

SIXTH DIVISION
February 19, 2016

No. 1-15-2731

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 INTERESTS OF:)	Appeal from the Circuit Court of
ARMOND S. and JOSIAH S., minors,)	Cook County, Illinois Child
)	Protective Division
Respondents-Appellees,)	
)	
)	
(The People of the State of Illinois)	Nos. 13 JA 1196
)	14 JA 844
Petitioner-Appellee,)	
)	
v.)	
)	
ARMOND S.,)	Honorable
)	Andrea M. Buford,
Respondent-Appellant).)	Judge Presiding

JUSTICE HALL delivered the judgment of the court.
Presiding Justice Rochford and Justice Hoffman concurred in the judgment.

ORDER

HELD: Trial court's adjudicatory orders finding Armond S. and Josiah S. neglected due to an injurious environment and abused due to a substantial risk of physical injury are not against

the manifest weight of the evidence. Trial court's dispositional order finding respondent unable, for some reason other than financial circumstances alone, to care for his two minor sons, is not contrary to the manifest weight of the evidence.

¶ 1 Respondent Armond S. appeals from adjudicatory orders entered by the circuit court of Cook County finding his two minor sons, Armond S. (born September 19, 2013), and Josiah S. (born August 1, 2014), neglected due to an injurious environment and abused due to a substantial risk of physical injury under sections 2-3(1)(b) and 2-3(2)(ii) of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/2-3(1)(b), (2)(ii) (West 2010)).

¶ 2 The trial court's findings of neglect and abuse are based on evidence presented at separate adjudicatory hearings for the two boys which showed that Felicia P., the natural mother of the boys, suffered from ongoing substance/alcohol abuse problems and various other personal challenges which led to her conviction for possession of a controlled substance and incarceration for aggravated child abuse and which adversely affected her judgment and ability to parent. The evidence also revealed that respondent as well suffered from ongoing substance/alcohol abuse problems and various other personal issues which led to his incarceration for a drug-related offense and adversely affected his ability to parent.

¶ 3 Evidence established that respondent and Felicia P. had been required to complete various services and treatment programs designed to address the problems each was facing at the time of the adjudicatory hearings, but they had failed to complete all of these services and programs. For the reasons that follow, we affirm the trial court's adjudicatory orders and dispositional order.

¶ 4

BACKGROUND

¶ 5 Respondent and Felicia P. came to the attention of the Illinois Department of Children and Family Services (DCFS) in September 2013, when the agency discovered that three years earlier in Winnebago County, Felicia P. had been charged with aggravated battery of her minor daughter Nevaeh P. (born December 29, 2006).¹ Felicia P. pled guilty to the charge and served a term of imprisonment. As a condition of Felicia P.'s probation and of being reunited with her daughter, she was required to complete various services and treatment programs including parenting classes, mental-health services, anger management, and drug and alcohol related services. However, prior to completing the reunification plan, Felicia P. had consented to the adoption of Nevaeh P.

¶ 6 DCFS subsequently opened a case file regarding Armond S. On December 23, 2013, the State filed a petition for adjudication of wardship with respect to Armond S. along with a motion for temporary custody on behalf of the minor. The petition alleged that Armond S. was neglected pursuant to section 2-3(1)(b) of the Act (705 ILCS 405/2-3(1)(b) (West 2010)) on the ground that his environment was injurious to his welfare and that he was abused pursuant to section 2-3(2)(ii) of Act (705 ILCS 405/2-3(2)(ii) (West 2010)) in that there was a substantial risk of physical injury to him other than by accidental means.

¶ 7 In support of these allegations, the petition stated the following facts: Felicia P. had a prior indicated report for cuts, bruises, welts, abrasions and oral injuries to Nevaeh P.; on December 13, 2011, she pled guilty to aggravated battery of a child; she failed to complete several services required for reunification including mental health treatment, individual therapy, and parent coaching; in December 2013, both respondent and Felicia P. were assessed to be in

¹ Respondent is not Nevaeh's natural father and no evidence was presented that he was in contact with Felicia P. or the minor when the abuse occurred.

need of inpatient substance abuse treatment in which they were currently participating; and respondent admitted to using illegal substances on November 28, 2013.

¶ 8 On January 10, 2014, the trial court appointed the Public Guardian to represent Armond S. as his attorney and guardian *ad litem*; appointed the public defender to represent respondent; and appointed a private attorney to represent Felicia P. The parties entered into a stipulation which granted the guardianship administrator of DCFS temporary custody of Armond S. At this time, Felicia P. was pregnant with Josiah S. who was subsequently born on August 1, 2014.

¶ 9 On August 7, 2014, the State filed a petition for adjudication of wardship with respect to Josiah S. along with a motion for temporary custody on behalf of the minor alleging he was neglected and abused based on the same allegations as in Armond S.'s petition, including an allegation that the whereabouts of respondent and Felicia P. had remained unknown from May 2014 until the birth of Josiah S. The trial court appointed the Public Guardian to represent Josiah S. as his attorney and guardian *ad litem*. The parties entered into a stipulation which granted the guardianship administrator of DCFS temporary custody of Josiah S.

¶ 10 Following separate adjudication hearings for Armond S. and Josiah S., the trial court found they were both neglected due to an injurious environment and abused due to a substantial risk of physical injury. A dispositional hearing was held and respondent and Felicia P. were both found to be unable to parent the minors primarily based on evidence that they had failed to complete required reunification services.

¶ 11 The trial court adjudicated the minors wards of the court and placed guardianship with DCFS. The court entered a permanency goal of the children's return home in 12 months and noted that respondent and Felicia P. had made some progress in completing the services offered to them by DCFS, but there was a need for continued services.

¶ 12 Respondent now appeals the abuse and neglect adjudications, and dispositional ruling, arguing they are against the manifest weight of the evidence. We affirm. Felicia P. is not a party to this appeal.

¶ 13 ANALYSIS

¶ 14 Respondent contends the trial court's adjudicatory findings that Armond S. and Josiah S. were neglected due to an injurious environment and abused due to a substantial risk of physical injury, were against the manifest weight of the evidence. He maintains these findings are against the manifest weight of the evidence because they are primarily based on Felicia P.'s prior history of child abuse and a theory of anticipatory neglect. We must disagree. The record here shows the trial court's findings were not only based on Felicia P.'s prior history of child abuse, but also on Felicia P.'s and respondent's current and continued inability to parent in light of their ongoing substance abuse problems.

¶ 15 The purpose of an adjudicatory hearing is to determine whether an allegation that a minor is neglected and/or abused is supported by a preponderance of the evidence. *In re Arthur H.*, 212 Ill. 2d 441, 465 (2004). A 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." *In re K.G.*, 288 Ill. App. 3d 728, 735 (1997).

¶ 16 In its respective petitions for adjudication of wardship of Armond S. and Josiah S., the State alleged they were neglected pursuant to section 2-3(1)(b) of the Act, which provides that a neglected minor is "any minor under 18 years of age whose environment is injurious to his or her welfare." 705 ILCS 405/2-3(1)(b) (West 2010). The petitions further alleged the minors were abused pursuant to section 2-3(2)(ii) of the Act, which provides in part that an abused minor includes "any minor under 18 years of age whose parent or immediate family member, or any

person responsible for the minor's welfare, or any person who is in the same family or household as the minor, or any individual residing in the same home as the minor *** creates a substantial risk of physical injury to such minor by other than accidental means which would be likely to cause death, disfigurement, impairment of emotional health, or loss or impairment of any bodily function." 705 ILCS 405/2-3(2)(ii) (West 2010).

¶ 17 The term "neglect" as used in the Act " ' 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 the surrounding circumstances changes.' " *In re N.B.*, 191 Ill. 2d 338, 346 (quoting *People ex rel. Wallace v. Labrenz*, 411 Ill. 618, 624 (1952)). The term has generally been defined as the failure of a responsible adult to exercise the care that circumstances demand and encompasses both unintentional and willful disregard of parental duties. *In re John Paul J.*, 343 Ill. App. 3d 865, 879 (2003).

¶ 18 Similarly, the term "injurious environment" has been recognized "as an amorphous concept that cannot be defined with particularity." *In re Arthur H.*, 212 Ill. 2d at 463. The term has generally been interpreted to include " 'the breach of a parent's duty to ensure a "safe and nurturing shelter" for his or her children.' " *Id.*, at 463 (quoting *In re N.B.*, 191 Ill. 2d at 346).

¶ 19 Cases involving adjudication of neglect, abuse, and wardship are *sui generis* and each case must ultimately be decided on the basis of its own particular facts. *In re K.T.*, 361 Ill. App. 3d 187, 201 (2005). A trial court has broad discretion when determining whether a child has been neglected or abused and its decision will not be disturbed on review unless it is against the manifest weight of the evidence. *In re Stephen K.*, 373 Ill. App. 3d 7, 20 (2007). A court's decision is against the manifest weight of the evidence only if the opposite conclusion is clearly evident. *In re Arthur H.*, 212 Ill. 2d at 464.

¶ 20 With these principles in mind we conclude, after reviewing the evidence, that the trial court's findings that the minors were neglected due to an injurious environment and abused due to a substantial risk of physical injury, were not against the manifest weight of the evidence.

¶ 21 Evidence presented at the respective adjudicatory hearings for the minors revealed that at the time the State filed its petition for adjudication of wardship for Armond S. on December 23, 2013, Felicia P. had failed to successfully complete all of the required reunification services geared toward correcting the parenting issues and substance abuse problems which lead to the removal of Nevaeh P. from the home. Moreover, and perhaps more importantly, evidence also established that at the time the petition was filed and Armond S. was in the custody and care of respondent and Felicia P., they were both actively abusing alcohol and illegal substances. Felicia P. reported having a dependence on alcohol and marijuana since she was 12 years of age and reported using these substances almost daily. She reported drinking two fifths of wine on November 28, 2013. Respondent reported using cocaine and alcohol on a daily basis over the past 28 years and reported using both of these substances on November 28, 2013.

¶ 22 Although the trial court mentioned anticipatory neglect and considered the prior abuse of Nevaeh P. in reaching its adjudicatory rulings with respect to Armond S. and Josiah S., the record is clear that the court not only considered this prior abuse, but also the environment the minors were currently living in, which was an environment where they were in the custody and care of two individuals who were abusing alcohol, marijuana, and cocaine on a regular basis. The trial court, in referring to the current environment in which Armond S. was living in, stated in part: "This is a chronic substance abuse problem, which in my view created an injurious environment and risk of harm. *** This is a case where there is significant substance abuse issues that are chronic and significant." Here, the trial court was not referring to a past incident

of abuse or the anticipated probability of some event occurring in future, but rather, the current circumstances existing in the home at the time the minors were taken into protective custody.

¶ 23 Given the facts in the record and due deference to the trial court's credibility determinations, we cannot say that the court's findings of neglect and abuse as to Armond S. and Josiah S. were against the manifest weight of the evidence.

¶ 24 Respondent next contends the record failed to support the "notion" that he was a "perpetrator" in the abuse of his sons. He argues the trial court erred in finding he was a "perpetrator" of his sons' abuse because the findings were based on the physical injuries Nevaeh P. sustained when she was in the custody and care of Felicia P. and another man. Again, we must reject respondent's contentions. In adjudicating Armond S. neglected and abused, the trial court stated in relevant part as follows:

"There will be a finding that both parents are perpetrators. I understand that the father was not involved with the first minor, wasn't even in the picture, and was not with the mother. However, he was involved with the other two minors that are court involved here. And just like the mother, he is still to engage in all services that are necessary. For those reasons, they will both be found to be the perpetrators."

¶ 25 The trial court's comments reveal the court determined that respondent was a "perpetrator" in so far as he had failed to successfully complete the required reunification services designed to correct the parenting issues and chronic substance abuse problems which rendered him unable to effectively parent his sons.

¶ 26 Respondent finally contends the trial court abused its discretion by finding that it was in the minors' best interests to be "placed in guardianship," rather than returned to his custody. Respondent has forfeited review of this issue because he failed to object to the trial court's

dispositional finding that he was unable to care for his two sons (*In re Lakita B.*, 297 Ill. App. 3d 985, 991-93 (1998)), and even if it was not forfeited, this issue lacks merit.

¶ 27 Section 2-27(1) of the Act authorizes the trial court to commit a minor to DCFS wardship if it determines the parent is unfit or unable, for some reason other than financial circumstances alone, to care for, protect, train, or discipline the minor and that the health, safety, and best interests of the minor will be jeopardized if the minor remains in the custody of the parent. 705 ILCS 405/2-27(1) (West 2004).

¶ 28 Such a finding will be reversed only if it is against the manifest weight of the evidence or the court abused its discretion by selecting an inappropriate dispositional order. *In re T.B.*, 215 Ill. App. 3d 1059, 1062 (1991). A decision is against the manifest weight of the evidence where a review of the record clearly demonstrates that the opposite conclusion is proper. *In re Lakita B.*, 297 Ill. App. 3d 985, 994 (1998). This standard of review recognizes that the trial court is generally in a better position than the reviewing court to observe witnesses, assess credibility, and weigh the evidence. *In re T.B.*, 215 Ill. App. 3d at 1062.

¶ 29 The evidence as it existed on the date of the dispositional hearing supports the trial court's determination that respondent was unable, for some reason other than financial circumstances alone, to care for Armond S. and Josiah S. The evidence established that although respondent had completed some of his required reunification services, individual therapy and intensive outpatient substance abuse treatment were still ongoing. We believe there is little to no disagreement that a parent who is actively abusing alcohol, marijuana, and cocaine on a regular basis is unable to effectively parent and supervise a young child. The manifest weight of the evidence amply supports the trial court's finding that respondent was unable, for some reason other than financial circumstances alone, to care for his two minor sons.

¶ 30 Accordingly, for the reasons set forth above, we affirm the trial court's adjudicatory orders and dispositional order.

¶ 31 Affirmed.