

NOTICE

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2014 IL App (4th) 140674-U
NOS. 4-14-0674, 4-14-0687 cons.
IN THE APPELLATE COURT

FILED
December 11, 2014
Carla Bender
4th District Appellate
Court, IL

OF ILLINOIS

FOURTH DISTRICT

In re: A.F., a Minor,)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
Petitioner-Appellee,)	Champaign County
v. (No. 4-14-0674))	No. 14JA21
FRANK FINDLAY,)	
Respondent-Appellant.)	
-----)	
In re: A.F., a Minor,)	
THE PEOPLE OF THE STATE OF ILLINOIS,)	
Petitioner-Appellee,)	
v. (No. 4-14-0687))	
SANDRA FINDLAY,)	Honorable
Respondent-Appellant.)	John R. Kennedy,
)	Judge Presiding.

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

ORDER

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

¶ 2 In May 2014, the trial court adjudicated A.F. (born September 19, 2012) a neglected minor after finding respondents, Frank and Sandra Findlay, subjected her to an environment injurious to her welfare as defined by section 2-3(1)(b) of the Juvenile Court Act of 1987 (Juvenile Act) (705 ILCS 405/2-3(1)(b) (West 2012)). In June 2014, the court entered a dispositional order making A.F. a ward of the court and granting the Department of Children and Family Services (DCFS) guardianship.

¶ 3 On appeal, Frank asserts the trial court's adjudicatory and dispositional findings were against the manifest weight of the evidence. Sandra joins with Frank in challenging the court's dispositional findings. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In March 2014, the State filed a petition for adjudication of neglect and shelter care against respondents. The petition alleged A.F. was neglected by being placed in an environment injurious to her welfare as defined by section 2-3(1)(b) of the Juvenile Act (705 ILCS 405/2-3(1)(b) (West 2012)) in that respondents (1) exposed her to domestic violence (count I); and (2) failed to correct the conditions which resulted in a prior adjudication of parental unfitness as to her siblings, J.F., L.F., and B.F. (count II). The next day, the trial court found the State established probable cause and that it was an immediate and urgent necessity to remove A.F. from respondents' care. The court placed custody and guardianship with DCFS.

¶ 6 A. Adjudicatory Hearing

¶ 7 In May 2014, the adjudicatory hearing commenced. The trial court took judicial notice of (1) a February 4, 2014, order of protection Sandra obtained against Frank (Champaign County case No. 14-OP-39); and (2) the denial of Frank's February 4, 2014, petition for an order of protection against Sandra (Champaign County case No. 14-OP-40). The court also took judicial notice of the orders entered in respondents' prior DCFS cases (Kankakee County case Nos. 04-JA-27, 04-JA-28, 05-JA-55) wherein respondents' parental rights were terminated. The parties then presented the following testimony.

¶ 8 1. *Officer David Sawlaw*

¶ 9 David Sawlaw, a police officer for the Rantoul police department, testified regarding two incidents he investigated involving respondents. On February 3, 2014, he was

dispatched to Brenda MacPeek's residence in reference to a domestic dispute. When he arrived, MacPeek, Sandra's mother, invited him inside, where he observed Sandra "throwing her arms around and screaming and hollering." When she calmed down, Sandra told him she had been in an argument with Frank at their residence. During the argument, Sandra threw her cellular phone charger at Frank, who was holding A.F. Sandra stated Frank then picked her up and slammed her to the floor. Sandra described the resulting injury to her back as "extremely painful," though she bore no physical marks.

¶ 10 Sawlaw walked to respondents' nearby residence, where he met with Frank. Frank admitted he argued with Sandra but denied having a physical altercation. As a temporary resolution of the matter, it was decided Sandra would spend the night at her mother's trailer. Sawlaw provided a police presence while Sandra entered the residence to gather some personal belongings. Frank and Sandra renewed their argument, and Sawlaw overheard Sandra say that Frank had hit her in the past. When Sawlaw confronted her, Sandra became verbally abusive and started throwing items.

¶ 11 As Sandra prepared to leave the residence with her belongings, Sawlaw observed A.F. to be calm and under adequate supervision with Frank; therefore, he permitted A.F. to remain with Frank.

¶ 12 On March 12, 2014, Sawlaw spoke with MacPeek regarding injuries she allegedly obtained on March 10, 2014, following a physical altercation with Sandra. Sandra denied any physical altercation with her mother.

¶ 13 *2. Marcus Truss*

¶ 14 Marcus Truss testified he was a child-protection-specialist investigator for DCFS. On February 3, 2014, Truss responded to a hotline report alleging Frank and Sandra had been in

a physical altercation in the presence of A.F. Truss spoke to Sandra, who said she intended to seek an order of protection against Frank because he threw her down and hit her over a dispute regarding a phone charger. She also said Frank held her down on the bed and tried to pry her phone out of her hands when she attempted to call police. Sandra reported to Truss that A.F. was in her crib during the altercation. Frank indicated he was holding A.F. during the incident. Sandra reported Frank had been using cocaine and marijuana and that he refused to take his prescribed medication for his bipolar disorder. Additionally, Sandra admitted she and Frank had a history of domestic violence.

¶ 15 During Truss's conversation with Sandra, he learned respondents' parental rights had been terminated as to three other children. Sandra blamed Frank because it was "his fault" they did not complete their services. When asked about her mental health, Sandra revealed she had been previously diagnosed with borderline personality disorder, narcissism, and histrionic depression, but she told Truss those diagnoses were "invalid" because the psychiatrist who diagnosed her was now deceased.

¶ 16 Later that day, Truss interviewed Frank. Frank denied striking Sandra. He expressed concerns over Sandra's parenting ability because he observed her strike A.F. and consume excessive amounts of alcohol. Frank admitted he and Sandra had prior physical altercations. With respect to their three other children, Frank blamed Sandra for the termination of their parental rights. When asked about his mental health, Frank explained he had been diagnosed with personality disorder, narcissism, and bipolar disorder; however, he said the test was "invalid" because it was given when he was tired after working a long shift. As a result, he did not take his medication.

¶ 17 After speaking with both Sandra and Frank, Truss implemented a safety plan. As part of the plan, Frank and Sandra were going to switch homes with MacPeek, and MacPeek would have custody of A.F. The parents were not to be the sole caretakers of A.F. The safety plan required respondents to obtain a psychological evaluation and submit to drug testing. During Truss's weekly checks, he found A.F. properly cared for in an appropriate environment.

¶ 18 On March 12, 2014, Truss received a call from MacPeek, who reported, on March 10, 2014, Sandra had physically assaulted her. Following the altercation, MacPeek left A.F. behind at Sandra's residence. When Truss went to investigate, he found A.F. in Sandra's sole custody, and Sandra admitted A.F. had been in her sole custody since March 10, 2014. Sandra denied assaulting her mother and asserted her mother simply left because she no longer wanted to participate in the safety plan.

¶ 19 *3. Brenda MacPeek*

¶ 20 MacPeek testified, on March 10, 2014, she had custody of A.F. as part of a safety plan with DCFS. In the evening hours, MacPeek and A.F. were visiting at Sandra's residence. MacPeek stated Sandra had been upset and angry all day. MacPeek tried to calm her down, but Sandra continued "slamming stuff, throwing stuff, and just saying she couldn't take it anymore." Sandra then grabbed MacPeek's hair and neck. Sandra's actions aggravated a preexisting injury to MacPeek's neck. MacPeek stated she gathered her belongings and left Sandra's residence without A.F. MacPeek said she was frightened and thought Sandra would cause "further harm" if MacPeek tried to take A.F. with her. Frank was not present when the incident occurred. On March 12, 2014, MacPeek reported Sandra's conduct to DCFS.

¶ 21 *4. Dr. Renee St. Clair*

¶ 22 Dr. Renee St. Clair, accepted as an expert witness in the field of family counseling, testified she provided weekly counseling for respondents between March 6, 2014, and April 11, 2014. Respondents attended consistently and made progress toward accomplishing each of their counseling goals. St. Clair explained she discontinued her counseling of respondents due to a lack of funding but expressed her willingness to continue as their counselor if DCFS provided the funding. St. Clair testified she did not see signs of bipolar disorder in Sandra, despite sufficient opportunity to observe symptoms. She did note symptoms of depression in both respondents. However, she did not conduct any psychological evaluations to diagnose mental-health disorders. Respondents told her they had an altercation on February 3, 2014, but denied any incidents of domestic violence.

¶ 23 Following the presentation of evidence, the trial court found the State proved both counts of the petition.

¶ 24 B. Dispositional Hearing

¶ 25 In June 2014, the dispositional hearing commenced despite the absence of respondents. The attorneys for respondents indicated they spoke with their respective clients about the dispositional hearing. Specifically, Sandra's attorney stated:

"I believe that the child should be made a ward of the court. I think it's appropriate at this point to enter findings that both parents are unfit. I would join in the recommendation that a psych eval [*sic*] be ordered for my client. She and I have talked about the need for an updated psych eval [*sic*]. She is on board with this so I'm joining in that request. I would ask that we come back for

review in three months, and I don't have any objection at this point to supervised visits."

Frank's attorney then said:

"I would suggest that everything my client has talked about makes me believe he is determined to do what's necessary and appropriate in this case to get his child returned home, but at this time we do accept the recommendations. It is appropriate to make [A.F.] a ward of the court and award custody and guardianship to [DCFS]. My client has also talked about the appropriateness of an updated psychological evaluation. And as to visitation, I suppose at this time it probably is appropriate for it to be agency supervised."

¶ 26 The dispositional report relied upon by the parties and the trial court noted respondents' long history with DCFS. While respondents expressed a desire to cooperate, DCFS indicated a concern for respondents' failure to acknowledge or understand their mental illnesses. The report ultimately recommended the court place custody and guardianship with DCFS with supervised visitation while the parents obtained updated psychological evaluations. Based on this report and the agreement of the parties, the court found it was in the best interests of the minor to be made a ward of the court because respondents were unfit and unable to care for A.F.

¶ 27 Both parties filed notices of appeal. We have consolidated respondents' cases for review.

¶ 28 II. ANALYSIS

¶ 29 On appeal, Frank asserts the trial court's adjudicatory and dispositional findings were against the manifest weight of the evidence. Sandra joins with Frank in challenging the court's dispositional findings. We address these arguments in turn.

¶ 30 A. Adjudicatory Finding

¶ 31 Frank asserts the trial court erred in adjudicating A.F. a neglected minor under section 2-3(1)(b) of the Juvenile Act (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). A parent has a duty to shield 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.*, 888 N.E.2d at 549.

¶ 32 As to count I of the petition, which alleged respondents exposed A.F. to domestic violence, Frank asserts the conflicting evidence failed to support the trial court's adjudicatory finding that a physical altercation occurred between the parties on February 3, 2014. We disagree.

¶ 33 Respondents offered inconsistent statements regarding their February 3, 2014, altercation. Sandra alleged (1) she threw a phone charger at Frank while he held A.F.; (2) Frank threw her to the floor, still holding A.F.; and (3) Frank held her down on the bed while he

attempted to wrestle her phone away from her. Though Sandra initially said Frank held A.F. during their altercation, she later revised her statement, saying A.F. was in her crib throughout the physical altercation. Conversely, Frank admitted to police that he and Sandra engaged in a verbal altercation but denied battering her.

¶ 34 We give deference to the trial court's findings of fact at an adjudicatory hearing because the court "is in the best position to observe the conduct and demeanor of the parties and the witnesses and has a degree of familiarity with the evidence that a reviewing court cannot possibly obtain." *In re D.F.*, 201 Ill. 2d 476, 498-99, 777 N.E.2d 930, 943 (2002). In this instance, evidence existed to support the court's finding that A.F. had been exposed to domestic violence in the home. Though the parties offered conflicting statements, the court was not required to believe Frank's self-serving statement to police that he did not batter Sandra. Rather, the court could have believed Sandra's statement, in which she also admitted wrongdoing by throwing her phone charger at Frank to instigate the physical altercation. Further, Officer Sawlaw overheard a private argument where Sandra accused Frank of domestic abuse on prior occasions. Accordingly, the court heard sufficient evidence to support a finding that respondents exposed A.F. to domestic violence.

¶ 35 Frank also asserts A.F.'s safety has never been compromised, noting the evidence failed to demonstrate a physical altercation occurred that created an "unsafe" environment for A.F. As noted above, sufficient evidence supported the trial court's adjudicatory finding that respondents exposed A.F. to domestic violence. That A.F. was not actually injured during the February 3, 2014, physical altercation between respondents is of little consequence. "[W]here a trial court finds that the minors' environment is injurious, it need not wait until each child becomes a victim or is emotionally damaged in order to remove the child from the household."

In re B.J., 316 Ill. App. 3d 193, 199-200, 735 N.E.2d 1058, 1064 (2000). The parents' failure to provide a safe and nurturing environment for their children constitutes neglect. *Id.* Witnessing or hearing domestic violence does not provide a minor with a safe, nurturing environment. Rather, respondents exposed A.F. to a hostile environment where she could be physically or emotionally harmed, even if caused inadvertently. Thus, we reject this argument.

¶ 36 We therefore conclude the trial court's adjudicatory finding 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.").

¶ 37 B. Dispositional Finding

¶ 38 Respondents assert the trial court erred in entering the dispositional order (1) finding respondents unfit and unable to care for A.F., (2) making A.F. a ward of the court, and (3) granting guardianship to DCFS. Following an adjudication of neglect, the court must determine, by a preponderance of the evidence, whether it is in the best interests of the minor to be made a ward of the court. If the minor is declared a ward of the court, the court must then determine what disposition best serves the health, safety, and interests of the minor and the public. 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).

¶ 39 We note from the outset that respondents have forfeited this issue. "[A] party cannot complain of error that she induced the court to make or to which she consented." *In re E.S.*, 324 Ill. App. 3d 661, 670, 756 N.E.2d 422, 430 (2001). Respondents failed to appear at the dispositional hearing, at which time their respective attorneys agreed with the recommendations set forth in the dispositional report. Both attorneys indicated they had spoken with their clients and agreed with the recommendations. Those same recommendations were adopted by the trial court in reaching its decision. A parent is estopped from challenging the court's dispositional finding where the parent's attorney expressed agreement with the recommendations of the State that the minor be made a ward of the court and guardianship be granted to DCFS. *In re Stephen K.*, 373 Ill. App. 3d 7, 25, 867 N.E.2d 81, 97-98 (2007). Thus, respondents cannot complain the court's decision was in error when they consented to that decision.

¶ 40 Regardless, respondents' arguments fail on the merits. As the State points out, Frank argues only that the trial court erred by making A.F. a ward of the court and granting DCFS guardianship; he does not challenge the court's finding that he was unfit or unable to care for A.F. Sandra, however, challenges the entirety of the court's decision, so we will address it here.

¶ 41 In reaching its decision to make A.F. a ward of the court, the trial court considered information in the dispositional report as well as testimony from the adjudicatory hearing. The adjudicatory hearing revealed (1) respondents' parental rights had been previously

terminated as to three other children due to their failure to complete services; (2) ongoing concerns regarding respondents' mental health due to their refusal to acknowledge or treat their mental illnesses; and (3) domestic violence occurring in the presence of A.F. The dispositional report also highlighted DCFS's concerns over respondents' mental health and their failure to address their various diagnoses. Moreover, Sandra violated the safety plan by maintaining sole custody over A.F., which demonstrated her lack of cooperation with DCFS. Thus, sufficient evidence existed for the court to question the well-being and safety of A.F. if she remained in the custody of respondents.

¶ 42 Sandra concedes the trial court properly adjudicated A.F. as neglected, but she asserts the two domestic-violence incidents do not demonstrate she was unfit or unable to care for A.F. In support, Sandra asserts she did not pose a threat to A.F.'s safety, nor was A.F. at risk of physical harm while in Sandra's custody. We disagree. Sandra's behavior suggests her inability to control her violent outbursts. Throughout both domestic-violence incidents, A.F. was present. During the February 3, 2014, altercation, Sandra acknowledges throwing a phone charger at Frank. During the March 10, 2014, domestic-violence incident, Sandra yanked MacPeek's hair and head, frightening MacPeek to the extent that she fled the residence without A.F. Frank also expressed concerns to Truss about Sandra's drinking and stated he had previously witnessed her striking A.F. Sandra's outbursts in front of Officer Sawlaw, who observed her screaming, flailing her arms, and throwing items, provide further support for the court's finding. An individual with this lack of control cannot provide a safe and nurturing environment for her young child. In her brief, Sandra concedes A.F. was "upset by the commotion" but not harmed. As we noted above, the court was not required to wait until A.F.

