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2017 IL App (4th) 170351-U

NOS. 4-17-0351, 4-17-0352 cons.

FILED
September 28, 2017
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

| | | |
|---|---|---|
| In re: L.S., a Minor, | ) | Appeal from |
| | ) | Circuit Court of |
| (The People of the State of Illinois, | ) | Vermilion County |
| Petitioner-Appellee, | ) | No. 16JA53 |
| v. (No. 4-17-0351) | ) | |
| Jennifer Denney Servis, | ) | |
| Respondent-Appellant). | ) | |
| ---------------------------------------- | ) | |
| In re: O.D., a Minor, | ) | No. 16JA54 |
| | ) | |
| (The People of the State of Illinois, | ) | |
| Petitioner-Appellee, | ) | |
| v. (No. 4-17-0352) | ) | Honorable |
| Jennifer Denney Servis, | ) | Craig H. DeArmond, |
| Respondent-Appellant). | ) | Judge Presiding. |

PRESIDING JUSTICE TURNER delivered the judgment of the court.
Justices Steigmann and Knecht concurred in the judgment.

**ORDER**

¶ 1 *Held*: The circuit court's findings an infant was abused and her older sister neglected based on that abuse were not against the manifest weight of the evidence.

¶ 2 In July 2016, the State filed petitions for the adjudication of wardship as to L.S. (born in June 2016), and O.D. (born in February 2015), the minor children of respondent, Jennifer Denney Servis. After an adjudicatory hearing, the Vermilion County circuit court found L.S. was abused and O.D. was neglected. At the April 2017 dispositional hearing, the court made the minor children wards of the court and placed their custody and guardianship with the Department of Children and Family Services (DCFS).

¶ 3 Respondent appeals, contending the circuit court erred by finding the minor children were abused and neglected. We affirm.

¶ 4 I. BACKGROUND

¶ 5 After paternity testing, it was determined David Holycross is the father of L.S., and Dale Tuel is the father of O.D. The fathers are not parties to this appeal. In July 2016, the State filed petitions for the adjudication of wardship of L.S. and O.D., which alleged the minor children were abused pursuant to section 2-3(2)(ii) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(2)(ii) (West 2016)) in that (1) their parent or any person residing with or caring for them creates a substantial risk of physical injury to them by other than accidental means which would be likely to cause death, disfigurement, impairment of emotional health, or loss or impairment of bodily function; and (2) their parents create a substantial risk of physical injury to them by other than accidental means which would be likely to cause death or impairment of emotional health. The petition also alleged the minor children were neglected pursuant to section 2-3(1)(b) of the Juvenile Court Act (705 ILCS 405/2-3(1)(b) (West 2016)) in that their environment was injurious to their welfare because L.S. suffered nonaccidental injuries and her parents had no plausible explanation for the injuries.

¶ 6 On January 5, 2017, the circuit court commenced the adjudicatory hearing. The State presented the testimony of Vermilion County sheriff deputy Casey Hahne; Vermilion County sheriff deputy Sean Jones; Nicholas Conway, DCFS child protection investigator; and Dr. Roberta Hibbard, professor of pediatrics at Indiana University School of Medicine and Riley Hospital for Children. Respondent did not present any evidence. The relevant testimony is set forth below.

¶ 7 Deputy Hahne testified that, at 5 p.m. on July 11, 2016, he was dispatched to the

emergency room at Presence United Samaritans Medical Center (Presence) to meet with respondent and Bradley Servis about a juvenile incident. Bradley was not the father of the child at issue, L.S., but he cared for the child as his own. Bradley did most of the talking, with respondent adding parts to the story. Respondent did not contradict Bradley's description of the incidents. Bradley stated that, earlier in the day, he was holding L.S. at a neighbor's house when the neighbor's son turned to look at L.S. and hit her on the head with his elbow. The boy was thought to be four or five years old. After that, Bradley and respondent took L.S. home to nurture the injury. Bradley did not identify the neighbor. Respondent "pretty much confirmed" Bradley's story. Deputy Hahne observed a bruise on the left side of L.S.'s face in the area of her eye. The arm was wrapped up, and Deputy Hahne could not observe it.

¶ 8 Bradley and respondent also told Deputy Hahne about a second incident later that day. They were all at home, and Bradley picked L.S. up out of a stationary swing. Upon holding her, Bradley noticed L.S. had a bruise on her head that had become slightly swollen. He also observed L.S. was not moving her left arm. All of the sudden, her left arm popped out and began to dangle. At that point, Bradley and respondent took L.S. to the Presence emergency room. While Deputy Hahne was talking to Bradley and respondent, a nurse came in and explained L.S.'s arm was broken. The nurse also indicated L.S. was being transferred to the Riley Hospital in Indianapolis. Bradley and respondent stated they did not know how L.S.'s arm was broken. Deputy Hahne confirmed with L.S.'s doctor that Bradley and respondent had given her a similar story.

¶ 9 Deputy Jones testified he took the case over from Deputy Hahne. He canvassed the area where respondent and Bradley lived. He spoke with four residents out of approximately 12 homes in a two block area. None of the residents he spoke with had a child, or knew of a

child, that matched the description given to Deputy Hahne. Moreover, none of them were familiar with the incident. Deputy Jones also spoke with respondent's mother, and she did not personally know anything about the incident. No criminal charges were brought related to the incident.

¶ 10 Conway testified that, on July 11, 2016, he learned of a child with bone fractures and a head injury. Since the child had been discharged, he went to the family's home, but no one was there. Conway then called a contact number he had been given. Respondent answered the call and informed Conway she and Bradley were on their way to Riley Hospital. Conway explained the allegations that L.S. had been injured as a result of physical abuse, and respondent commented she and Bradley did not hurt L.S. When asked who hurt L.S., respondent stated she did not know who. Respondent also stated L.S.'s only caretakers were her, her mother, and Bradley.

¶ 11 On July 12, 2016, Conway received information from Riley Hospital that L.S. had suffered a brain bleed and fractures to her left humerus and both femurs. Based on L.S.'s injuries and the lack of an explanation by respondent and Bradley, DCFS decided to take protective custody of L.S. and O.D. O.D. was staying with respondent's friend, Megan Jones, and Conway took protective custody of O.D. there. Conway took O.D. to a local emergency room for an examination. O.D. had a small mark on her eye, but the doctor could not tell if it was from normal play or abuse. The only reason O.D. was taken into protective custody was for risk of harm. Additionally, when Conway was introducing respondent to the new caseworker, respondent commented the only people who would have been in a caretaker role for L.S. were her and Bradley.

¶ 12 Dr. Hibbard testified she examined L.S. on July 12, 2016, when L.S. was only

three weeks old. She observed L.S. had significant bruising to her temple, a scratch with some bruising to her left cheek, and both eyes were black with bruising. The bruises appeared fresh, as they were red and purple. L.S.'s arm was already splinted due to the fracture. L.S. then had a skeletal survey, which is an X-ray of every bone in the body. The skeletal survey showed the spiral humerus fracture, which was already known. The humerus fracture was fresh, meaning it occurred less than 10 to 14 days before the X-ray. The skeletal survey also showed fractures to both femurs at the very end near the knee and a fracture to her right tibia. The ages of those three fractures were indeterminate. L.S. also underwent laboratory tests, all of which were normal, except for liver function. An abdominal scan showed swelling around the liver but not an injury that could be identified radiographically. Additionally, L.S. had magnetic resonance imaging (MRI) of her head. The MRI showed the cortex of L.S.'s brain was torn near the gray-white matter junction with the tear being worse on the left side. Dr. Hibbard reviewed the MRI with a neuroradiologist, and they concluded the brain injury was days to a week or two old. The doctors did not think it was three weeks old.

¶ 13 Dr. Hibbard explained none of the injuries were ones that are typical in routine handling of an infant. She noted less than 1% of infants have bruising. Moreover, the spiral fracture to the arm had to have been caused by a twisting mechanism. The fractures near L.S.'s knees were the kind typically seen with a jerk or a yank mechanism but could be caused by a twisting mechanism as well. The head injury was a very unusual injury. The type of injury is caused by "a significant impact with angular kind of momentum to it," such as hitting the windshield in an automobile accident. It was not an injury seen when a child falls off a couch or changing table or down stairs.

¶ 14 Dr. Hibbard spoke with Bradley and respondent. They told her L.S. was elbowed

in the head by a five- or six-year-old child and seemed to be fine. Bradley brought her home and put L.S. down for a nap. After her nap, Bradley noticed bruising on L.S.'s face. When he picked her up, Bradley heard her arm crack and saw the arm go limp. They also told Dr. Hibbard about a car accident that happened a week before or sometime the previous month. They said L.S. was properly restrained in a rear-facing car seat on the passenger's side of the car when the car was T-boned on the driver's side. No one received any medical care, and L.S. seemed fine. They reported the one-year-old child said the baby was "jostled" during the accident.

¶ 15 Dr. Hibbard testified the bruising on the side of L.S.'s face could have been caused by an elbow but not the rest of her injuries. She also noted there was no evidence of bone disease, and L.S. could not have caused the injuries to herself since she was only three weeks old. Moreover, Dr. Hibbard opined it was very unlikely any of the injuries resulted from her birth, as respondent reported L.S. was delivered vaginally and head first. Dr. Hibbard testified L.S.'s injuries were most consistent with nonaccidential injuries. Her medical conclusion was probable physical abuse.

¶ 16 On March 30, 2017, the circuit court entered its adjudicatory order, finding (1) L.S. was physically abused and in substantial risk of physical abuse and (2) O.D. was neglected as alleged in the petition.

¶ 17 On April 27, 2017, the circuit court held the dispositional hearing, at which it found respondent unfit, unable, and unwilling to care for the minor children. The court made the minor children wards of the court and appointed the Department of Children and Family Services as their guardian. The written dispositional orders were filed on April 28, 2017.

¶ 18 On May 3, 2017, respondent filed timely notices of appeal in sufficient compliance with Illinois Supreme Court Rule 303 (eff. Jan. 1, 2015). See Ill. S. Ct. R. 660(b)

(eff. Oct. 1, 2001) (providing the rules governing civil cases govern appeals from final judgments in all proceedings under the Juvenile Court Act, except for delinquency cases). Thus, this court has jurisdiction of these appeals under Illinois Supreme Court Rule 304(b)(1) (eff. Mar. 8, 2016). See *In re Austin W.*, 214 Ill. 2d 31, 43-44, 823 N.E.2d 572, 580 (2005), *abrogated on other grounds by In re M.M.*, 2016 IL 119932, ¶ 31, 72 N.E.3d 260 (noting "dispositional orders are generally considered 'final' for the purposes of appeal"). This court docketed L.S.'s case as case No. 4-17-0351 and O.D.'s case as case No. 4-17-0352. In August 2017, this court consolidated the two appeals.

¶ 19 II. ANALYSIS

¶ 20 Cases involving neglect and abuse allegations and the adjudication of wardship are *sui generis*, and thus courts must decide them based on their unique circumstances. *In re A.P.*, 2012 IL 113875, ¶ 17, 981 N.E.2d 336. Moreover, in any proceeding brought under the Juvenile Court Act, including an adjudication of wardship, the paramount consideration is the children's best interests. *A.P.*, 2012 IL 113875, ¶ 18, 981 N.E.2d 336.

¶ 21 The Juvenile Court Act provides a two-step process the trial court must utilize to decide whether minor children should become a ward of the court. *A.P.*, 2012 IL 113875, ¶ 18, 981 N.E.2d 336. Step one of the process is the adjudicatory hearing, at which the court considers only whether the minor children are abused, neglected, or dependent. See 705 ILCS 405/2-18(1) (West 2016); *A.P.*, 2012 IL 113875, ¶ 19, 981 N.E.2d 336. If a circuit court determines the minor children are abused, neglected, or dependent at the adjudicatory hearing, then the court holds a dispositional hearing, where the court determines whether it is consistent with the health, safety, and best interests of the minor children and the public for the minor children to be made wards of the court. *A.P.*, 2012 IL 113875, ¶ 21, 981 N.E.2d 336.

¶ 22 Here, respondent challenges only the first step, the circuit court's abuse and neglect findings. The State bears the burden of proving a neglect or abuse allegation by a preponderance of the evidence, which means it must show the allegations are more probably true than not. See *A.P.*, 2012 IL 113875, ¶ 17, 981 N.E.2d 336. The State only has to prove a single ground for abuse or neglect, and when a circuit court has found a minor abused or neglected on more than one ground, the judgment may be affirmed if any of the bases of neglect or abuse are upheld. *In re Faith B.*, 216 Ill. 2d 1, 14, 832 N.E.2d 152, 159 (2005). On review, this court will not reverse a circuit court's neglect or abuse finding unless it is against the manifest weight of the evidence. See *A.P.*, 2012 IL 113875, ¶ 17, 981 N.E.2d 336. "A 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.

¶ 23 A. L.S.

¶ 24 In this case, the circuit court found L.S. was physically abused as defined by section 2-3(2)(i) of the Juvenile Court Act (705 ILCS 405/2-3(2)(i) (West 2016)) and in substantial risk of physical abuse as defined by section 2-3(2)(ii) of the Juvenile Court Act (705 ILCS 405/2-3(2)(ii) (West 2016)).

¶ 25 Section 2-3(2) of the Juvenile Court Act (705 ILCS 405/2-3(2) (West 2016)) provides, in pertinent part, the following:

> “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:
>
> (i) inflicts, causes to be inflicted, or allows to be inflicted upon

such minor physical injury, by other than accidental means, which causes death, disfigurement, impairment of physical or emotional health, or loss or impairment of any bodily function;

(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."

¶ 26 Respondent contends the evidence was insufficient to show she was the one who caused L.S.'s injuries. However, the focus of an adjudicatory hearing is not whether the respondent abused the minor but rather on whether the minor was abused. *In re R.G.*, 2012 IL App (1st) 120193, ¶ 35, 977 N.E.2d 869. Thus, who specifically committed the alleged abuse is of no particular consequence in an adjudicatory hearing. *R.G.*, 2012 IL App (1st) 120193, ¶ 35, 977 N.E.2d 869.

¶ 27 In this case, the evidence was overwhelming L.S. suffered physical abuse. L.S. was only three weeks old when it was discovered she had four fractures, a brain injury, two black eyes, and significant bruising on her face. Dr. Hibbard did not find evidence of birth trauma or bone disease. Additionally, the injuries were inconsistent with the stories given by respondent and Bradley. The aforementioned evidence that supports the physical abuse finding also supports the circuit court's finding the State proved by a preponderance of the evidence L.S. was abused due to a substantial risk of physical injury. See *R.G.*, 2012 IL App (1st) 120193, ¶ 42, 977 N.E.2d 869. Thus, we find the circuit court's findings L.S. was abused due to physical abuse and a substantial risk of physical abuse were not against the manifest weight of the evidence.

¶ 28 B. O.D.

¶ 29 In this case, the circuit court found O.D. was neglected under section 2-3(1)(b) of the Juvenile Court Act (705 ILCS 405/2-3(1)(b) (West 2016)), which provides a neglected minor is "any minor under 18 years of age whose environment is injurious to his or her welfare." Our supreme court has explained the terms "neglect" and "injurious" as follows:

> "Generally, neglect is defined as the failure to exercise the care that circumstances justly demand. [Citations.] This does not mean, however, that the term neglect is limited to a narrow definition. [Citation.] As this court has long held, neglect encompasses wilful as well as unintentional disregard of duty. It 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 surrounding circumstances changes. [Citations.] Similarly, the term injurious environment has been recognized by our courts as an amorphous concept that cannot be defined with particularity. [Citation.] Generally, 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.]" (Internal quotation marks omitted.) *A.P.*, 2012 IL 113875, ¶ 22, 981 N.E.2d 336.

The State alleged an injurious environment based on the injuries to O.D.'s infant sister. Thus, the State's neglect allegation was premised upon an anticipatory neglect theory. Under that theory, "the State seeks to protect not only children who are the direct victims of neglect or abuse, but also those who have a probability to be subject to neglect or abuse because they reside, or in the future may reside, with an individual who has been found to have neglected or

abused another child." *In re Arthur H.*, 212 Ill. 2d 441, 468, 819 N.E.2d 734, 749 (2004).

¶ 30 Our supreme court has explained the proper analysis of an anticipatory neglect theory as follows:

> "Although our appellate court has recognized the theory of anticipatory neglect for some time [citation], our courts have also held that there is no *per se* rule that the neglect of one child conclusively establishes the neglect of another child in the same household. [Citations.] Rather, such neglect should be measured not only by the circumstances surrounding the sibling, but also by the care and condition of the child in question. [Citations.] Although section 2-18(3) of the [Juvenile Court] Act (705 ILCS 405/2-18(3) (West 2000)) provides that the proof of neglect of one minor shall be admissible evidence on the issue of the neglect of any other minor for whom the parent is responsible [citation], we emphasize that the mere admissibility of evidence does not constitute conclusive proof of the neglect of another minor. Each case concerning the adjudication of minors, including those cases pursued under a theory of anticipatory neglect based upon the neglect of a child's sibling, must be reviewed according to its own facts." (Internal quotation marks omitted.) *Arthur H.*, 212 Ill. 2d at 468-69, 819 N.E.2d at 749-50.

¶ 31 Here, O.D. was only one year old when her three-week-old sister, L.S., suffered multiple fractures, bruising, and a brain injury while in the care of respondent and Bradley. Dr.

Hibbard opinioned L.S.'s injuries were more consistent with nonaccidential injuries and were inconsistent with the stories reported by Bradley and respondent. O.D. resided in the same home with respondent and Bradley. Given O.D. resided with the same individuals who cared for L.S. when she suffered numerous, nonaccidential injuries and the facts she too was very young and completely dependent on respondent and Bradley, the State's evidence was sufficient to prove by a preponderance of the evidence O.D.'s environment was injurious to her welfare.

¶ 32 III. CONCLUSION

¶ 33 For the reasons stated, we affirm the Vermilion County circuit court's judgment.

¶ 34 Affirmed.