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2015 IL App (3d) 140727-U
(Consolidated with 140728, 140729, 140730, 140731)

Order filed May 28, 2015

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2015

<i>In re</i> J.S., J.S.-H., J.C., D.C. and L.C.,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
Minors	)	Peoria County, Illinois,
)	
(The People of the State of)	
Illinois,	)	Appeal Nos. 3-14-0727, 3-14-0728,
	)	3-14-0729, 3-14-0730 &
Petitioner-Appellee,	)	3-14-0731
	)	Circuit Nos. 14-JA-63, 14-JA-64,
v.	)	14-JA-65, 14-JA-66 &
	)	14-JA-67
Jennifer S.,)	
	)	Honorable
Respondent-Appellant).	)	Albert L. Purham, Jr.,
	)	Judge, Presiding.

JUSTICE O'BRIEN delivered the judgment of the court.
Presiding Justice McDade and Justice Carter concurred in the judgment.

ORDER

¶ 1 *Held:* A trial court's order adjudicating minors neglected because of an environment injurious to their welfare was upheld on appeal because the State proved by a preponderance of the evidence that the mother's substance abuse problem with alcohol and associated violence, especially towards the oldest minor, constituted neglect and a breach of her duty to provide a safe and nurturing home for the minors.

¶ 2 The minors, J.S., J.S.-H., J.C., D.C., and L.C., were adjudicated neglected by reason of an injurious environment. The respondent mother, Jennifer S., was found dispositionally unfit, and she was ordered to complete certain tasks before the minors could be returned to her care. The mother appeals the adjudication of neglect.

¶ 3 FACTS

¶ 4 On March 14, 2014, the State filed juvenile petitions alleging that the minors, J.S., J.S.-H., J.C., D.C., and L.C., were neglected due to an injurious environment. The petitions alleged that the mother was intoxicated on the morning of March 12, 2014, she struck J.S. on the head with a plate, she threw a space heater at J.S., and she also hit J.C. and D.C. The petitions also alleged that when the Department of Children and Family Services (DCFS) came to the home that afternoon, the mother was intoxicated. Further, the petitions alleged that the mother had a substance abuse problem with cannabis and alcohol and that she used cannabis in front of the minors. Also, the petitions alleged that, in March 2013, the mother had whipped J.S. and his friend with an extension cord. The mother had a previous indicated report by DCFS on March 21, 2013, and the mother had a criminal history that included possession of cannabis and criminal damage to property. The remainder of the allegations did not relate to the mother.

¶ 5 Raiann Karl, a registered nurse employed at Peoria High School, testified at that adjudication hearing that a coach brought J.S. to her on the morning of March 12, 2014. J.S. told Karl that he was awakened that morning by his mother hitting him over the head with a plate and then she threw a space heater at him. Karl noted cuts on both of J.S.'s hands and extracted fragments of beige or ivory from his hair. J.S. did not mention that his mother was intoxicated.

¶ 6 Ta'Niqua Phipps, an investigator with DCFS, testified that she went to Peoria High School late in the morning on March 12, 2014, to speak with J.S. He told her that he was

awakened that morning by his mother hitting him over the head with a plate and cursing at him. His mother was mad that he had cooked french fries the night before. J.S. also told Phipps that his mother had thrown a space heater at him and kicked him in the face. J.S. told Phipps that his mother was intoxicated that morning, and he was afraid to go home. Phipps observed a cut on J.S.'s wrist and lacerations on his left hand. Phipps also spoke with D.C., who told her J.S. had gotten in trouble that morning and he heard yelling, but didn't see anything. He said his mother had been drinking. D.C. told Phipps that he and J.C. had gotten "whoopings" that day by their mother. Phipps went to the home that afternoon and one of the minors answered the door and said the mother was sleeping. The mother finally came to the door, and Phipps noticed a strong smell of alcohol and noticed her eyes to be glassy. Phipps knew the mother had worked the night before, and that she had just woken up, but testified that the mother looked intoxicated. The mother was agitated, sometimes yelling and cursing at the children. The mother admitted to hitting J.S. on the head with a plate, but denied being responsible for the laceration and abrasion on his hand and wrist. She also admitted to "whooping" D.C. and J.C. that day. Phipps did not observe any beer or vodka bottles, not any marijuana paraphernalia while in the home. J.C. told Phipps that her mother drank beer and vodka in front of the minors, and sometimes she had trouble waking her mother up because she had too much to drink. J.S. told Phipps that his mother drank alcohol all day, every day.

¶ 7 Sherrell Stinson, a City of Peoria police detective, testified that he had a conversation with J.S. on May 9, 2014, regarding the events of March 11 and 12, 2014. J.S. told Stinson that his mother left for work on March 11, and J.S. made himself some food but left a plate out when he went to bed. He heard his mother come home, and, at around 5 a.m. the next morning, he heard her coming down the steps. She hit him over the head with the dinner plate that he had left

out and then told him to clean up the glass. J.S. told Stinson that his mother also hit him with the heater. Stinson then had a conversation with the mother. The mother told Stinson that she got home from work around 10 p.m. on March 11. She had been having some trouble with J.S. eating all of the food. She told Stinson that she stayed up, and drank vodka, but stated that she did not get drunk. Early in the morning, she went into the kitchen and found the oven door open with an empty plate in it. She took the plate and went downstairs to talk to J.S. about heating the plate and leaving it dirty in the oven. The mother told Stinson that she was yelling as she walked down the stairs, and she “clocked” J.S. over the head twice with the plate.

¶ 8 Roberto Vasquez, also a City of Peoria police detective, testified regarding the incident in March 2013. J.S. told Vasquez that he and a friend had been playing basketball on the evening of March 19, 2013, and J.S. brought his friend home with him after. J.S. stated that his mother was upset because he had not told her they were leaving. The mother struck J.S. on the cheek, ear, and shoulder with a black cable extension cord. She then went downstairs and whipped J.S.’s friend. Vasquez observed a newer loop mark on J.S.’s shoulder, but did not observe any marks on his cheek or his ear. Vasquez then interviewed the mother, who said that J.S. and his friend had been gone for over three days and came home late. She intended to hit him 15 times on his palms with the cable because he was 15 years old. According to the mother, J.S. was defiant and he grabbed the cord. She was afraid he would push her down the stairs. Vasquez went to the home and located the cord, which was a cable TV coaxial cable with metal connections on both ends.

¶ 9 The mother stipulated to the prior indicated report by DCFS, which correlated with the March 2013 incident and her prior convictions. The trial court adjudicated the minors neglected, finding that the State proved by a preponderance of the evidence that the minors were neglected

as a result of being in an injurious environment. The trial court found that the allegations regarding the abuse on March 12, 2014, were proven by a preponderance of the evidence, except for the allegations regarding the space heater. With regard to cannabis, the trial court found that it could not find that the mother had a substance abuse problem with cannabis, only that she used cannabis in front of the minors. However, there was sufficient evidence to show that the mother had a substance abuse problem with alcohol. The trial court also found that the State proved by a preponderance of evidence the allegations of March 2013 with the coaxial cable, which was supported by the indicated report.

¶ 10 After a dispositional hearing, the mother was found to be unfit. The mother appealed, challenging the finding of neglect but not raising any issue with respect to the finding of unfitness.

¶ 11 ANALYSIS

¶ 12 The mother argues that the trial court's finding that the minors were neglected was against the manifest weight of the evidence. With respect to J.S.-H., J.C., D.C., and L.C., the mother argues that the allegations of the abuse of J.S. did not show an injurious environment to the other minors. She contends that the evidence did not show that these minors were not well cared for, not healthy, or not attending school. With respect to J.S., the mother argues her actions did not rise to the level of neglect.

¶ 13 Under section 2–3(1)(b) of the Juvenile Court Act of 1987, a neglected minor includes “any minor under 18 years of age whose environment is injurious to his or her welfare.” 705 ILCS 405/2-3(1)(b) (West 2012). Cases involving allegations of neglect are *sui generis*, and must be decided on the basis of their unique factual circumstances. *In re Arthur H.*, 212 Ill.2d 441, 463 (2004). While the definition of neglect varies with the circumstances, it is generally

defined as the failure to exercise the care that the circumstances demand. *In re A.P.*, 2012 IL 113875, ¶ 22. Neglect includes both willful and unintentional disregard of parental duty. *Id.* “Injurious environment” is a fluid concept that generally has been interpreted to include the breach of a parent's duty to ensure a safe and nurturing shelter for his or her children. *Id.*

¶ 14 At an adjudicatory hearing, the State bears the burden of proving neglect allegations by a preponderance of the evidence. *In re A.P.*, 2012 IL 113875, ¶ 17. A trial court's finding of neglect will not be reversed on appeal unless it was against the manifest weight of the evidence. *In re Faith B.*, 216 Ill. 2d 1 (2005).

¶ 15 The trial court found that J.S. was neglected as the result of physical abuse inflicted on him by his mother. That finding was not against the manifest weight of the evidence. The mother points to the fact that the trial court was not sure that the cut on J.S.’s wrist was attributable to the mother hitting him with the plate, but acknowledges that she frightened J.S. when she hit him over the head with the plate and likely overreacted. Considering that incident, along with the March 2013 incident and the testimony regarding the mother’s alcohol abuse, we agree with the circuit court that the State proved by a preponderance of the evidence that the mother failed to exercise the care that the circumstances demanded.

¶ 16 The evidence showed that the mother would mostly strike J.S., sometimes with other objects, but that she also gave D.C. and J.C. “whoopings.” The mother denied being drunk on the day that she struck J.S. with the plate, but J.S. told Phipps that his mother was drunk. Also, the mother admitted to Detective Stinson that she had stayed up all night, doing her hair and drinking vodka. D.C. told Phipps that he heard his mother yelling at J.S. that morning and that she had been drinking alcohol. D.C. also told Phipps that he was afraid of his mother when she drank alcohol. J.C. and J.S.-H. both told Phipps that they sometimes had trouble waking their

mother up when she had been drinking alcohol. Considering all of the facts and circumstances, especially the evidence that the mother had a substance abuse problem with alcohol and had an associated pattern of violence, we find that the trial court's conclusion that the minors were neglected due to an injurious environment was not against the manifest weight of the evidence. See *In re Faith B.*, 216 Ill. 2d 1, 13-14 (2005) (a ruling is against the manifest weight of the evidence only if the opposite conclusion is clearly evident).

¶ 17

CONCLUSION

¶ 18

The judgment of the circuit court of Peoria County is affirmed.

¶ 19

Affirmed.