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2016 IL App (3d) 150441-U

Order filed April 28, 2016

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2016

<i>In re</i> Ang.P., V.P., Ant.P., and P.P.,	)	Appeal from the Circuit Court
	)	of the 13th Judicial Circuit,
Minors	)	Grundy County, Illinois,
)	
(The People of the State of Illinois,)	
	)	Appeal Nos. 3-15-0441, 3-15-0442,
Petitioner-Appellee,	)	3-15-0443, and 3-15-0444
	)	Circuit Nos. 14-JA-1, 14-JA-2, 14-JA-3,
v.	)	and 14-JA-6
)	
Derrick P.,	)	Honorable
	)	Robert C. Marsaglia,
Respondent-Appellant).	)	Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Justices Holdridge and Schmidt concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court erred in adjudicating P.P. neglected because she was not a minor. The trial court's determination that Ang.P. was abused or neglected and that V.P. and Ant.P. were neglected is not against the manifest weight of the evidence.

¶ 2 Following a hearing on the State's petition for adjudication of wardship, the trial court adjudicated Ang.P. abused or neglected and P.P., V.P., and Ant.P. neglected. Respondent, Derrick P. (the children's biological father), appeals arguing that the trial court's orders are void

because: (1) P.P. was not a minor at the time the trial court adjudicated her neglected; and (2) the State failed to comply with the notice requirements when serving P.P.'s natural mother with the petition for adjudication of wardship. Alternatively, respondent argues the trial court's findings at the adjudication hearing are against the manifest weight of the evidence. We affirm in part and vacate in part.

¶ 3

FACTS

¶ 4

Respondent is the biological father of Ang.P. (born July 16, 1999), P.P. (born December 31, 1996), V.P. (born February 10, 2009), and Ant.P. (born October 31, 2010). Rachel P. is the natural mother of V.P. and Ant.P. Ang.P.'s natural mother is deceased. P.P.'s natural mother is Jeannette M.¹

¶ 5

On May 13, 2014, the State filed three petitions for adjudication of wardship. The petition with respect to Ang.P. alleged that the minor had been abused because respondent engaged in sexual contact and penetration with Ang.P. The petitions as to V.P. and Ant.P., alleged that the two minors had been neglected in that the two minors lived in an injurious environment due to respondent engaging in sexual contact with their sibling, Ang.P., while the minors were in respondent and Rachel's custody. The same day, the trial court held a shelter care hearing and entered a temporary custody order finding probable cause and an immediate and necessary need to remove the minors from the home.

¶ 6

On July 29, 2014, the State filed a fourth petition for adjudication of wardship regarding P.P. The two count petition alleged that P.P. had been neglected because she participated in underage drinking in the presence of and with respondent and respondent violated a no contact order prohibiting respondent from contacting P.P. In addition, the State charged P.P. with

¹Rachel and Jeannette M. are not parties to the instant appeal.

unlawful consumption of alcohol by a minor and filed a petition to revoke her juvenile probation based on the alleged unlawful consumption of alcohol. The same day, the trial court held a shelter care hearing and entered a temporary custody order finding probable cause and an immediate and necessary need to remove P.P. from the home.

¶ 7 On August 13, 2014, the State filed an affidavit for service by publication as to P.P.'s natural mother, Jeannette M.

¶ 8 On August 25, 2014, the State filed amended petitions for adjudication of wardship for all four minors. The petitions regarding Ang.P., V.P., and Ant.P., were amended to include two additional counts which alleged the minors had been neglected in that respondent engaged in underage drinking with their sibling (P.P.) and respondent violated a no contact order regarding their sibling (P.P.). The petition as to P.P. was amended to include one additional count alleging that P.P. was in an injurious environment in that respondent had engaged in sexual contact with her sibling (Ang.P.). The same day, the trial court found P.P.'s natural mother in default after notice of the proceedings had been published in the Morris Daily Herald.

¶ 9 P.P. turned 18 years old on December 31, 2014. On March 12, 2015, the State withdrew the charges against P.P. for unlawful consumption of alcohol by a minor, as well as the petition to revoke P.P.'s juvenile probation.

¶ 10 Subsequently, the trial court held an adjudicatory hearing for all four petitions for adjudication of wardship. The parties presented the following evidence at the hearing.

¶ 11 P.P. testified that on July 25, 2014, she met respondent in person. P.P. had just been released from a rehabilitation facility for treatment of her substance abuse problems. That day, she met respondent despite the existence of a no contact order that prohibited him from contacting P.P. The two began drinking beer together in the afternoon and into the evening.

They spent the night at a family friend's house. The next morning, a Department of Children and Family Services (DCFS) representative and the police came to the house. P.P. and respondent did not answer the door because of the no contact order. Respondent left out the back of the home unnoticed, but when P.P. tried to leave the home later, police stopped her. P.P. spoke with the police which led to the charges against her for unlawful consumption of alcohol by a minor and the petition to revoke her juvenile probation.

¶ 12 Ang.P., who was 15 years old at the time of her testimony, stated that respondent, her father, started touching her in ways that made her uncomfortable when she was 10 years old. At the time, Ang.P. lived with respondent and her stepmother, Rachel. Respondent and Rachel's two children, Ant.P. and V.P., also lived in the house at that time.

¶ 13 According to Ang.P., the first time respondent touched her inappropriately occurred while Ang.P. took a shower. As Ang.P. used the shower, respondent entered the bathroom and told Ang.P. to lay down on the floor. Ang.P. lay on the floor and respondent put his fingers inside her vagina. The incident lasted about three minutes and when respondent finished he told Ang.P. not to tell anyone what had happened. For the next year, respondent continued to perform the same act to Ang.P. about once every two weeks. Ang.P. did tell respondent to stop, but she never told anybody what had happened because she was afraid and she did not want respondent to get into trouble.

¶ 14 About a year after respondent first abused Ang.P., an incident occurred in Ang.P.'s bedroom where respondent pushed her to the floor. Ang.P. had been changing her clothes at the time and was naked. Respondent lay on top of Ang.P. and she began punching and kicking respondent. Respondent then inserted his penis inside Ang.P.'s vagina and engaged in sexual intercourse with her for approximately 10 minutes. When respondent stopped, he told Ang.P.

not to tell anyone or he would "leave and never come back." Ang.P. explained again that she did not tell anyone what had happened because she thought respondent would change his ways and stop abusing her. But, according to Ang.P., incidents where respondent engaged in sexual intercourse with her increased to around once a week for the next year.

¶ 15 Ang.P. explained that respondent stopped abusing her when P.P. (Ang.P.'s stepsister) moved into the family's residence. Ang.P. was 13 or 14 years old at the time. Before P.P. moved back into the house, Ang.P. told Rachel that respondent had been abusing her, but Rachel did not believe Ang.P. and did not address Ang.P.'s allegation. P.P. resided in the home for six months. When P.P. moved out of the home, respondent resumed abusing Ang.P. again about once every week or two. After respondent resumed abusing Ang.P., she reported the abuse to Rachel a second time. Rachel still did not believe Ang.P. As a result, Ang.P. did not tell anybody else about the abuse because she did not think other people would believe her.

¶ 16 When Ang.P. turned 14 years old, she moved out of the family residence and began living with a foster parent, Jenice Gurney. Jenice took Ang.P. to see a physician at the Riverside Medical Center because the two believed that Ang.P. had a miscarriage. At the hospital, Ang.P. told Jenice that respondent had abused her. Ang.P. told the treating physician that the only individual she had sexual intercourse with was her father. However, she later told the physician that she also had sexual intercourse with another male.

¶ 17 On cross-examination, Ang.P. stated that when she was around seven years old, she spent time at the "psych ward" Ang.P. went to the hospital because she had hit her youngest brother. Ang.P. also explained that she returned to the hospital "probably ten times for no reason" based on "lies" made by Rachel. When asked by hospital staff, Ang.P. did not report that she had been abused by respondent.

¶ 18 When Ang.P. ultimately told Jenice and her physician that respondent had been abusing her, Ang.P. spoke with a DCFS investigator for a "victim sensitive interview." The videotaped interview was admitted into evidence at trial.

¶ 19 During the interview, Ang.P. told the investigator that when she was around 12 years old, her father had sexual intercourse with her. Ang.P. indicated the first incident occurred when she was in the shower. Respondent came into the bathroom and told Ang.P. to get onto the floor. Ang.P. refused and respondent forced her to the floor and began having sexual intercourse with her. Respondent told Ang.P. not to tell anyone what had happened and that if she did, he would not love her anymore and would not speak to her. Ang.P. told Rachel what had happened, but Rachel did nothing to help her. After the first incident, respondent continued to abuse Ang.P. on a nightly basis.

¶ 20 During Ang.P.'s testimony, she acknowledged in the interview that she stated respondent had been having sexual intercourse with her every night, even though Ang.P. previously testified that sexual intercourse occurred once every week or two. Also, Ang.P. acknowledged her previous testimony that the first incident of inappropriate touching only involved respondent digitally penetrating her vagina but, during the interview, Ang.P. told the investigator that the first incident involved respondent actually having sexual intercourse with her.

¶ 21 Ang.P. went on to explain that sexual intercourse with respondent had occurred often and that she did not keep track of the days respondent abused her. Ang.P. also explained that she did not tell the DCFS investigator that respondent had been digitally penetrating her because she did not "know if they needed to know that part or not."

¶ 22 The parties stipulated to the admission of a psychological evaluation of Ang.P. completed March 26, 2013. According to the evaluation, in August 2012, Ang.P. had been hospitalized "for

suicidal ideation, threatening violence, physical destruction, impulsivity, depression and anxiety." In addition, the evaluation includes a note that indicated Ang.P. had been previously hospitalized nine times. The evaluation also includes a note that during the evaluation sessions, Ang.P. "was alert and oriented to time, person, place, and situation," and that "[h]er thought processes were generally logical and linear." In the evaluation's summary, it concludes that Ang.P. met the criteria for "mild mental retardation" and bipolar disorder, and that her overall adaptive behavior could be characterized as "extremely lower functioning than is typical for her age." It further added that Ang.P., "shows negative, defiant, disobedient, and often hostile behavior toward her parents, but not other authority figures."

¶ 23 Rachel, the natural mother of Ant.P. and V.P., and both P.P. and Ang.P.'s stepmother, testified and denied that Ang.P. ever told her that respondent abused her.

¶ 24 Respondent did not testify, present any witnesses in his defense, and did not present any argument.

¶ 25 Following closing arguments, the trial court discussed the credibility of Rachel and Ang.P. The trial court noted the opportunities Ang.P. had to report respondent's abuse, but did not. It also noted the time Ang.P. spent in a mental health facility. Then, the court noted that Ang.P.'s testimony that she told Rachel about the abuse contradicted Rachel's testimony that Ang.P. never mentioned any abuse. The trial court stated, "[t]hat issue, as on several issues, I find Rachel's testimony to be inherently incredible" "[a]nd I find that Rachel testified untruthfully throughout her testimony[.]" The trial court then proceeded to state:

"[i]ts a very difficult case. There was excellent cross-examination, but [Ang.P.'s] testimony was clear, concise and convincing. And based on my weighing the credibility of the witnesses, I'm finding that the State met their burden of proof.

The allegations are the same in all three cases, and I'll make a finding in favor of the State and adjudicate these minors to be neglected."

¶ 26 The trial court entered adjudicatory orders with respect to all four children. The order regarding Ang.P. includes a finding that she was "abused or neglected" in that she was in an environment injurious to her welfare and that she was "sexually abused as defined by [section 2-3(2)(iii)] 705 ILCS 405/2-3 (2) (iii)." The adjudicatory orders as to V.P. and Ant.P. include findings that the children were neglected in that they were in an environment injurious to their welfare due to respondent sexually abusing Ang.P. and because P.P. consumed alcohol with respondent while P.P. was under 21 years of age. The adjudicatory order as to P.P. includes a finding that she was neglected in that she was in an environment injurious to her welfare because she and respondent consumed alcohol together in violation of the law and that respondent had sexually abused her sibling, Ang.P.

¶ 27 ANALYSIS

¶ 28 I

¶ 29 First, respondent argues that all orders regarding P.P. are void because: (1) P.P. reached 18 years of age by the time the trial court adjudicated her neglected; and (2) P.P.'s natural mother did not receive notice of the proceedings. The State concedes that the trial court lacked jurisdiction to adjudicate P.P. neglected because she did not qualify as a minor under the Juvenile Court Act of 1987 (the Act) (705 ILCS 405/1-1 *et seq.* (West 2014)). Upon careful review of the record and the arguments of the parties, we accept the State's concession and vacate *all* orders entered by the trial court with regard to P.P.

¶ 30 Before turning to respondent's substantive claims involving his other three children, we reject respondent's contention that the trial court's erroneous adjudication of P.P. prohibited the

court from entering adjudicatory orders regarding his other three children. Unlike P.P., the remaining children were all minors at the time of adjudication and, thus, the trial court had jurisdiction over them by way of the Act. Section 2-23 of the Act grants the trial court jurisdiction to order placement or custody for minors "under 18 years of age" found to be dependent, neglected, or abused. 705 ILCS 405/2-23(1) (West 2014). Further, even assuming the State failed to provide P.P.'s natural mother with notice of the proceedings, such a deficiency would have no impact on the trial court's jurisdiction over the other children as P.P. has a different natural mother than the other three children.

¶ 31

II

¶ 32

Next, respondent challenges the trial court's finding that Ang.P. was abused or neglected. The Act provides, in pertinent part, that an abused minor includes any minor under 18 years of age whose parent "commits or allows to be committed any sex offense against such minor, as such sex offenses are defined in the Criminal Code of 1961 or the Criminal Code of 2012." 705 ILCS 405/2-3(2)(iii) (West 2014). In addition,

"a neglected minor includes 'any minor under 18 years of age whose environment is injurious to his or her welfare.' An 'injurious environment' has no static definition and must be defined in terms of the particular facts of a case. [Citation.] In general, a parent neglects [his] child when the parent's conduct exhibits the 'failure to exercise the care that circumstances justly demand and encompasses both wilful and unintentional disregard of parental duty.' [Citation.]" *In re D.R.*, 354 Ill. App. 3d 468, 474 (2004).

¶ 33 Respondent's sole argument is that the evidence is insufficient because he claims that Ang.P.'s testimony is not credible. Upon review, we find the evidence is sufficient to establish that Ang.P. was abused or neglected.

¶ 34 At the adjudicatory hearing, Ang.P. testified that when she was 10 years old, respondent began abusing her by digitally penetrating her vagina. Ang.P. stated that the abuse continued about every other week but, eventually, respondent began forcefully engaging in sexual intercourse with her. According to Ang.P., respondent continued engaging in sexual intercourse with her every other week, but the abused eventually increased to weekly occurrences. This testimony alone, if credible, is sufficient to support the trial court's finding that Ang.P. had been abused or neglected. Significantly, the trial court found Ang.P. to be a credible witness. We will not second guess the trial court on the issue of credibility, "[b]ecause of its ability to observe witnesses and judge their demeanor, the [trial] court is in the best position to determine their credibility." *In re B.W.*, 216 Ill. App. 3d 410, 414 (1991).

¶ 35 Respondent challenges this credibility finding by calling our attention to the fact that Ang.P. was an unreliable witness in the following ways. First, respondent contends that Ang.P.'s psychological evaluation "demonstrates that [Ang.P.] was a troubled young lady" which the trial court failed to give any weight. Second, the State "conceded that [Ang.P.] gave inconsistent statements." Third, Ang.P. never reported respondent's sexual abuse, even though she had been hospitalized several times and had been specifically asked if she had ever been abused. Fourth, Ang.P. testified that she had a miscarriage when she first complained of the sexual abuse, but the State never presented any corroborating evidence "that she in fact experienced a miscarriage." Fifth, Ang.P. also admitted to being sexually active with another male in the past. Last, Ang.P. allegedly resented Rachel.

¶ 36 Significantly, none of the above points call into question Ang.P.'s consistent assertion that she had in fact been sexually abused by respondent. During her interview with DCFS, Ang.P. stated that she had been sexually abused by respondent in that he engaged in sexual intercourse with her and that he continued to do so on several occasions. This is consistent with Ang.P.'s unrebutted testimony that respondent abused her by forcing her to the floor and engaging in sexual intercourse and that respondent continued abusing her on several more occasions. While we acknowledge Ang.P.'s psychological evaluation and the inconsistencies in her statements as to the frequency of the abuse, we emphasize that Ang.P. was never inconsistent with her assertion that respondent did in fact engage in sexual intercourse with her.

¶ 37 Moreover, "[c]onflicts or discrepancies in a minor's testimony do not necessarily destroy its credibility, but only affect the weight to be given that evidence." *In re S.M.*, 171 Ill. App. 3d 361, 365-66 (1988). The trier of fact had the opportunity to observe Ang.P. while she testified and had the opportunity to review the psychological evaluation admitted into evidence. It was the role of the trier of fact to resolve any inconsistencies in Ang.P.'s statements and determine the weight to be given to her testimony. Based on its findings, the trier of fact found Ang.P.'s testimony credible regardless of any inconsistencies in her testimony or the findings in the psychological evaluation. By contrast, the trier of fact found Rachel's testimony incredible. We will not substitute our judgment for that of the trial court on questions involving credibility of a witness. *B.W.*, 216 Ill. App. 3d at 414.

¶ 38

III

¶ 39 Defendant next argues that the trial court's determination that V.P. and Ant.P. were neglected in that they were in an injurious environment is against the manifest weight of the evidence. As discussed above, we have already found that the evidence was sufficient to

establish that Ang.P. was abused or neglected because respondent had sexually abused her on several occasions. The ongoing sexual abuse of Ang.P. occurred while V.P. and Ant.P. lived in the family home and is sufficient to establish neglect based upon an injurious environment. *In re J.P.*, 331 Ill. App. 3d 220, 235 (2002) ("Sibling abuse may be *prima facie* evidence of neglect based upon an injurious environment."). "[P]roof of the abuse, neglect or dependency of one minor shall be admissible evidence on the issue of the abuse, neglect or dependency of any other minor for whom the respondent is responsible." 705 ILCS 405/2-18(3) (West 2014).

¶ 40

CONCLUSION

¶ 41

The judgment of the circuit court of Grundy County is affirmed in part and vacated in part.

¶ 42

Affirmed in part and vacated in part.