

No. 1-15-3117

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 INTEREST OF TERRION F.,)	Appeal from the
)	Circuit Court of
Minor-Respondent-Appellee,)	Cook County
)	
(THE PEOPLE OF THE STATE OF ILLINOIS)	
)	
Petitioner-Appellee)	No. 14 JA 01298
v.)	
)	
TAMUAKI F.,)	Honorable
)	Richard Stevens,
Mother-Respondent-Appellant.))	Judge Presiding.

PRESIDING JUSTICE PIERCE delivered the judgment of the court.
Justices Simon and Hyman concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court's finding of neglect due to an injurious environment was not against the manifest weight of the evidence.
- ¶ 2 Respondent Tamuaki F., appeals from an order of the circuit court of Cook County finding her son Terrion to be neglected due to an injurious environment. For the following reasons, we affirm the judgment of the circuit court.

¶ 3

BACKGROUND

¶ 4 Terrion F. is a minor born on February 1, 2002, to respondent Tamuaki F. Tamuaki's sister Annette began serving as Terrion's legal guardian on June 5, 2012.

¶ 5 On November 3, 2014, the State filed a petition for adjudication of wardship wherein the State alleged that Terrion was neglected pursuant to section 2-3(1)(b) of the Juvenile Court Act (Act). 705 ILCS 405/2-3(1)(b) (West 2014) and abused because he was at substantial risk of physical injury, pursuant to section 2-3(2)(ii) of the Act. 705 ILCS 405/2-3(2)(ii) (West 2012). In support to these assertions, the State alleged the following facts:

"Mother has one other minor who is in DCFS temporary custody. Legal guardian refuses to allow minor to return home. Legal guardian refuses to make a care plan for this minor. Minor states that legal guardian whips him with belts and extension cords. Mother currently resides inpatient at her substance abuse treatment program. Services are ongoing for mother. Putative father's whereabouts are unknown. Paternity has not been established."

¶ 6 Separate counsel was appointed for Tamuaki, Annette, and Terrion. Terrion was placed in the temporary custody of the Department of Children and Family Services (DCFS).

¶ 7 On October 27, 2015, the court held an adjudication hearing. DCFS Child Protection Investigator Rodney McKinney testified that he was assigned to Terrion's case on October 30, 2014, after receiving a report that Terrion's legal guardian was refusing to allow Terrion back into her home. Terrion admitted to McKinney that he had run away from home because Annette had accused him of stealing her tablet. Terrion told McKinney that he was staying at various friends' houses since running away. He also stated that his mother was in drug treatment.

¶ 8 McKinney spoke with Annette who informed McKinney that Terrion had been lying, stealing and running away from her home. Annette told McKinney that Terrion would not be allowed to return to her home. Annette provided no alternative care plan for Terrion and would not participate in the placement preservation services offered. Annette told McKinney that she "felt that services could not do anything and that she was not letting him back in the home." Annette informed McKinney that Terrion's mother was in a drug treatment program. McKinney took protective custody of Terrion and placed him in a shelter.

¶ 9 DCFS child protection investigator Wayne Waters took over Terrion's case from McKinney on October 30, 2014. Waters spoke with Annette the following day. Annette told Waters that Terrion ran away on October 26, 2014, and then broke into her home the following day through a second story window and stole a gaming console. Annette informed Waters that she would not allow Terrion back into her home because he was lying, stealing and running away. Annette provided no substitute caregiver for Terrion and stated that no one in the family was willing to "take charge" of him.

¶ 10 Waters located Tamuaki at Haymarket House drug treatment facility and spoke with her on November 1, 2014. Tamuaki stated that she did not know how long she had been in drug treatment and did not know how long the program would last. Tamuaki was unable to give any contact information for Terrion's father and was unable to provide a care plan for Terrion stating, "that she did not know of anyone who could care for her son." Tamuaki stated that she had three adult children and four under the age of 18.

¶ 11 Waters met with Terrion on November 2, 2014. Terrion stated that he was 12 years old and in the 7th grade. Terrion stated that he ran away from Annette's home on October 26, 2014,

because Annette was "mean" and would spank him with leather belts and extension cords.

Terrion admitted returning to Annette's home two days later with a ladder so that he could climb through a second story window to retrieve his video game console. Waters testified that he did not believe it was safe for Terrion to return to Annette's home.

¶ 12 The State submitted several exhibits without objection including (1) the June 5, 2012 order appointing Annette as Terrion's legal guardian; (2) certified Haymarket House records for Tamuaki from November 26, 2012, to January 9, 2015, that indicated that Tamuaki had a 21-year heroin, 10-year cocaine and 21-year marijuana use history, engaged in daily drug use, and had mental health issues; (3) certified school records for Terrion; and (4) certified Women's Treatment records for Tamuaki from August 18, 2014, to November 12, 2014, including information that as of August 2014 Tamuaki self-reported to using \$100 worth of heroin daily, \$50 of marijuana daily and \$20 of crack cocaine every other day and that Tamuaki had been discharged as "non-compliant" from treatment.

¶ 13 At the conclusion of the State's evidence, Annette moved for a directed finding asking that "no findings of abuse or neglect be entered." The court denied the motion stating:

"The reason I'm denying it is because the State's allegations and findings made by the Court aren't findings against any adult. Not the legal guardian, not the parent. They are findings that follow the minor and the findings that I will make will be based on, you know, what the facts are. And at this point, though, the State's presented sufficient evidence since there's a 12 year old who had no place to go, couldn't go back to the legal guardian's home and the mother apparently made no care plan for him and apparently couldn't have him at drug treatment center and the father's whereabouts

were unknown. So at this point the State has made a prima facie case so that's why the motion is denied."

¶ 14 Annette testified that she was the legal guardian of Terrion and he lived with her continuously from June 2012 until June 2013 when his father took him across state lines without permission. Police returned Terrion to her in October 2013 and Terrion remained with her until October 26, 2014, when he ran away. During that time Terrion would see Tamuaki about once a month when she visited Terrion's aunt who lived downstairs from Annette. Annette stated that Terrion would not obey her rules and refused to come home after spending time with his mother.

¶ 15 On October 26, 2014, Annette awoke to find her tablet was missing. Terrion stated that he didn't know where it was and then ran away later that day. Annette went to the police station to file a report regarding Terrion's disappearance the following day. While she was at the police station she received a call that her home security system had been set off. Annette arrived home to find that someone had broken through a second story window and took a video game console and some games.

¶ 16 Annette testified that she reached out to Terrion's relatives but was unable to find someone who was willing to care for him. She called a DCFS caseworker for advice on how to handle the situation.

¶ 17 At the conclusion of the hearing, the State asked the court for findings of neglect injurious environment (705 ILCS 405/2-3(1)(b) (West 2014)), neglect care necessary (705 ILCS 405/2-3(1)(a) (West 2014)), and abuse substantial risk of physical injury (705 ILCS 405/2-3(2)(ii) (West 2014)). Annette asked the court to enter a finding of no fault dependency pursuant to 2-4(c) of the Act (705 ILCS 405/2-4(c) (West 2014)) claiming that she was justified in

refusing to allow the minor back into her home because Terrion's behavior made her fear for her safety. Tamuaki also asked for a no fault finding arguing that the neglect finding was improper where DCFS made no real attempts to reconcile the relationship between Terrion and Annette.

¶ 18 The court found Terrion was neglected because his environment was injurious to his welfare and stated that the finding "has less to do with Annette and more to do with the fact that this child, although not in the mother's care, had a mother who apparently had to reside in a drug treatment center and therefore couldn't care for the child." The court noted that Tamuaki could not "come up with any relatives who might be able to care for the child." The court did not enter findings on abuse substantial risk of injury or neglect care necessary. However, the court did find Terrion dependent pursuant to section 2-4(c) of the Act (705 ILCS 405/2-4(c) (West 2014) holding:

"[T]he facts before me require ***amending the pleadings on its face at this point for a no fault dependency. That's dependency under Section C *** as to the legal guardian, Annette. And so I'll enter a written adjudication order with both findings, neglect injurious environment and the reason for that finding is because the mother and father were essentially unable to care for the minor due to the mother's substance abuse treatment needed and the father being – apparently his whereabouts were unknown, at least to DCFS. And under the circumstances and the testimony presented the last time the father had *** the child.

* * *

And the no [fault] dependency is really because I don't believe that Annette did anything unreasonable in telling the DCP investigators that at the time she didn't

want the minor to return home and the main reason for that was she was the victim of a crime and she was being asked to let the perpetrator of the crime back into her home with no plan put in place to account for her need for safety."

¶ 19 On October 27, 2015, after the adjudicatory hearing, the court held a dispositional and permanency hearing. The court found it was in Terrion's best interests to be made a ward of the court. The court found Annette unable to care for Terrion and vacated her legal guardianship. The court noted that Terrion's parents were not willing to participate in regular visitation, or any reunification services, and found both parents unable and unwilling to provide for Terrion's care and placed Terrion under DCFS guardianship.

¶ 20 The court also issued a permanency goal of private guardianship for Terrion, but instructed the parties that there should be concurrent planning for possible termination of parental rights and adoption in the event that private guardianship is not successful.

¶ 21 Tamuaki appeals from the order of the court finding Terrion was neglected due to an injurious environment.

¶ 22 ANALYSIS

¶ 23 Tamuaki argues that the trial court's finding that Terrion was neglected based on an injurious environment was erroneous because she had no opportunity to provide any environment for Terrion, let alone an injurious one, where Terrion was left in the care of an adult relative who was also his legal guardian. Tamuaki is not challenging the court's finding of dependency.

¶ 24 The Act "sets forth the procedures and criteria to be used in deciding whether a minor should be removed from his parents' custody and made a ward of the court." *In re A. W.*, 231 Ill.

2d 241, 254 (2008) (citing 705 ILCS 405/1-1 *et seq.* (West 2012)). At an adjudicatory hearing, the circuit court must determine whether the minor is abused, neglected, or dependent before conducting a dispositional hearing on wardship. 705 ILCS 405/2-21 (West 2014); 705 ILCS 405/2-18(1) (West 2014) ("At the adjudicatory hearing, the court shall first consider only the question whether the minor is abused, neglected, or dependent."); *In re Arthur H.*, 212 Ill. 2d 441, 462 (2004). The court must consider the status of the minors at the time the adjudication petition was filed and not their status at the time of the hearing. *In re C.W.*, 199 Ill. 2d 198, 217 (2002); *In re Kenneth D.*, 364 Ill. App. 3d 797, 804 (2006).

¶ 25 It is the burden of the State to prove allegations of abuse and neglect by a preponderance of the evidence. *In re Arthur H.*, 212 Ill. 2d at 463. The trial court has broad discretion when determining the existence of neglect or abuse as it has the best opportunity to observe the demeanor and conduct of the parties and witnesses and is therefore in the best position to determine the credibility and weight to be given to the witnesses' testimony. *In re Stephen K.*, 373 Ill. App. 3d 7, 20 (2007). We review a trial court's finding of abuse and neglect under the manifest weight of the evidence standard. *In re Alexis H.*, 401 Ill. App. 3d 543, 551 (2010). "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 at 254.

¶ 26 We find Tamuaki's argument to be without merit. The legislature has stated that the purpose of an adjudicatory hearing is "to determine whether the allegations of a petition * * * that a minor under 18 years of age is * * * neglected * * * are supported by a preponderance of the evidence." 705 ILCS 405/1-3(1) (West 2000); *In re Arthur H.*, 212 Ill. 2d at 465. "The plain language of this provision instructs the circuit court to focus solely upon whether the child has

been neglected. The legislature made no mention in this provision that during the adjudicatory stage of the proceedings the circuit court is also to determine who may be responsible for the child's neglect, and to assess the proportion of blame with respect to such individuals." *Id.* As our supreme court had noted, the only question to be resolved at an adjudicatory hearing is whether or not a child is neglected, and not whether every parent is neglectful. *Id.* at 467.

¶ 27 At the adjudicatory hearing, the court focused on whether Terrion had been neglected due to an injurious environment without determining who was responsible for his neglect or assessing the portion of the blame with respect to each individual. After considering all of the testimony and the exhibits, the court found that there was no one to care for Terrion and therefore he was neglected due to an injurious environment. Tamuaki's specific role in providing that injurious environment was irrelevant to the court's decision that Terrion was neglected. We therefore find that the trial court did not abuse its discretion in finding Terrion neglected due to an injurious environment.

¶ 28

CONCLUSION

¶ 29 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 30 Affirmed.