

No. 1-18-1529

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

<i>In re</i> D.M., a Minor,	)	
	)	
(THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Petitioner-Appellee,	)	Cook County
	)	
v.	)	No. 17 JA 1297
	)	
BEARRA L.,	)	The Honorable
	)	Andrea Buford,
	)	Judge Presiding.
Respondent-Appellant).	)	

JUSTICE PIERCE delivered the judgment of the court.  
Presiding Justice Griffin and Justice Walker concurred in the judgment.

**ORDER**

¶ 1 *Held:* The judgment of the circuit court is affirmed. The circuit court’s finding that respondent abused and neglected her minor son was not against the manifest weight of the evidence, and the circuit court did not err by admitting testimony regarding respondent’s failure to complete intact services.

¶ 2 Respondent, Bearra L., appeals from an order of the juvenile court finding that she abused and neglected D.M., her minor son. Bearra only challenges the circuit court’s adjudication order and raises no argument on appeal regarding the circuit court’s dispositional order. For the following reasons, we affirm.

¶ 3

## I. BACKGROUND

¶ 4 Bearra is the mother of D.M., a minor born September 29, 2017. On December 11, 2017, the State filed a petition for adjudication of wardship for D.M. alleging that D.M. was abused or neglected. The petition alleged that Bearra had “one prior indicated report for substantial risk of injury/environment injurious to health and welfare by neglect,” as D.M. was born testing positive for tetrahydrocannabinol (THC), a controlled substance. The State alleged that Bearra needed substance abuse services and a mental health assessment, and that she had been discharged from a substance abuse treatment facility on December 7, 2017, after slapping a program client in the presence of D.M. and being verbally aggressive. The petition alleged that Bearra was noncompliant with her substance abuse treatment and parenting classes.

¶ 5 The matter proceeded to an adjudicatory hearing. The circuit court heard testimony from several witness and admitted several exhibits into evidence. According to D.M.’s and Bearra’s medical records, Bearra presented at Northwest Community Hospital in April 2017 and learned that she was roughly five weeks pregnant. She tested positive for cannabinoids but was negative for cocaine and other drugs. D.M. was born prematurely in September 2017 and his meconium tested positive for THC. Around the time of D.M.’s birth, Bearra’s toxicology screen was negative, although she had admitted to drinking wine and smoking marijuana before she learned that she was pregnant.

¶ 6 D.M.’s hospital records reflect that Bearra had an “extensive history of social issues during childhood and adolescence which have involved foster homes, substance abuse, sexual abuse and domestic violence,” and that she had been in the WINGS program for domestic abuse since the end of August 2017. D.M.’s records reflected that on October 3, 2017, when Bearra was discharged

from the hospital, she became combative, refused to see her physicians, and refused to talk to anyone about receiving help.

¶ 7 Bearra's hospital records reflected that she had previously been diagnosed with depression and a mood disorder and had previously been hospitalized for depression and anger. She had been prescribed Abilify but was noncompliant in taking the medication. Her records reflected a possible history of drug and alcohol abuse. Bearra's October 3, 2017, psychiatric evaluation reflected that she was 22 years old and living in a women's shelter. She was diagnosed with depression when she was 16 years old and had been noncompliant with her Abilify "for years." She was "pleasant, cooperative, somewhat defensive" with no suicidal or homicidal ideations or psychosis. The psychiatric assessment concluded that Bearra suffered from a "mood disorder, not otherwise specified," and was it recommended that she follow up with a psychiatrist as an outpatient.

¶ 8 In November 2017, Bearra lived at the Women's Treatment Center (WTC) shelter. According to the WTC intake assessment dated November 16, 2017, Bearra reported drinking two beers on November 15, 2017, and smoking half a blunt of marijuana on October 3, 2017. Bearra denied having any alcoholic blackouts, using heroin or cocaine, or having any significant depression in the past six months. At the WTC, she participated in psychological and nursing assessments. Between November 16 and December 7, Bearra attended 16 hours of individual therapy, and 10 hours of case management. During her time at the WTC, Bearra attended parenting classes and received praise from staff for appropriately feeding D.M. and handling him overnight by herself. Bearra was engaged during doctor's visits and had bonded with D.M.

¶ 9 The WTC records reflect that Bearra engaged with caseworkers, therapists, and doctors. The WTC records also reflect instances where Bearra was argumentative or when she complained. A December 1 progress note states that "[Bearra] will transition to another level of care as it has

been deemed by all parties concerned that patient is not suitable for this level of care[.]” The note also reflects that Bearra “appears to be in the pre-contemplation stage of change evidenced by patient verbalizing that she does not have a problem with drugs of marijuana. [Bearra] also lacks insight as to how her drug and alcohol use impacts her behavior[,] which have caused negative consequences.” A subsequent note from December 4 states that Bearra understood that “she need[s] a new placement for her and baby with less supervision[.]” The progress notes reflect that Bearra was to transition to Maryville Recovery Home with a target move date of December 6, 2017.

¶ 10 On December 7, Bearra was discharged from the WTC as noncompliant for refusal to abide by program rules. According to the discharge note, she refused to go a doctor’s appointment and was “emotionally unstable evidenced by constant aggressive outbursts with staff and her peers.” She used abusive language and blamed others rather than accepting responsibility for her behaviors and problems. She refused to attend groups because she believed that they were for “crack-heads.” She was at risk for relapse and did not have a sober supportive network. The discharge note stated that Bearra had alcohol dependence and cocaine dependence.<sup>1</sup> The discharge note also reflects that Bearra “stated she had not smoked any marijuana since 3/2017.”

¶ 11 Jeanette Roldan, a child welfare specialist with Lutheran Social Services of Illinois, testified that she was assigned as the intact worker for the family. When she was assigned, Bearra had already been admitted to the WTC and was receiving substance abuse treatment and parenting classes. At a November 28, 2017, meeting with Bearra and Florence Wright, the director of the WTC, Bearra stated that she did not like the “crack-house” atmosphere at WTC. Bearra claimed

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<sup>1</sup>We note that there is no other references in the record suggesting that Bearra had ever used or had any ongoing substance abuse issue with cocaine. There was no explanation during the adjudicatory hearing as to why the discharge note reflects cocaine dependence.

that she only used marijuana while other group members were addicted to heroin and cocaine. Bearra told Rodan that she did not like leaving D.M. with people that she did not know at the WTC, and that she was not getting along with other group members. Rodan testified that on December 6, Bearra said that she did not like the WTC and that its employees were disrespectful. Bearra said she would be disrespectful to people who were disrespectful to her. Bearra was upset about having to leave D.M. at the WTC when she had doctor's appointments at the hospital. On December 7, Rodan spoke to Bearra about an incident at the WTC. Rodan stated that there had been an incident where Bearra "started banging on the table when she was upset at the staff and called them bitches."

¶ 12 Florence Wright testified that she was the director of the WTC and she oversaw the day-to-day programming for postpartum women. She regularly interacted with the patients through casual interactions. She testified that, upon admission, Bearra was diagnosed with marijuana and alcohol dependence, and was assessed for and referred to residential services, which included specific services. Bearra was required to attend daily group sessions related to substance abuse education, trauma, relapse prevention, and health education. Wright testified, over Bearra's foundational objection, that Bearra did not complete all of the services that she was offered. When Bearra "was not in agreement, she would not go to groups or she would become very angry." On December 6, Bearra had a verbal altercation with another patient who was holding a baby. Wright testified that Bearra was discharged because her behavior was combative, and she had been noncompliant with her required treatment. Wright testified that she was the person who decided to terminate Bearra, a decision she made after the December 6 verbal altercation. Bearra never tested positive for any drugs or alcohol while at WTC. Wright did not recall the number of sessions that

Bearra failed to attend or how many she was excused from for medical reasons. She stated that Bearra's interactions with D.M. were appropriate.

¶ 13 LaTonya Green, a child protection specialist at DCFS, testified that she was assigned to D.M.'s case on December 7, 2017. Green testified that she spoke with Bearra on December 7. Bearra said that she did not think she had a drug problem and felt like she was living among "dope fiends" and "crack-heads" at the WTC. Bearra feared being taken advantage of by the other people at the WTC. Bearra also said she had gotten into a verbal confrontation with another client after that person picked up a telephone book and approached Bearra, who was holding D.M. at the time, although Green did not testify as to when this incident occurred.

¶ 14 At the conclusion of the hearing on March 29, 2018, and after hearing argument from counsel and the guardian *ad litem*, the circuit court found that the State had proved "neglect injurious environment and substantial risk of injury" by a preponderance of the evidence. The circuit court found that D.M. was born substance exposed and Bearra "had issues with others" at the WTC. While Bearra felt she did not need all of the services, "she did fail to complete those necessary services, and she was in a close physical altercation while holding her daughter [*sic*] in her arms." The circuit court found that the WTC records indicated Bearra "was dismissed for failing to complete services and she has a poor prognosis, that she's emotionally unstable and she is at risk of relapse." The circuit court's written order reflects that D.M. was abused or neglected under section 2-3 of the Juvenile Court Act (Act) (705 ILCS 405/2-3 (West 2018)) due to an injurious environment (*id.* § 2-3(1)(b)) and substantial risk/physical injury (*id.* § 2-3(2)(ii)).

¶ 15 The matter proceeded to a dispositional hearing. On June 14, 2018, the circuit court found Bearra unable but not unwilling to care for D.M., who was adjudged a ward of the court and placed into guardianship. Bearra filed a timely notice of appeal.

¶ 16

## II. ANALYSIS

¶ 17 On appeal, Bearra argues that the circuit court’s findings of abuse and neglect based on an injurious environment and a substantial risk of physical injury were against the manifest weight of the evidence.

¶ 18 “[C]ases involving allegations of neglect and adjudication of wardship are *sui generis*, and must be decided on the basis of their unique circumstances.” *In re Arthur H.*, 212 Ill. 2d 441, 463 (2004). The State bears the burden of proving allegations of neglect by a preponderance of the evidence, meaning that the allegations of neglect are more probably true than not. *In re A.P.*, 2012 IL 113875, ¶ 17. “A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident.” *Id.*

¶ 19 Section 2-3(1)(b) of the Act provides that neglected persons include “any minor under 18 years of age \*\*\* whose environment is injurious to his or her welfare.” 705 ILCS 405/2-3(1)(b) (West 2018)). In *In re A.P.*, our supreme court stated

“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.) *In re A.P.*, 2012 IL 113875, ¶ 22.

¶ 20 Section 2-18(2)(h) of the Act provides that

“proof that a newborn infant’s blood, urine, or meconium contains any amount of a controlled substance \*\*\* or a metabolite of a controlled substance, with the exception of controlled substances or metabolites of those substances, the presence of which is the result of medical treatment administered to the mother or the newborn, is prima facie evidence of neglect.” 705 ILCS 405/2-18(2)(h) (West 2018).

¶ 21 We find that the circuit court’s findings of neglect and an injurious environment are not against the manifest weight of the evidence. Bearra had a history of, and was diagnosed with, marijuana and alcohol dependence. D.M. was born with THC in his meconium and there was no evidence that Bearra was prescribed or being treated with marijuana for any purpose before or during her pregnancy. Bearra was required to participate in substance abuse programs because D.M. was born drug exposed, and the testimony at the adjudication hearing was that she failed to participate in all of the required services while at the WTC.

¶ 22 Bearra contends that the State never alleged abuse or neglect under section 2-3(1)(c) of the Act, which specifically provides that a minor is neglected if they are born with a controlled substance in their blood, urine, or meconium, unless the mother or newborn is being treated with the controlled substance (705 ILCS 405/2-3(a)(c) (West 2018)), and the State never proved the lack of an exception for marijuana. She argues that the State was therefore required to prove a nexus between her marijuana use and D.M.’s environment in order to prove neglect.



¶ 23 Bearra fails to cite any authority to support her position that the State was required to establish a nexus between her marijuana use and D.M.’s environment in order to establish neglect by an injurious environment. D.M. was presumptively neglected when he was born drug exposed. See 705 ILCS 405/2-18(2)(h) (West 2018). Regardless of whether the State sought a finding of neglect based solely on D.M.’s drug exposure at birth under section 2-3(1)(c) of the Act, the circuit court was free to consider the drug exposure at birth as part its finding of neglect by an injurious environment. Furthermore, there was evidence that Bearra did not complete all of the services she was required to complete at the WTC, which included drug abuse and relapse services. Faced with a drug exposed infant and a mother failing to complete services required as a result of the birth of a drug exposed infant, the circuit court’s finding of neglect by an injurious environment was not against the manifest weight of the evidence.

¶ 24 Bearra contends that the circuit court’s finding that her “untreated mental health issues” and “emotional instability” contributed to an injurious environment or a substantial risk of physical injury was against the manifest weight of the evidence. She contends that her psychiatric evaluation upon discharge following D.M.’s birth reflected a mood disorder that did not require any inpatient treatment. She contends that there was no evidence that her infrequent bouts with depression created any risk of harm where the parenting educator and doctors all praised her care of D.M.

¶ 25 Bearra and the State agree that a parent merely having a mental illness is insufficient to support a finding of neglect, as there must be some showing that a mental illness “places the children in an injurious environment.” *In re Faith B.*, 216 Ill. 2d 1 (2005). But here, the circuit court did not find that Bearra had a mental illness that placed D.M. in an injurious environment. Instead, the circuit court found that Bearra had “potentially untreated mental health issues,” and

observed that the WTC records reflected that Bearra was “emotionally unstable and she is at risk of relapse.” The circuit court did not find that Bearra’s potentially untreated mental health issues were *the* cause of an injurious environment, but rather a contributing factor along with her risk of relapsing into drug abuse, her repeated verbal outbursts, and her failure to complete required services. Bearra’s mental health was a relevant factor at the adjudicatory hearing, and the circuit court’s concerns about her mental health were supported by the record.

¶ 26 Bearra further contends that the circuit court erred by admitting Wright’s testimony regarding Bearra’s failure to complete services because there was an inadequate foundation for Wright’s testimony. Bearra argues that Wright did not possess personal knowledge of Bearra’s compliance with required services, Wright only had a “casual” relationship with Bearra, and Wright could not specify which required services Bearra failed to attend or whether Bearra was excused from any services for valid reasons. We disagree.

¶ 27 Illinois Rule of Evidence 602 (eff. Jan. 1, 2011) provides, in relevant part, “A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the witness’ own testimony.”

¶ 28 Wright’s testimony regarding Bearra’s compliance was admissible because it was based on her personal knowledge. Wright testified that she was the director of the WTC and she oversaw the day-to-day programming for postpartum women. She regularly interacted with the patients through casual interactions. She testified that Bearra was assessed for and referred to residential services, which included specific services. She had daily interactions with patients and testified that “there were times when, if [Bearra] was not in agreement, she would not go to groups or she would become very angry.” Wright testified that she made the decision to terminate Bearra based

in part on Bearra's noncompliance with required services. Any gaps in Wright's recollection as to Bearra's compliance with specific services might affect the weight given to her testimony by the trier of fact, not its admissibility. The circuit court therefore did not err in allowing Wright to testify about Bearra's compliance with intact services.

¶ 29 Bearra also argues that the circuit court erred by "giving persuasive weight to Wright's unfounded assertions that [Bearra] failed to comply with necessary intact services." Bearra points to other evidence in the record to show that she participated in a psychological assessment, nursing assessment, individual therapy, and case management. Bearra does not, however, point to evidence in the record contradicting Wright's testimony that Bearra did not comply with all of the required intact services. The circuit court, sitting as the trier of fact, considered all of the evidence before it and concluded that Bearra did not comply with required services. We give deference to the circuit court's findings of fact, as the circuit court is in the best position to observe the witnesses, assess their credibility, and weigh the evidence. *In re Edward T.*, 343 Ill. App. 3d 778, 794 (2003). We find no error in the circuit court's admission of Wright's testimony or the conclusions it drew therefrom.

¶ 30 Finally, Bearra argues that the circuit court's finding that she engaged in a "close physical altercation" with another WTC patient was against the manifest weight of the evidence. We agree that there was no evidence of a close physical altercation. Although the State's petition alleged that Bearra slapped another program client, no witness testified that they observed Bearra make physical contact with any other patients during any verbal altercations. At most, the evidence presented during at the adjudicatory hearing showed that Bearra engaged in verbal altercations with other patients, one of which occurred in the presence of D.M. The circuit court's oral finding of close physical altercation is against the manifest weight of the evidence. However, for the

reasons set forth above, the circuit court's ultimate decision that D.M. was neglected and abused through an injurious environment and substantial risk/physical injury was not against the manifest weight of the evidence.

¶ 31

### III. CONCLUSION

¶ 32 For the foregoing reasons, the judgment of the circuit court is affirmed

¶ 33 Affirmed.