesitant" to answer questions. Initially, she would not state the children's names because she feared the officers would call DCFS, but she ultimately told the officers the children's names. The respondent told Purcell that there had been an argument but she claimed that nothing physical had happened. There was a red mark on her neck, but she would not let Purcell photograph it. The respondent claimed that she got the mark from scratching a mole.

¶ 9 After Dustin A. was taken into custody, Purcell noticed that Dustin A. had some marks and bruising on his neck, which Purcell photographed. Dustin A. claimed he got the marks while playing basketball with the children. Dustin A. told Purcell that he was on parole. Purcell did not believe that Dustin A. had his ankle bracelet on at the time.

¶ 10 During cross-examination, Purcell testified that, when he entered the respondent's home on August 22, 2013, the home appeared to be clean and free from any obvious safety hazards. He stated that, as far as he knew, the children were sleeping in their bedrooms at that time. He also acknowledged that it would be common for parents in "these types of situations" to be "concerned about DCFS."

¶ 11 Raelyn Galassi, a DCFS investigator, also testified. Galassi investigated the August 22, 2013 incident. She spoke with B.A. and B.P. separately about the incident. B.A. told Grassi that

¹ As the trial court noted, the respondent did not argue that the warrantless police entry into her residence was not justified.

the respondent and Dustin A. had a fight in the kitchen and in the living room and that Dustin A. was throwing the respondent around, hitting and punching her. B.A. tried to help the respondent by trying to keep Dustin A. back with what he referred to as "the thing you clean the floor with." B.A. told Grassi that his two brothers were also present, watching the fight and crying. B.A. said that the respondent told him to call 9-1-1 but his dad got the phone away from him before he could dial the number. Dustin A. did not want B.A. to call 9-1-1 and he did not let anyone open the door for the police because he did not want to go to jail. During the fight, Dustin A. tried to get the phone from the respondent, hurting her wrist in the process. Grassi stated that B.A. told her that Dustin A. was mean and he sometimes hit B.A. with a "metal baseball stick."

¶ 12 Grassi testified that B.P. also told her that police came to the house on August 22, 2013, and that the respondent did not want to let them in because she did not want them to have to go live somewhere else and she did not want Dustin A. to go to jail. B.P. said that the police were called because Dustin A. was fighting with the respondent. B.P. tried to help the respondent, but he was afraid that Dustin A. might hurt him if he did. He told Grassi that B.A. tried to help the respondent and that A.P. was standing in the living room watching the fight with B.P. According to B.P., Dustin A. hit and punched the respondent and "knocked and dragged" her around. On cross-examination, Grassi testified that B.P. was five or six years old at the time she interviewed him, and she acknowledged that she did not discuss the difference between the truth and a lie with B.A. or with B.P.

¶ 13 Steve Miller, a patrol officer with the Peoria County Sheriff's department, testified about the domestic violence incident that occurred on May 16, 2006. On that date, Miller was dispatched to the scene of the incident, where he spoke with the respondent. The respondent told Miller that she had been in a fight with her live-in boyfriend, Dustin A., and that Dustin A. had "thrown her around" in the kitchen and bedroom, injuring her in the process. The respondent

wrote a report about the incident in which she stated that Dustin A. grabbed her and threw her down and then followed her into the bedroom where he threw her onto the bed and pushed her into a wall. After the respondent admitted that the State's Exhibit 3 (the incident report) was in her handwriting and signed by her, the report was admitted into evidence.

¶ 14 The trial court found that the children were neglected due to an environment injurious to their welfare. The trial court's written adjudicatory order reflects that the basis of the neglect finding was the domestic violence of the parents and the father's criminal history. During its oral comments from the bench, the trial court noted that the State had proved the May 16, 2006 and August 22, 2013 incidents, that the children had witnessed the latter incident, and that the children's account of that incident was corroborated by other evidence. The court found it significant that the respondent "took [Dustin A.] back" despite the prior incident of domestic violence and the no-contact order.

¶ 15 A dispositional hearing was held on August 11, 2014. A dispositional report prepared by a caseworker on approximately July 27, 2014 was presented to the court.² The report noted that the respondent had completed domestic violence and parenting classes, but Dustin A. had not started parenting classes or counseling. The report also noted that the respondent had recently informed her caseworker that she had been ticketed for driving under the influence (DUI). According to the report, the defendant received the ticket after she rear-ended two parked cars on May 18, 2014, at 2:26 a.m. Her car sustained heavy front-end damage during the accident. The children were not in the car at the time because the respondent had previously dropped them off at her parents' home. When the respondent was taken to the hospital for treatment after the

² The caseworker who prepared the dispositional report did not testify because she was on medical leave at the time of the hearing.

accident, her eyes were red and glassy, her breath smelled strongly of an alcoholic beverage, her speech was mumbled, and her eye movement was lethargic. She had a blood alcohol content (BAC) of .252. When her father arrived at the hospital, the respondent acted belligerently toward him. At the time of the dispositional hearing, the respondent had not pled guilty or been convicted of the May 14, 2014 DUI. The respondent had previously committed a DUI on January 3, 2010.

¶ 16 Caseworker Rebecca Stark testified at the dispositional hearing. Stark testified that, after the dispositional report was written, the respondent scheduled a substance abuse assessment. Shortly before the dispositional hearing, Stark spoke with the respondent about her relationship with Dustin A. The respondent admitted to having contact with Dustin A. but said that she was not in a relationship with him. A Facebook post showed a photograph of the respondent with Dustin A. and stated that the two were together on July 14, 2014. On July 15, 2014, the respondent posted a comment underneath the photograph stating "Damn my man sexy af Dustin [A.]." When confronted with the photo and subscript, the respondent admitted that she had met with Dustin A. to celebrate her birthday on July 14, 2014 and that the meeting had ended "in an intimate nature." However, the respondent claimed she was just looking for human contact and was not in a relationship with Dustin A. No child was present during the respondent's encounter with Dustin A. To Stark's knowledge, Dustin A. had not been in the home with the children, and the children were safe and well taken care of while they were in the respondent's care pending the dispositional hearing.

¶ 17 The respondent had completed counseling before she posted the Facebook picture of her and Dustin A. The dispositional report (which was completed before Stark asked the respondent about the Facebook post) indicated that the respondent's relationship with Dustin A. ended in January of 2014. Stark noted that the respondent had not violated the order of protection because

the order did not bar her from having contact with Dustin A. However, Stark opined that the respondent's "judgment needs to be looked at" and that counseling could be an appropriate place for the respondent to look at issues relating to her contact with Dustin A. Stark did not recommend the removal of the children from the home.

¶ 18 Caseworker Matthew O'Marah, Stark's supervisor, testified that the respondent had made progress and had done a "very good job" with the children. However, he stated that he had concerns about the respondent's ability to separate herself from Dustin A. as she had continued to engage in a relationship with him after all the services she had completed. O'Marah expressed hope that, if the respondent kept the children in her care, she would "reengage in services and come to the conclusion that she needed to end that relationship and be there for her children." O'Marah noted that the Children's Home Agency does not allow caseworkers to recommend a finding of fitness or unfitness.

¶ 19 The State asked the trial court to find the respondent unfit. The State argued that, after the May 2006 domestic violence incident and despite the subsequent no-contact order, the respondent allowed Dustin A. back into her life and he battered her in front of the children. Moreover, the State argued that, despite completing counseling and domestic violence classes, the respondent was still "back with" Dustin A. at the time of the dispositional hearing. Although she denied having a relationship with him, the evidence showed that she still called him "her man" and was still intimate with him even after completing all of her services. She even sought to defend her having had contact with Dustin A. Moreover, the State noted that the respondent had recently been ticketed for a DUI for the second time.

¶ 20 The children's guardian *ad litem* expressed concerns about the safety of the children and was unable to recommend that the respondent be found fit. She noted that the dispositional report was written before additional information came to light, and she stated that the

respondent's alcohol issues and her ongoing contact with Dustin A. were "very concerning" because they "go back to the beginnings of this case in terms of what the issues have been." Although she conceded that the respondent was capable of parenting, the guardian *ad litem* believed that "it is clear that she is not making the choices that allow her to create a safe environment for her children." The guardian found this all the more concerning because it occurred after the respondent had engaged in services. She acknowledged that the effect of an unfitness determination would be the removal of the children from the respondent's care.

¶ 21 The trial court found the respondent unfit. It noted that the respondent's May 2014 DUI incident involved a very high blood alcohol concentration and resulted in property damage. The court observed that the May 2014 incident had been the respondent's second DUI within four years. In addition, the court stressed that concerns about the respondent's relationship with Dustin A. had existed from the start of the case, yet the respondent still had a relationship with him even though he had not addressed his problems. The trial court found that placement of the children outside the respondent's home was in the children's best interests. Accordingly, the court made the minors wards of the court, appointed DCFS as the children's temporary guardian, and placed the minor's outside the respondent's home.

¶ 22 This appeal followed.

¶ 23 ANALYSIS

¶ 24 1. Neglect

¶ 25 The respondent argues that the trial court's finding that the children were neglected due to an injurious environment was against the manifest weight of the evidence. We are not persuaded.

¶ 26 "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).

¶ 27 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).

¶ 28 In this case, the trial court's finding that the children were neglected due to an injurious environment was not against the manifest weight of the evidence. Dustin A. had an extensive and violent criminal history which had resulted in multiple incarcerations, and (as proven by Officer Miller's testimony and the respondent's May 2016 incident report), he had physically

abused the respondent in the past. Upon his release from prison in December 2012, Dustin A. was ordered not to contact the respondent in any way. Nevertheless, despite the prior abuse and the no-contact order, the respondent allowed Dustin A. into her home on August 22, 2013 while the children were present. B.A. and B.P. told Grassi that the respondent and Dustin A. got into altercation that night which turned physical. They tried to help their mother during the altercation; B.P. was afraid that Dustin A. would hurt him. All three of the children watched as Dustin A. punched their mother and "knocked and dragged" her around the room. B.A. also told Grassi that Dustin A. was "mean" and would sometimes hit him with a "metal baseball stick." B.P. testified that, when the police came to the house, the respondent did not want to let them in because she did not want Dustin A. to go to jail.

¶ 29 B.A.'s and B.P.'s accounts of the August 22, 2013, incident were corroborated in certain material respects by Officer Purcell's testimony. Purcell stated that he was dispatched to the respondent's home on a domestic disturbance call. No one answered the police officers' knocks on the door, and when an officer called the respondent cell phone, someone answered and immediately hung up. When police officers kicked in the door to check on the children's welfare, they found Dustin A. in the home.³ The respondent was initially hesitant to answer Purcell's questions. She ultimately admitted that she had had an argument with Dustin A., but she denied that the argument was physical. However, Purcell observed red marks on the respondent's neck and marks and bruises on Dustin A.'s neck. Although Dustin A. and the

³ Although the respondent notes that the police entered her home without a warrant, she does not argue that the police entry was not justified or that Purcell's testimony regarding what he witnessed in the home was inadmissible. Nor did she raise any such argument before the trial court. Accordingly, any such argument is waived.

respondent each offered alternative explanations for the marks on their necks, the trial court could reasonably have concluded that the marks were caused by a physical altercation between the respondent and Dustin A., as B.P. and B.A. described.

¶ 30 Based on the evidence presented at the adjudicatory hearing, the trial court could have reasonably found that the respondent allowed Dustin A. into the family home while the children were present on at least one occasion even though Dustin A. posed a serious threat to her safety and to the children's safety. The court could also have reasonably found that Dustin A. physically abused the respondent in the children's presence on August 22, 2013, and that the respondent tried to protect Dustin A. immediately afterwards by downplaying the incident in her discussions with the police. In sum, there was ample evidence supporting the trial court's conclusion that the children were neglected due to an environment that was injurious to their welfare. An opposite conclusion is not clearly evident. We therefore affirm the trial court's neglect finding.

¶ 31 2. Fitness

¶ 32 The respondent argues that the trial court's finding that the respondent was an unfit parent is against the manifest weight of the evidence. We do not find the respondent's arguments persuasive.

¶ 33 At the dispositional stage, the trial court determines whether a minor child's parent is fit to care for the child (705 ILCS 405/2-27(1) (West 2014)) and whether "it is consistent with the health, safety, and best interests of the [child] and the public that the [child] be made a ward of the court." (705 ILCS 405/2-21(2) (West 2014); *In re N.B.*, 191 Ill. 2d 338, 343 (2000)). In cases that do not involve the complete termination of parental rights (like the instant case), the State must prove that respondent is unfit by a preponderance of the evidence. *In re A.P.*, 2013 IL App (3d) 120672, ¶ 15; see also *In re April C.*, 326 Ill. App. 3d 245, 257 (2001). We will reverse the

trial court's fitness findings only if such findings are against the manifest weight of the evidence. *In re J.C.*, 396 Ill. App. 3d 1050, 1060 (2009). A reviewing court will find that the trial court's determination is 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. *D.F.*, 201 Ill. 2d at 498. We give deference to the trial court's determination because the trial court has a higher degree of familiarity with the evidence and is in the best position to observe the witnesses' demeanor. *Id.* at 498–99.

¶ 34 The evidence in this case strongly supports the trial court's finding that the respondent is unfit. After the children were adjudicated neglected due to the August 22, 2013, domestic violence incident involving Dustin A., the respondent continued to have contact with Dustin A. She had intimate relations with Dustin A. less than one month prior to the dispositional hearing and referred to him as "her man" in a Facebook posting. Caseworker Stark opined that the respondent's judgment "need[ed] to be looked at" and recommended that the respondent obtain counseling to address her continuing interaction with Dustin A. Caseworker O'Marah (Stark's supervisor) expressed concerns about the respondent's ability to separate herself from Dustin A. given that she had continued to engage in a relationship with him after all the services she had completed (including counseling and domestic violence and parenting classes). O'Marah suggested that the respondent needed to end her relationship with Dustin A. and "be there for her children." The children's guardian *ad litem* also expressed concerns regarding the respondent's continuing contact with Dustin A. even after her completion of services.

¶ 35 The respondent argues that Dustin A. was never in the children's presence after the adjudicatory hearing and that the respondent's ongoing contact with Dustin A. did not endanger the children. However, given Dustin A.'s history of domestic violence and his violent criminal history, the trial court was not required to credit that argument. The respondent also contends

that her inability to break off contact with Dustin A. could be addressed effectively through counseling. However, the respondent continued to see Dustin A. after having undergone counseling and other services, and she continued to have intimate relations with him despite the fact that he had physically abused her on at least two prior occasions. Under these circumstances, the trial court could reasonably have concluded that further counseling would not have solved the problem.

¶ 36 Moreover, a few months prior to the dispositional hearing, the respondent was ticketed for a DUI that resulted in a serious accident and damage to property. Her blood alcohol content at the time was .252, more than three times the legal limit. It was the respondent's second citation for DUI in four years. The respondent notes that the children were not in the car at the time of the accident, that she was forthcoming in promptly disclosing the incident to her caseworker, and that she agreed to undergo a substance abuse assessment and random breathalyzer tests thereafter. Nevertheless, the evidence strongly suggested that the respondent had an ongoing problem with alcohol and that she continued to exercise bad judgment and make poor decisions that put her safety and others' safety at risk even after she had completed services.

¶ 37 The children's guardian *ad litem* was unable to recommend that the respondent be found fit. She noted that the dispositional report was written before additional information came to light, and she stated that the respondent's alcohol issues and her ongoing contact with Dustin A. were "very concerning" because they "go back to the beginnings of this case in terms of what the issues have been." Although she conceded that the respondent was capable of parenting, the guardian *ad litem* believed that "it is clear that [the respondent] is not making the choices that allow her to create a safe environment for her children." The guardian found this all the more concerning because it occurred after the respondent had engaged in services.

¶ 38 The respondent argues that she made substantial progress by completing individual counseling and domestic violence and parenting classes. She also notes that her caseworkers acknowledged that she did a good job parenting the children and they did not recommend that she be found unfit or that the children be removed from her care. However, as noted, the respondent's caseworkers and the guardian *ad litem* expressed concerns about the respondent's continuing contact with Dustin A., and the guardian expressed concerns about her ongoing problems with alcohol. The fact that the these problem persisted after the respondent had completed services undermines the respondent's argument that her completion of services demonstrates progress. Moreover, O'Marah testified that the Children's Home Agency does not allow caseworkers to recommend a finding of fitness or unfitness. Thus, the fact that the respondent's caseworkers did not recommend that she be found unfit is of no moment.

¶ 39 CONCLUSION

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

¶ 41 Affirmed.