

FOURTH DIVISION
NOVEMBER 10, 2011

No. 1-11-1770

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

| | | |
|---------------------------------------|---|--------------------|
| IN THE INTEREST OF DAVID S., |) | |
| |) | |
| Minor-Respondent-Appellee |) | Appeal from the |
| |) | Circuit Court of |
| (The People of the State of Illinois, |) | Cook County. |
| |) | |
| Petitioner-Appellee, |) | |
| v. |) | No. 10JA00697 |
| |) | |
| Christine S., |) | Honorable |
| |) | Joan M. Kubalanza, |
| Respondent-Appellant.) |) | Judge Presiding. |

JUSTICE PUCINSKI delivered the judgment of the court.
Presiding Justice Lavin and Justice Fitzgerald Smith concurred in the judgment.

ORDER

HELD: Trial court's finding that respondent's adopted son was a neglected minor was not against the manifest weight of the evidence where the minor, although defiant, did not pose a danger to his family, and where the respondent failed to make efforts to find alternative care and shelter for her son after she refused to permit him to return home following his stay at a juvenile detention facility.

¶1 Following an adjudication hearing under the Juvenile Court Act of 1987 (Act)

1-11-1770

(705 ILCS 405/1-1 et seq. (West 2008)), the trial court found that David S. was a neglected minor because he was deprived of necessary care and was subjected to an injurious environment when respondent, Christine S., refused to permit David to return home following his stay in a juvenile detention facility. David was subsequently made a ward of the court. Christine appeals the trial court's neglect finding. For the reasons explained herein, we affirm the judgment of the trial court.

¶2 BACKGROUND

¶3 David was born on April 1, 1994. He was exposed to cocaine in utero and experienced withdrawal symptoms until he was three months of age. The Department of Children and Family Services (DCFS) removed David from his biological mother's care as he was her fifth child that had been drug-exposed. Thereafter, on June 30, 1994, David was placed into Christine's foster home, where he lived with Christine and Christine's biological daughter. David remained in Christine's care, and in 2002, when David was eight-years-old, Christine formally adopted him.

¶4 David was diagnosed with, and treated for, Attention Deficit Hyperactivity Disorder from the age of 4 to the age of 7. As David grew older, he began to exhibit defiant behavior at home and at school and became a member of the Spanish Cobra street gang. On June 5, 2010, David was arrested when police found him in possession of a handgun. David was then placed in the care of the Saura Center, a juvenile detention facility. On July 19, 2010, David was court ordered to return to his home, but Christine refused to allow David to return home because she was fearful of David and his gang affiliation. Christine expressed concern that gang members would come to her house where she lived with her daughter and granddaughter and cause her

1-11-1770

family harm. Moreover, Christine was fearful that she would lose her public housing if she was found to be harboring a felon.

¶5 Petition for Adjudication of Wardship

¶6 On August 10, 2010, the State filed a petition for adjudication of wardship because David was a minor child with no place to live. In the petition, the State alleged that David was "neglected" as that term is defined in the Juvenile Court Act of 1987 (705 ILCS 405/2-3 (West 2008)). Specifically, the State alleged that David was neglected because he was not receiving the necessary care that he required (705 ILCS 405/2-3(1)(a) (West 2008)) and because he was subjected to an injurious environment (705 ILCS 405/2-3(1)(b) (West 2008)). To support its claim of neglect, the State alleged: "Adoptive mother refuses to allow this minor to return home. Adoptive mother has not made a care plan for this minor. This is a single parent adoption."

¶7 Given that David had no place to live, the State also filed a motion for temporary custody, requesting the court to enter a temporary custody order appointing D. Jean Ortega-Piron, a DCFS Guardianship Administrator, as David's temporary guardian.

¶8 On August 25, 2010, the trial court presided over a hearing on the State's temporary custody motion. Christine stipulated to the facts alleged in the State's petition for adjudication of wardship—namely, that she would not permit David to return home—and the court found probable cause that David was neglected. Accordingly, the trial court entered an order placing him in the temporary custody of a DCFS Guardianship Administrator.

¶9 The Adjudication Hearing

¶10 The adjudication hearing commenced on April 5, 2011, and the parties delivered opening

1-11-1770

arguments. The State and the Public Guardian both argued that Christine's refusal to permit David to come home or make an alternative care plan for him constituted neglect and urged the trial court to find that David had been neglected because he had been deprived of necessary care and was in an injurious environment. Christine's attorney, however, urged the court to make a finding of dependency rather than one of neglect, given that David's behavioral problems and gang affiliations created a dangerous home environment and prevented Christine from finding alternative placement for him. Thereafter, the trial court heard live testimony.

¶11 Byron Beverly, a child protective investigator with Illinois Department of Children and Family Services, testified that in July 2010 he was assigned investigative duties pertaining to David. As a child protection investigator, Beverly indicated he would typically interview the subjects involved in an investigation in an effort to make an informed decision as to whether the minor child should continue living with his or her parents or should be placed in an alternative living situation. Accordingly, in this instance, Beverly interviewed David and Christine.

Beverly first spoke with David who was in the care of the Saura Center. David acknowledged that he was in the juvenile detention facility because he been apprehended by police and had been found with a gun in his possession. David stated that he was a member of the Spanish Cobras street gang and had been involved with the gang for four years. David indicated that the gun belonged to his gang and that he would likely be "violated," or punished for allowing police to confiscate the weapon. While in the Saura Center, David had been in contact with the gang leader, and he suspected he would either be severely beaten by the gang or be required to sell drugs to work off the cost of the weapon. David also admitted that he had gotten into trouble

1-11-1770

with the law on prior occasions and had been on probation for three gun charges. He also admitted to experimenting with marijuana. When Beverly asked David about Christine, David indicated that his mother told him that she would lose her public housing if she allowed David to return home. David did not believe Christine's claim and said he wanted to return home.

¶12 Beverly subsequently spoke with Christine and conducted a domestic violence and substance abuse screen in accordance with DCFS procedures. Christine tested negative for substance abuse and her home contained no evidence of domestic violence. During their discussion, Christine confirmed that David lived with her since he was three years old. As he became older, Christine reported that David became more defiant and disrespectful towards her. David would frequently violate curfew and stay out late. Christine also received calls from David's school about his problematic behavior. In addition, Christine expressed concern about David's gang involvement and reported that she was fearful that his gang would come to her house and cause problems for her, her daughter and her granddaughter; however, she did not mention that any specific threats had been made towards her or her family. Christine indicated that she had worked with members of DCFS's post-adoption program as well as with members of the Jewish Child and Family Services program to help David; however, due to David's behavior problems and gang affiliations, Christine felt that she could no longer "deal with" him any longer. Although Christine told Beverly that she still loved David, she reported that she was afraid of him and of his gang. She was specifically fearful that members of David's gang would come to her house and do something to punish him for losing the gang's gun.

¶13 In addition to fear, Christine also expressed concern that she could lose her public

1-11-1770

housing if she permitted David to return home. She showed Beverly a letter from the Chicago Public Housing Authority warning residents that they could lose their public housing if they were found to be harboring a convicted felon. At that time, however, David had not been charged with, or convicted of, a felony. Christine attempted to make alternative living arrangements for David and spoke with a relative, but the relative did not want David to stay with her because of his behavior.

¶14 Dennis Brady, a probation officer employed by Cook County Juvenile Probation, testified that he was assigned to be David's probation officer in June 2010. At that time, David was at the Saura Center, a nonsecure detention facility. When he was initially assigned to be David's probation officer, Brady assumed that David would return home and live with his mother following his stay at the Saura Center. Accordingly, Brady intended to prepare a plan for David's care following his release from the Saura Center. Namely, Brady was prepared to refer David to the Center Factory Program, an alternative school program, as well as to an intensive outpatient drug counseling program at Illinois Masonic Hospital. The services offered by both institutions would have been available to David once he left the Saura Center and returned to his mother's home.

¶15 Brady explained, however, that he was never able to implement these services because Christine refused to permit David to leave the Saura Center and return home. Brady spoke to Christine on several occasions and explained that the courts and the probation authorities would assist her and provide David with services in an effort to solve the problems present in their home environment. Christine, however, remained adamant that David would not be permitted to

1-11-1770

return home.

¶16 Hector Ocegueda, an employee with the Jewish Child and Family Services, testified that he was David's therapist from December 2009 until August 2010. Christine had requested his counseling services because she and David had been having communication problems and David was being defiant and getting into trouble in school. Accordingly, Ocegueda made efforts to stabilize the home environment and counsel David individually. Ocegueda explained that David was not very responsive to Ocegueda's therapeutic efforts and would often miss therapy sessions. Ocegueda also regularly met with Christine to provide her with emotional support. He developed a treatment plan for David; however, he was not able to complete the treatment plan. Ocegueda explained that his relationship with, and treatment of, David terminated in August 2010 because Christine refused to permit David to return home. Because Jewish Child and Family Services only provides counseling and assistance to children who are living at home, Ocegueda was unable to continue working with David.

¶17 At the conclusion of the live testimony, the parties delivered closing arguments. The trial court subsequently delivered a detailed oral ruling, discussing the evidence presented at the hearing and reciting relevant case law. In pertinent part, the trial court observed that although Christine reported being fearful, "there was no evidence that [she] ever called the police for any reason related either to David's actions toward her or any member of the household or to actions by any gang members towards her or any other member of the household." Moreover, the court found it important that Christine did not make significant efforts to get help for David or find alternative placement, noting: "although [she] did contact the post-adoption unit of [DCFS] and

1-11-1770

had therapy in place from Jewish Child and Family Services for David, she did little else." The court acknowledged that while Christine "may reasonably be frustrated with David's behavior, she [was] not justified in locking David out of the house." Ultimately, the court concluded that Christine "breached her duty to ensure a safe and nurturing shelter for David" and found that David was a neglected minor because he did not receive necessary care (705 ILCS 405/2-3(1)(a) (West 2008)) and was subjected to an injurious environment (705 ILCS 405/2-3(1)(b) (West 2008)).

¶18 The Disposition Hearing

¶19 After finding that Christine neglected David by subjecting him to an injurious environment and depriving him of necessary care, the court presided over a disposition hearing. The court took judicial notice of the evidence presented at the adjudication hearing and heard testimony from Abraham Nedungatt, David's DCFS caseworker. David, now age 17, had been placed in a group home. David had been convicted of possession of a firearm and remained on probation. When Nedungatt spoke to David's probation officer, he learned that David was compliant with the terms of his probation. Nedungatt reported that David was attending a local public high school but was not receiving good grades. Although he was behaving well at school, David had left the group home without permission on three or four occasions; nonetheless, David always returned to the group home. David attended group counseling sessions on occasion, but Nedungatt indicated that David refused to attend individual counseling because he believed he did not need it. Because neither David nor Christine wanted David to return home at this point, Nedungatt reported that his focus was on helping David to establish an independent life.

1-11-1770

¶20 Nedungatt indicated that he was also aware that Christine was receiving individual counseling. He had spoken to Christine's therapist who reported that Christine was doing "fine" but Nedungatt had not seen a written report on her progress. To his knowledge, Christine and David have had two or three supervised visits in the past six months and have communicated over the phone. Christine also sent David items that he requested during their conversations. David told Nedungatt that he wants the visits with Christine to continue and that he wants to visit his grandmother the next time she comes into town. Nedungatt ultimately recommended that David be made a ward of the court.

¶21 The trial court concurred with Nedungatt's recommendation and adjudged David a ward of the court, finding that doing so was in David's best interest. DCFS was appointed to be David's guardian.

¶22 Christine subsequently appealed the trial court's adjudicatory order; she does not contest the trial court's subsequent dispositional order.

¶23 ANALYSIS

¶24 On appeal, Christine argues that the trial court erred in finding that David was a neglected rather than a dependent minor. Given David's gang affiliation, arrests, the fear that pervaded Christine's household, and the inability of any adult to control David, she contends that the trial court's finding was against the manifest weight of the evidence.

¶25 The State and the Public Guardian both contend that the trial court's ruling was correct. The parties emphasize that Christine refused to permit David to continue living with her even though there was no evidence that David or his gang posed a threat to Christine or the rest of her

family or that she would lose her Section 8 housing by allowing David to return. Moreover, Christine failed to make real efforts to help David with his behavioral issues or find alternative placement for him. Accordingly, the trial court's finding that David was a neglected minor was not against the manifest weight of the evidence.

¶26 "The Juvenile Court Act is a statutory scheme, created by the legislature, the purpose of which is to secure for each minor subject thereto the care and guidance which will best serve the minor's safety and moral, emotional, mental and physical welfare, and the best interests of the community." *In re Austin W.*, 214 Ill. 2d 31, 43 (2005); 705 ILCS 405/1-2(1) (West 2008). The best interest of the child is the standard applicable to proceedings under the Juvenile Court Act. *In re Z.L.* 379 Ill. App. 3d 353 (2008). In a juvenile proceeding, the intent is to determine the status of a minor child on whose behalf proceedings have been brought, not to assign criminal or civil liability to any party. *In re R. B.*, 336 Ill. App. 3d 606, 614 (2003). Specifically, in an adjudicatory hearing, the issue is to determine whether or not a minor is abused, neglected or dependent. *In re Austin W.*, 214 Ill. 2d at 43; 705 ILCS 405/2-21(1) (West 2008). It is the State's burden to prove allegations of neglect or dependency by the preponderance of the evidence. *In re L.H.*, 384 Ill. App. 3d 836, 841 (2008). A preponderance of the evidence is that amount of evidence that leads the trier of fact to find that a condition is "more probable than not." *In re N.B.*, 191 Ill. 2d 338, 343 (2000). A trial court's determination, in turn, will not be reversed unless it is against the manifest weight of the evidence. *In re L.H.*, 384 Ill. App. 3d at 841. A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly apparent. *In re Christopher S.*, 364 Ill. App. 3d 76, 86 (2006).

¶27 Pursuant to the Act, a neglected minor includes any child "under 18 years of age who is not receiving the proper or necessary support, education as required by law, or medical or other remedial care recognized under State law as necessary for a minor's well-being, or other care necessary for his well-being, including adequate food, clothing and shelter, or who is abandoned by his or her parent or parents *** ." 705 ILCS 405/2-3(1)(a) (West 2008). The term neglect also encompasses "any minor under 18 years of age whose environment is injurious to his or her welfare." 705 ILCS 405/2-3(1)(b) (West 2008). 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), quoting *In re A.W.*, 231 Ill. 2d at 254. In general, neglect has been "defined as the failure to exercise the care that circumstances justly demand and includes both willful and unintentional disregard of parental duties." *In re L.H.*, 384 Ill. App. 3d at 841; *see also In re Gabriel E.*, 372 Ill. App. 3d 817, 822 (2007); *In re Christina M.*, 333 Ill. App. 3d 1030, 1034 (2002).

¶28 A dependent minor, in contrast, includes "any minor under 18 years of age *** who is without proper medical or other remedial care recognized under State law or other care necessary for his or her well being through no fault, neglect or lack of concern by his parents, guardian or custodian." 705 ILCS 405/2-4(1)(c) (West 2008). Ultimately, a minor's status under the Act depends upon the unique facts and circumstances of each case. *In re L.H.*, 384 Ill. App. 3d at 841-42; *see also In re Christopher S.*, 364 Ill. App. 3d at 88 ("cases involving adjudication of neglect and wardship are *sui generis*, and each case must be decided on the basis of its own unique circumstances").

¶29 Although a trial court's determination of a minor's status as neglected or dependent is made on a case-by-case basis, it is clear upon review of case law that findings of no-fault dependency rather than neglect in "lock-out" cases often depend on whether the difficult minor child was violent and posed an actual danger to his or her parents and whether the parent of the minor child made significant efforts to seek treatment or alternative placement opportunities for the child prior to the adjudication proceedings. Generally, findings of neglect rather than dependency are proper and upheld where the child poses no real threat to his or her family and where the parent fails to make significant efforts to find alternative placement for the minor. See, e.g., *In re L.H.*, 384 Ill. App. 3d at 842-43 (finding of neglect rather than dependency proper where mother refused to let her bipolar daughter return home following her stay at a hospital because there was no evidence the minor was violent or posed a danger to her family and the mother did not cooperate with DCFS to find alternative placement for her daughter); *In re Christina M.*, 333 Ill. App. 3d at 1034-35 (finding of neglect rather than dependency affirmed where the mother locked-out her daughter after her daughter engaged in defiant and deviant behavior that included using drugs and allowing gang members to come by the house because the lock-out was an "inappropriate" response to the minor's delinquency and the mother did not participate in developing a care plan for her daughter); see also *In re Diamond M.*, 2011 Ill. App. (1st) 111184, ¶¶ 27-32 (finding of neglect rather than dependency affirmed where adoptive mother refused to allow her psychologically and emotionally troubled daughter return home following a hospital stay even though the minor had been physically aggressive because the mother demonstrated lack of concern for her daughter's welfare, failed to cooperate with her

1-11-1770

daughter's treatment team and did not make sufficient efforts to find alternative treatment and shelter for her daughter).

¶30 In contrast, findings of dependency rather than neglect are appropriate and have been upheld where the minor poses an identifiable and real threat to his or her family and the parents make real efforts to find alternative sources of care and support to the child. See, *e.g.*, *In re Christopher S.*, 364 Ill. App. 3d at 86-89 (finding of no-fault dependency rather than neglect affirmed where the minor was physically and verbally abusive to his parents and adoptive brother and did not want to return to live with his adoptive parents following a hospital stay and where the parents made great efforts to find alternative care and placement for their adoptive son, contacting over 43 different agencies and individuals for help); see also *In re S.W.*, 342 Ill. App. 3d 445, 447-48 (2003) (finding of dependency not against the manifest weight of the evidence where minor daughter was hospitalized on several occasions for exhibiting uncontrollable aggressive behavior towards her mother).

¶31 Here, we find the circumstances of the lock-out in the case at bar support a finding of neglect rather than one of dependency. Notably, there was no evidence that David was a danger to his family. Indeed, although David was a difficult child, Christine concedes that he did not exhibit violence towards her or other members of their family. Despite the fact that David had been affiliated with the Spanish Cobras for four years, Christine reported no incidents in which David or members of his gang harmed or threatened to harm her. Although there was some evidence that David could potentially be the victim of a beating for losing the gang's gun, there was nothing to suggest that Christine, her daughter, or her granddaughter would be subject to

1-11-1770

any similar physical danger. In addition, the record reveals that Christine made limited efforts to find alternative placement for David. Aside from contacting a relative, Christine made no further efforts to find alternative sources of care and shelter for David. Moreover, Christine refused to reconsider her lock-out decision even though David's probation officer explained the services that would be available to David if he were permitted to return home. The lock-out also precluded the possibility that David could continue to receive counseling from Jewish Child and Family Services. Although Christine contended she would lose her public housing if she permitted David to return, the record does not contain any correspondence from public housing authorities directed to Christine or any evidence of the charges of which David was ultimately convicted. See *Foutch v. O'Bryant*, 99 Ill. 2d 389, 393 (1984) (an appellant bears the burden of providing a sufficiently complete record to allow for meaningful appellate review and any deficiencies in the record will be resolved against the appealing party). Nonetheless, even if David was convicted of a felony and Christine's fear of losing her house was legitimate, her lack of effort to find alternative placement for David supports a finding of neglect. See *In re Diamond M.*, 2011 Ill. App. (1st) 111184, ¶¶ 27-32; *In re L.H.*, 384 Ill. App. 3d at 42-43; *In re Christina M.*, 333 Ill. App. 3d at 1034-35.

¶32 The evidence does not support Christine's assertion that David is a dependent minor. We reiterate that Christine affirmatively locked David out of her home and refused to permit David to return to her home even though he posed no threat to the family and probation and counseling services would be available to him upon his return. Because Christine is responsible for David's current position, we conclude that the trial court's finding of neglect rather than one of no-fault

1-11-1770

dependency is not against the manifest weight of the evidence. *In re L.H.*, 384 Ill. App. 3d at 42-43.

¶33 CONCLUSION

¶34 For the reasons contained herein, we affirm the judgment of the trial court.

¶35 Affirmed.