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Carla Bender
4th District Appellate
Court, IL

2017 IL App (4th) 170413-U

NO. 4-17-0413

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: M.G., a Minor,	)	Appeal from
	)	Circuit Court of
(The People of the State of Illinois,	)	Sangamon County
Petitioner-Appellee,	)	No. 15JA238
v.	)	
Chad Glover,	)	Honorable
Respondent-Appellant).	)	Karen S. Tharp,
	)	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 a petition for the adjudication of wardship as to M.G. (born in 2012) the minor child of respondent, Chad Glover. After an adjudicatory hearing, the Sangamon County circuit court found M.G. was neglected. At the April 2017 dispositional hearing, the court made M.G. a ward of the court and placed her custody and guardianship with the Department of Children and Family Services (DCFS).

¶ 3 Respondent appeals, contending the circuit court erred by finding M.G. was neglected. We affirm.

¶ 4 I. BACKGROUND

¶ 5 M.G.'s mother is Krista Glover, who had two other minor children, N.S. (born in

2007) and A.K. (born in 2009), who were also the subjects of the proceedings in this case. The record indicates N.S. and A.K. regarded respondent as their father. We will refer to M.G., N.S., and A.K. collectively as the minor children. Krista is not a party to this appeal. However, she did file her own appeals, which were docketed as case Nos. 4-17-0410, 4-17-0411, and 4-17-0412.

¶ 6 The State's December 2015 wardship petition alleged M.G. was 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 her environment was injurious to her welfare because (1) Krista allowed the minor children to have unsupervised contact with respondent, her husband, 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 respondent's sexual abuse or assault of a child victim; (3) they are at a substantial risk of being sexually abused as evidence by Krista allowing respondent unsupervised access to the minor children after being notified by DCFS that respondent was indicated for sexual molestation of a child victim. The victim of the alleged sexual molestation was not one the minor children at issue in this case.

¶ 7 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 respondent'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 Krista; N.S.; A.K.; Nancy Brittin, DCFS investigator; and Laura Weston, DCFS investigator. At the State's request, the court took

judicial notice of respondent's criminal case related to the sexual molestation allegations (People v. Glover, No. 15-CF-1063 (Cir. Ct. Sangamon Co.)). Respondent 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. Respondent 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 respondent DCFS had indicated him for sexual molestation and substantial risk of sexual abuse to the sibling of the sex abuse victim. Respondent also impeached Brittin and Weston with their contact notes, which were not admitted into evidence.

¶ 8 Brittin testified that, on July 1, 2015, she was assigned to investigate allegations of child sexual abuse by respondent. Respondent was living with Krista, 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. Britton noted one could not supervise another person when he or she was sleeping. Respondent and Krista 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 the minor children were abused. When asked about inappropriate touching, N.S. mentioned a friend had touched his privates on the playground, and respondent told the friend not to do it or he could not play with N.S. N.S. and A.K. did not state respondent had touched them inappropriately.

¶ 9 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 respondent and Krista. Brittin was satisfied everything was going well. The safety plan created on that visit stated respondent was not to have unsupervised contact with the minor children and another adult had to be present at all times when respondent was with the minor children. Brittin explained it was not a different plan from the first one. It just did not mention respondent could not spend the night since it was understood spending the night would be unsupervised.

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

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

¶ 12 The next visit was August 6, 2015. Brittin observed positive interactions and did not see any signs respondent was sexually assaulting the minor children. The safety plan that week only stated respondent could not have unsupervised contact with the minor children. It was again signed by respondent and Krista. Brittin returned on August 10, 2015. She had no concerns of respondent sexually abusing the minor children. The new safety plan provided respondent 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 Krista when they stated respondent was not living in the home after July 1, 2015, and they were complying with the safety plans. She never did a walk through to see if respondent's personal effects and

hygiene products were in the home.

¶ 13 Brittin's final visit to the family was on August 21, 2015. At that visit, she informed respondent and Krista her investigation report for respondent would be an indicated finding of sexual molestation and risk of harm due to sex offender access to a child. Brittin also told them respondent could not reside in the home or be around the minor children. If the minor children were around respondent anymore, then they would be removed. Both respondent and Krista agreed with respondent moving out of the home. In her August 21, 2015, case note, Brittin did not write down that she told respondent and Krista 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.

¶ 14 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 respondent 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.

¶ 15 Weston testified she received information on December 18, 2015, that respondent 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 respondent 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 respondent and Krista respondent "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 respondent lived with her and explained he slept in her mother's room. A.K. stated she felt safe at home. N.S. told Weston respondent lived in their home, and respondent had been left alone with all three minor children. Weston's notes only mentioned N.S. reported he had been alone with respondent, not all three children. N.S. also stated he felt safe with respondent 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.

¶ 16 Weston also talked to Krista. Krista stated the safety plan ended when respondent's case was closed. Weston explained the concern about respondent living in the home. Krista stated respondent stayed with a friend but did sleep at the home on the nights when she and respondent would work the same shift the next day, so they could ride to work together. Krista acknowledged respondent's belongings were at her home and would not give Weston the name of the friend where respondent was staying. She also told Weston respondent 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.

¶ 17 Weston asked to speak with respondent 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.

¶ 18 Krista testified she and respondent 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

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

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

¶ 20 Krista further testified that, in August 2015, respondent and Krista worked at the same place. Krista owned two cars, and respondent drove one of them. Respondent drove her to work when they had the same shift. If respondent needed a car, she would take it to him at a location away from the home. When respondent moved out of the home, he resided with Don Hyde. Respondent had all of his clothes, shoes, and hygiene products with him at Hyde's home but did have some keepsakes at Krista's home. Since August 2015, respondent had not stayed in her home so they could ride to work the next day. Krista only recalled telling Weston respondent 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, Krista and respondent developed a plan to keep things as normal as possible for the minor children. Respondent 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. Respondent would come over three to four times a week. According to Krista, she did not know about respondent's indicated DCFS finding until respondent showed her DCFS's December 21, 2015, letter, notifying him of the indicated findings.

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

¶ 22 Also, in December 2016, A.K. testified she lived with Krista and respondent last Christmas but did not remember last Thanksgiving. A.K. never lived with her biological dad. Last Halloween, she lived with Krista and respondent. Then, she shared a room with M.G., and Krista and respondent shared a room. At that time, Krista helped her get ready for school, and both Krista and respondent took her to school. Respondent helped her get ready for bed by

helping her take a bath. She also testified only Krista gave her baths. A.K. further testified she usually went to bed before Krista and respondent, and they usually got up before her. When she woke up on the morning of last year's Halloween, respondent, Krista, and Wasson were already awake. When she was getting ready for bed, respondent helped her with her bath and Krista helped her go to bed.

¶ 23 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.

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

¶ 25 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 respondent's criminal case, and the file showed that, in October 2015, the State charged respondent 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 Krista's December 18, 2015, statements more credible than Krista'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 M.G. a ward

of the court and appointed DCFS as their guardian.

¶ 26 On May 24, 2017, respondent filed a timely notice 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 his appeal 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").

¶ 27 II. ANALYSIS

¶ 28 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 child's best interests. *A.P.*, 2012 IL 113875, ¶ 18, 981 N.E.2d 336.

¶ 29 The Juvenile Court Act provides a two-step process the trial court must utilize to decide whether a minor child 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 child is 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 child is 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 child and the public for the minor child to be made a ward of the

court. *A.P.*, 2012 IL 113875, ¶ 21, 981 N.E.2d 336.

¶ 30 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 child 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.

¶ 31 In this case, the circuit court found M.G. was 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.

¶ 32 Citing *In re J.B.*, 312 Ill. App. 3d 1140, 1143, 728 N.E.2d 59, 61 (1999), respondent first asserts the circuit court's judgment should be reversed because the court improperly based its finding of neglect on facts not alleged in the wardship petition. In *J.B.*, 312 Ill. App. 3d at 1143, 728 N.E.2d at 61, the reviewing court noted wardship petitions were civil in nature, and as such, the rules pertaining to civil pleadings applied. In civil proceedings, a party cannot succeed on a theory that is not contained in the party's complaint. *J.B.*, 312 Ill. App. 3d at 1143, 728 N.E.2d at 61. There, the State pleaded the children were neglected based only on an injurious environment (705 ILCS 405/2-3(1)(b) (West 1998)), but the circuit court found the children neglected because they were left without supervision (705 ILCS 405/2-3(1)(d) (West 1998)). *J.B.*, 312 Ill. App. 3d at 1142, 728 N.E.2d at 60. Thus, the reviewing court reversed the circuit court's judgment because the State failed to put in its petition that it was also proceeding under the lack of supervision provision of the Juvenile Court Act.

¶ 33 In this case, the State pleaded M.G. was neglected based on an injurious environment, proceeded on that theory at the adjudicatory hearing, and the circuit court found M.G. was neglected based on an injurious environment. Thus, *J.B.* is distinguishable from this case. Moreover, respondent cites no authority the State's pleading required formal, written notification of an indicated finding. In this case, the State presented evidence respondent and Krista received verbal notice respondent was being indicated. Accordingly, we disagree with respondent the petition was improper.

¶ 34 Respondent next argues this is an anticipatory neglect case like *In re Arthur H.*, 212 Ill. 2d 441, 468, 819 N.E.2d 734, 749 (2004), and the State had to prove a prior finding of abuse or neglect. However, we agree with the circuit court's assessment that this is not a typical anticipatory neglect case. Generally, an anticipatory neglect cases involve a child whose sibling has previously been adjudicated neglected or abused. See *Arthur H.*, 212 Ill. 2d at 468-69, 819 N.E.2d at 749-50. However, this case involves the parents violating safety provisions warranted because one of them was accused of sexual abuse of a child and DCFS found the allegations credible. It is the violation of the safety provisions that is the basis for neglect and not the alleged abuse itself. As such, we find *Arthur H.* distinguishable from the facts of this case.

¶ 35 Respondent further asserts the circuit court's factual finding he was sleeping at the family home was against the manifest weight of the evidence. We disagree. Weston testified respondent told her respondent spent the night at the home when they worked the same shift in the morning. The circuit court found her testimony more credible than Krista's. This court will not substitute our judgment for that of the circuit court regarding witness credibility. *People v. Deleon*, 227 Ill. 2d 322, 332, 882 N.E.2d 999, 1005 (2008). Moreover, N.S. testified that, around Halloween and Thanksgiving 2015, respondent was living with them. He also testified he would go into respondent and Krista's bedroom and wake them up in the morning. The attorney's questions would frequently refer back to Halloween 2015. Thus, we find the circuit court did not err by finding N.S.'s testimony was about the time period at issue. Accordingly, we find the circuit court's finding respondent was sleeping at the family home was not against the manifest weight of the evidence.

¶ 36 Here, in July 2015, respondent and Krista knew respondent was being investigated for sexually abusing a child. By the end of August 2015, they both knew respondent

was going to have an indicated finding for sexual abuse. Britton explained the need to both of them for eyes on supervision of respondent's contact with M.G. and the other children at all times, and Krista's testimony indicates she understood that. Brittin's testimony indicates respondent also understood. Despite the severity of the allegations against respondent and Krista understanding what she needed to do to protect M.G., the evidence indicates she allowed respondent to spend the night in the home when M.G. and the other children were there. By doing so, Krista put M.G. at risk for sexual abuse and thus breached her parental duty to ensure a safe shelter for M.G. Likewise, respondent breached his parental duty to M.G. by spending the night at the home with her and the other children in violation of the safety provisions given to him by DCFS. Accordingly, the circuit court's finding M.G. was neglected was not against the manifest weight of the evidence.

¶ 37 III. CONCLUSION

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

¶ 39 Affirmed.