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2015 IL App (3d) 150039-U

Order filed October 27, 2015

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2015

|                          |   |                               |
|--------------------------|---|-------------------------------|
| In re K.S., a Minor,     | ) | Appeal from the Circuit Court |
|                          | ) | of the 10th Judicial Circuit, |
| (THE PEOPLE OF THE STATE | ) | Peoria County, Illinois.      |
| OF ILLINOIS,             | ) |                               |
|                          | ) |                               |
| Petitioner-Appellee,     | ) | Appeal No. 3-15-0039          |
|                          | ) | Circuit No. 14-JA-196         |
| v.                       | ) |                               |
|                          | ) |                               |
| CORTNEY S.,              | ) | Honorable                     |
|                          | ) | David J. Dubicki              |
| Respondent-Appellant).   | ) | Judge, Presiding.             |

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JUSTICE O'BRIEN delivered the judgment of the court.  
Justices Carter and Schmidt concurred in the judgment.

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**ORDER**

¶ 1 *Held:* Trial court's determination to make minor a ward of the State based on its findings that minor was neglected and mother was unfit was not against the manifest weight of the evidence.

¶ 2 The trial court properly found that minor was neglected based on an injurious environment and that placement with mother was inappropriate where mother was unfit based on

her failure to acknowledge that a continued relationship with her sex offender boyfriend posed a danger to her daughter and her unstable living and employment situations. We affirm.

¶ 3

### FACTS

¶ 4

The State filed a petition for wardship on July 17, 2014, seeking to make the minor, K.S., a ward of the court. The petition alleged that K.S.'s mother, Cortney S., was pregnant by a man, Jonathan N., who was a registered sex offender and sexual predator, who had been convicted of child abduction; that Jonathan N. had been indicated by the Department of Child and Family Services (DCFS) in 2012 for causing internal injuries to a child; a case was opened by DCFS on June 3, 2014, due to Cortney's relationships; Cortney maintained a relationship with Jonathon N. and the relationship involved domestic violence; Cortney sought an order of protection against Jonathon N.; Cortney wanted to allow Jonathon N. to attend prenatal doctor appointments with her; Cortney took K.S. into her care on August 11, 2014; Cortney was planning to move in with Jonathon's mother but did not; also on August 11, Cortney sought to modify the order of protection to allow Jonathon to attend prenatal appointments and the delivery; on August 13, Cortney disclosed to DCFS she and K.S. were living with a cousin; a registered sex offender listed the cousin's address as his residence; DCFS sought to take K.S. into protective custody but Cortney objected; Cortney would not disclose the name of K.S.'s father; and Jonathon N. had a criminal history.

¶ 5

Cortney answered the petition and denied its allegations. She argued that Jonathon N. had not harmed her child and was not living with them. A hearing took place on the petition. The DCFS investigator, Karla Allen, testified that she investigated a hotline call that came in on June 3, 2014, regarding Cortney and that K.S. was at risk of harm because Cortney was spending time with Jonathon N, a registered sex offender who had a violent history. Cortney was living

with K.S. at a shelter and denied any relationship with Jonathon. However, Cortney admitted she was pregnant with Jonathon's child but maintained that he was wrongly placed on the sex offender registry because "he was really a violent offender." Cortney further maintained that there was no risk of harm to K.S. because Jonathon was innocent.

¶ 6 Allen met with Cortney later in June but Cortney refused services and signed a temporary guardianship of K.S. On July 1, Allen received a call from Cortney, who was upset and said Jonathon had punched her in the arm. Allen advised Cortney to go to a shelter and to obtain an order of protection. On July 15, Cortney regained custody of K.S. Cortney was unemployed and lacked housing. On July 28, Cortney and K.S. were evicted from the shelter. Cortney told Allen she wanted to move in with Jonathon's mom. She also indicated to Allen that she wanted Jonathon to go to her prenatal doctor appointments with her. Cortney denied calling Allen about Jonathon hitting her. Cortney and K.S. did not move in with Jonathon's mom, and for a period, Allen was unsure where they were living. They were not staying at the locations Cortney gave her. On August 13, Cortney called and gave Allen an address where she and K.S. were staying. A sex offender was registered as also living at that address. Allen told Cortney to stay there so DCFS could take protective custody of K.S. Cortney fled the location. K.S. was thereafter taken into DCFS custody.

¶ 7 Cortney testified that she and K.S. had never lived with a sex offender, including Jonathon N. The sex offender who was registered at the same address where she and K.S. lived had moved out a month earlier. She never left K.S. alone with Jonathon after she discovered he had indicated reports against him with DCFS.

¶ 8 The trial court made the following findings. It determined the State had proved the allegations set forth in the petition, namely: that Jonathon was Cortney's boyfriend and her

unborn child's father; that he was a registered sex offender based on an event that took place in September 2013; and that DCFS had two indicated reports against him for injuries to an infant.

The trial court noted that Cortney stayed in a relationship with Jonathon even after she was warned by DCFS investigator Allen on June 3, 2014, that Jonathon posed a risk of harm to K.S. In addition the trial court found Cortney's denial of the harm posed by Jonathon both troubling and inconsistent with the allegations made against Jonathon in Cortney's petition for an order of protection which she obtained on July 1, 2014. The order of protection named K.S. as a person in need of protection from Jonathon. Cortney later wanted to drop or modify the order of protection in order to be able to be in contact with Jonathon for doctor's visits.

¶ 9 The trial court further found that the State proved Jonathon's criminal history as alleged in the complaint, including theft and child abduction/luring a child (2013), obstructing justice (2011), and burglary (2009). The court further found the State did not prove the count which alleged that Cortney would not disclose the name of the minor's father and that it was not relevant to the issue of injurious environment. Finally, the trial court found that the State had proved by a preponderance of the evidence that K.S. was neglected due to an injurious environment because Cortney lacked stability and the ability to protect K.S.

¶ 10 A dispositional hearing took place. The trial court considered the DCFS dispositional hearing and social history, an integrated assessment, a family service plan, and a counseling report. The documentary evidence established that Cortney was not initially cooperative with DCFS but later began to participate in some services. She was staying with an aunt and uncle and employed as a seasonal worker at Kohl's. Cortney was attending classes, and counseling sessions as required, including parenting and domestic violence classes. Cortney also attended weekly supervised visitation with K.S., where she engaged appropriately with her daughter.

¶ 11 Cortney’s caseworker testified he was not prepared to recommend that Cortney was unfit but that placement was still necessary. He described his position regarding fitness as indifferent and would defer to the trial court’s determination. The trial court found Cortney unfit, based on the proven petition, the inability to see the danger for K.S. from Jonathon, the occurrence of domestic violence, and Cortney’s lack of stability and inappropriate housing for K.S. The trial court made K.S. a ward of the court. Cortney appealed.

¶ 12 ANALYSIS

¶ 13 On appeal, Cortney argues that the trial court erred in its findings of neglect and unfitness and in making K.S. a ward of the court. Cortney maintains the evidence did not support the State’s allegations that she placed K.S. in an injurious environment with a risk of harm. According to Cortney, there was no proof she lived with a sex offender and there must be abuse before an injurious environment can exist.

¶ 14 We first consider whether the trial court’s neglect determination was supported by the evidence. Cortney contends any risk of harm to K.S. was speculative and that the trial court improperly required Cortney to prove there was no harm to K.S. Cortney argues that there was no proof of misconduct by Jonathon toward K.S., the concept of anticipatory neglect was not applicable, and his criminal record was insufficient to establish neglect.

¶ 15 A minor is neglected when her environment is injurious to her welfare. 750 ILCS 405/2-3(1)(b) (West 2012). A parent’s failure to exercise the care demanded by the circumstances constitutes neglect and includes willful and unintentional disregard of the duty. *In re Arthur H.*, 212 Ill. 2d 441, 463 (2004) (quoting *In re N.B.*, 191 Ill. 2d 338, 346 (2000)). An injurious environment includes “ ‘the breach of a parent’s duty to ensure a “safe and nurturing shelter” for his or her children.’ ” *Id.* A person’s status as a sex offender is not sufficient, without more, to

create an injurious environment). *In re K.B.*, 2012 IL App (3d) 110655 ¶ 17. The State bears the burden of proving the neglect allegations by a preponderance of the evidence. *In re M.D.H.*, 297 Ill. App. 3d 181, 190 (1998). This court will not reverse a trial court's neglect finding unless it is against the manifest weight of the evidence. *Id.*

¶ 16 After a trial court determines a child is neglected, it must then determine whether the child must be made a ward of the court because the parent is unfit to care for him or her. 705 ILCS 405/2-21(2), 2-27(1) (West 2012); *In re Arthur H.*, 212 Ill. 2d at 464. Where a court finds in writing that a parent is unfit and determines that the minor's health, safety, and best interest will be at risk if the child remains with the parent, the trial court may place the child outside the family home. 705 ILCS 405/2-27(1) (West 2012). This court will not reverse a trial court's dispositional order unless its findings of fact are against the manifest weight of the evidence or it committed an abuse of discretion in choosing an inappropriate disposition. *In re Stephen K.* 373 Ill. App. 3d 7, 25 (2007).

¶ 17 The trial court made K.S. a ward of the court, finding K.S. was neglected based on an injurious environment and Cortney was unfit. Its findings are supported by the evidence. She was involved with a sex offender and pregnant with his child. He had two prior indicated reports with DCFS where he caused injuries to a child. The couple had a history of domestic violence. Cortney obtained an order of protection against Jonathon. Cortney had periods of unemployment and homelessness. Although at the time of the dispositional hearing she was living with relatives, employed seasonally, engaged in some services and had completed a parenting class, she had not yet achieved stability.

¶ 18 The trial court based its decision, in part, on Cortney's inability to see that Jonathon was a danger to K.S. Cortney complains that Jonathon never hurt K.S. and that any risk to K.S. as a

result of Cortney's relationship with Jonathon was speculative. We disagree. She and Jonathon had a history of domestic violence. Cortney told the caseworker and alleged in her petition for an order of protection that Jonathon had punched her and repeatedly threatened to hurt her. Jonathon had two indicated findings for child abuse and a criminal history, including child abduction.

¶ 19 The trial court focused on Cortney's failure to acknowledge that Jonathon posed a risk to her and K.S. as determinative of injurious environment and unfitness. Cortney downplayed his criminal history and the DCFS indicated findings and asserted Jonathon's innocence as a sex offender. She signed over temporary guardianship of K.S. and continued her relationship with him. Cortney maintained the relationship with Jonathon even after she was granted an order of protection. She sought to modify the order of protection to allow Jonathon to accompany her to prenatal classes and to attend the delivery of their child. Cortney did not exercise the care demanded. We thus find that she failed to fulfill her duty to provide a safe and nurturing environment for K.S. The trial court did not err in finding K.S. neglected and Cortney unfit, and in making K.S. a ward of the court.

¶ 20 For the foregoing reasons, the judgment of the circuit court of Peoria County is affirmed.

¶ 21 Affirmed.