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2015 IL App (3d) 140968-U

Order filed September 30, 2015

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2015

<i>In re D.B., C.F., J.B., J.F. & F.B.,</i>	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
Minors	)	Peoria County, Illinois.
)	
(The People of the State of)	
Illinois,	)	Appeal Nos. 3-14-0968, 3-14-0969,
	)	3-14-0970, 3-14-0971 &
Petitioner-Appellee,	)	3-14-0972
	)	Circuit Nos. 14-JA-163, 14-JA-164,
v.	)	14-JA-165, 14-JA-166 &
	)	14-JA-167
Samantha F.,)	
	)	Honorable
Respondent-Appellant).	)	David J. Dubicki,
	)	Judge, Presiding.

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

ORDER

- ¶ 1 *Held:* A trial court's finding that minors were neglected due to an injurious environment was not against the manifest weight of the evidence when the evidence showed that the mother married a registered sex offender, allowed him to stay overnight in the family home with some of the minors present, he registered the mother's address as his secondary address, and the mother persisted in her belief that he had not sexually abused his daughter despite a guilty plea and a DCFS indicated report. The trial court's finding that the mother was dispositionally unfit was also

not against the manifest weight of the evidence when the evidence showed that the mother had recently realized that the sex offender should not be around the minors, but she had yet to file for divorce and she was still in counseling.

¶2 The minors, D.B., C.F., J.B., J.F., and F.B. were adjudicated neglected. After a dispositional hearing, the respondent mother was found to be unfit. The mother appeals the findings of neglect and unfitness.

¶ 3 FACTS

¶ 4 On July 17, 2014, the State filed petitions for adjudication of wardship, alleging that the minors were neglected due to environments that were injurious to their welfare. The petitions alleged that the minors' mother was planning on marrying a registered child sex offender, Lamont N., and he was found at the home when four of the minors were present. The petitions further alleged that Lamont had a history of drug use and a criminal history. There were also allegations that the fathers, or putative fathers, of some of the minors had criminal histories. The mother's answer stipulated that most of the allegations could be proven, so the only allegation at issue was Lamont's status as a registered sex offender and his presence in the mother's home.

¶ 5 At the adjudicatory hearing, the State offered the certified copy of Lamont's conviction in Peoria County based on a guilty plea to aggravated criminal sexual abuse of a family member. The State also offered a Department of Children and Family Services (DCFS) report from 2007 wherein it was alleged that Lamont committed sexual penetration against his teenage daughter. That finding was indicated by DCFS in the report. It also offered Lamont's Illinois sex offender registration forms. On a form signed June 17, 2014, the mother's address was added as Lamont's secondary address.

¶ 6 Heidi Creasy, a child welfare specialist and an investigator with DCFS, testified that she went to the mother's home in response to a hotline call on June 14, 2014. Creasy testified that

Lamont answered the door, although he initially denied that was his name. The minors' mother was not present at the time, but C.F. and D.B. were both present, along with another man. The mother arrived home and told Creasy that she had known Lamont for approximately seven months and was planning on marrying him the next weekend. The mother was aware that Lamont was a sex offender, but she did not believe he had done what he was convicted of. The mother believed that Lamont had completed sex offender treatment. The minors were not aware that Lamont was a sex offender, and the mother did not want them to know. Creasy spoke with three of the minors and they identified Lamont as their mother's boyfriend. According to the mother and Lamont, he did not reside at the residence, and Creasy watched him leave the residence before she left. Creasy asked the mother to not allow Lamont in the residence while the investigation was ongoing, and the mother agreed.

¶ 7 Another DCFS investigator, Alyssa Hoerr, spoke with the mother on the telephone on June 23, 2014, and was informed that the mother had married Lamont over the weekend. The mother told Hoerr that she did not believe that Lamont was a high risk to reoffend and that he got a poor report from sex offender counseling because he owed the counselor money. Hoerr suggested a new safety plan, specifically, that Lamont could not reside in the home, could not spend the night in the home, he could not be registered at their home, and could never be unsupervised with the children. The mother agreed to the new safety plan, with a follow-up in a couple of weeks. Hoerr's DCFS supervisor, Megan Sturtevant, testified that she also spoke with the mother on June 23, 2014. The mother asked if Lamont could be around the minors if he was supervised. Sturtevant told the mother that Lamont could not reside in the home, could not spend the night in her home, and could not be unsupervised with the children. The mother told

Sturtevant that she did not believe Lamont would harm her children because she did not feel that he had sexually abused in the past.

¶ 8 Hoerr made an unannounced visit to the mother's home on July 11, 2014, at 9:40 a.m. The mother, Lamont, and four of the minors (J.B., C.F., J.F. and F.B.) were present in the home. The mother told Hoerr that she and the kids had spent the night at her mother's home and that Lamont did not spend the night with them. Hoerr spoke to the four minors. F.B. told her that his mother and siblings had slept at their own house but Lamont did not. J.B. stated that they slept at his grandmother's house and that Lamont was at his own father's or grandfather's house. C.F. initially told Hoerr that he and his siblings and his mother had slept at his grandmother's. After some questioning, C.F. told Hoerr that they all slept at the house: the minors, the mother, and Lamont. All of the children seemed healthy and none reported that Lamont had abused them. At that point, an out-of-home safety plan was signed by the mother and the minors were removed from the home.

¶ 9 The mother testified that when Hoerr arrived at her home on the morning of July 11, she and the children had just arrived home from her mother's home, where they had stayed overnight. The mother testified that none of the children slept at home that night. When she arrived home at around 7:30 a.m., Lamont was at her house. She did not know where he spent the night.

¶ 10 The trial court found that the mother was aware that Lamont was a registered sex offender and that she agreed to the conditions laid out by Hoerr on June 23 that Lamont could not reside in the home, he could not stay the night, he could not be unsupervised with the minors, and he should not be registered to her home. With respect to July 11, the trial court did not find the mother to be credible and believed the testimony of one of the children that they all slept at

the house the night before. The trial court concluded that the State carried its burden of proving that Lamont spent the night at the home. The trial court found that even if Lamont had not spent the night, the State still proved by a preponderance of the evidence that the minors were neglected because Lamont had been convicted of aggravated criminal sexual abuse of a family member and the mother was in a state of denial and not in a position to protect the children. She claimed that Lamont did not sexually abuse his daughter, although he had pled guilty to the offense.

¶ 11 At the dispositional hearing, the mother testified that she was in the process of filing a petition for divorce from Lamont. She also testified that she no longer doubted the allegation that Lamont sexually abused his daughter. She had completed her parenting class, she was taking a domestic violence class, and her drug drops were negative. She was not residing with Lamont. The trial court found the mother to be unfit and made the minors wards of the court. The trial court acknowledged the mother's recent progress and realization that Lamont should not be around her children, but found that she came to those conclusions belatedly and failed to protect her children. The mother appealed.

ANALYSIS

¶ 13 The mother argues that the wardship petition failed to state a cause of action because it relied solely on Lamont's status as a sex offender. Alternatively, the mother argues that the trial court's finding that the minors were neglected was against the manifest weight of the evidence. The mother also contends that the trial court's finding that she was dispositionally unfit was against the manifest weight of the evidence. The State argues that the trial court's finding of unfitness was not against the manifest weight of the evidence.

¶ 14 Pursuant to section 2-3(1)(b) of the Juvenile Court 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); *In re Gabriel E.*, 372 Ill. App. 3d 817, 822 (2007). Neglect is the failure to exercise the care that is demanded by the circumstances. *In re K.B.*, 2012 IL App (3d) 110655, ¶ 16. An injurious environment is a concept that varies with the circumstances, but includes a breach of the parents' duty to provide a safe and nurturing shelter for their children. *In re L.M.*, 319 Ill. App. 3d 865, 868 (2001). The State must prove an allegation of neglect by a preponderance of the evidence. *K.B.*, 2012 IL App (3d) 110655, ¶ 16. An individual's status as a registered sex offender, without more, is not sufficient to create an injurious environment as a matter of law. *K.B.*, 2012 IL App (3d) 110655, ¶ 17. However, if a parent allows a registered sex offender to watch over her children without supervision, that is a *prima facie* case of neglect. *Id.* It then falls to that parent to present evidence that the children were not at risk while in the sex offender's care. *Id.* A trial court's finding of neglect will not be disturbed on appeal unless it is against the manifest weight of the evidence. *In re Arthur H.*, 212 Ill. 2d at 464.

¶ 15 In this case, contrary to the mother's argument, Lamont's status as a registered sex offender was not the sole basis for the finding of neglect. Rather, it was his status, in conjunction with the facts that Lamont had stayed overnight in the family home with some of the minors present, his sexual offense was against his teenage daughter, he registered the mother's address as his secondary address, and the mother did not believe that Lamont had committed the offenses even though he pled guilty to the offense and there was an indicated DCFS report. Also, the mother did not inform the minors of the danger. As such, the State established a *prima facie* case of neglect in that the mother failed to provide a safe and nurturing shelter for the minors. The mother did not present any evidence to rebut this, such as proof that Lamont had

successfully completed sex offender treatment or that he was a low risk to re-offend. See *K.B.*, 2012 IL App (3d) 110655, ¶ 17 (after the State has established a *prima facie* case of neglect, the parent has the opportunity to present evidence in rebuttal). Thus, the trial court's determination that the State proved an injurious environment was not against the manifest weight of the evidence.

¶ 16 The mother also challenges the trial court's finding of dispositional unfitness. A trial court may make a child a ward of the court if the trial court finds that the parents are unfit, unwilling, or unable for some reason, other than financial circumstances alone, to care for, protect, train, or discipline the minor and that the health, safety, and best interest of the minor will be jeopardized if the minor remains in the custody of the parents. 705 ILCS 405/2-27(1) (West 2012). At this stage, where a finding of unfitness will not result in a complete termination of parental rights, the State has the burden of proving unfitness by a preponderance of the evidence. *In re April C.*, 326 Ill. App. 3d 245, 257 (2001). On review, the trial court's dispositional decision will be reversed only if the findings of fact are against the manifest weight of the evidence or the trial court committed an abuse of discretion by selecting an inappropriate disposition. *In re Ta.A.*, 384 Ill. App. 3d 303, 307 (2008). A determination will be found to be against the manifest weight of the evidence only if the record shows that the opposite conclusion is clearly evident. *April C.*, 326 Ill. App. 3d at 257.

¶ 17 As the trial court acknowledged, the mother had come to the realization that Lamont should not be around her children and she was complying with her service plan. However, the mother had married Lamont knowing that he was a registered sex offender. So, even in light of the recent realization, the mother had not made decisions in the best interest of the minors and the changes were not fully implemented in that she was still in counseling and she had not yet

filed for divorce. Based on these circumstances, we conclude that the trial court's finding that the mother was dispositionally unfit was not against the manifest weight of the evidence.

¶ 18

CONCLUSION

¶ 19

The judgments of the circuit court of Peoria County are affirmed.

¶ 20

Affirmed.