2018 IL App (4th) 180518-U

NO. 4-18-0518

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
November 5, 2018
Carla Bender
4th District Appellate
Court, IL

In re K.S., J.C., and J.M., Minors	) Appeal from the) Circuit Court of
(The People of the State of Illinois, Petitioner-Appellee, v. Susan S., Respondent-Appellant).	) Champaign County) No. 18JA27)) Honorable) John R. Kennedy,) Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Justices DeArmond and Cavanagh concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court's neglect finding was not against the manifest weight of the evidence.

¶ 2 In March 2018, the State filed a petition for an adjudication of wardship as to K.S. (born in 2004), J.C. (born in 2007), and J.M. (born in 2015), the minor children of respondent, Susan S., asserting the children were neglected. While the minor children's fathers are not parties to this appeal, we note who they are. K.S.'s father, David K., surrendered his parental rights to her during the pendency of this case. J.C.'s father is Joseph C., and J.M.'s father is Jonathan M. After a June 2018 adjudicatory hearing, the Champaign County circuit court found the minor children were neglected as alleged in the petition. At a July 2018 dispositional hearing, the court (1) made the minor children wards of the court; (2) removed guardianship of the children from the minor children's parents and placed the minor children's guardianship with

the Department of Children and Family Services (DCFS); (3) found Jonathan M. unfit to care for J.M. and removed custody of J.M. from him; (4) allowed custody of the minor children to continue with respondent; and (5) allowed custody of J.C. to continue with Joseph C.

¶ 3 Respondent appeals, contending the circuit court erred by (1) finding the minor children were neglected and, (2) if the minor children were not neglected, entering a dispositional order instead of dismissing the petition. We affirm.

¶ 4 I. BACKGROUND

¶ 5 The State's March 2018 petition 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 2016)), in that their environment was injurious to their welfare (1) when they reside with respondent due to exposure to substance abuse and (2) when they reside with respondent and Jonathan M. due to exposure to domestic violence. In May 2018, Joseph C. waived his right to an adjudicatory hearing. In June 2018, David K. surrendered his parental rights to K.S.

¶ 6 On June 7, 2018, the circuit court held the adjudicatory hearing. The State presented the testimony of (1) Shawn Hallett, Champaign County sheriff's deputy; (2) Jessica Lowry, employee at a bar called the "Office II"; (3) Caleb Billingsley, city of Champaign police officer; (4) Jonathan Reifsteck, Champaign County sheriff's deputy; and (5) Megan McNeal, a DCFS child protection specialist. Respondent testified on her own behalf and presented the testimony of her father, Samuel S.

¶ 7 Deputy Hallett testified that, on November 6, 2016, he responded to a report by Jonathan M. Jonathan M. told him that, on the night before, Jonathan M. and respondent had an altercation and he left the residence. When he returned in the morning to get his pickup truck, he

entered the residence to get his keys. While inside he and respondent got into a verbal altercation that turned physical. Respondent struck him in the back of the head with a cellular telephone. As a result of the strike, Jonathan M. sought medical treatment and needed three staples in his head. The police made several attempts to locate respondent but were unable to do so. On November 13, 2016, Deputy Hallett received a call from Jonathan M., in which Jonathan M. stated he was back together with respondent and no longer wished to pursue charges in the matter. Jonathan M. was with respondent when he made the call. Deputy Hallett never learned where the children were when the incident took place. He also was never able to talk with respondent.

¶ 8 Lowry testified that, on the evening of March 12, 2018, she went to the Office II around 10 p.m. to make her schedule, and respondent was there. Lowry observed respondent was heavily intoxicated and was gambling. The bartender had cut respondent off from drinking, but respondent stayed another hour and a half to gamble. Lowry knew respondent was heavily intoxicated because she fell off her chair a few times. Lowry had also seen respondent doing shots and drinking alcohol. Lowry called "Doug," respondent's "boyfriend or friend" to come get her. Respondent also called Doug. When Doug arrived, he and respondent got into an argument. Doug threw his hands up and declared he was not dealing with it. Lowry saw Doug go out to his truck and respondent follow him. Lowry also went outside and saw respondent and Doug have another argument there. Lowry then went back inside. When Lowry went outside again to smoke a cigarette, she saw respondent turn on respondent's car's headlights. Respondent immediately hit Lowry's car, causing damage to both cars. Lowry talked to respondent after she hit Lowry's car, trying to get respondent to exit her car. Respondent had her car window down, and Lowry could smell alcohol. Respondent refused to exit the car.

Respondent just backed up her car and drove off. The accident happened around 1:30 a.m.

¶ 9 Officer Billingsley testified he responded to a call of a hit-and-run accident at the Office II on March 13, 2018. He spoke with Lowry at the scene. About 30 minutes after speaking with Lowry, he went to a gas station where Champaign County deputies had detained respondent. When he spoke with respondent, Officer Billingsley observed respondent's speech was slurred and the things she was saying did not make sense. He also observed respondent had an odor of alcohol and had a hard time standing up, keeping her balance, and walking. Officer Billingsley conducted field sobriety tests on respondent. During the horizontal gaze nystagmus, walk and turn, and the one-leg stand tests, respondent showed several indicators of impairment. Additionally, when asked to count from 69 to 44 backwards, respondent said 66 instead of 56 and counted all the way down to 0. Respondent was able to correctly do the alphabet test. Officer Billingsley also observed damage to respondent's vehicle that was consistent with what Lowry reported. He also watched a surveillance video from the gas station that showed respondent driving up to the gas station, getting out of the driver's seat of the car, and walking into the gas station.

¶ 10 Officer Billingsley took respondent into custody for driving under the influence. After her arrest, respondent complained of not being able to breathe and said she was having an asthma attack. Officer Billingsley took respondent to the hospital and stayed with her while she was there. At the hospital, respondent would not answer questions. According to Officer Billingsley, respondent was rude and uncooperative with everyone who spoke with her. Several times, respondent fell to the floor, claiming to pass out and not being able to breathe. The nurses checked her out each time and said she seemed fine. The nurses did not detect any medical problems.

¶ 11 Deputy Reifsteck testified that, on August 20, 2016, he responded to a domestic call and spoke with Jonathan M. at a gas station in Rantoul about a domestic incident that took place at his residence in rural Dewey. Jonathan M. told Deputy Reifsteck he had gotten into an argument with respondent and the argument had turned physical. Respondent had attacked Jonathan M. in the bedroom on two separate occasions that night and had scratched his face. Deputy Reifsteck observed the scratch. Jonathan M. said respondent had come after him in an aggressive manner, and during the attack, he had to push her down to the floor. J.M., the child of Jonathan M. and respondent, was not present during the incident.

¶ 12 Deputy Reifsteck also spoke with respondent at the Dewey home. He found respondent asleep in her bedroom. He could smell the odor of alcohol on her breath. Deputy Reifsteck also observed a broken beer bottle on the floor. Respondent denied a verbal argument or physical altercation took place between her and Jonathan M. Deputy Reifsteck did not see any children in the residence or an injury to respondent.

¶ 13 McNeal testified she began investigating K.S., J.C., and J.M.'s case on January 23, 2018. She was also familiar with previous investigations of the family. During her investigation, McNeal spoke with both K.S., who was 13 years old, and K.S.'s brother (we assume it was J.C. since J.M. is very young) on January 24, 2018. K.S. reported that, two nights ago, she and her brother were to do the dishes but fell asleep before they did them. When respondent and Doug returned home, respondent was intoxicated and began yelling at them to do their chores. Respondent then went and got a paddle and hit the countertop so hard that it broke the countertop. K.S. had to move her hand so that it would not be hit by the paddle. The State presented a photograph of the broken countertop that was admitted into evidence. Respondent and Doug argued, and Doug demanded his keys. K.S. was scared and stayed up all night, along

with her brother. K.S. also reported an incident in November 2017, during which she observed respondent slap Doug and Doug punch respondent in the face causing respondent to have a black eye and not be able to open her jaw. After the November incident, K.S. lived with her grandfather for a few months. Moreover, K.S. reported respondent drinks very heavily and often comes home in the middle of the night intoxicated. According to K.S., respondent also yells a lot. K.S. was scared of respondent and had a rough relationship with her. Additionally, McNeal testified Jonathan M. does not live in the house.

¶ 14 McNeal further testified she met with respondent once and spoke with her on the telephone a couple of times. McNeal never noticed any signs of intoxication when speaking with respondent. Respondent reported to McNeal she had continued to work with a domestic violence advocate after her relationship with Jonathan M. ended. Respondent stated Jonathan M. had not lived in the house for over a year.

¶ 15 Samuel S. testified he is close to his daughter and grandchildren. He saw them regularly. Samuel S. testified respondent drank alcohol, but he had never seen her drink to excess. He was aware of a December 2016 domestic violence incident involving respondent and Jonathan M. Samuel S. was unaware respondent was engaged in counseling for domestic violence. According to Samuel S., respondent stopped dating Jonathan M. in December 2016. Samuel S. did not know of any more recent domestic-violence incidents. After the December 2016 incident, respondent and the children lived with Samuel S. for five to six months. Respondent had not allowed the children to be around Jonathan M. since the December 2016 incident. Samuel S. also testified respondent was involved in a domestic violence incident with Joseph C.

¶ 16 Samuel S. testified K.S. lived with him for six weeks in November 2017 after

K.S. asked to be picked up one night. According to Samuel S., K.S. wanted to be picked up because she was upset with Doug. Doug was telling K.S. to do "this and that," and K.S. got upset and walked out the door. Samuel S. talked with K.S. about the situation. He was unaware of respondent having a black eye in November 2017. K.S. did not tell him she saw Doug punch respondent in the face. Also, J.C. would sometimes spend weekends with Samuel S. K.S. returned to respondent's home, when respondent requested K.S. to do so.

¶ 17 Respondent testified her relationship with Jonathan M. ended in December 2016 when he threw her over a staircase. Her father and sister found her on the floor. After the incident she packed a bag for herself and a bag for the children and never went back. She did not get her belongings. About four days after she left, she began seeing a domestic-violence counselor from Courage Connection. She sees the counselor about once a week.

¶ 18 As to the countertop damage, respondent referred to it as a broken sink and stated she caused the damage when she dropped a pan of spaghetti noodles on the corner of the sink. Her hand had slipped on the side of the strainer, and she burned her hand, causing her to drop the whole pan. She denied having been drinking.

¶ 19 Respondent did not contact the police after the December 2016 incident. She has never had an order of protection against Jonathan M. According to respondent, she was arrested for domestic battery against Jonathan M. twice. Once she was never charged, and once she was found not guilty. Respondent was not then dating "Douglas Anderson."

¶ 20 At the conclusion of the hearing, the circuit court found the State had proven both allegations in the wardship petition by a preponderance of the evidence.

¶ 21 On July 6, 2018, the circuit court held the dispositional hearing. The only evidence at the hearing was the dispositional report. The State and guardian *ad litem* both

requested all of the parents be found unfit and the minor children removed from the parents' custody and guardianship. At the conclusion of the hearing, the court found respondent and Joseph C. fit and left custody of their respective minor children with them. It found Jonathan M. unfit and removed custody of J.M. from him. The court then made the minor children wards of the court, removed guardianship from the parents, and placed the minor children's guardianship with DCFS. On July 10, 2018, the court entered a written dispositional order reflecting the above findings.

¶ 22 On July 24, 2018, respondent filed a timely notice of appeal in sufficient compliance with Illinois Supreme Court Rule 303 (eff. July 1, 2017). 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 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").

¶ 23 II. ANALYSIS

¶ 24 The Juvenile Court Act provides a two-step process the circuit court must utilize to decide whether the minor children should become wards of the court. *In re 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. 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.

¶ 25 Here, respondent essentially challenges only the first step. 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. The State only has to prove a single ground of abuse, neglect, or dependency to move the wardship proceedings to the second step. See *In re Faith B.*, 216 Ill. 2d 1, 14, 832 N.E.2d 152, 159 (2005) (noting the State need only prove one ground for neglect and thus this court may affirm if any of the circuit court's bases for a neglect finding are upheld). 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. "A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident." *A.P.*, 2012 IL 113875, ¶ 17.

¶ 26 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 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. [Citation.] 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. [Citation.] 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. [Citation.]" (Internal quotation marks omitted.) *A.P.*, 2012 IL 113875, ¶ 22.

¶ 27 Respondent asserts the State did not show the minor children's environment was injurious to their welfare under both counts. Specifically, she asserts the statements made by K.S. are uncorroborated hearsay and thus cannot support a finding of neglect under section 2-18(4)(c) of the Juvenile Court Act (705 ILCS 405/2-18(4)(c) (West 2016)). The State disagrees and asserts respondent has forfeited this issue.

¶ 28 In *In re April C.*, 326 Ill. App. 3d 225, 242, 760 N.E.2d 85, 98 (2001), the reviewing court recognized that, when a respondent fails to make an appropriate objection in the circuit court, he or she has failed to preserve the question for review and the issue is forfeited. Moreover, a party cannot complain of error that it induced the court to make or to which it consented. *In re Ch. W.*, 408 Ill. App. 3d 541, 547, 948 N.E.2d 641, 648 (2011). Here, respondent did not object to the State's and the guardian *ad litem*'s references to K.S.'s statements to McNeal in their respective closing arguments. Moreover, respondent's counsel also addressed K.S.'s statements in closing argument by contending they were exaggerated. Respondent's counsel did not assert K.S.'s statements were uncorroborated for purposes of section 2-18(4)(c). Thus, we agree respondent cannot complain of the error on appeal.

¶ 29 Regardless, we find the State did present sufficient corroborating evidence. Section 2-18(4)(c) of the Juvenile Court Act (705 ILCS 405/2-18(4)(c) (West 2016)) provides

the following: "Previous statements made by the minor relating to any allegations of abuse or neglect shall be admissible in evidence. However, no such statement, if uncorroborated and not subject to cross-examination, shall be sufficient in itself to support a finding of abuse or neglect." "[W]hether there is sufficient corroboration under section 2-18(4)(c) is a determination that must be made on a case-by-case basis." *In re A.P.*, 179 Ill. 2d 184, 198, 688 N.E.2d 642, 650 (1997). In the context of section 2-18(4)(c), our supreme court has explained corroborating evidence as follows:

> "[C]orroborating evidence of the abuse or neglect requires there to be independent evidence which would support a logical and reasonable inference that the act of abuse or neglect described in the hearsay statement occurred. In essence, corroborating evidence is evidence that makes it more probable that a minor was abused or neglected. The form of corroboration will vary depending on the facts of each case and can include physical or circumstantial evidence." *A.P.*, 179 Ill. 2d at 199, 688 N.E.2d at 650.

¶ 30 Regarding the allegation of injurious environment based on exposure to substance abuse, McNeal testified K.S. stated respondent drinks very heavily and often comes home in the middle of the night intoxicated. K.S. relayed a specific instance in January 2018 when respondent returned home intoxicated and started yelling at K.S. and her brother for not doing the dishes. According to K.S., respondent grabbed a wooden paddle and struck the countertop, breaking it and nearly striking K.S.'s hand. The State presented a picture of the broken countertop. It also presented testimony from Lowry and Officer Billingsley about a March 2018 incident in which respondent got very intoxicated and drove her car into another car at around 1:30 a.m. Officer Billingsley also testified respondent was very rude and uncooperative at the

hospital after her arrest, and Lowry testified about an argument respondent had with Doug before she hit Lowry's car. Additionally, Deputy Reifsteck testified about another incident in August 2016 when he found respondent asleep and she had an odor of alcohol on her breath. Jonathan M. had accused respondent of attacking him during that incident. We find the aforementioned independent evidence makes more probable K.S.'s statements about respondent's drinking habits and behavior while intoxicated. We disagree with respondent the fact children were not present during her other drinking incidents renders K.S.'s statements uncorroborated.

¶ 31 As to the sufficiency of the State's evidence regarding the neglect allegation itself, K.S. told McNeal about the countertop incident and respondent's heavy drinking. Respondent almost hit K.S.'s hand with the wooden paddle during the countertop incident. K.S. told McNeal she was scared of respondent. Respondent's heavy drinking and general behavior while intoxicated was corroborated by Lowry, Officer Billingsley, and Deputy Reifsteck. Respondent has a history of heavy drinking and exhibiting aggressive behavior while drunk. Based on the aforementioned evidence, we find the State's evidence was sufficient to prove respondent breached her duty to provide a safe and nurturing environment for the minor children by exposing them to her heavy alcohol consumption and aggressive behavior while intoxicated. Accordingly, the circuit court did not err by finding the minor children neglected.

¶ 32 Since the State only has to prove a single ground of neglect to move the wardship proceedings to the second step (see *Faith B.*, 216 Ill. 2d at 14, 832 N.E.2d at 159), we do not address the neglect finding based on exposure to domestic violence. Moreover, respondent asserts the dispositional order should be vacated and the petition dismissed if this court agrees with her the circuit court erred by finding the minor children neglected. We did not find the circuit court erred by finding the minor children neglected, and thus we do not disturb the circuit

court's dispositional order.

¶ 33 III. CONCLUSION

¶ 34 For the reasons stated, we affirm the Champaign County circuit court's judgment.

¶ 35 Affirmed.