

NOTICE

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2014 IL App (4th) 130933-U

NO. 4-13-0933

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

March 17, 2014

Carla Bender

4th District Appellate Court, IL

In re: Z.C., a Minor,)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
Petitioner-Appellee,)	Champaign County
v.)	No. 13JA28
ARTHUR HUTCHESON,)	
Respondent-Appellant.)	Honorable
)	Richard P. Klaus,
)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Justices Knecht and Harris concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed, holding the trial court's findings following adjudicatory and dispositional hearings were not against the manifest weight of the evidence.

¶ 2 In May 2013, the State filed a petition for adjudication of neglect, alleging Oshie Cook and/or respondent, Arthur Hutcheson, neglected their minor daughter, Z.C. (born August 18, 2009), by providing an environment injurious to her welfare (705 ILCS 405/2-3(1)(b) (West 2012)). Specifically, the petition alleged Cook and/or Hutcheson exposed Z.C. to substance abuse (count I) and domestic violence (count II). Cook is not a party to this appeal.

¶ 3 Following a September 2013 adjudicatory hearing, the trial court adjudicated Z.C. a neglected minor. In October 2013, following a dispositional hearing, the court made Z.C. a ward of the court and granted custody and guardianship to the Department of Children and Family Services (DCFS), with the authority to place Z.C.

¶ 4 Hutcheson appeals, asserting the trial court erred in (1) adjudicating Z.C. neglected and (2) making Z.C. a ward of the court and granting guardianship to DCFS. We affirm.

¶ 5 I. BACKGROUND

¶ 6 In October 2010, DCFS became involved with Z.C. upon receiving a hotline call stating Hutcheson "chokes, hits, and beats" Cook. Cook then reported Hutcheson came to her home and "jumped her" in September 2010. The couple subsequently ended their relationship. On another occasion, Cook alleged Hutcheson appeared at her home intoxicated, at which time he yelled at her, called her names, and cursed, though he never became physical. Z.C. was present in Cook's home at the time. After the relationship between Cook and Hutcheson dissolved, Z.C. remained with Cook, but Hutcheson received regular visitation. DCFS opened an intact case, at which time DCFS referred Cook and Hutcheson for substance-abuse assessments. DCFS also referred Cook for domestic-violence classes.

¶ 7 The case remained open as an intact case until January 2013 due to Cook's inability to overcome her substance-abuse and domestic-violence issues. As of April 2012, the report indicated Hutcheson had completed all required services. In September 2012, DCFS asked the State to initiate juvenile court proceedings due to Cook's lack of progress toward the intact-case goals. In January 2013, when the State still had not filed a petition, DCFS closed the case.

¶ 8 On May 28, 2013, the State filed a petition for adjudication of neglect, alleging Cook and/or Hutcheson neglected Z.C. by exposing her to an environment injurious to her welfare (705 ILCS 405/2-3(1)(b) (West 2012)) because Z.C. was exposed to substance abuse (count I) and domestic violence (count II). Upon the State's filing of its petition, DCFS reopened

the intact case previously closed in January 2013. Z.C. remained in Cook's care following the filing of the petition; however, in August 2013, DCFS took protective custody of Z.C. after Cook either failed or missed numerous drug tests. Following the shelter-care hearing, the trial court found probable cause to believe Z.C. was neglected and determined it was a matter of immediate and urgent necessity to place Z.C. in DCFS's custody.

¶ 9 In September 2013, the case proceeded to an adjudicatory hearing. Cook stipulated to count I of the petition, which alleged Z.C. had been subjected to an injurious environment by Cook and/or Hutcheson due to Z.C.'s exposure to substance abuse. The hearing then proceeded as to Hutcheson only.

¶ 10 The State called Douglas Bialeschki, a deputy with the Champaign County sheriff's department, to testify about his prior contacts with Hutcheson. In April 2010, Bialeschki was dispatched to an "unknown domestic situation." Upon arrival, he spoke with Hutcheson, who reported Cook battered him over the course of a lengthy domestic dispute. The officer noted Cook's behavior was "out of control" and that she appeared either intoxicated or under the influence of a controlled substance. Hutcheson admitted he and Cook had consumed alcohol the evening before. Cook told the officer Hutcheson was "pushing her around," as he had done repeatedly in the past. Following his investigation, Bialeschki arrested Cook for domestic battery.

¶ 11 Bialeschki then testified regarding an April 2012 dispatch reporting domestic violence between Cook and Hutcheson. Upon arrival, Bialeschki observed Cook and Hutcheson arguing and noticed Hutcheson had his hand in his mouth. Cook told Bialeschki that Hutcheson struck her in or just behind the ear because he was upset over a missing phone. Bialeschki then observed a small bump behind Cook's ear. Hutcheson denied striking Cook. He then offered

contradictory statements about the condition of his hand, indicating (1) he injured his hand by hitting the couch and (2) Cook inflicted the injury. Bialeschki arrested Hutcheson for domestic battery.

¶ 12 Heidi Gulbrandson, a DCFS supervisor, testified she supervised Z.C.'s intact family case from October 2010 until September 2012, at which time DCFS transferred the case to the Center for Youth and Family Solutions (CYFS). DCFS referred the family for services due to a history of substance abuse and domestic violence.

¶ 13 Gulbrandson stated she initially referred Hutcheson for a substance-abuse assessment and for domestic-violence education. Hutcheson completed the substance-abuse assessment, at which time he was not referred for any services.

¶ 14 Gulbrandson then testified Hutcheson did not complete the domestic-violence education as required. However, none of the service plans included within the record reflect Hutcheson had been referred for domestic-violence education prior to the State filing the petition for adjudication of neglect. Rather, an August 2013 service plan indicated Hutcheson had completed all services as of April 2012. At the shelter-care hearing, Gulbrandson stated Hutcheson had initially been referred for domestic-violence education, which he attended. She could not recall whether he finished those classes. Also at the shelter-care hearing, Gulbrandson testified she did not have contact with Hutcheson after his April 2012 arrest.

¶ 15 Kelly Beisser, an intake worker for CYFS, testified she became the family's intake caseworker in September 2012, when the case transferred from DCFS to CYFS. According to her records, DCFS did not recommend any services for Hutcheson, nor did she refer him for any services from September 2012 until the case closed in January 2013. In fact, at the shelter-care hearing, Beisser indicated she had no contact with Hutcheson prior to closing the

intact case. However, it was her understanding from reviewing DCFS records that Hutcheson had been referred for both domestic-violence and substance-abuse assessments and DCFS determined further services were unnecessary. At the shelter-care hearing, Beisser indicated she had recently visited Hutcheson's home and had no concerns about Z.C.'s safety while with Hutcheson. The trial court then took judicial notice of Hutcheson's conviction in Champaign County case No. 10-CM-703 for possession of drug paraphernalia.

¶ 16 Hutcheson testified he last resided with Cook and Z.C. in April 2012, when he was arrested for domestic battery. He noted the State later dismissed the domestic battery charges stemming from his April 2012 arrest. Hutcheson stated he never completed domestic-violence education classes. However, he testified he completed a substance-abuse assessment as ordered. Hutcheson then indicated he had no further "incidents" with law enforcement since his April 2012 arrest.

¶ 17 Following the adjudicatory hearing as to Hutcheson, the trial court found the State met its burden as to both counts and concluded Z.C. was a neglected minor.

¶ 18 In October 2013, the dispositional hearing commenced. Lutheran Social Services (Lutheran) became involved in the case following the State's filing of the petition and issued a report prior to the dispositional hearing. The report indicated DCFS referred both Cook and Hutcheson for intact services due to ongoing domestic violence and substance abuse. According to Lutheran, Hutcheson admitted smoking cannabis in July 2012. Throughout the three years the case had been pending, all of his drug drops came back as negative. He admitted consuming alcohol "every couple of weeks" while at a bar.

¶ 19 After Hutcheson's April 2012 arrest, Hutcheson and Cook ended their relationship. Hutcheson moved into his stepfather's residence in Tolono, Illinois. Lutheran

expressed concern that, though Hutcheson had regular visitation with Z.C., he often left her with family members due to his work schedule. Hutcheson did not complete his high school education; however, he maintained consistent employment. He had been working at his current job, Jiffy Lube, for approximately 18 months. A September 2013 case note stated Hutcheson and Z.C. appeared to be bonded. Z.C. was residing with her paternal grandmother in Tolono and appeared to be well-adjusted to her placement. Nevertheless, Lutheran referred Z.C. for play therapy due to some behavioral issues.

¶ 20 Lutheran's report noted Hutcheson completed a domestic-violence screening in August 2013 and was waiting to see whether he would be referred for counseling. Lutheran intended to refer Hutcheson to parenting classes once the results of his substance-abuse assessment were complete. Additionally, Lutheran recommended Hutcheson obtain a psychological evaluation.

¶ 21 The report by the court-appointed special advocate (CASA) expressed concern about Z.C.'s placement with her paternal grandmother. Though Z.C. had her own bedroom, her grandmother and uncle were sleeping on a chair and the couch, respectively. The CASA worker also noted behavioral problems in Z.C. in that she was verbally aggressive and acted inappropriately. Ultimately, CASA recommended custody and guardianship remain with DCFS.

¶ 22 Hutcheson's attorney noted Hutcheson had a recent walk-in screening for substance-abuse treatment, with another appointment scheduled for later in the month. The trial court then found it was in the best interests of Z.C. and the public that Z.C. be made a ward of the court and adjudicated as neglected. Further, the court found Cook and Hutcheson were currently unfit and unable to act as custodial parents, and that it was in the best interests of Z.C. to place guardianship with DCFS.

¶ 23 This appeal followed.

¶ 24 II. ANALYSIS

¶ 25 On appeal, Hutcheson asserts the trial court erred by (1) adjudicating Z.C. to be a neglected minor and (2) making Z.C. a ward of the court and granting guardianship to DCFS.

We address these arguments in turn.

¶ 26 A. Adjudicatory Finding

¶ 27 Hutcheson first asserts the trial court erred in adjudicating Z.C. a neglected minor under section 2-3(1)(b) of the Juvenile Court Act of 1987 (705 ILCS 405/2-3(1)(b) (West 2012)). "Neglect" is defined as "the failure to exercise the care that circumstances justly demand and encompasses both willful and unintentional disregard of parental duty." *In re Kamesha J.*, 364 Ill. App. 3d 785, 792-93, 847 N.E.2d 621, 628 (2006). One of a parent's duties is to protect his or her child from harm. *Id.* at 793, 847 N.E.2d at 628. When the petition for adjudication of neglect alleges the minor has been subjected to an injurious environment, the case should be reviewed based on the specific circumstances of that case. *In re Arthur H.*, 212 Ill. 2d 441, 477, 819 N.E.2d 734, 754 (2004). The court's findings of fact are afforded great deference and will not be overturned unless those findings are against the manifest weight of the evidence. *In re R.S.*, 382 Ill. App. 3d 453, 459, 888 N.E.2d 542, 548-49 (2008). "A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident." *Id.* at 459, 888 N.E.2d at 549.

¶ 28 In this case, Cook stipulated to count I of the petition, which alleged Z.C. was subjected to an injurious environment due to her exposure to substance abuse. Hutcheson asserts that stipulation was insufficient to prove Z.C. was neglected. We disagree.

¶ 29 In determining whether a minor is neglected, "[a] custodial parent's admission and stipulation, *by itself*, may be sufficient to support a finding of abuse or neglect." (Emphasis in original.) *In re R.B.*, 336 Ill. App. 3d 606, 616, 784 N.E.2d 400, 408 (2003). In this case, the trial court not only relied upon Cook's stipulation but also upon live testimony presented during Hutcheson's adjudicatory hearing. The purpose of an adjudicatory hearing is not to determine which parent caused the minor's neglect but to determine whether a child is neglected because adverse conditions exist. *Id.* at 614-15, 784 N.E.2d at 407. "The fact that the State cannot prove causation makes the child no less abused and no less needful of court intervention to both protect her and assure that the abuse stop[s]." *Id.* at 616, 784 N.E.2d at 408. Hence, the question is not whether Hutcheson neglected Z.C., but whether Z.C. was neglected.

¶ 30 The evidence supports the trial court's finding of neglect. At the hearing, the parties did not contest that Cook abused illegal substances during the pendency of the case, as she (1) tested positive for illegal substances on numerous occasions, (2) failed to maintain sobriety throughout the intact case, and (3) expressed her intention of entering residential treatment. Cook struggled with substance abuse throughout the pendency of the case to the extent that, in August 2013, the court removed Z.C. from Cook's care following a positive drug test for cocaine. Hutcheson asserts the evidence reflects Cook used cocaine while at a friend's house and not in Z.C.'s presence; therefore, he argues, Z.C. had not been exposed to Cook's substance abuse. We disagree. The fact that Cook engaged in ongoing illegal drug use while Z.C. remained in her custody demonstrates Cook subjected Z.C. to an injurious environment. See *In re Z.Z.*, 312 Ill. App. 3d 800, 805, 727 N.E.2d 667, 671 (2000) ("[A]n ongoing pattern of substance abuse can create an injurious environment."). Thus, the court's finding of neglect as to count I was not against the manifest weight of the evidence. Because we affirm the court's

findings as to count I, we need not address the merits of count II. See *In re Faith B.*, 216 Ill. 2d 1, 14, 832 N.E.2d 152, 159 (2005) ("[W]hen the circuit court has found a minor neglected on several grounds, we may affirm if any of the circuit court's bases of neglect may be upheld.").

¶ 31

B. Dispositional Finding

¶ 32 Hutcheson next asserts the trial court erred in entering a dispositional order making Z.C. a ward of the court and granting guardianship to DCFS. Following an adjudication of neglect, the court must determine, by a preponderance of the evidence, whether it is in the health, safety, and best interests of the minor to remain with the parent, or if alternative custody and guardianship placement, *i.e.*, with DCFS, is more appropriate. 705 ILCS 405/2-22 (West 2012); see also *In re K.B.*, 2012 IL App (3d) 110655, ¶ 22, 973 N.E.2d 470. The court's central concern in fashioning a dispositional order is the best interests of the child. *In re M.P.*, 408 Ill. App. 3d 1070, 1073, 945 N.E.2d 1197, 1200 (2011). In making its decision, the court "should consider all reports, whether or not the author testifies, which would assist the court in determining the proper disposition for the minor." *In re L.M.*, 189 Ill. App. 3d 392, 400, 545 N.E.2d 319, 325 (1989). "A reviewing court will not overturn a trial court's findings merely because the reviewing court would have reached a different result." *K.B.*, 2012 IL App (3d) 110655, ¶ 23, 973 N.E.2d 470. In other words, we will not overturn the trial court's decision unless it is against the manifest weight of the evidence. *In re J.W.*, 386 Ill. App. 3d 847, 856, 898 N.E.2d 803, 811 (2008).

¶ 33

Though the trial court proceedings focused primarily on Cook's shortcomings, the State also presented legitimate concerns about placing Z.C. with Hutcheson. First, during the pendency of the intact case, a significant period of time elapsed in which DCFS and CYFS had no contact with Hutcheson. It appears DCFS lost contact with Hutcheson sometime before April

2012 and did not reestablish contact prior to transferring the case to CYFS. CYFS then had no contact with Hutcheson for the entirety of its supervision of the intact family case from September 2012 through January 2013. The need for communication between the caseworker and parent is essential to the process of reuniting the family; thus, a parent's failure to maintain communication with caseworkers during the pendency of the intact case raises concerns about his willingness to maintain communication with DCFS during the present proceedings.

¶ 34 Second, we note the time period in which Hutcheson and Gulbrandson lost contact coincided with Hutcheson's April 2012 arrest for domestic battery. Due to Hutcheson's absence, Gulbrandson was unable to refer Hutcheson for domestic-violence education classes following his arrest. Despite the State's decision to later dismiss Hutcheson's charges, the ongoing domestic violence between Hutcheson and Cook raised legitimate concerns that Z.C. could be exposed to violence while in Hutcheson's care. After all, Officer Bialeschki had responded to domestic-violence calls involving Cook and Hutcheson two times over a four-year period, indicating a possible pattern. Moreover, during both instances Hutcheson was accused of physical aggression toward Cook. During the most recent incident, the officer observed injuries Cook indicated were inflicted by Hutcheson. Hutcheson had attended an assessment to determine whether he required domestic-violence education classes, but DCFS was awaiting results from other assessments before making any referrals. Absent a domestic-violence assessment, the trial court had no assurances that Z.C. would remain safe if placed in Hutcheson's care.

¶ 35 Finally, though Hutcheson repeatedly passed drug screens and previous assessments indicated no need for treatment existed, Hutcheson admitted smoking cannabis in July 2012, during the pendency of the intact case, and also had a 2010 conviction for possession

of drug paraphernalia. At the time of the dispositional hearing, DCFS was in the process of having Hutcheson assessed once more and awaiting a determination as to whether he required further treatment.

¶ 36 Hutcheson has maintained steady employment and has bonded with Z.C., which are promising foundations for progress in this case. However, in light of Hutcheson's lapse in communication with DCFS and CYFS, the reported history of domestic violence, and his admitted drug use, we conclude the trial court's decision that it was in the best interests of Z.C. to place guardianship and custody with DCFS was not against the manifest weight of the evidence.

¶ 37 III. CONCLUSION

¶ 38 For the reasons stated, we affirm the trial court's judgment.

¶ 39 Affirmed.