

NOTICE

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2015 IL App (4th) 150275-U

NO. 4-15-0275

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

September 2, 2015
Carla Bender
4th District Appellate
Court, IL

In re: A.M., a Minor,)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
Petitioner-Appellee,)	Champaign County
v.)	No. 15JA4
ARTASHA DAVIS,)	
Respondent-Appellant.)	Honorable
)	Richard P. Klaus,
)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justices Turner and Holder White concurred in the judgment.

ORDER

¶ 1 *Held:* (1) The trial court's determination that the minor was neglected was supported by the record and not against the manifest weight of the evidence.

(2) The trial court's removal of the minor from the respondent mother's care and placement of the minor in the custody and guardianship the Illinois Department of Children and Family Services was supported by the record and not against the manifest weight of the evidence.

¶ 2 Respondent, Artasha Davis, appeals the trial court's dispositional order adjudicating her child, A.M. (born November 17, 2007), neglected and removing A.M. from respondent's custody. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On January 20, 2015, the State filed a petition for adjudication of neglect, alleging A.M. was a neglected minor. Specifically, it asserted A.M.'s environment was injurious to her

welfare when she resided with respondent, her mother, because A.M. was exposed to inadequate supervision (count I) and the risk of physical harm (count II).

¶ 5 On March 6, 2015, an adjudicatory hearing was conducted. Jeremy Hale testified he was a police officer for the City of Urbana. On January 19, 2015, he responded to a call that a small child was found crying on a street corner. He arrived at the scene and found the individual who called the police standing with A.M., who was then seven years old. Hale stated A.M. was crying and reported that she had been at the park with respondent, who left her at the park and "drove away." A.M. attempted to find her way home but became lost. However, she was able to give Hale respondent's name and address. Hale asked another officer to go to respondent's residence while Hale took A.M. to the police department.

¶ 6 Hale testified he eventually had contact with respondent by telephone and asked her to come to the police department to get A.M. According to Hale, respondent "stated she wouldn't come if she was going to be arrested." Hale responded that he was more interested in A.M.'s health and welfare. Respondent then asserted she lacked transportation. As a result, an officer went to respondent's residence, picked her up, and brought her to the police department.

¶ 7 Andrew Hewkin testified he was a sergeant with the Urbana police department. He responded along with Hale to the report of a small child crying on a street corner. After Hale learned respondent's name and address, Hewkin went to the address to locate respondent. He stated he knocked loudly several times but no one ever came to the door. Hewkin observed a vehicle parked directly in front of the residence. He asked his dispatcher to run the license plate on the vehicle and learned it was registered to respondent. It also matched a description A.M. had given of her mother's vehicle.

¶ 8 Hewkin testified he further obtained respondent's telephone number from police records and attempted to call her. Initially, he received no response and left a voicemail message. Ultimately, he was able to contact respondent and informed her that A.M. was at the police station. Hewkin testified that, at first, respondent did not really respond. He then heard crying on the other end of the phone and respondent stated "she just didn't know what to do and she was overwhelmed with everything going on with [A.M.]" Hewkin asked respondent to come to the police department and she stated she would "be right there." After 20 or 30 minutes passed and respondent had not shown up, Hewkin attempted to call her again but only got respondent's voicemail. However, respondent called back and Hewkin gave the phone to Hale. Hewkin learned that respondent reported she could not drive to the police department because she did not have a valid driver's license. He returned to respondent's residence to pick her up.

¶ 9 Hewkin testified that, upon arriving at respondent's home, he observed respondent and a man "kind of yelling at each other." Respondent identified the man as her on-again, off-again boyfriend, Bruce Renfro. While transporting respondent to the police department, Hewkin questioned her about the situation with A.M. Respondent asserted she had taken A.M. to the park and raced her to the swing set. When respondent won, A.M. became upset and stormed off, walking to the other side of the park. Respondent went to her vehicle and waited for A.M. to cool down and return. A short time later, A.M. walked up to the car. She tried to open the passenger door but it was locked. According to respondent, A.M. walked away again and respondent lost sight of her. Respondent reported she waited a few minutes but did not see A.M. She decided A.M. must have walked home and returned home to look for her.

¶ 10 Hewkin testified respondent reiterated that she was "having lots of issues," she

was "overwhelmed," and she did not know what to do. She acknowledged being home when Hewkin knocked on her door the first time "but just because of everything going on, she didn't answer her door for whatever reason."

¶ 11 Arnold Black, an employee with the Illinois Department of Children and Family Services (DCFS), testified, on January 19, 2015, he went to the police department and spoke with A.M. According to Black, A.M. reported that she was playing with respondent at the park when respondent received a phone call and started walking to her car. A.M. followed respondent, who entered her vehicle. A.M. stated she tried to open the car door but it was locked and respondent "told her that she needed to get away from the car and started yelling at her." A.M. walked in the park and eventually saw respondent "pull off from the parking lot." A.M. began crying because she saw respondent leave. She started walking toward home but became lost and was found by some people in the community and the police.

¶ 12 Black testified he asked A.M. whether anything similar had happened before and A.M. reported that she had once been separated from respondent at the mall. Specifically, she stated that respondent "was taking a picture of her[,] *** got mad at her[,] and walked off and left her." A.M. reported she began crying and a woman at the mall approached her and asked what was wrong. Mall security was also called.

¶ 13 Black testified he additionally spoke with respondent about the incident. Respondent reported that she and A.M. played a "racing game" at the park. Respondent won the game and A.M. became upset. Respondent asserted she then received a phone call and returned to her car. A.M. followed respondent to the car but the door was locked. Respondent assumed A.M. went back to the park to continue playing. She stated that "when she looked up," she did

not see A.M. and "assumed that she left." Respondent stated she circled the park a couple of times to make sure A.M. was not there and then drove home to wait for A.M. Black testified that respondent acknowledged that the police tried to contact her. However, she stated "she didn't know what they wanted so she didn't answer the door or answer the telephone."

¶ 14 Officer Zachery Mikalik testified regarding an incident involving respondent and A.M. that occurred on May 10, 2013. Shortly before 11 a.m. on that date, he responded to a report about a small child, approximately five years of age, who was unsupervised. He spoke to two witnesses who observed the child outside by herself. The second witness observed the child enter an apartment. Mikalik knocked on the door of the apartment but received no answer. The second witness, who happened to be a maintenance man for the property, used his keys to open the door and perform a welfare check on the residence. Mikalik observed a child inside the apartment who matched the description of the unsupervised child provided by the witnesses. The child, who identified herself as A.M., was alone and reported her mother was working at Target.

¶ 15 Mikalik telephoned Target and spoke with respondent. He testified respondent reported she typically left for work around 7 a.m. and had an arrangement with a neighbor to watch A.M. Specifically, respondent "[t]ells the neighbor that her daughter is still sleeping upstairs in her bedroom, and that he can go and get her at around usually around 11 [a.m.] or 12 noon when she wakes up, and then he can watch her from there."

¶ 16 At the adjudicatory hearing, respondent presented the testimony of her mother, Loretta Guy Davis, and sister, Osheena Guy. Both lived in the Chicago area but asserted they frequently observed respondent with A.M. Davis stated respondent was "real good with A.M.,"

loved A.M. dearly, and treated A.M. "real well." Guy testified respondent and A.M. had "[t]he best" relationship. Neither had ever known respondent to leave A.M. on her own and A.M. had never complained to Davis or Guy about being left alone. Additionally, both Davis and Guy testified respondent was a single parent and provided for all of A.M.'s needs.

¶ 17 Respondent also testified on her own behalf. She recalled going to the park with A.M. on January 19, 2015, and that the two became separated. Respondent testified she raced A.M. to the swings and won. Initially, A.M. was unhappy and pouted, but after respondent explained to A.M. that she could not always win, A.M. was okay. Respondent testified she then received some phone calls and walked around the park with A.M. while talking on the phone. Ultimately, respondent and A.M. walked back to the car. Respondent stated she got in the car and, when she started it up, the doors locked. She observed A.M. pull the door handle one time and then return to the play area. Respondent waited for A.M. to finish playing. After approximately 10 minutes, she looked for A.M. but did not see her. Respondent testified she drove around the park to look for A.M. but could not find her. She assumed A.M. "had gone to walk home because [A.M.] told [respondent] that she would walk home." She then testified as follows:

"So I proceeded home and I gave [A.M.] approximately between five and eight minutes. I was timing her to make it home. If she wasn't home during that time, I had planned on contacting the police, *** but before it even reached that time for her to make it home, the police came there. I did not notice [A.M.] with them at all so I assumed it was for something completely different, which

was my mistake, and then I checked the voicemail and called them immediately back and went to the police station."

¶ 18 Respondent testified she and A.M. had been to that particular park before and had "walked together there several times." She believed it was possible for A.M. to know her way to and from the park. Respondent estimated the park was approximately a six-minute walk from her home. On cross-examination, respondent testified she did not initially answer the door because she believed the police were possibly investigating crimes that had occurred in the area. She stated crime in her neighborhood was common.

¶ 19 Respondent testified she recalled an incident at the mall in November 2014. She recalled walking with A.M. when A.M. stopped to put on her coat and the two became separated. Respondent testified she looked for A.M. but did not see her because "a lady took [A.M.] inside a store." Mall security contacted respondent by phone, they "met up together," and respondent took A.M. home. Respondent testified she and A.M. were separated for only 8 to 10 minutes.

¶ 20 Respondent also recalled an incident that occurred in May 2013, when she was working at Target. At that time, respondent had an agreement with her neighbor to watch A.M. while she was working. Respondent denied ever intentionally leaving A.M. alone. On cross-examination, respondent testified she would leave her house at 7 a.m. while A.M. was still sleeping and her neighbor was supposed to go to her house around 7:30 or 8 a.m. to get A.M. and take her to his residence. On the day in question, the neighbor reported to her that he "didn't make it over there in time."

¶ 21 Following the parties' arguments, the trial court determined the State had met its burden of proof as to both counts. On March 6, 2015, the same date as the hearing, the court en-

tered its adjudicatory order, finding the State had proved A.M. was a neglected minor and setting the matter for a dispositional hearing.

¶ 22 On April 2, 2015, the trial court conducted the dispositional hearing. Initially, the court stated it had reviewed the dispositional report. The report showed that, since June 2012, respondent lived in a two-bedroom townhouse apartment. Renfro, respondent's paramour, sometimes stayed in the home. Respondent's rent was income based and she "receive[d] assistance through the LINK card and the Medical Card." The report also showed that beginning in December 2014, respondent had intermittent, part-time work through a local temporary agency. Further, she had weekly supervised visits with A.M. The report stated respondent had participated in all of her scheduled visits, although two were missed due to a change in visit monitors. With respect to services, the report stated as follows:

"[Respondent] is recommended for individual therapy, substance abuse, domestic violence, and parenting [services]. [Respondent] was sent a letter on 03/19/15 informing her that her substance abuse referral and therapy referrals have been approved and thus she now needs to make contact with service providers. The referral for domestic violence and parenting are still pending approval. [Respondent] was asked to complete a urine screen on 03/10/15 however she failed to show for this appointment."

¶ 23 The dispositional report further showed that A.M. was placed in relative foster care with Davis, her maternal grandmother. A.M. had adjusted well to the home and Davis reported no behavioral problems. The report noted A.M. did "demonstrate occasional bouts of

emotional distress," in that "she becomes tearful or cries to be with [respondent,] whom she frequently talks about." Overall, A.M. was described as "typically happy" and showing no sleeping or eating difficulties. A.M. attended first grade. She was noted as doing well in school, although her class was working on things that had already been taught to her. A.M. was also referred for therapy to help her process her separation from respondent. At the conclusion of the report, the recommendations were that custody and guardianship of A.M. be placed with DCFS and that respondent have supervised visitation.

¶ 24 At the dispositional hearing, the State noted it had been informed that respondent had started counseling and had been attending her sessions. No further additions or corrections to the dispositional report were suggested and no additional evidence was presented at the hearing. Both the State and the guardian *ad litem* recommended A.M. be adjudged neglected and made a ward of the court, respondent be found unfit and unable to care for A.M., and that custody and guardianship of A.M. be removed from respondent and awarded to DCFS. In presenting respondent's position to the court, her counsel noted respondent had been cooperative with DCFS and further stated: "I am sure the Court will make the child a ward of the court and the other recommendations appear appropriate based on the information in the report."

¶ 25 At the conclusion of the hearing, the trial court found it was in A.M.'s best interest to be adjudged neglected and made a ward of the court. Further, it found respondent currently "unfit and unable to act as a custodial parent" and placed custody and guardianship of A.M. with DCFS. On April 6, 2015, the court's dispositional order was filed. The court's written order was consistent with its oral ruling.

¶ 26 This appeal followed.

¶ 27

II. ANALYSIS

¶ 28 On appeal, respondent first argues the trial court erred by finding A.M. was a neglected minor. She maintains the evidence presented by the State was insufficient to support a finding of neglect by the court.

¶ 29 Pursuant to the Juvenile Court Act of 1987 (Act) (705 ILCS 405/1-1 *et seq.* (West 2014)) a trial court must employ a two-step process when determining whether a minor should be made a ward of the court. *In re A.P.*, 2012 IL 113875, ¶ 18, 981 N.E.2d 336. The first step is the adjudicatory hearing, during which the court must determine whether the minor is abused, neglected, or dependent. *A.P.*, 2012 IL 113875, ¶ 19, 981 N.E.2d 336 (citing 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 2014).

¶ 30 "[C]ases involving allegations of neglect and adjudication of wardship are *sui generis*, and must be decided on the basis of their unique circumstances." *In re Arthur H.*, 212 Ill. 2d 441, 463, 819 N.E.2d 734, 747 (2004).

"Generally, "neglect" is defined as the "failure to exercise the care that circumstances justly demand." ' *** [Citations.] This does not mean, however, that the term neglect is limited to a narrow definition. [Citation.] As this court has long held, neglect encompasses 'wilful as well as unintentional disregard of duty. It is not a term of fixed and measured meaning. It takes its content always from specific circumstances, and its meaning varies as the context of surrounding circumstances changes.' *** [Citations.]

'Similarly, the term "injurious environment" has been recognized by our courts as an amorphous concept that cannot be defined with particularity.' [Citation.] Generally, however, 'the term "injurious environment" has been interpreted to include "the breach of a parent's duty to ensure a 'safe and nurturing shelter' for his or her children." ' [Citations.]" *A.P.*, 2012 IL 113875, ¶ 22, 981 N.E.2d 336.

¶ 31 The State has the burden of proving neglect allegations by a preponderance of the evidence. *A.P.*, 2012 IL 113875, ¶ 17, 981 N.E.2d 336. "In other words, the State must establish that the allegations of neglect are more probably true than not." *A.P.*, 2012 IL 113875, ¶ 17, 981 N.E.2d 336. "[T]he paramount consideration is the best interests of the child." *A.P.*, 2012 IL 113875, ¶ 18, 981 N.E.2d 336. "On review, a trial court's finding of neglect will not be reversed unless it is against the manifest weight of the evidence," and "[a] finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident." *A.P.*, 2012 IL 113875, ¶ 17, 981 N.E.2d 336.

¶ 32 Here, the State presented evidence showing respondent knowingly left seven-year-old A.M. alone and unsupervised at a city park. A.M. attempted to find her way home but became lost. Respondent initially avoided the police officers who were investigating the incident by refusing to answer her door or telephone. When speaking to one police officer, respondent refused to go to the police department and retrieve A.M., stating "she wouldn't come if she was going to be arrested." The State also presented evidence of two other incidents in which respondent left A.M. inadequately supervised. During one incident, A.M., who was then five years

old, was home alone while respondent was at work. Again, A.M. was observed alone and unsupervised on a city street. At the time, respondent reported to the police that she left for work around 7 a.m. and had arranged for a neighbor to get A.M. around 11 a.m. or noon.

¶ 33 In her brief, respondent relies on her own testimony and versions of relevant events to support her position that the trial court erred in finding A.M. neglected. However, the record shows respondent's testimony conflicted with the information A.M. reported to police officers and a DCFS employee. Respondent's testimony also conflicted with information she previously reported to those same individuals. We note that, in proceedings under the Act, the trial court's findings are "given great deference because of its superior opportunity to observe the witnesses and evaluate their credibility." *In re John C.M.*, 382 Ill. App. 3d 553, 570, 904 N.E.2d 50, 66 (2008). Here, the court's findings indicate it found respondent was not credible and the record reflects no error in that determination.

¶ 34 In this case, the record supports the trial court's finding that A.M. was a neglected minor as alleged by the State and an opposite conclusion from that of the court is not clearly evident. The court's neglect finding was not against the manifest weight of the evidence.

¶ 35 On appeal, respondent also argues the trial court erred by removing A.M. from respondent's custody and guardianship. Specifically, she contends the court's finding that she was unfit and unable to care for A.M. was against the manifest weight of the evidence.

¶ 36 The second step in determining whether a minor should be made a ward of the court 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." *A.P.*, 2012 IL 113875, ¶ 21, 981 N.E.2d 336. 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 2014). It 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 2014). "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).

¶ 37 Evidence at the dispositional hearing showed A.M. was in relative foster care with her maternal grandmother. Although she exhibited some emotional distress as a result of being separated from respondent, she was reportedly happy in her foster home and doing well. Further, although respondent had only just begun engaging in services, she failed to show up for a urine screen she had been asked to complete. Moreover, the record shows that, at the dispositional hearing, respondent agreed with recommendations—made by the State and guardian *ad litem*, and contained within the dispositional report—that A.M. be removed from her care and placed in the custody and guardianship of DCFS. A party may not acquiesce in proceedings and then complain on appeal that error occurred. See *In re B.L.*, 315 Ill. App. 3d 602, 605, 734 N.E.2d 476, 478 (2000) (holding a party "should not be allowed to appeal based on his own complicity in creating the issue that he now claims is error").

¶ 38 Based upon the circumstances presented, we find the trial court committed no error in removing A.M. from respondent's care and placing her custody and guardianship with DCFS. An opposite conclusion from that made by the trial court is not clearly evident and its decision is not against the manifest weight of the evidence.

¶ 39

III. CONCLUSION

¶ 40

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

¶ 41

Affirmed.