

2014 IL App (2d) 131014-U
No. 2-13-1014
Order filed March 6, 2014

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

<i>In re</i> MONTIQUE B., LONDON B., BERNARD B., and DONTAYE B., Minors)	Appeal from the Circuit Court of Winnebago County.
)	
)	Nos. 13-JA-188
)	13-JA-189
)	13-JA-190
)	13-JA-191
)	
(The People of the State of Illinois, Petitioner- Appellee, v. Theresa B., Respondent- Appellant).)	Honorable Mary Linn Green, Judge, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Justices Hudson and Birkett concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court properly found the four minors neglected. Therefore, we affirmed.
- ¶ 2 Respondent, Theresa B., has four minor boys: Dontaye, born January 19, 1997; Bernard, born August 19, 2000; London, born July 2, 2002; and Montique, born September 8, 2011. All four minors were adjudicated neglected, and respondent appeals. We affirm.
- ¶ 3 On May 3, 2013, the State filed neglect petitions for each minor under section 2-3(1) of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/2-3(1) (West 2012)). The four petitions were identical and alleged two counts of neglect. Count I alleged that the minors were neglected

in that they were “not receiving the proper or necessary support, education, as required by law, or medical or other remedial care” necessary for their well-being, including adequate food, clothing, and shelter (705 ILCS 405/2-3(1)(a) (West 2012)). Count I further alleged that the minors had no shelter, and as a result, spent at least a portion of the night outside. Count II alleged that the minors were neglected based on an environment injurious to their welfare in that respondent had not maintained a stable environment or shelter, thereby placing them at risk of harm (705 ILCS 405/2-3(1)(b) (West 2012)).

¶ 4 The court conducted a shelter care hearing that day, and the following evidence was adduced through a report submitted by the Department of Children and Family Services (DCFS) and the testimony of DCFS child investigator Luke Salberg.

¶ 5 Respondent and the children had been in the Rockford area since June 2012, and they had been refused entry at three shelters (Women’s Shelter, Remedies, and Janesville). On April 23, 2013, DCFS received a hotline report stating that respondent was homeless and had spent the previous night with three of the children “on the streets.” Respondent and the three youngest children stayed outside because they had been denied entry into a shelter due to Bernard’s behavior of acting out. The oldest child, Dontaye (age 15), had been staying at a friend’s home, although respondent was unable to provide a name or address of where he was staying. Respondent indicated that she had no family to help her and that all four children had different fathers who were not involved.

¶ 6 DCFS provided funds for respondent and her children to stay at the Alpine Inn for one week, beginning April 23, 2013. During that time, respondent did not make a plan of where they would stay next. Salberg testified that respondent asked to stay longer and blamed transportation issues and the timing of her monthly supplemental security income (SSI) payment on her failure to obtain housing. He testified that respondent was cooperative, polite, and straightforward

except for her failure to develop a stable plan for housing. Although DCFS attempted to pay for the family to stay at the Alpine Inn for one more week so that an apartment could be located, the hotel refused to let them stay longer because of behavioral issues with Bernard and London.

¶ 7 Both Bernard and London had mental health issues but were not taking medication. Bernard was diagnosed with posttraumatic stress disorder (PTSD) and oppositional defiant disorder (ODD), and London was diagnosed with ODD and attention deficit hyperactivity disorder (ADHD). Respondent admitted that she had not followed through with their mental health services because she did not have transportation.

¶ 8 Regarding schooling, Dontaye had been attending Auburn school every day for the past few months. Bernard had behavioral issues at his school, and the school requested that respondent sign a consent for him to participate in the Rising Stars program. Bernard had not been in school for one month. London attended Ellis school but missed most or all of April 2013. Though respondent had transportation issues getting the children to school, Salberg testified that the more frequently they moved around to different shelters, the harder it was to obtain transportation.

¶ 9 Respondent had three prior contacts with DCFS in 2012 for similar issues of the children not having access to school, mental health services, or stable housing. However, all of these investigations were deemed “unfounded” based on respondent receiving services from a shelter.

¶ 10 Respondent testified on her own behalf as follows. Respondent was currently staying at a hotel in Lafayette and did not have another address. She had been searching for housing for months, but it was “very very hard” due to her 2011 eviction and her lack of income; many places refused to rent to someone “with SSI.” Respondent was not working and earned approximately \$710 per month in SSI payments. Respondent’s plan after leaving the Alpine Inn

was to find another hotel for at least a week and then look for more housing. Much of respondent's extended family was not stable enough for the children to stay there.

¶ 11 Regarding treatment for Bernard and London's mental health issues, respondent testified that a Screening Assessment and Support Services (SASS) worker named Charles recently saw the boys on two different days at the Alpine Inn. Charles was in the process of assessing Bernard and London but could not complete the assessments due to a computer problem. When Charles called to schedule a time to complete the assessment, the children had already been removed.

¶ 12 Respondent testified regarding schooling. Bernard, age 12, attended Kennedy school but refused to ride the Septran transportation that respondent had arranged. Respondent offered to use her monthly bus pass to ride to school with Bernard. Respondent never signed consents for Bernard to attend a different school or program; no one ever discussed this with her. Respondent arranged for London, age 10, to receive transportation to Ellis school through Septran. London refused to go to Ellis for a couple of months, however, because of "the situation" with a BB gun. Although London got "kicked out" of Ellis, the school allowed him to return. London missed school in April 2013 because a teacher was treating him "bad."

¶ 13 The trial court found probable cause of neglect, reasoning as follows. The children were going from place to place without stability, which led to "educational neglect" and a lack of treatment for their mental health needs. The court gave DCFS discretion to place all four children in traditional or relative foster care.

¶ 14 At an adjudicatory hearing on July 24, 2013, Salberg testified as follows. Salberg met with respondent in response to the April 23, 2013, hotline call about the family spending the prior night outside. The Women's Crisis Shelter refused to allow respondent and the children to return to the shelter due to Bernard's behavior the night before. Bernard and London had gotten

into an argument that escalated into physical aggression, and the police were called. Bernard was so out of control that he had to be handcuffed and restrained, and he was taken to the hospital for assessment.

¶ 15 When Salberg met with respondent in response to the hotline call, she denied spending the night outside, saying that she and the children had slept at a friend's house. Respondent did not know the address or the name of the person she stayed with, however, and she never provided any information to that effect. Respondent said that her plan that night was to call another shelter, Remedies, to convince the staff to let her family return for the night. Respondent admitted that she and the children had stayed at Remedies in the past but were not allowed to return there due to the children's behavioral issues. Another shelter, Janesville, had also refused to let respondent and the children stay due to behavioral issues. Salberg did not believe that respondent's plan of begging Remedies to allow them to return was a solid plan for housing, and respondent had no other plan. Though respondent gave Salberg her maternal grandmother's number, the phone rang and rang and he never "got through."

¶ 16 DCFS planned on giving respondent one more week at the Alpine Inn so that she could receive her SSI payment at the first of the month and find housing. However, the manager at the Alpine Inn refused to let them remain because the children allegedly broke some equipment and disrupted other guests. Respondent used her monthly payment to check into another hotel. At this point, DCFS took protective custody because respondent still had no plan for housing.

¶ 17 Salberg explained that he "indicated" the allegation of inadequate shelter based on respondent's "pervasive pattern" of getting "the money at the beginning of the month," using it on hotel rooms and fast food restaurants, and then running out of money by the second week of the month. At that point, respondent "would usually go looking for a shelter." However, there were no shelters in the Rockford area that would allow respondent and the children to stay due to

the children's behavior. Also, Bernard had told Salberg that although he felt safe with respondent, he did not feel safe in the shelters. The other reasons that Salberg "indicated" the allegation of neglect included respondent's past involvement with DCFS, her lack of control over the children's behavior, and her lack of follow-through in getting educational and mental health services for the children.

¶ 18 Respondent advised Salberg that she was working with Rosecrance to get medication for Bernard and London and that they were not taking medication. Respondent stated that when Bernard was prescribed medication in the past, he refused to take it. Respondent blamed mental health providers for not following through on services. The children had not taken any prescription medicine "for some time," and no psychiatric appointments had been scheduled.

¶ 19 Salberg contacted Bernard's school and was advised that Bernard had been expelled. Although the school was doing everything it could to get Bernard into an alternative school, respondent dragged her feet in signing the necessary papers, which resulted in Bernard missing school. In addition, London missed roughly a month of school while they were moving from shelter to shelter based on transportation issues.

¶ 20 Respondent testified on her own behalf as follows. With respect to the DCFS hotline call, respondent explained that after Bernard acted out at the shelter, they went to the emergency room so that he could get some medicine. The staff at the shelter said that they would be able to return that night, but a different staff was present when they tried to return, and they refused to let them in. After they "got kicked out" of the shelter, respondent sat on a bench and made phone calls to friends and family. Someone named Jayda left the shelter on a smoke break and asked if they were alright, and respondent explained the situation. Jayda said she had a friend who would let them stay the night or a few hours until respondent contacted her family or friends.

Respondent and the children walked with Jayda to the address, went to the room, and went to sleep. It was about a 10-minute walk, and respondent “kind of” remembered the direction. The next morning, respondent, the children, and Jayda walked back to the shelter to try to get back in. The shelter did not allow any of them to return, even though the night staff had said that Jayda would be able to return because she was helping out a family.

¶ 21 When Salberg asked about spending the night outside, respondent told him that they had stayed with someone named Jayda. Respondent admitted that she did not know Jayda’s last name or remember her address. Jayda stayed at the shelter but also helped out there. Respondent contacted the shelter to get Jayda’s information, but the shelter would not disclose it. Respondent also “kind of knew” Jayda from the Life Center Pantry; she “really didn’t know her.” Respondent said that there were “false allegations made” to DCFS in the hotline call because other women at the shelter were jealous that Jayda was helping them out.

¶ 22 Respondent summarized their housing situation since she moved the children from Chicago to Rockford in June 2012. First, respondent and the children went to Remedies and stayed until August 2012, when they received housing assistance from Shelter Ministries. They stayed with Shelter Ministries until March 4, 2013, because it was a six-month program. The six-month program could be extended to a two-year program, but respondent was not accepted into the two-year program. From there, they went to the Travel Inn hotel for a couple of weeks. They did not leave Travel Inn due to the children’s behavior, but rather due to funding. After buying food and clothing for the children, respondent had a hard time paying the bills at the end of the month, so they returned to Remedies the last week of March 2013. Respondent and the children stayed at Remedies for three weeks. While at Remedies, respondent looked for more permanent housing, but the 2011 eviction made it difficult to find anything. They were asked to leave Remedies in mid-April 2013 because London was not following the rules. Respondent and

the children then stayed at Janesville for three days and were kicked out due to the children's behavior. After that, the City of Rockford helped pay for them to return to the Travel Inn hotel. When that funding ran out, they went to the Women's Crisis Center on April 19, 2013.

¶ 23 Respondent denied ever spending a night outside with the children. She "would never do that to them" and always kept a roof over their heads. Also, Dontaye was staying with his "Godmother."

¶ 24 The court rendered its decision on August 7, 2013. The court stated that it "reviewed all of the evidence, the testimony, arguments of counsel, witness credibility" in making "the following findings." The State had "met its burden by a preponderance of the evidence and proven" counts I and II of the petitions.

¶ 25 A dispositional hearing occurred on October 1, 2013. Respondent was aware of the court date but did not appear. A DCFS report indicated that respondent was still homeless and staying temporarily with a friend. Respondent blamed her housing issue on others and did not take responsibility. In addition, respondent refused efforts from DCFS to create a budget because she did not perceive a problem with the way she handled money. The report further stated that Bernard was behind in school due to his absences, and the absences were largely the result of respondent's inconsistent housing situation. Although respondent was cooperative in meeting with DCFS, she struggled to keep on task, even when answering simple questions. Based on the above, the court found respondent "unfit or unable" to properly parent the children.

¶ 26 Respondent timely appealed.

¶ 27 Respondent first asserts that the court's neglect determination failed to include written findings of fact as required under section 2-21(1) of the Act, which states that the "court's determination of whether the minor is abused, neglected, or dependent shall be stated in writing

with the factual basis supporting that determination.” 705 ILCS 405/2-21(1) (West 2012).

Section 2-21(1) further states:

“If the court finds that the minor is abused, neglected, or dependent, the court shall then determine and put in writing the factual basis supporting that determination, and specify, to the extent possible, the acts or omissions or both of each parent, guardian, or legal custodian that form the basis of the court’s findings. That finding shall appear in the order of the court.” *Id.*

¶ 28 The State concedes that the trial court failed to make the necessary written factual findings to support its neglect determination. As a result, it requested this court to enter a limited remand to the trial court to provide a specific factual basis for its ruling. See *In re Abel C.*, 2013 IL App (2d) 130263, ¶ 22 (because the trial court provided no factual basis for its neglect finding, this court retained jurisdiction over the appeal and entered a limited remand for the entry of the express factual basis supporting its neglect finding). This court granted the State’s motion and ordered a limited remand. A supplemental record outlining the trial court’s findings of fact was filed with this court on January 27, 2014. We discuss these findings below, in the context of respondent’s challenge to the neglect determination.

¶ 29 Respondent argues that the court erred by determining that the four children were neglected. “Neglect” is not a term of fixed and measured meaning; it embraces willful and unintentional disregard of duty. *In re Arthur H.*, 212 Ill. 2d 441, 463 (2004). Neglect has a fluid meaning and has been defined as the failure to exercise care that circumstances justly demand. *Id.*

¶ 30 The State must prove allegations of neglect by a preponderance of the evidence, which means that the allegations of neglect are more probably true than not. *In re Abel C.*, 2013 IL App (2d) 130263, ¶ 19. “A trier of fact, by virtue of its ability to actually observe the demeanor

and conduct of witnesses, is in the best position to assess their credibility; thus, we defer to the trial court's findings regarding credibility." *Id.* We will not reverse a trial court's determination of neglect unless it is against the manifest weight of the evidence. *Id.* A judgment is against the manifest weight of the evidence only if the opposite conclusion is clearly evident. *Id.*

¶ 31 In this case, the trial court found the four children neglected on two grounds. One of the grounds was an injurious environment based on respondent's failure to maintain a stable environment or shelter, thereby placing the children at risk of harm. Although the phrase "injurious environment" is a broad and amorphous concept, it is understood to include the breach of a parent's duty to ensure a safe and nurturing shelter for the children. *In re Alexis H.*, 401 Ill. App. 3d 543, 557 (2010). Cases involving allegations of neglect are *sui generis* and must be decided on the basis of their unique circumstances. *In re Arthur H.*, 212 Ill. 2d at 463.

¶ 32 Respondent argues that the State failed to prove neglect based on an injurious environment because she had provided shelter for the children since she arrived in the Rockford area in June 2012. She argues that she looked for housing but was rejected by landlords due to a previous eviction. Acknowledging that their environment was not "perfect," respondent argues that the children always had shelter and a roof over their heads. Respondent argues that even if she failed to provide a stable environment for the three youngest children, the State failed to provide evidence that Dontaye was ever at risk of harm or that his environment was unstable. Rather, the evidence showed that he was living in a stable environment with his godmother.

¶ 33 In finding the children neglected, the trial court made the following findings of fact: respondent had struggled with housing for many years and was unable to provide appropriate and safe shelter for the children; the family was chronically homeless, moving frequently from hotels, shelters, and short-term apartments; they moved six times within a 60-day period; Bernard did not feel safe at the shelters; respondent could not "get past her denial of this

impacting her children”; due to the children’s behavior, respondent had been cut off from services at a minimum of three shelters, as well as other sources; the children were not taking medication for their mental health issues; and the children were not attending school regularly. In particular, London missed at least one month of school while going from shelter to shelter, and Bernard missed a significant amount of school based on respondent’s failure to complete the necessary paperwork. The trial court’s findings were supported by the record.

¶ 34 The record is clear that respondent had no stable housing between June 2012 and the last court date in October 2013; she lived in 10 different locations during that time frame. Between June 2012 and May 2013, when the children were removed, she and the three youngest children moved eight times. The longest period without moving was six months, and, as the trial court noted, she and the children moved six times within a two-month period. According to Salberg, respondent’s monthly pattern consisted of using the SSI payment to pay for a hotel room and fast food restaurants, running out of money in the second week, and then turning to shelters for housing. This pattern of moving from place to place created an injurious environment in that the children never knew how long they would remain at any given location. In addition, Bernard told Salberg that he did not feel safe in the shelters.

¶ 35 The continual moving also impacted Bernard’s and London’s mental health issues. The children were not receiving the necessary mental health services or medication, which was evidenced by their acting out in school, in the shelters, and at the Alpine Inn. The children had untreated diagnoses of ODD, PTSD, and ADHD. In addition, both children had been kicked out of their schools and refused entry at three shelters based on their behavior. At one shelter, Bernard’s behavior was so extreme in fighting with London that the police were called, resulting in Bernard being restrained and taken to the hospital for assessment. The lack of mental health services put the children at risk of harm in controlling their behavior, and it also put them at risk

of harm in being on the street when they could not find a shelter willing to take them. Indeed, it was this scenario of a shelter denying the family housing that led to the DCFS hotline call. Salberg confirmed that there were no shelters in the Rockford area willing to take them in. Thus, the trial court's neglect findings as to Montique, Bernard, and London were not against the manifest weight of the evidence.

¶ 36 Likewise, the trial court also properly found that Dontaye was neglected. Respondent's argument that we should reverse that finding because he was living in a stable environment with his godmother is without merit. Proof that one minor is abused, neglected, or dependent is admissible evidence on the issue of abuse, neglect, or dependency of any other minor for whom the parent is responsible. *In the Interest of K.G.*, 288 Ill. App. 3d 728, 736 (1997). In other words, a parent's behavior toward one minor may be considered when deciding whether a sibling is exposed to an injurious environment (*id.*), and this is true even when the minor is living with someone else (see *In the Interest of B.C.*, 262 Ill. App. 3d 906, 909 (1994) (the fact that one minor lived with her godmother was of no consequence in neglect proceeding where siblings were found neglected because the mother retained custody and could remove the minor from the godmother's home at any time)). Therefore, respondent's failure to maintain a stable environment for Montique, Bernard, and London is reason to find Dontaye neglected as well.

¶ 37 Moreover, there is no evidence that Dontaye was staying with his godmother at the time the children were taken into care. When Salberg questioned respondent in response to the April 23, 2013, hotline call, respondent told him that Dontaye was staying at a friend's home, but she was not able to provide a name or address of where he was staying. It was not until the adjudicatory hearing in July 2013, when the children were removed and placed with a relative,¹

¹ Dontaye, London, and Montique were placed with a relative, and Bernard was in a residential

that respondent testified that Dontaye was living with his godmother. Therefore, respondent's argument that Dontaye was living in a stable environment with his godmother is not supported by the record. Moreover, the fact that respondent did not know with whom or where Dontaye was staying showed respondent's failure to ensure a safe and nurturing shelter for him. Therefore, the trial court's finding that Dontaye was neglected was not against the manifest weight of the evidence.

¶ 38 Having affirmed the court's neglect finding as to the four children on count II, which was an injurious environment based on respondent's failure to maintain a stable environment or shelter, we need not consider respondent's arguments regarding count I. See *In re Abel C.*, 2013 IL App (2d) 130263, ¶ 28 (only a single ground for neglect need be proven; when a trial court has found a minor neglected on more than one ground, we may affirm the judgment if any of the bases of neglect is upheld).

¶ 39 For all of these reasons, the judgment of the Winnebago County circuit court is affirmed.

¶ 40 Affirmed.

placement.