2017 IL App (1st) 163259-U
Order filed: April 21, 2017

SIXTH DIVISION

No. 1-16-3259

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

IN THE MATTER OF J.T., a Minor	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Cook County.
	)	
Petitioner-Appellee,	)	
	)	
v.	)	No. 16 JA 43
	)	
Dawn B.,	)	
	)	
Respondent-Appellant)	)	Honorable
	)	Bernard Joseph Sarley,
(Lamor Thomas, Respondent).	)	Judge Presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Presiding Justice Hoffman and Justice Delort concurred in the judgment.

ORDER

¶ 1 *Held*: We upheld the circuit court's findings of abuse and neglect of the minor as they were not against the manifest weight of the evidence and affirmed the adjudicatory and dispositional orders of the circuit court.

¶ 2 Respondent-appellant, Dawn B. (D.B.), appeals from the order of the circuit court that removed her minor daughter, J.T., from her custody and placed her in the guardianship of the Illinois Department of Children and Family Services (DCFS) with a goal of return home within 12 months, arguing that the court erred in finding that J.T. was abused and neglected. Having

concluded that the findings of abuse and neglect were supported by the manifest weight of the evidence, we affirm.

¶ 3 On January 15, 2016, the State filed a petition for adjudication of wardship and a motion for temporary custody alleging that J.T. had been subjected to an environment that was injurious to her welfare in violation of section 2-3(1)(b) of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/2-3(1)(b) (West Supp. 2015)), and to a substantial risk of physical injury in violation of section 2-3(2)(ii) of the Act (705 ILCS 405/2-3(2)(ii) (West Supp. 2015)). J.T. was born on March 4, 2007.

¶ 4 In support of its petition and motion for temporary custody, the State alleged that: D.B., the mother of J.T., had a prior indicated report for inadequate supervision in 2013, when J.T. was found at home with a sibling and cousins; D.B. had been referred to community based services as a result of the 2013 incident; D.B., J.T., and her siblings were found panhandling in traffic on December 7, 2015; D.B. had been assessed to receive anger management classes and a psychiatric evaluation; D.B. had failed to complete those services and her family reported that she uses illegal substances and has mental health issues.

¶ 5 Lamar T., the father of J.T., was also named as a respondent, but is not a party to this appeal.

¶ 6 The circuit court found that probable cause existed that the minor has been abused and neglected, granted the motion for temporary custody on January 15, 2016, and placed J.T. in the guardianship of DCFS. The court, on that date, also entered an order allowing D.B. to have supervised visitations with J.T.

¶ 7 On January 21, 2016, the court again conducted a hearing as to temporary custody of J.T. The State introduced into evidence a City of Harvey police report showing that, on December 7,

2015, D.B. was at 14733 S. Honore Street with her four children, including J.T., and she was "yelling and screaming at motorist[s]" and at the children's grandmother who lived at that address. As a result, D.B. was arrested for disorderly conduct. The State also introduced into evidence a report showing that, in 2013, there had been a DCFS "indicated" finding against D.B. for lack of supervision involving J.T. and other minors.

¶ 8 Stuart Moore, a child protection investigator for DCFS, testified that after the December 7, 2015, occurrence, J.T. and her siblings had been placed with Andrew C. as part of a safety plan and D.B. had agreed with that placement. Andrew C. is the father of J.T.'s siblings.

¶ 9 Maribel Rodriguez, a caseworker at Lutheran Child and Family Services, testified at the hearing that she spoke to J.T. during a break in the proceedings. J.T. told Ms. Rodriguez that she felt safer with Andrew C. and wished to continue to live with him.

¶ 10 Andrew C. testified he had received an order of protection against D.B. that protected the children, including J.T, from D.B. He sought the order, in part, because D.B. went to the police station on December 8, 2015, and alleged that he had kidnapped her children. Andrew C. was concerned about the safety of the children if they were in D.B.'s care.

¶ 11 The court entered an order on January 21, 2016, sustaining the temporary custody order of January 15, 2016.

¶ 12 From that date, the case was continued numerous times and many of the continuations were for status on visitations that were impacted by the order of protection. During this time period subpoenas were issued for pertinent medical and school records.

¶ 13 The court held an adjudicatory hearing on August 23, 2016.

¶ 14 At that hearing, Antoine Anderson testified he was on duty as an officer with the City of Harvey police department on December 7, 2015. At 4:20 p.m., he was called to 14733 South

Honore Avenue. Upon arriving at that location, Officer Anderson observed D.B. with "numerous children yelling and causing a disturbance causing *** the people that lived on that block to come outside." The children, while holding cardboard signs and empty cups, were standing between two parked vehicles, "partially into the street," where there was moving traffic. Officer Anderson told D.B., "numerous times," to move the children from the street because of the traffic. D.B. responded, "No, they're my kids." He found it difficult to get a "clear answer" from D.B. as to why she was in the street with the children.

¶ 15 D.B. was yelling and cursing and she was arrested for disorderly conduct and transported to the station. The children then went to the nearby home of Ms. Brown, the younger children's paternal grandmother.

¶ 16 On cross-examination, the officer testified that the children were appropriately dressed in jackets and they did not appear to be injured. The officer did not recall them crying.

¶ 17 Officer Anderson testified that, on another date[1], he encountered D.B. when he and other officers were dispatched to a disturbance near the emergency room entrance of Ingalls Memorial Hospital (Ingalls). D.B.'s father was attempting to get her out of a vehicle and admitted into the emergency room for "some sort of mental issues." However, D.B. was refusing to do so.

¶ 18 The police asked D.B. to voluntarily check into the hospital. Initially, D.B. refused but, eventually, she complied. Before entering the hospital, D.B. was yelling and attempting to kick and swing at the other officers. The police and Ingalls' security personnel escorted D.B. into the hospital.

[1] Officer Anderson stated that the Ingalls incident occurred a couple of days after the Honore Street incident. However, the Ingalls incident took place on December 3, 2015, prior to the Honore Street incident.

¶ 19 Franklin Joe, a child protection specialist with DCFS, was assigned to J.T.'s case on December 8, 2015. On that date, Mr. Joe visited the home of Andrew C. where D.B.'s children, including J.T., were now residing. Andrew C. and D.B. are the biological parents of three children, J.T.'s younger siblings. The children exhibited no signs of abuse. Mr. Joe asked J.T. about the incident on Honore Street. J.T. told him that D.B.'s vehicle had run out of gas and D.B. had the children make signs which stated that they were homeless and "have you seen my dad?" Mr. Joe asked one of J.T.'s siblings about how he was disciplined by D.B. and he replied that he received whippings with a belt and was spanked.

¶ 20 On December 9, 2015, Mr. Joe met with D.B. at his office. Mr. Joe explained to her the nature of the allegations and that DCFS performs various screenings, including screenings for domestic violence and substance abuse. He asked D.B. about the Ingalls incident and the whereabouts of the children while she was there. D.B. told him that her father drove her to Ingalls because he wanted to keep her automobile and, at that time, her children were either in school or with child care. D.B. told him that, when they arrived at Ingalls, security personnel escorted her into the hospital and that the doctors at Ingalls could not find anything wrong with her. D.B. showed Mr. Joe her discharge summary.

¶ 21 When he asked about the December 7 incident, D.B. explained that she and her children went to the grandmother's home to ask for money to attend a party. The children held signs in order to collect money.

¶ 22 In his interactions with D.B., Mr. Joe found her to be cooperative and willing to work toward the return home of the children, engage in intact services, and undergo a mental health evaluation. The safety plan prohibited D.B. from having unsupervised visits with her children. J.T.'s case was transferred to Mr. Moore on December 15, 2015.

¶ 23 Mr. Moore testified he met with D.B. on December 24, 2015. D.B. explained to him that on December 7, 2015, she and her children went to Ms. Brown's home to borrow $52. Ms. Brown had no money, and D.B. had no more gas. D.B. made a sign that said: "Do you know where our dads are?" After panhandling for about 10 to 15 minutes, D.B. made about $13.

¶ 24 D.B. denied having mental health issues and provided Mr. Moore with a discharge slip from Ingalls. Mr. Moore explained that she needed to participate in intact services, including a mental health assessment. D.B. replied that she wanted to "get her kids back." In January 2016, D.B. brought proof of a mental health assessment to court.

¶ 25 Andrew C. testified that J.T. began living with him on December 7, 2015. Soon thereafter, J.T. told him that she was afraid of D.B., that D.B. "carried weapons like a hammer in her purse," and that D.B. would fight and leave the children alone. J.T. said that D.B. would sometimes become angry if the children did not do what she asked and she would punch or hit them.

¶ 26 The State introduced into evidence, without objection, three exhibits: the prior indicated report for D.B., her records from Beacon Therapeutic Diagnostic & Treatment Center (Beacon) and Ingalls.

¶ 27 The exhibit relating to the prior allegation against D.B. showed that DCFS found credible evidence of inadequate supervision after D.B. left J.T. (then age seven), her three siblings (ages one, two, and three), and several cousins (ages two through seven), with no adult supervision in July 2013.

¶ 28 The Beacon records showed that, on November 12, 2015, D.B. was diagnosed with adjustment disorder, with anxiety, and it was recommended that she receive "counseling/therapy, case management, and client centered support." D.B. agreed to participate in the recommended

services. A December 16, 2015, report stated that D.B. was referred for an evaluation for "defiant behavior towards police officer, anger issues, defensive and paranoid." The areas of concern were listed as defiance of adult authority; problems with focus and attention; depressed mood; elevated, irritable, or manic moods; and anxieties, fears, and phobias.

¶ 29 The Ingalls records stated that, on December 3, 2015, D.B. was handcuffed and escorted by the police into the hospital after getting into an "altercation" just outside the hospital. She was restrained while at the hospital. Her father brought D.B. to Ingalls when he was unable to calm her down. She was "screaming obscenities and racial-themes, combative, kicking, threatening staff, uncooperative with questions." D.B.'s behavior was also described as: "[a]gitated, [t]hreatening, [i]nappropriate, [i]nterfering with [m]edical [t]reatment or [d]evice, [c]ombative, [m]anic, [d]epressed and [v]erbally abusive." D.B.'s diagnosis was "acute severe display of anger, behavior disorder—initial encounter." Her attitude was listed as "[u]ncooperative and [h]ostile," and her symptoms as "[v]iolent] [i]deation [t]oward [o]thers." D.B. was discharged with instructions to follow up "with the referred doctor or [p]rimary [c]are [p]hysician in 1-2 days."

¶ 30 D.B. testified that, on December 3, 2015, she and her father argued about the use of her vehicle and he drove her to Ingalls. When they arrived at the hospital, her father asked hospital security to assist in removing her from the vehicle because she was too upset to drive. D.B. was still in her vehicle when the police arrived. After speaking with her father, the police handcuffed her and "threw" her in a squad car "face down." The police said that she would not go to jail and asked if she wished to be treated at the hospital. D.B. refused treatment and the police carried her into the emergency room. In the emergency room, her clothes were removed "in front of everybody" and she was restrained. About an hour later, she was released from the restraints and

discharged because "there was nothing wrong with me." She did not receive a psychiatric evaluation.

¶ 31 On cross-examination, D.B., in contradiction to her direct testimony, denied that the police were involved or ever arrived at Ingalls on December 3, 2015. She admitted, however, that she was in an argument with her father that day.

¶ 32 D.B. further testified that, on December 7, 2015, she telephoned Ms. Brown, Andrew C.'s mother, seeking money for a party. A family friend who answered the call refused D.B.'s request. D.B. then drove with her children to the home of Ms. Brown. D.B. asked Ms. Brown for $52 so that her children could attend a birthday party. Ms. Brown, however, did not have any money. Using construction paper from her car, D.B. made signs that read: "we're homeless, we need money" and, "do you know where my father is?" Two of the children held signs and two held cups; all four children were standing on the curb. D.B. waved at passing cars and pointed to the children at the curb. The cars stopped in front of D.B. and the occupants of the cars gave her money. When asked if any of the children went into the street, D.B. answered: "Yeah. I held my child's hand and walked them to the car." She denied the children were ever in the street without holding her hand or where they could be hit by a passing vehicle. After she was arrested, the children went to Ms. Brown's house.

¶ 33 On cross-examination, D.B. denied that the police asked her to stop what she was doing on December 7, and to have the children step out of the street.

¶ 34 Prior to this incident, D.B. and the children had been living together in a homeless shelter. At that time, D.B. was working 12 to 15 hours per week as a hair stylist and, when she worked, the children were in school, in after school care, or with a babysitter. In November 2015, through the shelter, Beacon assessed D.B. and provided her with three to four counseling

sessions. The counseling was a requirement for staying at the shelter. After her children had been removed from her care, D.B. could no longer live at the shelter, nor receive these services.

¶ 35 D.B. testified that based on her conversations with Mr. Moore, she received a mental health assessment at Ingalls on January 8, 2016. D.B. faxed the assessment to Mr. Moore's supervisor and gave the assessment to Mr. Moore in court. D.B. was never offered any other services. She has never received mental health treatment.

¶ 36 After considering the evidence and finding the testimony of Officer Anderson to be credible, the court stated:

> "Based on the testimony of Officer Anderson alone I find that it is evidence of neglect and abuse. It is abuse substantial risk of injury. Fortunately none of the children were injured but putting the children in that situation does, in my view, create a substantial risk of injury. I do find that the State has proven neglect injurious environment and abuse substantial risk of injury in this case and the mother placed those children in that position so she's the perpetrator of the abuse and neglect in my view."

The court found that D.B. demonstrated inappropriate behavior when Ms. Brown refused her request for money, and that the incident at Ingalls also demonstrated an inappropriate response to stress. The court also stated that the prior indicated report was "some evidence of neglect." Based on its findings, the court entered an order finding that J.T. was abused or neglected due to an injurious environment and a substantial risk of physical injury, and that the abuse/neglect was inflicted by D.B.

¶ 37 A dispositional hearing was held on November 9, 2016.

¶ 38 Mayna Johnson, a DCFS case manager, testified that J.T. and her siblings continued to reside at the home of Andrew C. J.T. has been in individual therapy at Project HOPE since

October 2016 and had been making progress. J.T. had been held back in third grade and was to undergo a case study for an Individualized Education Program (IEP).

¶ 39 D.B. was in individual therapy at Gilead Behavioral Health Services and had attended about three sessions. D.B. underwent a psychiatric evaluation that did not require psychiatric services. However, Ms. Johnson thought it was possible that an incomplete case history had been provided for the evaluation. A Juvenile Court Assessment Project (JCAP) assessment recommended that D.B. undergo intensive outpatient treatment. D.B. had been participating in a Treatment Alternatives for a Safer Community (TASC) program and provided random urine drops. According to a TASC caseworker, "[D.B.] was doing very well," and "she has no problems with contacting [D.B.] for [urine] drops." D.B. provided urine drops twice a month for testing and the results were negative. D.B. had undergone a required domestic violence assessment, but the report from the assessment had not yet been completed. D.B. was referred to parenting classes to be followed up by parenting coaching, as well as anger management classes. D.B. has been cooperative and willing to engage in services. Ms. Johnson recommended that if J.T. became a ward of the court, that there be a permanency goal to return J.T. home to D.B. within 12 months.

¶ 40 D.B. is allowed two-hour supervised visits with the children on Saturdays. J.T. had previously been unwillingly to visit with D.B. but since September 2016 had been willing to do so. Ms. Johnson had supervised two visits. On the first visit, the "children were very, very happy to see [D.B.]." The second visit "was also very good." The children appeared to have bonded with D.B. and did not appear to be afraid of her.

¶ 41 The State entered exhibits into evidence, without objection, which included the JCAP assessment dated March 4, 2016. The JCAP assessment recommended intensive outpatient substance abuse treatment based on D.B.'s history of marijuana use.

¶ 42 The trial court took judicial notice, without objection, of the integrated assessment (IA) filed with the court on June 2, 2016. The IA report stated that D.B. sought to minimize her actions leading to the involvement of DCFS but emphasized Andrew C.'s behavior as the source of the problem. According to the IA, D.B.'s personal family history included physical aggression in her parents' relationship instigated by her mother; the use of corporal punishment; and aggression toward D.B. by her mother. She reported that Andrew C. and Lamar T. were abusive to her. The family has a history of mental illness. D.B. reported that she regularly smoked cannabis.

¶ 43 The assessors found no evidence to suggest that D.B. possessed the parental skills necessary to support her child's education and developmental needs. The IA report noted that D.B. "appears to be struggling with mental health problems which may be exacerbated by substance dependence," and that her depression, emotional instability, aggression, impulsivity, poor coping strategies and substance abuse problems posed a clear risk to the safety needs of her children.

¶ 44 The State asked that J.T. be adjudged a ward of the court with a permanency goal of return home within 12 months. D.B.'s attorney and the office of the Cook County Public Guardian were in agreement with that recommendation.

¶ 45 The court adjudged J.T. a ward of the court after finding D.B. was currently unable to care for, protect, train, or discipline J.T. as services were ongoing. J.T. was placed into the

custody and guardianship of DCFS with the right to place J.T. The court entered the requested permanency goal of J.T.'s return home within 12 months. D.B. now appeals.

¶ 46 On appeal, D.B. argues that the State failed to establish that J.T. was abused or neglected.

¶ 47 The Act provides a "step-by-step process used to decide whether a child should be removed from his or her parents and made a ward of the court." *In re Arthur H.*, 212 Ill. 2d 441, 462 (2004). Thus, after a petition for wardship has been filed and a child has been placed in temporary custody, the circuit court must make an adjudicatory finding of abuse, neglect, or dependence, before it then conducts a dispositional hearing as to wardship. *Id.*; 705 ILCS 405/2-21(1), (2) (West 2014).

¶ 48 Section 2-3(2)(ii) of the Act provides:

> "(2) Those who are abused include 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, or a paramour of the minor's parent:
>
> * * *
>
> (ii) 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 Supp. 2015).

¶ 49 Furthermore, section 2-3(1)(b) of the Act provides that a neglected minor includes "any minor under 18 years of age whose environment is injurious to his or her welfare." 705 ILCS 405/2-3(1)(b) (West Supp. 2015). Neglect is broadly defined as "the failure to exercise the care that circumstances justly demand and encompasses both willful and unintentional disregard of

parental duty." *In re Kenneth D.,* 364 Ill. App. 3d 797, 801 (2006). Similarly, the term "injurious environment" has been recognized to be an amorphous concept that cannot be defined with particularity. *Arthur H.,* 212 Ill. 2d. at 463. Nevertheless, 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.* (quoting *In re N.B.,* 191 Ill. 2d 338, 346 (2000)).

¶ 50 Finally, it is well understood:

> "In a proceeding for the adjudication of abused or neglected minors, the State must prove the allegations in the petition by a preponderance of the evidence. [Citations.] ' "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." ' [Citation.] The court's primary concern is the best interests of the children involved. [Citation.] ' "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." ' [Citation.] Cases adjudicating abuse and neglect are *sui generis* and must be decided on their own facts. [Citation.] We will not disturb the trial court's findings that the children have been abused or neglected, unless those findings are against the manifest weight of the evidence, meaning " 'the opposite conclusion is clearly evident or * * * the determination is unreasonable, arbitrary, and not based on the evidence." ' [Citation.]" *In re Juan M.,* 2012 IL App (1st) 113096, ¶ 49.

¶ 51 We first consider the court's finding that J.T. was subjected to a substantial risk of physical injury.

¶ 52 The evidence established that, on December 7, 2015, D.B. placed the well being and safety of J.T. and her siblings in harm's way. Under the direction of D.B., the children held

signs and were panhandling near or in the street where there was moving traffic. D.B. had the children carry signs indicating the children were homeless and their fathers were missing, thus, reflecting their vulnerability. D.B. allowed and encouraged encounters between strangers and the children in order to obtain money. D.B. refused to follow numerous requests from the police to remove the children from or near the street. She was unable to communicate to the police what was going on. At the same time, D.B. was screaming and cursing which alarmed the neighbors. D.B.'s actions led to her arrest for disorderly conduct and thus her separation from her children. D.B. took this risky course of action after the children's grandmother did not provide money which, D.B. claimed, was required not for necessities, but for a children's party. D.B. drove to Ms. Brown's home after becoming upset that her request for money during a telephone call had been rebuked. Additionally, there was evidence that in 2013 D.B. had previously left J.T., at the age of 7, and other children, including her siblings, aged 1 through 7, alone without supervision.

¶ 53 Based on this record, we conclude that the manifest weight of the evidence established that D.B. had subjected J.T. to a substantial risk of physical injury.

¶ 54 We next consider whether the finding that J.T. was neglected due to an injurious environment was supported by the manifest weight of the evidence and in doing so, we may consider the evidence that supported a finding of substantial risk of physical injury. *In re Tamesha T.*, 2014 IL App (1st) 132986, ¶ 44. The evidence set forth above shows that D.B. failed to ensure a safe and nurturing environment for J.T. in violation of her parental duty by placing J.T. in a dangerous situation during the incident on Honore Street and leaving her alone without an adult at the age of 7.

¶ 55 In addition, the record shows that, on December 3, D.B. had hostile interactions with her father at Ingalls that required police intervention. On that date, her father brought D.B. to the hospital when she became uncontrollable after a disagreement over her automobile. At the entry of the hospital, D.B. screamed at the police, and attempted to kick and swing at them. After entering the hospital, D.B. continued to display a hostile attitude, and was verbally abusive and combative toward the hospital staff. As a result, D.B. was restrained in a hospital bed. The circuit court found this evidence supported a conclusion that D.B. acts inappropriately when faced with issues that cause her stress. We agree with this conclusion and, further believe, that D.B.'s display of anger and hostility at Ingalls, although outside the presence of J.T., was relevant to a determination of an injurious environment. See *In re A.W., Jr.*, 231 Ill. 2d 241, 256 (2008) (parental anger and hostility outside presence of a minor may be relevant to allegations of injurious environment).

¶ 56 Further, J.T. revealed to Andrew C. that she was afraid of D.B. J.T. reported that D.B. would become angry or strike the children if they did not do what they were told. J.T. further stated that D.B. carried a hammer in her purse, and would leave the children alone. A younger sibling stated that D.B. disciplined him by a spanking with her hand, or a whipping with a belt. See *In re R.G.*, 2012 IL App (1st) 120193, ¶ 49 ("It is well settled that the State may use the evidence of neglect and abuse of one child as evidence of abuse and neglect of another child who lives in the same household and for whom the same parent is also responsible.").

¶ 57 The manifest weight of the evidence supports a finding that J.T. had been subjected to an environment that was injurious to her health.

¶ 58 In conclusion, the findings that D.B., by subjecting J.T. to an environment that was injurious to her welfare and to a substantial risk of injury, abused and neglected J.T. were

supported by the manifest weight of the evidence. D.B. has not raised an argument as to the dispositional order and, thus, has forfeited any challenge to that order. *People v. Nunez*, 236 Ill. 2d 488, 493 (2010).

¶ 59 We, thus, affirm the adjudicatory order that found J.T. had been abused and neglected by D.B., and the dispositional order placing J.T. in the guardianship of DCFS with a permanency goal of return home in 12 months.

¶ 60 Affirmed.