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2015 IL App (4th) 140991-U
NO. 4-14-0991

FILED
March 27, 2015
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

In re: Ja. G. and M.G., Minors,)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
Petitioner-Appellee,)	Champaign County
v.)	No. 14JA5
JESSICA WRIGHT,)	
Respondent-Appellant.)	Honorable
)	John R. Kennedy,
)	Judge Presiding.

PRESIDING JUSTICE POPE delivered the judgment of the court.
Justices Knecht and Turner concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's order finding the minors neglected and removing custody from respondent mother was not against the manifest weight of the evidence nor an abuse of discretion.

¶ 2 In November 2014, the trial court found the minors, Ja. G. (born July 10, 1997) and M.G. (born January 31, 1999), neglected and, following a dispositional hearing, placed the minors in the custody of the Illinois Department of Children and Family Services (DCFS). Respondent, Jessica Wright, appeals, arguing the court's finding of neglect and decision to remove the minors from her custody were against the manifest weight of the evidence. The minors' father is not a party to the appeal. We affirm.

¶ 3 I. BACKGROUND

¶ 4 A. The Initial Petition for Adjudication

¶ 5 On January 17, 2014, prior to the State's actions with regard to Ja. G. and M.G., the State filed a two-count petition for adjudication of wardship regarding another three of respondent's six children: Je. G. (born May 21, 1996), D.H. (born July 15, 2000), and J.H. (born July 9, 2001). The petition alleged the minors' environment was injurious to their welfare when residing with respondent because they were exposed to domestic violence and the risk of physical harm. 705 ILCS 405/2-3(1)(b) (West 2012).

¶ 6 At an adjudicatory hearing on June 2, 2014, regarding the initial petition involving Je. G., D.H., and J.H., the following evidence was adduced. On November 10, 2013, at 2:45 a.m., Champaign police officer Brian Rogers was dispatched to respondent's residence following a report of domestic battery. Respondent, her children (Je. G., D.H. and J.H.), and her live-in boyfriend, Corey Lipscomb, lived in the house. (Ja. G. and M.G. were not present during this incident.) Respondent told Rogers she and Lipscomb had an argument and Lipscomb pushed her down and choked her. During the altercation, her 17-year-old son, Je. G., pulled Lipscomb off her. Je. G. and Lipscomb began fighting and Lipscomb grabbed an ax and threatened to kill Je. G. with it. Lipscomb chased Je. G. with the ax, swinging the ax at him. The minors reported seeing Lipscomb choking their mother and chasing Je. G. with the ax. They appeared upset and were crying. Lipscomb was not located that night.

¶ 7 On November 14, 2013, Officer Marshall Henry, who was familiar with Lipscomb from prior contacts, spotted Lipscomb driving a car. Respondent was in the car with him. Henry was aware of the November 10 incident and arrested Lipscomb.

¶ 8 Sheree Foley investigated the November 10 incident for DCFS. She met with D.H. and J.H., who recounted what had happened. She met with respondent, who related the

incident and told Foley she met Lipscomb through the Internet. Respondent was not sure she wanted services or an order of protection and told Foley she would not allow Lipscomb back in the house because she was fearful for her children. Foley testified Lipscomb was back living in respondent's home thereafter. She also testified respondent later recanted her original statements about Lipscomb choking her and chasing Je. G. with an ax.

¶ 9 At the adjudicatory hearing, respondent denied any physical altercation with Lipscomb occurred. She denied seeing Lipscomb chase Je. G. with an ax. She and Je. G. went to the State's Attorney's office and signed affidavits recanting their statements to the police. Lipscomb was living with her and the minors as of the date of the hearing.

¶ 10 At the close of the evidence, the trial court found the State had proved both counts of neglect as to Je. G., D.H., and J.H. by clear and convincing evidence. The court then heard evidence respondent was engaging in domestic-violence counseling, although she continued to deny any domestic violence had occurred. Lipscomb had declined to engage in domestic-violence counseling. The court suggested respondent consult with her lawyer about how Lipscomb's reluctance to engage in services might affect the dispositional hearing "because you may be at a point in your life where you have to make a choice about him or your children and your lawyer will give you advice about this."

¶ 11 A dispositional hearing on the original petition was held on June 27, 2014. Respondent testified she had turned D.H. and J.H. over to their father, who resided in Joliet, Illinois. He picked up D.H. the day prior to the dispositional hearing. She stated she did not know his address.

¶ 12 The trial court also considered a dispositional report filed June 19, 2014. The

report indicated respondent was 35 years old and the mother of six children between the ages of 12 and 19, *i.e.*, D.W. (born March 27, 1994), Je. G., Ja. G., M.G., D.H., and J.H. Respondent indicated, with the exception of D.W. and Je. G., the other children lived with her prior to DCFS involvement.

¶ 13 The dispositional report also reflected Lipscomb pleaded guilty to battery/strangulation as a result of the November 10, 2013, incident. It also reflected multiple arrests beginning in 1993 and Lipscomb admitted doing "county time" and having been placed on probation. Lipscomb had not engaged in domestic-violence counseling. While the children were bonded with respondent, the report recommended the trial court place custody and guardianship with DCFS.

¶ 14 The trial court found it in D.H.'s and J.H.'s best interests to be adjudged wards of the court and placed custody and guardianship with DCFS. The court ordered all visitation to be supervised. This court affirmed the trial court's ruling in *In re D.H.*, 2014 IL App (4th) 140606-U.

¶ 15 B. The Supplemental Petition for Adjudication

¶ 16 On June 27, 2014, the day of the dispositional hearing on the initial petition, the State filed a two-count supplemental petition for adjudication regarding Ja. G. and M.G., who are the subjects of this appeal. The petition alleged the minors' environment was injurious to their welfare when residing with respondent because they were exposed to domestic violence and the risk of physical harm. 705 ILCS 405/2-3(1)(b) (West 2012).

¶ 17 At the October 14, 2014, adjudicatory hearing on the supplemental petition, the State called Sheree Foley, the child-protection investigator with DCFS who had testified at the

prior adjudicatory hearing for D.H. and J.H. Her testimony about the November 10, 2013, incident was consistent with her testimony recounted above. Additionally, Foley testified no one mentioned Ja. G. or M.G. to her during her investigation.

¶ 18 When Foley interviewed respondent the next day, respondent said she had no knowledge of Lipscomb's criminal history. Respondent told Foley she had come home from work on the evening of the incident and Lipscomb was not home. She got angry that he was out at a party. When he came home, they got into a verbal altercation, which ended up in the bathroom where Lipscomb attempted to choke her. Je. G. came downstairs and intervened. Respondent went upstairs to get the other children to leave the house. When she came back downstairs, Je. G. and Lipscomb were arguing. Then Lipscomb chased Je. G. down the street with an ax. Respondent told Foley that Je. G. was living in Chicago and was just down for a visit.

¶ 19 DCFS employee Barbara Traylor testified she received warrants to apprehend Ja. G. and M.G. on June 27, 2014. Traylor went to respondent's home to speak to her about the minors' whereabouts. Traylor stated, "There was some confusion." Respondent was talking about four children, two of whom Traylor knew nothing about. None of the children were present at respondent's home. When Traylor asked specifically about Ja. G. and M.G., respondent told Traylor they were with family in Chicago. Respondent gave an address and phone number for the father. However, the phone number was not a valid number and the address was not that of the father. When Traylor asked respondent about the reason the younger children had come into DCFS care, respondent said she did not know. Traylor returned to respondent's home on a daily basis at least 10 times but never found the minors. M.G. was

subsequently located in the Chicago area residing with his cousin, Carmelita Gipson. Traylor located Ja. G. in July 2014, also at the home of Gipson.

¶ 20 Traylor interviewed both minors. M.G. told Traylor he had been in the Champaign area staying with friends the entire time. M.G. said he turned himself in because the police kept coming by, he knew there were warrants out for him and Ja. G., and DCFS had been looking for them. Ja. G. told Traylor he had been back and forth between respondent's home and his girlfriend's home in Danville. Eventually, Traylor determined respondent had known where the minors were the whole time. Respondent had facilitated them getting to Chicago after the warrants were issued.

¶ 21 Kim Nix, formerly an intact caseworker at the Center for Youth and Family Solutions, had been involved with a February 2014 referral for intact services involving respondent. At that time, respondent was living in Champaign with D.H., J.H., and Lipscomb. As a result of an integrated assessment, respondent was referred for domestic-violence services, twice to Cognition Works and once to P.A.T.S. Prevention and Treatment Services. Respondent was terminated from Cognition Works for failure to attend. Respondent was involved in a car accident and physical therapy interfered with her attendance during the first referral to Cognition Works. Nix was not sure why respondent did not attend during the second referral. Respondent denied there was any domestic violence or substance abuse in her relationship with Lipscomb. Lipscomb also denied any domestic violence in the relationship. Nix never saw M.G. She saw Ja. G. twice.

¶ 22 Respondent testified she was currently living in Champaign with Lipscomb. In November 2013, respondent lived with J.H., D.H., M.G., Ja. G., and Lipscomb. Respondent

maintained M.G. and Ja. G. would visit their father in Chicago but never lived with him. When Traylor approached respondent in June 2014 about M.G.'s and Ja. G.'s whereabouts, respondent told her they were either at their cousin's or their aunt's in Chicago. She provided the addresses she had. She told Traylor the minors' father would be hard to reach because he was back and forth in the hospital with kidney failure. Respondent testified about the referrals for services received by Nix. She stated her work and physical-therapy schedules conflicted with the recommended services and Nix was well informed of respondent's schedule. Respondent did her best to cooperate with the referrals. She was not currently involved with any services because none had been given to her.

¶ 23 Respondent testified Ja. G. and M.G. were not home on November 10, 2013, when the domestic-violence incident occurred. She maintained neither had ever been exposed to domestic violence in the home.

¶ 24 At the continuation of the adjudicatory hearing on November 4, 2014, M.G. testified in chambers. He stated he was currently living in Chicago. M.G. had lived with respondent from his birth until the end of July 2014. Respondent's boyfriend, Lipscomb, lived in the home also. M.G. maintained he had never personally observed any domestic violence between Lipscomb and respondent. Neither respondent nor Lipscomb had ever talked to M.G. about domestic violence between them. M.G. had never heard about domestic violence from his siblings. However, M.G. stated Je. G. had told him about the November 2013 incident. He had been at his girlfriend's home in Indianapolis then.

¶ 25 The trial court questioned M.G. about where he wanted to live. He responded he wanted to live with his "momma" and his siblings. He preferred to live with respondent because,

unlike his father, she took care of him and his needs.

¶ 26 At the close of the evidence, the trial court found the State had proved both counts of neglect by clear and convincing evidence.

¶ 27 The hearing then proceeded to the dispositional phase. No additional testimony was offered, but Lutheran Social Services of Illinois (LSSI) had filed a dispositional report on October 9, 2014. In that report, respondent indicated she did not feel she had a problem with substance abuse or domestic violence and had not received any treatment or counseling or attended any support groups. She was still residing with Lipscomb in a four-bedroom, three-bathroom house, which she described as having bedrooms for her and Lipscomb, Ja. G., M.G., D.H., and J.H. Respondent indicated she and Lipscomb had been together for three years. She described their relationship as "good" and did not feel there were any difficulties in her relationship, including domestic violence or substance abuse. She denied any family history of domestic violence.

¶ 28 The report further reflected respondent had never attended any parenting classes but it was anticipated she would be referred for them. Respondent completed a domestic-violence assessment on October 1, 2014. Referral for a domestic-violence-survivor group was anticipated. It was also anticipated respondent would be referred for counseling services. Respondent had expressed a willingness to participate in all services to work toward having her children returned to her home. Due to lack of consistent contact, no visitation plan had been established. No integrated assessment had been conducted regarding Lipscomb.

¶ 29 Ja. G. was currently living with Carmelita Gipson in Chicago. He had previously been incarcerated in Danville and had several juvenile arrests, three of which had occurred since

being placed with DCFS. He reported he had been living with the mother of his child at the time the case came into the DCFS system. Ja. G. was currently enrolled in an alternative school because he acted violently on the first day of school at Gage Park Academy. He had been arrested and charges of battery and gang activity were pending. He was considered a sophomore due to lack of academic credits. He reportedly was adjusting well to placement with Carmelita Gipson. Therapy had been recommended, but Ja. G. felt that was not necessary.

¶ 30 M.G. was enrolled at Gage Park Academy as a sophomore. He reportedly was doing well in school without any problems. However, he had been caught leaving school early without permission. Therapy had been recommended, but M.G. felt that was not necessary.

¶ 31 Regarding Lipscomb's commitment to domestic-violence services, an earlier report by LSSI filed September 30, 2014, reflected he had been referred to and began domestic-violence classes at Cognition Works. However, he was terminated in May 2014 due to lack of attendance. LSSI indicated Lipscomb would need to be referred for services again and comply with them should he continue to have a relationship with respondent.

¶ 32 After hearing arguments, the trial court found respondent dispositionally unfit for reasons other than financial circumstances alone to care for, protect, train, and discipline the minors. Therefore, the court found it in the minors' best interests to be adjudged wards of the court and placed custody and guardianship with DCFS. The court ordered all visitation to be supervised.

¶ 33 This appeal followed.

¶ 34 II. ANALYSIS

¶ 35 On appeal, respondent argues the trial court erred when it (1) found Ja. G. and

M.G. neglected and (2) removed the minors from the home of respondent and Lipscomb. We disagree.

¶ 36 The Juvenile Court Act of 1987 (Act) (705 ILCS 405/1-1 to 7-1 (West 2012)), provides a two-step process for determining whether a minor should be removed from the parent's custody and made a ward of the court. *In re A.P.*, 2012 IL 113875, ¶ 18, 981 N.E.2d 336. Initially, the trial court must conduct an adjudicatory hearing to determine whether the minor is abused, neglected, or dependent. *Id.* ¶ 19, 981 N.E.2d 336 (quoting 705 ILCS 405/2-18(1) (West 2010)). 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). "Generally, 'neglect' is defined as the 'failure to exercise the care that circumstances justly demand.' " *In re Arthur H.*, 212 Ill. 2d 441, 463, 819 N.E.2d 734, 746 (2004). "Neglect" is not a term of fixed and measured meaning but takes its content from circumstances. Similarly, "injurious environment" is an amorphous concept but in general includes "the breach of a parent's duty to ensure a safe and nurturing shelter for *** her children." (Internal quotation marks omitted.) *A.P.*, 2012 IL 113875, ¶ 22, 981 N.E.2d 336. A trial court's finding of whether neglect occurred should not be disturbed on appeal unless it is contrary to the manifest weight of the evidence. *In re A.P.*, 179 Ill. 2d 184, 204, 688 N.E.2d 642, 652 (1997). "A finding is against the manifest weight of the evidence only if the opposite result is clearly evident." *In re A.W.*, 231 Ill. 2d 241, 254, 897 N.E.2d 733, 740 (2008).

¶ 37 Respondent maintains the allegations of neglect are against the manifest weight of the evidence because (1) they are based on a domestic-violence incident that occurred a year prior; (2) Ja. G. and M.G. were not in the home or even in town when the domestic-violence

incident occurred; (3) Ja. G. and M.G. have never witnessed domestic violence by respondent or Lipscomb; and (4) even though respondent and Lipscomb continue to live together, no other incidents of domestic violence have occurred.

¶ 38 "Under the anticipatory[-]neglect theory, the State seeks to protect not only children who are the direct victims of neglect or abuse, but also those who have a probability to be subject to neglect or abuse because they reside, or in the future may reside, with an individual who has been found to have neglected or abused another child." *Arthur H.*, 212 Ill. 2d at 468, 819 N.E.2d at 749. Evidence of abuse or neglect of one minor is admissible on the issue of the abuse or neglect of any other minor for whom the parent is responsible. 705 ILCS 405/2-18(3) (West 2012). Such evidence, however, does not constitute conclusive proof of neglect of the minor in question. *Id.*, 819 N.E.2d at 749. Rather, in determining whether a particular minor is neglected, a trial court should consider not only the circumstances surrounding the prior neglect of that minor's sibling or siblings but also the care and condition of the minor in question. *Id.*, 819 N.E.2d at 749-50. When faced with evidence of prior neglect by a parent or parents, a trial court need not wait to take action until after each particular minor suffers an injury. *Id.*, 819 N.E.2d at 754.

¶ 39 In this case, confusion existed over exactly where Ja. G. and M.G. were living. It appeared they spent time with their father in Chicago and with a cousin, and M.G. spent time with a girlfriend. However, respondent and the minors maintained they lived with respondent, Lipscomb, and the other minors previously found to be neglected. Respondent indicated, even though she had primary responsibility for the care of the minors, Lipscomb would assist with their care whenever necessary. Both Lipscomb and respondent had been reluctant to avail

themselves of recommended domestic-violence counseling. Moreover, in earlier proceedings regarding the initial petition, the trial court had admonished respondent to consult with her lawyer about how Lipscomb's reluctance to engage in services might affect the dispositional hearing "because you may be at a point in your life where you have to make a choice about him or your children and your lawyer will give you advice about this."

¶ 40 Lipscomb has still not participated in any domestic-violence treatment. Neither has respondent. Therefore, the situation has not changed since the younger minors were adjudicated neglected and removed from respondent's custody on June 27, 2014. Ja. G. and M.G. are still at risk of exposure to domestic violence and/or physical harm. Moreover, respondent continues to choose Lipscomb over her children since they are still residing together and she has made no indication she would be willing to change that arrangement in order to regain custody of her children. Therefore, under the theory of anticipatory neglect, we cannot find the court's finding of neglect is against the manifest weight of the evidence.

¶ 41 Respondent also argues the trial court erred when it removed Ja. G. and M.G. from her custody since (1) there was only one allegation of domestic violence between respondent and Lipscomb, which was remote in time; (2) she and Lipscomb have never separated; and (3) the State presented no evidence she had failed to care for any of her children or tend to their needs.

¶ 42 After a minor is found neglected, the second step in the proceedings is the dispositional hearing. *A.P.*, 2012 IL 113875, ¶ 21, 981 N.E.2d 336 (citing 705 ILCS 405/2-21(2) (West 2010)). "At the dispositional hearing, the trial court determines whether it is consistent with the health, safety and best interests of the minor and the public that the minor be made a

ward of the court." *Id.* If the minor "is to be made a ward of the court, the court shall determine the proper disposition best serving the health, safety and interests of the minor and the public." 705 ILCS 405/2-22(1) (West 2012). "The court's decision will be reversed only if the findings of fact are against the manifest weight of the evidence or the court committed an abuse of discretion by selecting an inappropriate dispositional order." *In re J.W.*, 386 Ill. App. 3d 847, 856, 898 N.E.2d 803, 811 (2008). "[A]n abuse of discretion occurs only where no reasonable person would take the view adopted by the court." *In re Marriage of DeRossett*, 173 Ill. 2d 416, 422, 671 N.E.2d 654, 657 (1996).

¶ 43 Pursuant to the Act, the trial court may enter the following dispositional orders:

"A minor under 18 years of age found to be neglected *** may be (1) continued in the custody of his or her parents, guardian or legal custodian; (2) placed in accordance with Section 2-27 [of the Act]; (3) restored to the custody of the parent, parents, guardian, or legal custodian, provided the court shall order the parent, parents, guardian, or legal custodian to cooperate with [DCFS] and comply with the terms of an after-care plan or risk the loss of custody of the child and the possible termination of their parental rights; or (4) ordered partially or completely emancipated in accordance with the provisions of the Emancipation of Minors Act." 705 ILCS 405/2-23(1)(a) (West 2012).

¶ 44 Section 2-27 of the Act provides the court may place custody and guardianship of the minor with DCFS upon a determination that "the parents *** of a minor adjudged a ward of

the court are unfit or are unable, for some reason other than financial circumstances alone, to care for, protect, train or discipline the minor or are unwilling to do so, and that the health, safety, and best interest of the minor will be jeopardized if the minor remains in the custody of his or her parents." 705 ILCS 405/2-27 (West 2012).

¶ 45 In this case, evidence at the adjudicatory hearing showed respondent's boyfriend assaulted one of her sons, Je. G., with an ax and choked respondent. Je. G. intervened on respondent's behalf to protect her from Lipscomb, something no child should ever have to do. Two of respondent's other children, D.H. and J.H., witnessed the violence. Ja. G. and M.G. lived in the home, too, but fortunately they were away when this violent incident occurred. Despite the trial court's warning to respondent following the adjudicatory hearing in the initial-petition proceedings, she chose Lipscomb over her children.

¶ 46 Lipscomb refused to engage in domestic-violence counseling. Respondent was entrenched in her denial of any domestic violence in her relationship with Lipscomb and her denial Lipscomb chased Je. G. with an ax. Indeed, only four days following the harrowing ax incident, respondent was found in a car with Lipscomb. This was after she told investigator Foley that Lipscomb would not be allowed back in her home. Her conduct showed she would not likely protect the safety of her children in the future. This court affirmed the trial court's decision finding the younger minors neglected and placing them in the custody and guardianship of DCFS.

¶ 47 In this supplemental proceeding, the trial court acknowledged M.G.'s desire to live with his mother. However, as the court aptly noted at the dispositional hearing, "the last thing the court wants to do is place [M.G.] in the same position that the minor *** [Je. G.] was in

at the time of this offense involving Mr. Lipscomb in the past." We agree with the court and find the likelihood respondent will not protect Ja. G. and M.G. is quite evident considering respondent chooses to continue living with Lipscomb and neither of them have participated in any domestic-violence counseling. Thus, the manifest weight of the evidence supported the court's finding respondent was dispositionally unfit. Because respondent could not be counted on to protect Ja. G. and M.G., the trial judge did not abuse his discretion by placing custody and guardianship with DCFS.

¶ 48

III. CONCLUSION

¶ 49

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

¶ 50

Affirmed.