

No. 1-15-2035

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

| | | |
|---------------------------------------|---|----------------------------------|
| IN THE INTEREST OF: |) | Appeal from the Circuit Court of |
| |) | Cook County, Illinois |
| D.S. and D.F., |) | Juvenile Justice and Protection |
| |) | Department, Child Protection |
| Minors-Respondents-Appellees, |) | Division |
| |) | |
| (The People of the State of Illinois, |) | |
| |) | Nos. 14 JA 657 |
| Petitioner-Appellee, |) | 14 JA 658 |
| |) | |
| v. |) | |
| |) | |
| Janina F., |) | Honorable |
| |) | Peter Vilkelis, |
| Mother-Respondent-Appellant). |) | Judge Presiding. |

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice Cunningham and Justice Connors concurred in the judgment.

ORDER¹

¶ 1 **Held:** The trial court's determination that Janina F. was unfit and it was in the best interest of D.S. and D.F. to be made wards of the state was not against the manifest weight of the evidence where Janina F. has not complied with agency directives, attended visitation irregularly and has not had contact with D.S. and D.F. since March 2015.

¹ This accelerated child custody case was fully briefed and marked ready for determination on May 5, 2016.

¶ 2 Respondent, Janina F., appeals the order of the trial court terminating her parental rights as to minors, D.F. and D.S. On appeal, she contends (1) the trial court's finding of unfitness was against the manifest weight of the evidence; and (2) the trial court erred in determining that it was in D.F. and D.S.'s best interest to make them wards of the state. We affirm.

¶ 3 JURISDICTION

¶ 4 The circuit court entered a finding of neglect and injurious environment on April 21, 2015. On June 25, 2015, the circuit court entered a finding that it was in the best interest that the minors be made wards of the court, and that guardianship be awarded to the Illinois Department of Children and Family Services. On July 17, 2015, mother filed her notice of appeal. Accordingly, this court has jurisdiction over this matter pursuant to Article VI, Section 6 of the Illinois Constitution, and Illinois Supreme Court Rules 301, 303, and 311. Ill. Const. 1970, art. VI, § 6; Ill. S. Ct. R. 301 (eff. Feb. 1, 1994); R. 303 (eff. May 30, 2008); R. 311 (eff. Mar. 8, 2016).

¶ 5 BACKGROUND

¶ 6 Respondent-appellant, Janina F., filed a notice of appeal challenging the trial court's order finding that both minors, D.F. and D.S., were abused and neglected and it would be in the best interest to remove them from the custody of Janina F. The People filed petitions for adjudication of wardship on June 18, 2014 alleging that the minor female, D.F, born on March 17, 2011, was neglected due to an injurious environment, and abused due to a substantial risk of physical injury and that the minor female, D.S., born on January 30, 2013, was neglected due to an injurious environment and lack of necessary care and abused due to a substantial risk of physical injury. The adjudicatory hearing for D.F. and D.S. took place on April 21, 2015, and after hearing all of the evidence, the trial court found that D.F. and D.S. were neglected due to lack of necessary care.

¶ 7 Ruby Peet testified for the State that she was employed by the Illinois Department of Children and Family Services (DCFS) as a child protection investigator. She was assigned to the case of D.S. and D.F. on May 8, 2013. The case originated because D.S., then three months old, was found in an alley on or around May 8, 2013. Peet testified that she spoke with D.S.'s mother over the phone. She denied having any issues with drugs or alcohol and admitted to an incident of domestic violence that involved D.S.'s father, Deshawn S. They had an argument and Deshawn S. threw a brick at Janina F., striking her in the leg. As part of the incident, Janina F. became aware that Deshawn S. had taken D.S. from a relative's home. Janina F. looked into Deshawn S.'s car but D.S. was not there so she called the police. The police responded and ultimately found D.S. in a nearby alley. As a result of the investigation, Deshawn S. was indicted for "leaving the child in a situation greater than his ability or maturity to handle and for substantial risk injurious environment by neglect." At the time, Janina F. also had custody of D.F., a three year old.

¶ 8 Janina F. had custody of both children at the time but she had made arrangements for relatives to take care of them because of her "transient nature." D.F. was living in St. Louis with an aunt while D.S. was living with a different aunt, Patricia Freeman. Peet testified Deshawn S. and Janina F. were offered domestic violence services but Peet did not know if the classes had been completed.

¶ 9 Edekia Nalls testified for the State that she was employed by the DCFS as a child protection investigator. On June 16, 2014, she was assigned to investigate a second report of allegations of abuse and neglect to D.F. and D.S. The incident involved Deshawn S. threatening to kill D.S. The record also indicates that Janina F. made statements to the effect of no longer wanting D.S. Nalls spoke to Janina F. over the phone on June 16, 2014. Janina F. stated Deshawn S. never threatened to kill or hurt D.S. She said she and D.F. were currently living

with Diane Ferguson, the mother of her sister's boyfriend. Janina F. stated that D.F. had been living with Ms. Ferguson since she was around three months old, although Ms. Ferguson did not have legal custody or guardianship of her. During the phone conversation, Janina F. stated she was not in a relationship with Deshawn S. but that she allowed him to see D.S.

¶ 10 Nalls testified that she met with Janina F. in person the next day. Nalls told Janina F. that she was taking protective custody of D.S. and D.F. on that day. Janina F. told Nalls that DCFS never informed her that she was supposed to discontinue all contact with Deshawn S. when he got out of jail and she was willing to do so if that is what DCFS needed her to do. Janina F. told Nalls that Deshawn S. had not hit her since February when he went to jail and that she did not think he would hurt D.S. because he was a "changed individual."

¶ 11 Nalls testified that she spoke with Deshawn S. over the phone on June 18, 2014. He denied threatening to kill D.S. although he acknowledged that he "messed up" a year earlier when he placed D.S. in the alley. He admitted that during that incident he threw a brick at Janina F. but did not strike her with it. He stated that he did not remember hitting Janina F. and that he "wasn't arrested for hitting her when she was eight months pregnant." He stated that he and Janina F. were not currently in a relationship and that Janina F. was a good mother. He also stated he smoked marijuana but he "doesn't lace it with anything," he is homeless and he could not take care of his children. The record also indicates that the caregiver of D.S. had observed both parents smoking marijuana.

¶ 12 Nalls testified that she took protective custody of the children because Janina F. was still allowing Deshawn S. to have contact with D.S. even after he had been indicted and pled guilty to child endangerment. Based on those factors, DCFS was concerned that the children would be at risk if they continued to remain in the care and custody of Janina F.

¶ 13 Nalls also testified that she was aware of an incident where the police went to the home of Diane Ferguson, where both children were living at the time, for a well-being check in response to a hotline call on June 15, 2013. Janina F. was not coherent when the police arrived. While no arrests were made and the children remained in the home, the record indicates police were unable to wake Janina F. Nalls did not remember what the police meant by "incoherent." Furthermore, the record indicates that Janina F. had been observed handling D.S. in a rough manner.

¶ 14 People's Exhibit #2, a certified statement of conviction and disposition for domestic battery and endangering the life/health of a child against Deshawn S., as well as a certified misdemeanor complaint for domestic battery with bodily harm, were entered into evidence. The domestic battery complaint alleged that Deshawn S. struck Janina F. with a brick on her upper right thigh on May 8, 2013.

¶ 15 The State and guardian *ad litem* rested. The attorney for Janina F. made a motion for a directed finding which was denied. Janina F. did not present any witnesses or evidence.

¶ 16 After hearing all of the evidence, the trial court stated that it was concerned with the environment in which both children were living. The court spoke about three month old D.S. being left in an alley and about the domestic violence incident between the parents. The court voiced further concern that although the parents were no longer in a relationship, Janina F. allowed Deshawn S. to see D.S. Further, she told Nalls that she did not think he would hurt his child, even after the conviction for leaving D.S. in the alley. The court also voiced concern that had she participated in the domestic violence class, she would have known she could not have contact with Deshawn S. following the first domestic violence incident. Furthermore, she would have gained an understanding of the challenges that exist in a relationship with a history of domestic violence.

¶ 17 The court explained how the state of Illinois defined neglect and injurious environment in child welfare cases. The court then acknowledged that the State proceeded under the theory of anticipatory neglect in regards to D.F. and found that the State met its burden of proof by a preponderance of the evidence that D.S. and D.F. were neglected due to an injurious environment.

¶ 18 The dispositional hearing was held on June 25, 2015. The State called Amber Hoeft, a case worker from Children's Home and Aid. The witness testified that she is assigned to both minors and is also the family's case worker. She testified that both girls are placed together in a traditional nonrelative home. Both children were found to be happy, but behind other children in terms of mental development. Janina F. had weekly visits, however, she only arranged one visit in January, February, and March and has not arranged any visits since March 2015. Janina F. was referred for individual therapy, psychiatric evaluation, parenting program, domestic violence services and random urine drops. Hoeft testified that Janina F. was not making progress and was inconsistent with visitation rights. Janina F. calls and schedules visits but does not show up. She had only participated in one urine screening and had been referred to the Nurturing Parenting Program three times, but missed the starting date for each session. She has not participated in the psychiatric evaluation and she discontinued her individual therapy in January. Furthermore, according to the Integrated Assessment she continued her relationship with Deshawn S. despite the previous domestic violence incident.

¶ 19 Hoeft recommended that both girls be made wards of the court, and that the goal should be return to the home. She added that if that goal cannot be effectuated the girls are in a pre-adoptive home.

¶ 20 On cross-examination, Hoeft acknowledged that Janina F. participated in an Integrated Assessment in July 2014 when the case came into the system. Hoeft also testified that Janina F. indicated that she wanted be more involved and consistently involved with visitation.

¶ 21 Following closing arguments, the trial judge adjudged the minors to be wards of the Court, and found that Janina F. was unable for some reason other than financial circumstances alone to care for, protect, train and discipline the minors. The court noted that there were reasonable efforts which had been made to prevent or eliminate the need for the minors to be removed from the home. Additionally, the services aimed at family preservation/reunification have thus far been unsuccessful. The trial court found that it was in the best interests of the minors to remove them from custody of the parents. He ordered the minors be placed in the custody and guardianship of the DCFS Guardianship Administrator, with the right to place the minors. At the conclusion of the dispositional hearing, the court set the permanency goal as returning to the home pending status. As a result, and based on the theory of anticipatory neglect, D.S. and D.F. were found to be neglected due to lack of care and injurious environment, and abused due to a substantial risk of physical injury. The notice of appeal was filed on July 17, 2015.

¶ 22 ANALYSIS

¶ 23 On appeal, Janina F. argues that the trial court's finding that D.S. and D.F. were abused and neglected was against the manifest weight of the evidence. She argues that she did not breach her duty to ensure a safe and nurturing environment for D.S. and so, since there were no specific allegations regarding D.F., the doctrine of anticipatory neglect does not apply. Both the State and the guardian *ad litem* argue that the trial court's finding of neglect was not against the manifest weight of the evidence and that the evidence established D.S. and D.F. were abused and neglected due to an injurious environment. Furthermore, the State argues that although the trial

court discussed the doctrine of anticipatory neglect with regard to D.F., the court specifically referred to the current conditions of the home as placing both children at risk of harm and therefore the court's order should be seen as finding both minors were neglected.

¶ 24 Whenever a petition for adjudication of wardship is brought under the Juvenile Court Act, the "best interests of the child are the paramount consideration." *In Re K.G.*, 288 Ill. App. 3d 728, 734-35 (1997). In a proceeding for the adjudication of abused or neglected minors, the State must prove neglect by a preponderance of the evidence. *In re F.S.*, 347 Ill. App. 3d 55, 62 (2004). "Preponderance of the evidence is that amount of evidence that leads a trier of fact to find that the fact at issue is more probable than not." *Id.*

¶ 25 Generally, a trial court's ruling of neglect will not be reversed unless it is against the manifest weight of the evidence. *In re Arthur H.*, 212 Ill. 2d 441, 443 (2004). "A trial court's finding is against the manifest weight of the evidence if review of the record clearly demonstrates that the opposite result would be the proper one." *K.G.*, 288 Ill. App. 3d at 735. "The trial court has the best opportunity to observe the demeanor and conduct of the parties and witnesses and, therefore, is in the best position to determine the credibility and weight of the witnesses' testimony." *In re E.S.*, 324 Ill. App. 3d 661, 667 (2001). As a result, "the trial court is afforded broad discretion when determining the existence of abuse[.]" *In Re R.M.*, 307 Ill. App. 3d 541, 551 (1999). Cases adjudicating abuse and neglect are *sui generis* and must be decided on the basis of their particular facts. *In re S.S.*, 313 Ill. App. 3d 121, 126 (2000).

¶ 26 The Juvenile Court Act (705 ILCS 4005/1-1 *et seq.*) sets forth the procedures and criteria for determining whether to remove a minor from his or her parents' custody and subsequently become a ward of the state. *Arthur H.*, 212 Ill. 2d at 462. There must be a finding of abuse, neglect, or dependence before a court can adjudicate wardship. *Id.* A "neglected minor," as described in the Act, is "any minor under 18 years of age whose environment is injurious to his

or her welfare." 705 ILCS 405/2-3(1)(b). "Injurious environment" cannot be defined with any particularity; it is an "amorphous concept" that has been previously interpreted to include "the breach of a parent's duty to ensure a 'safe and nurturing shelter' for his or her children." *Arthur H.*, 212 Ill. 2d at 463 citing *In re N.B.*, 191 Ill. 2d 338 (2000).

¶ 27 Still, to prove its allegations of abuse and neglect, the State was not required to show that each minor had already been harmed. It has long been recognized that a juvenile court need not wait for an injury to occur to a child in order to anticipate a probability of risk to that child. *Arthur H.*, 212 Ill. 2d at 468 citing *In re L.W.*, 291 Ill. App. 3d 619, 623 (1997). Anticipatory neglect recognizes that in addition to children who are the direct victims of neglect or abuse, there remains a probability that a child may be subject to neglect or abuse because he resides, 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. The doctrine recognizes that a parent's treatment of one child is probative of how that parent may treat another child. *In re Erin A.*, 2012 IL App (1st) 120050, ¶ 34. Anticipatory neglect flows from the concept of injurious environment. *Arthur H.*, 212 Ill. 2d at 468. Each case concerning the adjudication of minors pursued under a theory of anticipatory neglect based upon the neglect of a child's sibling, must be viewed according to its own facts. *In re Edricka C.*, 276 Ill. App. 3d 18, 28 (1995).

¶ 28 On appeal, Janina F. argues she did not breach her duty to ensure a safe and nurturing environment for D.S. Moreover, she argues as a victim of domestic violence approximately one year prior to her family becoming court-involved, she offered to correct the flaws that brought her family to the attention of DCFS in or around June 2014, and was denied an opportunity to do so. She argues the record indicates that the children were well-cared for, not placed at any risk of harm, and were not subject to an injurious environment.

¶ 29 However, based on the trial court's order and a review of the record, we cannot say that the trial court's finding that the minors were neglected based on an injurious environment was against the manifest weight of the evidence. The record indicates at least two domestic violence incidences involving Deshawn S., Janina F., and D.S. Additionally, the record indicates a home life that can best be described as transient. Finally, despite her arguments to the contrary, Janina F. has been offered several opportunities to make progress toward remedying the situation but has failed to do so.

¶ 30 There was the domestic violence episode which resulted in D.S. being left in an alley until the police found her. While the chronology of events is unclear from the record, during the course of an incident, Deshawn S. threw a brick at Janina F.,² and ultimately the infant D.S. was left unattended in an alley. Janina F. was unable to locate D.S. and was required to call the Chicago Police, who ultimately found her unharmed.

¶ 31 The record further indicates that even after the domestic violence incident Janina F. continued to allow Deshawn S. to see D.S. In a second incident of domestic abuse, Deshawn S. threatened to kill D.S. Also concerning is Janina L.'s statements that she did not want the minor, D.S. Moreover, the record indicates that when the police investigated this second incident, they found Janina incoherent and were unable to wake her. Janina F. told DCFS she never would have allowed Deshawn S. to visit after the first incident had she been informed of this fact. However, this argument is unpersuasive. As the trial court explained, after the first domestic violence incident, Janina F. had been offered domestic violence classes and had she attended them she would have known that she should not have allowed Deshawn S. to visit. The record further indicates that Janina F. would only separate from Deshawn S. because of DCFS involvement, suggesting she would return to the relationship at a later date.

² Janina F. denied the brick hit her but the police report admitted into evidence indicates it struck her on the leg.

¶ 32 The trial court heard testimony concerning the complete lack of stable housing for the children. The record indicates that since the birth of both minor children, they have never been in a stable home. Janina F. admitted that both children have lived with various relatives and non-relatives throughout their young lives. This shifting home is representative of Janina F.'s own struggles to find permanent housing. Janina F. admitted as much to DCFS. She was offered services through DCFS to help her find a permanent place to live, however, she has not taken advantage of the offer. There is no indication Janina F. has ever obtained permanent housing. Janina F. also has a documented history of marijuana and alcohol use, but has also failed to take advantage of classes offered to help her deal with these issues.

¶ 33 The record demonstrates that Janina F. has failed to provide adequate care to the two minor children since their births. As previously noted, the children have been raised by a variety of people who did not have legal custody of them. The Integrated Assessment performed by DCFS demonstrates that the children have suffered from Janina F. failing to seek medical treatment. D.S. was born at 32 weeks gestation and under weight. While D.S. remained hospitalized for approximately 1 month, yet Janina F. failed to seek any medical follow-ups after D.S. was released. Health problems have persisted through her young life and there is no indication Janina F. ever sought the proper medical care for D.S.

¶ 34 Janina F. argues that Nalls testified that there were no signs of abuse or neglect to either D.S. or D.F., rather the children were clothed and fed. She points to the fact that when the police performed a well-being check following the second domestic violence incident they did not remove D.S. and D.F. However, this does not obviate other facts in the case. First, the police were there because of a second incident of domestic violence. Second, when they found Janina F. she was incoherent. Furthermore, at the dispositional hearing, Amber Hoeft, a caseworker from Children's Home and Aid, testified that Janina F. had not arranged any visits to see the

children since March 2015. Moreover, she testified that Janina F. will call and schedule visits but then fails to show up. Hoeft also testified Janina F. was not making progress in her individual therapy, psychiatric evaluation, parenting program, or with domestic violence services. She also stated that Janina F. failed to appear for her random urine drops.

¶ 35 Under the circumstances of this case, it is not against the manifest weight of the evidence for the circuit court to conclude that D.S. and D.F. were neglected based on an injurious environment. We cannot say that "the facts clearly demonstrate that the court should have reached the opposite conclusion." *In re N.B.*, 191 Ill. 2d 338, 347 (2000). Nor are we prepared to stop the trial court from taking action to stop further harm from D.S. and D.F. *Arthur H.*, 212 Ill. 2d at 477 quoting *In re Brooks*, 63 Ill. App. 3d 328, 339 (1978) ("when faced with evidence of prior neglect by parents, 'the juvenile court should not be forced to refrain from taking action until each particular child suffers an injury.'").

¶ 36 If the State satisfies its burden of establishing neglect or dependency, the circuit court must then proceed to the second adjudicatory stage, in which the court determines whether "it is consistent with health, safety and best interest of the minor and the public that he be made a ward of the court." 705 ILCS 405/2-21(2). At a best interest hearing, the paramount consideration is the best interest of the child. *In re N.B.*, 191 Ill. 2d at 343. The State must prove, by a preponderance of the evidence that adjudication of wardship is in the best interest of the minors. See *In re D.T.*, 212 Ill. 2d 347, 366 (2004) (holding that the preponderance of the evidence standard is proper for the best interests hearing of an adjudication of wardship proceeding).

¶ 37 In the instant case, given the facts noted above, the trial court's ruling that D.S. and D.F. should be made wards of the court was not against the manifest weight of the evidence.

¶ 38

CONCLUSION

¶ 39 For the reasons stated above, we affirm the order of the trial court.

¶ 40 Affirmed.