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2015 IL App (4th) 150134-U

NO. 4-15-0134

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

July 14, 2015

Carla Bender

4<sup>th</sup> District Appellate

Court, IL

In re: T.R., A.W., and J.W., Minors,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Champaign County
v.	)	No. 14JA84
AIRON WINSTON,	)	
Respondent-Appellant.	)	Honorable
	)	Richard P. Klaus,
	)	Judge Presiding.

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

**ORDER**

¶ 1 *Held:* The appellate court affirmed, concluding the trial court's adjudicatory and dispositional findings were not against the manifest weight of the evidence.

¶ 2 In November 2014, the State filed a petition for adjudication of neglect, alleging respondent, Airon Winston, and respondent mother, Shelby Rix, neglected their minor children by subjecting them to an environment injurious to their welfare (705 ILCS 405/2-3(1)(b) (West 2012)). Respondent is the father of A.W. (born October 23, 2013) and J.W. (born November 9, 2014). Neither the father of T.R. nor Rix are parties to this appeal.

¶ 3 Following a January 2015 adjudicatory hearing, the trial court adjudicated A.W. and J.W. neglected minors. The following month, the court entered a dispositional order making the children wards of the court and granting custody and guardianship to the Department of Children and Family Services (DCFS).

¶ 4 Respondent appeals, asserting the trial court's adjudicatory and dispositional findings were against the manifest weight of the evidence. For the following reasons, we affirm.

¶ 5 I. BACKGROUND

¶ 6 A. Initial Proceedings

¶ 7 In November 2014, the State filed a petition for adjudication of neglect and shelter care, alleging the children were subjected to an injurious environment pursuant to section 2-3(1)(b) of the Juvenile Court Act of 1987 (Juvenile Act) (705 ILCS 405/2-3(1)(b)), in that the children were exposed to (1) substance abuse while in Rix's care (count I), and (2) domestic violence while in Rix's and/or respondent's care (count II).

¶ 8 B. Adjudicatory Hearing

¶ 9 In January 2015, the trial court held an adjudicatory hearing. Megan McNeal, a child-protection specialist with DCFS, testified she received a report in November 2014 that Rix gave birth to J.W., and J.W.'s meconium tested positive for illegal substances, including cocaine, marijuana, and opiates. McNeal then interviewed Rix, who admitted she used marijuana the night before going into labor due to excessive pain following a dental procedure. She also admitted to using marijuana a few weeks prior. When asked about her relationship with respondent, Rix stated they were no longer together due to domestic-violence issues. McNeal was unaware of any arrests resulting from respondent's alleged domestic violence.

¶ 10 During the course of her investigation, McNeal learned respondent and Rix had been previously referred for intact services in May 2013. Rix had reportedly yelled at and smacked T.R., who was then two years old. At the time, Rix was pregnant with A.W. As part of the safety plan, Rix was not permitted unsupervised contact with T.R. After A.W.'s birth, he

lived with respondent's mother. The safety plan was still in place in November 2014 when J.W. was born.

¶ 11 Lane Daniels, a caseworker with DCFS, testified regarding his involvement with the family's previous intact case. He explained respondent had been referred to domestic-violence counseling. As of the time of J.W.'s birth in November 2014, respondent had not yet completed the counseling. Rix had been referred to numerous services, including substance-abuse counseling, due to her testing positive for cocaine on several occasions during her pregnancy. Around the time of J.W.'s birth, Rix and respondent's relationship was sporadic, with their relationship status changing almost daily.

¶ 12 The trial court then took judicial notice of respondent's three prior court cases in Champaign County: (1) an adjudication of delinquency for aggravated battery (case No. 08-JD-156); (2) an adjudication of delinquency for robbery, aggravated battery, and mob action (case No. 10-JD-24); and (3) a 2014 conviction for aggravated domestic battery, for which respondent was on probation (case No. 14-CF-772).

¶ 13 Following the presentation of evidence, the trial court found the children neglected on both counts of the petition because they had been exposed to an environment injurious to their welfare. The court's written order noted Rix had used cocaine during her pregnancy and that J.W. had tested positive for cannabis at birth. Further, respondent had not completed the domestic-violence counseling to which he had been referred.

¶ 14 C. Dispositional Hearing

¶ 15 In February 2015, the trial court held a dispositional hearing. The parties presented no evidence but relied upon the dispositional report prepared by DCFS. The dispositional report contained much of the same information presented during the adjudicatory

hearing. However, the report contained additional information as well. Following the adjudicatory hearing, respondent cancelled his two scheduled visits due to his work schedule. He was employed but had no set schedule. He was behind on his rent on the home he shared with Rix; however, his landlord indicated she was willing to create a payment plan.

¶ 16 Respondent wore a monitoring bracelet following his aggravated-domestic-battery conviction but was due to have it removed in March 2015. Contrary to the information presented at the adjudicatory hearing, Rix denied any prior domestic-violence with respondent. Respondent reported no physical or mental-health problems and denied any substance abuse.

¶ 17 In submitting the report, the caseworker recommended the trial court find respondent unfit and order the children to remain in the custody of DCFS. The caseworker further recommended a goal of return home in 12 months with discretion for DCFS to grant third-party supervised visits.

¶ 18 After reviewing the dispositional report, the trial court found respondent and Rix were unfit and unable to act as the custodial parents and that it was in the best interest of the children to be made wards of the court and placed in the guardianship of DCFS. In making this finding, the court emphasized respondent's history of domestic violence. The court further found the dispositional report regarding third-party visitation was "divorced from reality." Rather, the court ordered all visits would be supervised by DCFS.

¶ 19 This appeal followed.

## ¶ 20 II. ANALYSIS

¶ 21 On appeal, respondent argues the trial court's adjudicatory and dispositional findings were against the manifest weight of the evidence. We address these assertions in turn.

### ¶ 22 A. Adjudicatory Finding

¶ 23 Respondent contends the trial court erred in adjudicating his children neglected under section 2-3(1)(b) of the Juvenile Act (705 ILCS 405/2-3(1)(b) (West 2012)). "Neglect" is defined as "the failure to exercise the care that circumstances justly demand and encompasses both willful and unintentional disregard of parental duty." *In re Kamesha J.*, 364 Ill. App. 3d 785, 792-93, 847 N.E.2d 621, 628 (2006). A parent has a duty to shield his or her child from harm. *Id.* at 793, 847 N.E.2d at 628. When the petition for adjudication of neglect alleges the minor has been subjected to an injurious environment, the case should be reviewed based on the specific circumstances of that case. *In re Arthur H.*, 212 Ill. 2d 441, 477, 819 N.E.2d 734, 754 (2004). The court's findings of fact are afforded great deference and will not be overturned unless those findings are against the manifest weight of the evidence. *In re R.S.*, 382 Ill. App. 3d 453, 459, 888 N.E.2d 542, 548-49 (2008). "A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident." *Id.*, 888 N.E.2d at 549.

¶ 24 Respondent first argues the trial court inappropriately considered the parties' failure to correct the conditions which led to the intact service plan because the issue was not raised in the pleadings. See *In re J.B.*, 312 Ill. App. 3d 1140, 1143, 728 N.E.2d 59, 61 (2000) ("a party can only win the case according to the case the party has presented in the pleadings"). However, we may affirm on any basis in the record. See *Alpha School Bus Co. v. Wagner*, 391 Ill. App. 3d 722, 734, 910 N.E.2d 1134, 1148 (2009). Accordingly, we conclude the record supports the court's finding based on the evidence presented on the pleadings.

¶ 25 Respondent next asserts count I of the petition, which alleged the children were in an injurious environment due to their exposure to substance abuse, did not relate to him. He therefore raises no argument with respect to count I. Though the allegations pertained to the use of illicit substances by Rix, the purpose of an adjudicatory hearing is not to determine which

parent caused the minor's neglect but to determine whether a child is neglected because adverse conditions exist. *In re R.B.*, 336 Ill. App. 3d 606, 614-15, 784 N.E.2d 400, 407 (2003). Hence, the question is not whether respondent neglected the children, but whether the children were neglected. Because respondent fails to argue the merits of the trial court's finding as to count I, we deem that issue forfeited. See Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013); *Sellers v. Rudert*, 395 Ill. App. 3d 1041, 1046, 918 N.E.2d 586, 591 (2009) (arguments not raised in an appellant's brief are deemed forfeited).

¶ 26           Regardless, the record supports the trial court's adjudication of neglect as to count I. At birth, J.W. tested positive for opiates, marijuana, and cocaine. This demonstrates Rix exposed J.W. to an environment injurious to her welfare. Additionally, Daniels testified Rix tested positive for illegal substances on multiple occasions while participating in an intact family case which began in May 2013 and was ongoing at the time of the filing of the petition. As part of that intact family case, though A.W.'s grandmother was his primary caretaker, the parents were, at times, allowed unsupervised contact with A.W. If and when in the care of Rix, A.W. would have been subjected to the same injurious environment. We therefore conclude the court's finding as to count I was not against the manifest weight of the evidence.

¶ 27           Because we affirm the court's findings as to count I, we need not address the merits of count II. See *In re Faith B.*, 216 Ill. 2d 1, 14, 832 N.E.2d 152, 159 (2005) ("[W]hen the circuit court has found a minor neglected on several grounds, we may affirm if any of the circuit court's bases of neglect may be upheld.").

¶ 28   B. Dispositional Finding

¶ 29           Respondent next argues the trial court's dispositional finding was against the manifest weight of the evidence.

¶ 30 Following an adjudication of neglect, the trial court must determine, by a preponderance of the evidence, whether it is in the health, safety, and best interest of the minor to remain with the parent, or if alternative custody and guardianship placement, *i.e.*, with DCFS, is more appropriate. 705 ILCS 405/2-22 (West 2012). The court's central concern in fashioning a dispositional order is the best interest of the child. *In re M.P.*, 408 Ill. App. 3d 1070, 1073, 945 N.E.2d 1197, 1200 (2011). In making its decision, the court "should consider all reports, whether or not the author testifies, which would assist the court in determining the proper disposition for the minor." *In re L.M.*, 189 Ill. App. 3d 392, 400, 545 N.E.2d 319, 325 (1989). We will not overturn the court's decision unless it is against the manifest weight of the evidence. *In re J.W.*, 386 Ill. App. 3d 847, 856, 898 N.E.2d 803, 811 (2008).

¶ 31 In this case, the trial court determined it was in the best interest of the children's health and safety to place custody and guardianship with DCFS. Respondent's sole argument on this issue is the court based its findings of respondent's unfitness on improper grounds—respondent's failure to correct the conditions in the intact case. Respondent offers no further argument and provides this court with no citations to legal authority. Thus, this argument is forfeited. See Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013); *Sellers*, 395 Ill. App. 3d at 1046, 918 N.E.2d at 591 (arguments not raised in an appellant's brief are deemed forfeited).

¶ 32 Despite respondent's forfeiture of the issue, the record supports the trial court's findings. Since the adjudicatory hearing, respondent had not engaged in any visits with his children. His criminal record reflects a history of violence, including two adjudications of juvenile delinquency and a 2014 conviction for aggravated domestic battery. Respondent had not yet completed the recommended services from the intact case, which included domestic-violence counseling. The record further demonstrates respondent had a sporadic relationship

with Rix, who was still attempting to overcome her substance-abuse issues that resulted in the court's finding of neglect as to count I. This evidence is sufficient to support the court's finding that respondent was unfit and unable to care for the children and, thus, placing the children with DCFS was in their best interest. Accordingly, we conclude the court's dispositional finding was not against the manifest weight of the evidence.

¶ 33

### III. CONCLUSION

¶ 34

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

¶ 35

Affirmed.