

NOTICE

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2015 IL App (4th) 140767-U
NOS. 4-14-0767, 4-14-0768 cons.
IN THE APPELLATE COURT

FILED
February 4, 2015
Carla Bender
4th District Appellate
Court, IL

OF ILLINOIS

FOURTH DISTRICT

In re: K.T., a Minor,)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
Petitioner-Appellee,)	Woodford County
v. (No. 4-14-0767))	No. 14JA1
JESSICA TILLER,)	
Respondent-Appellant.)	
_____)	
In re: M.C., a Minor,)	No. 14JA2
THE PEOPLE OF THE STATE OF ILLINOIS,)	
Petitioner-Appellee,)	
v. (No. 4-14-0768))	Honorable
JESSICA TILLER,)	Charles M. Feeney,
Respondent-Appellant.)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Justices Knecht and Appleton concurred in the judgment.

ORDER

- ¶ 1 *Held:* The appellate court affirmed the trial court's judgment, which adjudicated the respondent's minor children neglected and made them wards of the court.
- ¶ 2 In April 2014, the State filed wardship petitions alleging that M.C. (born August 2, 2010) and K.T. (born August 20, 2012)—the minor children of respondent, Jessica Tiller—were neglected within the meaning of section 2-3(1)(b) of the Juvenile Court Act of 1987 (705 ILCS 405/2-3(1)(b) (West 2012)). At a July 2014 adjudicatory hearing, respondent stipulated to one allegation of neglect common to both of the State's petitions. After admonishing respondent and listening to the State's factual basis, the trial court accepted the stipulation and adjudicated both minors neglected. Following an August 2014 dispositional hearing, the court made the mi-

nors wards of the court and appointed the Department of Children and Family Services (DCFS) as their guardian.

¶ 3 Respondent appeals, arguing that the trial court's finding of neglect was against the manifest weight of the evidence. We disagree and affirm.

¶ 4 I. BACKGROUND

¶ 5 A. The State's Wardship Petitions

¶ 6 In both April 2014 wardship petitions, the State alleged that M.C. and K.T. were neglected under section 2-3(1)(b) of the Act in that their environment was injurious to their welfare. Specifically, the State alleged in count I of both petitions that (1) K.T. recently received injuries consistent with blunt-force trauma, including swelling and bruising to his face, torso, arms, legs, and testes; (2) the cause of K.T.'s injuries was unknown; and (3) the injuries occurred while K.T. was in the care of respondent and respondent's friend. In count II of both petitions, the State alleged that M.C. (K.T.'s older sister) received unexplained rib fractures in 2010 while under the care of respondent and another person.

¶ 7 B. The Adjudicatory Hearing

¶ 8 At the beginning of the July 2014 adjudicatory hearing, the State announced that respondent would be stipulating to the sufficiency of the evidence to prove count I of the State's petitions, except for the portion of count I that alleged the injuries occurred while K.T. was in the care of respondent and respondent's friend. Pursuant to the stipulation, (1) the trial court struck the portion of count I that alleged the injuries occurred while K.T. was in the care of respondent and respondent's friend, (2) the State dismissed count II of both petitions, and (3) respondent declined to present any competing evidence. The court admonished respondent as to the rights she was giving up by stipulating, and respondent stated that she understood those rights. The State

then proffered the following factual basis:

"[I]f called to testify, Erica Frantz from [DCFS] would state that she is a child protection investigator specialist, and she has been so for several years. And she was assigned to the case regarding [K.T.] On April 4, 2014, she went to [the] Illinois Children's Hospital in Peoria, Illinois. [K.T.] had been transferred there from [Advocate BroMenn Medical Center] out of Bloomington due to some injuries he had. *** [K.T.] has a sister who is older than him, [M.C.] *** They both reside at 17 East Sixth Street, El Paso, Woodford County, Illinois, with their mother, [respondent], who is present in court. ***

When [Frantz] went to the hospital she saw injuries to [K.T.] that included several bruises [on] several different areas about his body, a couple on his face, *** one in his ear. He had a spot on his eye, and then a couple bruises along his legs. But most importantly was the—his scrotum area. His genitalia [were] very swollen, red. It appeared as if his scrotum was going to tear due to the swelling. She saw this. She would testify to it. She would testify as far as pictures as well. And there was [sic] several other injuries right in that scrotum area.

[Frantz] would testify that she spoke to [respondent] and that [respondent] lived at 17 East Sixth Street in El Paso, and she had gone to work at Casey's in El Paso from the hours of 4:00 to

8:00 on April 3rd. She saw [K.T.] prior to going to work and everything appeared fine.

[K.T.] was being watched by a friend of [respondent], a 17-year-old male by the name of Davis Hopkins. And this is a person she has known for some time who would occasionally watch the child when she was working. She got back home, went to bed, woke up in the morning, and she went to change [K.T.'s] diaper and saw the injuries. She has no idea how the injuries occurred.

In addition to that testimony there would be the testimony from Molly Hofmann, who is an advanced practicing nurse ***. She examined *** [K.T.'s] injuries, and based upon the locations of the bruising and different areas, different planes of the body, the severe injury to the scrotum area, she would give the opinion that these injuries were *** intentionally inflicted, it was abuse, it wasn't accidental. And to this date there has not been a reason given for the injuries."

After the State proffered the factual basis, respondent's counsel stated as follows:

"We would stipulate that if called to testify, those witnesses would testify consistent with that. That stipulation is consistent also with discovery received in this case. So, accordingly, my client would so stipulate to that proffer."

Neither the State nor respondent presented any argument.

¶ 9 The trial court accepted the parties' stipulation and found that the stipulation was "sufficient to determine that both children [were] in an environment that [was] injurious to their welfare due to the injuries and abuse to [K.T.]" The court then (1) directed the State to draft an adjudicatory order (which the court entered that same day) and (2) set the matter for a dispositional hearing.

¶ 10 C. The Dispositional Hearing

¶ 11 At the August 2014 dispositional hearing, the trial court admitted a (1) dispositional report and (2) 56-page integrated assessment, both of which were prepared by Lutheran Social Services of Illinois, a DCFS contractor. The report recommended that the court find respondent unfit within the meaning of section 2-27 of the Act (705 ILCS 405/2-27 (West 2012)) and make the children wards of the court. The State rested upon the report and integrated assessment without presenting additional evidence.

¶ 12 Respondent testified, in pertinent part, that 17-year-old Hopkins—whom respondent described as her friend and "the babysitter"—looked after the children "quite a bit." (Although respondent initially denied ever being intimate with Hopkins, she eventually admitted on cross-examination that she had intercourse with Hopkins "maybe, about, like, once" or "two times.") Respondent had no concern or suspicion that Hopkins abused the children. On April 3, 2014, Hopkins babysat K.T. while respondent worked a four-hour afternoon/evening shift at a convenience store. When respondent returned home that evening, she did not notice anything particularly unusual about K.T. The next day, however, K.T. seemed particularly distressed. When respondent changed K.T.'s diaper, she noticed the swelling in his testes and rushed him to the hospital. Respondent theorized that K.T.'s injuries may have been caused by being bounced upon someone's knee. On cross-examination, respondent acknowledged that only she and Hop-

kins were present in the home with K.T. from April 3 to 4, 2014. Respondent had no idea how K.T.'s injuries occurred.

¶ 13 Following the presentation of argument, the trial court found respondent unfit within the meaning of section 2-27 of the Act and made both children wards of the court.

¶ 14 These appeals followed.

¶ 15 II. ANALYSIS

¶ 16 Respondent argues that the trial court's finding of neglect was against the manifest weight of the evidence. The State contends that respondent is estopped from raising this argument because she stipulated to the State's neglect allegation at the adjudicatory hearing. We agree with the State.

¶ 17 A. Section 2-3 of the Act and the Standard of Review

¶ 18 Under section 2-3 of the Act (705 ILCS 405/2-3 (West 2012)), "[t]he terms 'neglect' and 'injurious environment' do not have fixed and measured meanings but, rather, take their content from the particular circumstances of each case." *In re Gabriel E.*, 372 Ill. App. 3d 817, 823, 867 N.E.2d 59, 65 (2007). "[C]ases involving such allegations are *sui generis* and must be decided on the basis of their unique facts." *Id.* "A trial court's finding that a minor has been neglected or abused under section 2-3 of the Act will not be reversed unless it is against the manifest weight of the evidence." *In re L.S.*, 2014 IL App (4th) 131119, ¶ 60, 11 N.E.3d 349.

¶ 19 B. The Effect of the Parties' Stipulation

¶ 20 Although the State has the burden of proving the allegations of neglect by a preponderance of the evidence (*In re A.P.*, 2012 IL 113875, ¶ 17, 981 N.E.2d 336), "a respondent parent's stipulation of facts can provide a sufficient basis by itself for a trial court's finding of neglect." *In re R.B.*, 336 Ill. App. 3d 606, 618, 784 N.E.2d 400, 410 (2003). "A stipulation, or a

judicial admission, is an agreement between the parties or their attorneys with respect to business before the court." *Lee v. Chicago Transit Authority*, 152 Ill. 2d 432, 462, 605 N.E.2d 493, 505-06 (1992). "It has the effect of withdrawing a fact from issue and dispensing wholly with the need for proof of that fact." *Id.* 605 N.E.2d at 506. "In other words, if a fact is judicially admitted, the adverse party has no need to submit any evidence on that point. The admission serves as a substitute for proof at trial." *People v. Wright*, 2012 IL App (1st) 073106, ¶ 92, 971 N.E.2d 549.

¶ 21 In this case, respondent stipulated to the truth of the State's factual basis, which the State recited in open court at the adjudicatory hearing. Respondent declined to present any competing evidence. Based upon the stipulation, (1) the State dismissed count II of both petitions and (2) the trial court adjudicated the minors neglected (without objection from respondent). On appeal, respondent now contends for the first time that the facts to which she stipulated were insufficient to establish that the children were neglected under section 2-3 of the Act. We refuse to condone such a litigation tactic in a child-protection case.

¶ 22 The transcript of the adjudicatory hearing leaves no doubt that the trial court, the State, respondent, and respondent's counsel all understood respondent's stipulation to be not only that the facts alleged were true, but also that those facts established neglect under section 2-3 of the Act. However, even if the stipulation was merely meant to establish the truth of the State's factual allegations and respondent did not intend to concede that the children were neglected as a matter of law under section 2-3 of the Act, we would still decline to entertain respondent's challenge to the court's neglect finding.

¶ 23 As already stated, cases involving allegations of child neglect are *sui generis* and each must be decided on its own facts. *Gabriel E.*, 372 Ill. App. 3d at 823, 867 N.E.2d at 65.

Accordingly, when the State alleges that certain facts exist which establish that a child has been neglected under section 2-3 of the Act, we will presume that a respondent parent's "stipulation" to that allegation is an admission that the facts are not only true, but also sufficient to establish neglect under section 2-3 of the Act. The Act does not allow a respondent parent to admit the truth of allegations in the trial court, yet wait until the appeal before testing the legal sufficiency of those facts to establish neglect.

¶ 24 Further, as happened in this case, a stipulation excuses the need for a party—in this case the State—to present further evidence in support of its allegation. *Lee*, 152 Ill. 2d at 462, 605 N.E.2d at 506. We will not allow a respondent parent to "sandbag the proceedings" by entering into a stipulation, only to argue on appeal that the State failed to present sufficient evidence to support the court's finding of neglect. It would be fundamentally contrary to the Act's policy of speedy resolution of child-protection cases to allow respondent parents to stipulate to the State's neglect allegations at an adjudicatory hearing and then wait until the appeal to argue that those facts failed to establish neglect under section 2-3 of the Act. See 705 ILCS 405/2-14(a) (West 2012) (stating the General Assembly's finding that "serious delay in the adjudication of abuse, neglect, or dependency cases can cause grave harm to the minor and the family and that it frustrates the health, safety and best interests of the minor and the effort to establish permanent homes for children in need.")

¶ 25 We conclude that respondent's stipulation to the State's neglect allegation estopped her from challenging the trial court's neglect finding on appeal. In any event, we note that even if respondent were not estopped from raising her argument, the stipulation alone provided sufficient evidence to establish that the children were neglected. Further, because respondent has failed to specifically challenge the court's dispositional order, we affirm that por-

tion of the court's judgment without discussion.

¶ 26

III. CONCLUSION

¶ 27

For the reasons stated, we affirm the trial court's judgment.

¶ 28

Affirmed.