

NOTICE

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FILED

October 23, 2017
Carla Bender
4th District Appellate
Court, IL

2017 IL App (4th) 170410-U

NOS. 4-17-0410, 4-17-0411, 4-17-0412 cons.

IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

In re: N.S., a Minor,)	Appeal from
)	Circuit Court of
(The People of the State of Illinois,)	Sangamon County
Petitioner-Appellee,)	No. 15JA236
v. (No. 4-17-0410))	
Krista Glover,)	
Respondent-Appellant).)	
_____)	
In re: A.K., a Minor,)	No. 15JA237
)	
(The People of the State of Illinois,)	
Petitioner-Appellee,)	
v. (No. 4-17-0411))	
Krista Glover,)	
Respondent-Appellant).)	
_____)	
In re: M.G., a Minor,)	No. 15JA238
)	
(The People of the State of Illinois,)	
Petitioner-Appellee,)	
v. (No. 4-17-0412))	Honorable
Krista Glover,)	Karen S. Tharp,
Respondent-Appellant).)	Judge Presiding.

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

ORDER

- ¶ 1 *Held:* The circuit court’s neglect adjudication was not against the manifest weight of the evidence.
- ¶ 2 In December 2015, the State filed petitions for adjudication of wardship as to N.S. (born in 2007), A.K. (born in 2009), and M.G. (born in 2012) the minor children of respondent,

Krista Glover. After an adjudicatory hearing, the Sangamon County circuit court found the minor children were 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 neglected. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In December 2015, the State filed petitions for the adjudication of wardship of N.S., A.K., and M.G., which alleged the minor children 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 Supp. 2015)) in that their environment was injurious to their welfare because (1) respondent allowed the minor children to have unsupervised contact with her husband, Chad Glover, after she was notified the minor children could not have unsupervised contact with him based on his DCFS indicated finding for sexual molestation and substantial risk of sexual molestation; (2) they are at a substantial risk of being sexually abused as evidence by Chad's sexual abuse or assault of a child victim; (3) they are at a substantial risk of being sexually abused as evidence by respondent allowing Chad unsupervised access to the minor children after being notified by DCFS that Chad was indicated for sexual molestation of a child victim. Chad is only the biological father of M.G. Additionally, the victim of the alleged sexual molestation was not one the minor children at issue in this case.

¶ 6 On December 14, 2016, the circuit court commenced the adjudicatory hearing. The court granted the State's motion *in limine* to bar testimony concerning the underlying facts related to Chad's indicated finding as the State decided not to proceed on the neglect allegation

that was based on the minor children being at a substantial risk of being sexually abused (second count). The State presented the testimony of respondent; N.S.; A.K.; Nancy Brittin, DCFS investigator; and Laura Weston, DCFS investigator. At the State's request, the court took judicial notice of Chad's criminal case related to the sexual molestation allegations (People v. Glover, No. 15-CF-1063 (Cir. Ct. Sangamon Co.)). Chad presented the testimony of Deanna Large, the administrator of DCFS's state central registry; and Katrina Adye, foster care family worker with the Center for Youth and Family Solutions. Chad also presented the DCFS safety plans for July and August 2015; some photographs of the minor children; and DCFS's December 21, 2015, letter, informing Chad DCFS had indicated him for sexual molestation and substantial risk of sexual abuse to the sibling of the sex abuse victim. Chad also impeached Brittin and Weston with their contact notes, which were not admitted into evidence. Respondent did not present any evidence.

¶ 7 Brittin testified that, on July 1, 2015, she was assigned to investigate allegations of child sexual abuse by Chad. Chad was living with respondent, the minor children, and Chris Wasson. That day, Brittin made a safety plan for the minor children that contained three provisions. It provided the following: (1) Chad could not be left alone with the minor children; (2) when Chad was in the home, the minor children needed "eyes on supervision"; and (3) Chad could not spend the night with the minor children. When Chad was in the home, the minor children needed "eyes on supervision." Brittin noted one could not supervise another person when he or she was sleeping. Chad and respondent both signed the safety plan and verbally agreed to comply with it. During the visit, Brittin met with each of the minor children. She did not observe any signs of abuse, and the children were not afraid of anyone in the home. When asked about inappropriate touching, N.S. mentioned a friend had touched his privates on the

playground, and Chad told the friend not to do it or he could not play with N.S. N.S. and A.K. did not state Chad had touched them inappropriately.

¶ 8 Despite the fact Brittin was to meet weekly with the family, Brittin did not visit the minor children's home again until July 14, 2015. On that day, the minor children interacted positively with both Chad and respondent. Brittin was satisfied everything was going well. The safety plan created on that visit stated Chad was not to have unsupervised contact with the minor children and another adult had to be present at all times when Chad was with the minor children. Brittin explained it was not a different plan from the first one. It just did not mention Chad could not spend the night since it was understood spending the night would be unsupervised.

¶ 9 Brittin's next visit was July 23, 2015. The minor children seemed happy, and Brittin again observed positive interactions between the minor children and Chad and respondent. The safety plan was worded the same as the one dated July 14, 2015. Chad and respondent again signed the safety plan.

¶ 10 Brittin had another visit on July 30, 2015. The safety plan created required another adult to be in the home at all times and Chad could only have supervised contact with the minor children. Respondent and Chad again signed the safety plan.

¶ 11 The next visit was August 6, 2015. Brittin observed positive interactions and did not see any signs Chad was sexually assaulting the minor children. The safety plan that week only stated Chad could not have unsupervised contact with the minor children. It was again signed by Chad and respondent. Brittin returned on August 10, 2015. She had no concerns of Chad sexually abusing the minor children. The new safety plan provided Chad was not to be left alone in the sole caregiver position and another adult would be in the home at all times. Additionally, Brittin testified her safety plans for this family were the same every time. She just

used different wording. Brittin believed respondent and Chad when they stated Chad was not living in the home after July 1, 2015, and were complying with the safety plans. She never did a walk through to see if Chad's personal effects and hygiene products were in the home.

¶ 12 Brittin's final visit to the family was on August 21, 2015. At that visit, she informed respondent and Chad that her investigation report for Chad would be an indicated finding of sexual molestation and risk of harm due to sex offender access to a child. Brittin also told them Chad could not reside in the home or be around the minor children. If the minor children were around Chad anymore, then they would be removed. Both Chad and respondent agreed with Chad moving out of the home. In her August 21, 2015, case note, Brittin did not write down that she told Chad and respondent there would be an indicated finding. Brittin testified a final determination of an indicated finding can only take place when she met at a staff meeting with her supervisor. A staff meeting took place around August 28, 2015. Her supervisor agreed with her recommendation of an indicated finding.

¶ 13 Brittin closed her investigation on August 28, 2015. She did not recall leaving a voicemail for respondent on that date, saying the minor children could have contact with Chad as long as it was supervised. The voicemail was played in court to refresh her memory, but Brittin still did not recall leaving the message. Brittin did not think the voicemail sounded like her voice but acknowledged it could have been her. Brittin recalled speaking with Weston on December 21, 2015. However, she did not recall telling Weston that she had told Krista respondent should not live in the home and should have only supervised contact with the minor children.

¶ 14 Weston testified she received information on December 18, 2015, that Chad had been charged with criminal sexual assault of a minor and was living in a home with three children. She spoke with Brittin, who told her Chad understood he was not to have any

unsupervised contact with the minor children or live in the home with the children. Weston later testified Brittin told Chad and respondent Chad “should” not live in the home and “should have supervised contact with the minor children.” Weston also went to N.S. and A.K.’s school to talk with them. A.K. told Weston Chad lived with her and explained he slept in her mother’s room. A.K. stated she felt safe at home. N.S. told Weston Chad lived in their home, and Chad had been left alone with all three children. Weston’s notes only mentioned N.S. reported he had been alone with Chad, not all three children. N.S. also stated he felt safe with Chad and was not scared. N.S. and A.K. both stated no one bothered them when they slept or went to the bathroom. Weston did not observe any signs of abuse.

¶ 15 Weston also talked to respondent. Respondent stated the safety plan ended when Chad’s case was closed. Weston explained the concern about Chad living in the home. Respondent stated Chad stayed with a friend but did sleep at the home on the nights when she and Chad would work the same shift the next day, so they could ride to work together. Respondent acknowledged Chad’s belongings were at her home and would not give Weston the name of the friend where Chad was staying. She also told Weston Chad was never left home alone with the minor children. Weston determined the minor children were unsafe, and her supervisor approved of her taking protective custody of the minor children.

¶ 16 Weston asked to speak with Chad at the December 22, 2015, shelter care hearing, and he did not want to talk to her without his attorney. However, he told her he was not indicated for the minor children he was living with.

¶ 17 Respondent testified she and Chad married in April 2015. In July 2015, Brittin, a DCFS investigator, visited her home. At that time, N.S. was eight years old, A.K. was six years old, and M.G. was three years old. All three minor children had a loving relationship with Chad.

Respondent agreed to the plans Brittin put in place for Chad seeing the minor children.

According to respondent, the safety plans on and after July 14, 2015, allowed Chad to live in the home. She and Chad did not violate the safety plans. Respondent and Chad often worked the same shift. When they were not working, they would take the minor children fishing or to a park.

¶ 18 In August 2015, Brittin told respondent Chad could not live in the home or see the minor children. Brittin asked her to choose between Chad and the minor children, and she chose the minor children. Brittin told Chad he needed to move out of the home, and he grabbed his things and left. Brittin explained to respondent that, if Chad was caught around the minor children, then the children would be removed from the home. A week after that conversation, respondent received a voicemail from Brittin, stating Chad could not live in the home or sleep there but could have supervised contact with the minor children. Respondent understood supervision meant eyes on the minor children at all times. If the children left the room, she had to leave the room. Chad always stayed in the living room with Wasson, so he was never left unattended.

¶ 19 Respondent further testified that, in August 2015, Chad and respondent worked at the same place. Respondent owned two cars, and Chad drove one of them. Chad drove her to work when they had the same shift. If Chad needed a car, she would take it to him at a location away from the home. When Chad moved out of the home, he resided with Don Hyde. Chad had all of his clothes, shoes, and hygiene products with him at Hyde's home but did have some keepsakes at respondent's home. Since August 2015, Chad had not stayed in her home so they could ride to work the next day. Respondent only recalled telling Weston Chad lived with a friend, had not lived in her home, and would give her a ride to work. To comply with the safety

provisions in Brittin's voicemail, respondent and Chad developed a plan to keep things as normal as possible for the minor children. Chad would not be at the home at all in the mornings. He would come over between 4 p.m. and 5 p.m. and stay only until around 9:30 p.m., which was after the minor children went to bed. Chad would come over three to four times a week. According to respondent, she did not know about Chad's indicated DCFS finding until Chad showed her DCFS's December 21, 2015, letter, notifying him of DCFS's indicated findings.

¶ 20 In December 2016, N.S. testified that, last Thanksgiving, he lived with respondent and Chad, and they all went to Uncle Jared's house. For last Halloween, he was a ninja and lived with Chad and respondent. After trick-or-treating, they went out and ate. When dinner was done, both respondent and Chad came back to the house and helped him get ready for bed. At that time, he had his own room, and respondent and Chad slept in the same room. When he woke up the next morning after trick-or-treating, both respondent and Chad helped him get ready for school. Chad took him to school and then went to work. N.S. also testified he was the first one to get up in the morning. He would have to wake both respondent and Chad up after N.S. ate breakfast. They both would wake up and help him get ready for school. N.S. referred to Chad as "dad" and wanted Chad to live with him. N.S. also testified Wasson helped him get ready for school and watched him get on the school bus.

¶ 21 Also, in December 2016, A.K. testified she lived with respondent and Chad last Christmas but did not remember last Thanksgiving. A.K. never lived with her biological dad. Last Halloween, she lived with respondent and Chad. Then, she shared a room with M.G., and respondent and Chad shared a room. At that time, respondent helped her get ready for school, and both respondent and Chad took her to school. Chad helped her get ready for bed by helping her take a bath. She also testified only respondent gave her baths. A.K. further testified she

usually went to bed before respondent and Chad, and they usually got up before her. When she woke up on the morning of last year's Halloween, Chad, respondent, and Wasson were already awake. When she was getting ready for bed, Chad helped her with her bath and respondent helped her go to bed.

¶ 22 Large testified the letters DCFS sends as written notification of the results of its investigations were generated automatically by a computer system. The system sent the letters once the investigator and supervisor had entered all of the required information into the system. DCFS's December 21, 2015, letter, notifying Chad of his indicated finding, was the only one sent to him.

¶ 23 Adye testified she supervised Chad's weekly visits with M.G. He always kept his appointments and interacted appropriately with her. M.G. did not appear to fear Chad.

¶ 24 On March 30, 2017, the circuit court announced its findings at a hearing and entered its written adjudicatory order, finding the minor children neglected as asserted in allegations one and three. In its oral ruling, the court noted it had taken judicial notice of the file in Chad's criminal case, and the file showed that, in October 2015, the State charged Chad with predatory criminal sexual assault (720 ILCS 5/11-1.40 (West 2014)) and aggravated criminal sexual abuse (720 ILCS 5/11-1.60 (West 2014)). It also noted it found Weston's testimony regarding respondent's December 18, 2015, statements more credible than respondent's testimony. The court also concluded this was different from the classic anticipatory neglect cases. On May 11, 2017, the court entered its dispositional order, finding respondent was unfit, unwilling, or unable to care for the minor children. The court also made the minor children wards of the court and appointed DCFS as her guardian.

¶ 25 On May 31, 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 her 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 N.S.'s case as case No. 4-17-0410, A.K.'s case as case No. 4-17-0411, and M.G.'s case as case No. 4-17-0412. In June 2017, this court granted respondent's motion to consolidate the three appeals. We note Chad filed a separate appeal in case No. 4-17-0413.

¶ 26

II. ANALYSIS

¶ 27 Cases involving neglect 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.

¶ 28 The Juvenile Court Act provides a two-step process the trial court must utilize to decide whether the minor children should become wards 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 2014); *A.P.*, 2012 IL 113875, ¶ 19, 981 N.E.2d 336. If the 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.

¶ 29 Here, respondent challenges only the first step, the circuit court's neglect finding. The State bears the burden of proving a neglect 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 neglect, and when a circuit court has found the minor children neglected on more than one ground, the judgment may be affirmed if any of the bases of neglect 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 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.

¶ 30 In this case, the circuit court found the minor children were neglected under section 2-3(1)(b) of the Juvenile Court Act (705 ILCS 405/2-3(1)(b) (West Supp. 2015)), 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.

¶ 31 In alleging the State failed to prove neglect by a preponderance of the evidence, respondent argues the circuit court's finding inappropriately focused solely on her actions. In support of her argument, she notes that, in *In re Arthur H.*, 212 Ill. 2d 441, 465-66, 819 N.E.2d 734, 748 (2004), our supreme court stated (1) section 1-3(1) of the Juvenile Court Act (705 ILCS 405/1-3(1) (West 2000)) "instructs the circuit court to focus solely upon whether the child has been neglected" and (2) section 2-21 of the Juvenile Court Act (705 ILCS 405/2-21 (West 2000)) contains "no direction from the legislature that the court shall consider the actions of the parents in making this determination." We agree with the State respondent has taken those quotes out of context. Our supreme court made the aforementioned statements in explaining why the appellate court erred by finding that, for a minor to be adjudicated neglected, both parents or all persons responsible for the welfare of the minor must engage in acts or omissions that constitute neglect. *Arthur H.*, 212 Ill. 2d at 465, 819 N.E.2d at 748. The *Arthur H.* court clarified "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." *Arthur H.*, 212 Ill. 2d at 467, 819 N.E.2d at 749. It did not hold a circuit court could never consider a parent's actions in determining whether a child is neglected. As stated, the term injurious environment includes a *parent's* breach of his or her duty to ensure a safe and nurturing shelter for his or her children. *A.P.*, 2012 IL 113875, ¶ 22, 981 N.E.2d 336.

Thus, we do not find the circuit court inappropriately focused on her actions.

¶ 32 We also disagree with respondent that timing was the pivotal factor at the adjudicatory hearing. The evidence showed that, at the first meeting with Brittin on July 1, 2015, Brittin made respondent aware Chad was under investigation for sexual abuse of a child. Brittin also testified she told respondent and Chad on August 21, 2015, that, as a result of her investigation, Chad's report would have an indicated finding. The State then brought criminal charges against Chad in October 2015. Thus, the fact Chad did not receive a formal letter with the indicated finding until late December 2015 is of little consequence where respondent and Chad clearly had knowledge DCFS and the State found the allegations against Chad credible.

¶ 33 Respondent further argues she abided by all of the safety plans. Based on Weston's testimony, respondent suggests Brittin's directions to her on August 21, 2015, were suggestions and not requirements. However, respondent herself testified she knew Chad was not to live in or spend the night at her house and was to have only supervised contact with the minor children. As to compliance with the aforementioned safety provisions, Weston testified respondent told her Chad spent the night at the home when they worked the same shift in the morning. Moreover, N.S. testified that, around Halloween and Thanksgiving 2015, Chad was living with them. During that time period, N.S. would go into respondent and Chad's bedroom and wake them up in the morning. Thus, his observations were not misguided by his age and early bedtime. A.K. also testified Chad live with them during that time.

¶ 34 In July 2015, respondent knew Chad was being investigated for sexually abusing a child. By the end of August 2015, she was aware Chad was going to have an indicated finding for sexual abuse. Brittin explained the need to both respondent and Chad for eyes on supervision of Chad's contact with the minor children at all times, and respondent's testimony

indicates she understood that. Despite the severity of the allegations against Chad and respondent understanding what she needed to do to protect her minor children, the evidence indicates she allowed Chad to spend the night in the home when the minor children were there. By doing so, she put her minor children at risk for sexual abuse and thus breached her parental duty to ensure a safe shelter for the minor children. Likewise, Chad breached his parental duty to M.G. by spending the night at the home with the minor children in violation of the safety provisions given to him by DCFS. Accordingly, the circuit court's finding the minor children were neglected was not against the manifest weight of the evidence.

¶ 35

III. CONCLUSION

¶ 36

For the reasons stated, we affirm the Sangamon County circuit court's judgment.

¶ 37

Affirmed.