

NOTICE

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2016 IL App (4th) 150994-U
NO. 4-15-0994

FILED
March 30, 2016
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

In re: A.C., S.C., and T.S., Minors,)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
Petitioner-Appellee,)	Champaign County
v.)	No. 15JA43
BRANDON SHINAUL,)	
Respondent-Appellant.)	Honorable
)	John R. Kennedy,
)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Justices Harris and Pope concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court found the trial court did not err in finding the minor was neglected and making him a ward of the court.

¶ 2 In July 2015, the State filed a petition for adjudication of neglect with respect to A.C., S.C., and T.S., the latter being the minor child of respondent, Brandon Shinaul. In December 2015, the trial court made the minors wards of the court and placed custody and guardianship with the Department of Children and Family Services (DCFS).

¶ 3 On appeal, respondent argues the trial court's finding that T.S. was neglected due to an injurious environment was against the manifest weight of the evidence. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In July 2015, the State filed a petition for adjudication of neglect with respect to A.C., born in April 2007; S.C., born in March 2010; and T.S., born in May 2012. Tatiana

Mylord is the mother of the three children, and respondent is the father of T.S. In count I, the petition alleged the minors were neglected pursuant to section 2-3(1)(b) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(1)(b) (West 2014)) because their environment is injurious to their welfare when they reside with respondent and their mother because the environment exposes the minors to domestic violence. In count II, the petition alleged the minors were abused pursuant to section 2-3(2)(ii) of the Juvenile Court Act (705 ILCS 405/2-3(2)(ii) (West 2014)) because Mylord creates a substantial risk of physical injury to the minors, by other than accidental means, which would likely cause death, disfigurement, impairment of physical or emotional health, and/or loss or impairment of any bodily functions of the minors.

¶ 6 In October 2015, the trial court conducted the adjudicatory hearing. Jessica Lee, a child-protection investigator with DCFS, testified she became aware of an incident between Mylord and respondent. Mylord stated she had an argument with respondent while they were driving. After respondent battered her, Mylord stated she used a pair of keys to stab him in self-defense. Lee also interviewed A.C., who reported respondent hit Mylord and Mylord used a pair of scissors to stab respondent. S.C. reported the same incident. A.C. also mentioned previous physical arguments between respondent and Mylord. Lee stated she spoke with respondent, who denied he physically contacted Mylord but reported there had been an argument and she used a pair of scissors to stab him.

¶ 7 Champaign police officer Ed Wachala testified he was dispatched to Marketplace Mall on July 27, 2015, regarding a possible stabbing. Upon his approach, he observed a female, who was "upset and crying," outside of a van. He also saw a man, "probably 30, 40 feet away," who was also upset. Wachala spoke with Mylord and asked her where the scissors were located.

Mylord stated she did not know anything about scissors and, after further discussion, said it must have been the keys in her hand that Wachala meant. Wachala spoke with A.C., who stated, "Mommy stabbed daddy" with scissors. S.C. also reported, "Mommy stabbed Brandon with scissors." Wachala later located a pair of scissors in the van. Wachala stated he spoke with respondent, who stated he and Mylord got into an argument. Mylord hit him in the face, and respondent got into the backseat to get away from her. After she turned up the radio and he reached to turn it down, Mylord "started swinging blindly again with the scissors." When respondent put his arm up, he was stabbed. Wachala observed "a small mark" on respondent's arm that looked "a little bit bloody." Mylord was eventually arrested.

¶ 8 The State asked the trial court to take judicial notice of Mylord's conviction for the offense of domestic battery. The court noted the February 2014 judgment indicated Mylord made physical contact of an insulting or provoking nature with respondent by striking him with her vehicle. Thereafter, the State rested.

¶ 9 Tatiana Mylord testified she and respondent had an argument while they were traveling to the mall with the three minors. Mylord was driving on the interstate when the argument ensued. Mylord stated respondent was "absolutely enraged and upset." She stated respondent was shouting so loudly he was scaring the children. She pulled over to the side of the road and turned up the radio to give him time to calm down. Respondent turned the radio down and then struck her. They eventually arrived at the mall. When respondent attempted to hit her again, she put her arms up. She stated respondent was scratched by the keys in her hand. She denied stabbing respondent with scissors.

¶ 10 Respondent testified he climbed into the backseat of the van during the argument. He stated he had been struck in the face and was trying to avoid any more physical contact.

Respondent denied striking Mylord. He stated she stabbed him with scissors. He also noted Mylord had been aggressive toward him in the past.

¶ 11 The trial court found the State proved count I by clear and convincing evidence. The court found in favor of respondent and Mylord on count II. The court entered an adjudicatory order, finding the minors neglected based on an injurious environment.

¶ 12 In December 2015, the trial court conducted the dispositional hearing. The court found respondent and Mylord unfit and unable for reasons other than financial circumstances alone to care for, protect, train, or discipline the minors and the health, safety, and best interest of the minors would be jeopardized if the minors remained in the custody of each parent. The court found the evidence presented at the adjudicatory hearing showed the minors were exposed to and had to watch "a dangerous situation" while in the vehicle. After noting the prior incident of domestic violence, the court stated the evidence indicated, "the anger of the parents goes beyond any bounds that are consistent with the safety of the kids, and that has to be dealt with." The court adjudged the minors neglected, made them wards of the court, and placed custody and guardianship with DCFS. This appeal followed.

¶ 13 II. ANALYSIS

¶ 14 Respondent argues the trial court's finding that T.S. was neglected due to an injurious environment was against the manifest weight of the evidence. We disagree.

¶ 15 In deciding whether a minor should become a ward of the court, the trial court must first conduct a hearing on the State's petition for adjudication of wardship to determine whether the minor is abused, neglected, or dependent. *In re A.P.*, 2012 IL 113875, ¶¶ 18-19, 981 N.E.2d 336. At this stage of the proceedings, the court determines "whether the child is neglected, and not whether the parents are neglectful." *In re Arthur H.*, 212 Ill. 2d 441, 467, 819

N.E.2d 734, 749 (2004).

¶ 16 The Juvenile Court Act states, in part, that a minor "whose environment is injurious to his or her welfare" is neglected. 705 ILCS 405/2-3(1)(b) (West 2014). "Because the concepts of 'neglect' and 'injurious environment' have no fixed meaning and take their content from the particular circumstances of each case, each case involving such allegations must be decided on the basis of its unique facts." *In re Malik B.-N.*, 2012 IL App (1st) 121706, ¶ 52, 984 N.E.2d 55. "In general, 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.]" *Arthur H.*, 212 Ill. 2d at 463, 819 N.E.2d at 747.

¶ 17 The trial court is afforded broad discretion in determining whether a child has been abused or neglected, and this court will not disturb the trial court's findings unless they are against the manifest weight of the evidence. *A.P.*, 2012 IL 113875, ¶ 17, 981 N.E.2d 336. A trial court's 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.

¶ 18 In the case *sub judice*, the evidence supports a finding of neglect. The evidence indicates respondent and Mylord were arguing in the van while she drove to the mall with the minors in the backseat. Mylord stated respondent was shouting so loudly he was scaring the children. At some point, respondent struck Mylord. She responded by swinging a pair of scissors at him and cutting him. The minors witnessed these events. Such irresponsible actions by both parents created an unsafe environment and put T.S. and the other children in danger. The evidence also indicates this was not the first time respondent and Mylord had been involved in a domestic altercation involving a vehicle. We find the trial court's finding that T.S. was neglected due to an injurious environment was not against the manifest weight of the evidence.

¶ 19

III. CONCLUSION

¶ 20

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

¶ 21

Affirmed.