Second Division
February 28, 2016

No. 1-16-1289

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

In re AERON C., AUSTIN C. AMIYAH C., and AIDEN C., Minors.	)	Appeal from the Circuit Court of Cook County.
(THE PEOPLE OF THE STATE OF ILLINOIS,	)	
Petitioner-Appellee,	)	Nos. 14 JA 1048 14 JA 1049 14 JA 1050
v.	)	14 JA 1051
KIA C.,	)	The Honorable Bernard J. Sarley,
Respondent-Appellant).	)	Judge, presiding.

PRESIDING JUSTICE HYMAN delivered the judgment of the court.
Justices Neville and Mason concurred in the judgment.

ORDER

¶ 1 *Held*: Juvenile court's findings that (i) all four children were neglected based on an environment injurious to their welfare and (ii) two of the minor children were neglected due to lack of necessary care of neglect were not against the manifest weight of the evidence. Letters written by school staff regarding two of the minor children as well as health records related to the Department of Children and Family Services investigation were admissible as business records.

¶ 2 Respondent Kia C. appeals from orders of neglect and wardship of her four children: Aiden, 11 years old; Amiyah, 9 years old; Aeron, 6 years old; and Austin, 2 years old. Each child has a different father; none of the fathers is a party to this appeal. The juvenile court adjudicated each child neglected based on an environment injurious to his or her welfare, and Aiden and Amiyah were also neglected as to necessary care. 705 ILCS 405/2-3(1)(a); 2-3(1)(b) (West 2012). After a dispositional hearing, the juvenile court made all four children wards of the court. The juvenile court placed Aiden, the oldest, in the care of his biological father under an order of protection. The three younger children were placed with the Department of Children and Family Services.

¶ 3 Kia asserts error occurred when the juvenile court admitted certain school records as to Aiden. In addition, Kia asserts the medical reports for all four children should have been excluded because they were prepared in anticipation of litigation.

¶ 4 We affirm. Based on the evidence, the juvenile court's findings of neglect were not against the manifest weight of the evidence. Moreover, the State's exhibits consisting of three letters written by Aiden's school personnel and health records from the children's August 2014 medical appointment were not prepared in anticipation of litigation and thus were properly admitted under the business record exception pursuant to section 2-18(4)(a) of the Juvenile Court Act.

¶ 5 BACKGROUND

¶ 6 In September 2014, the State filed motions for temporary custody and petitions for adjudication of wardship for all four children. The petitions alleged all four were neglected based on an injurious environment and abuse based on a substantial risk of physical injury. (705 ILCS 405/2-3(1)(b), 2-3(2)(ii) (West 2012)). The petition for Aiden also alleged he was neglected

based on lack of necessary care. 705 ILCS 405/2-3(1)(a) (West 2012). The petition for Amiyah alleged she was abused based on excessive corporal punishment. 705 ILCS 405/2-3(2)(v) (West 2012).

¶ 7 The juvenile court appointed the Public Guardian to represent the children, the Public Defender to represent Kia, and a conflict attorney with the Public Defender to represent Aiden's father (the other three children had three different fathers who were each defaulted). On the same date, the juvenile court placed all four children in DCFS temporary custody, based on the facts alleged in the temporary custody motions.

¶ 8 The record established the following.

¶ 9 In August 2014, Franklin Joe, DCFS Child Protection Investigator, was assigned to investigate an allegation of "cuts, welts, and bruises" on Amiyah ("F sequence"—sixth report to DCFS received for this family). Joe interviewed Kia in the principal's office at Amiyah's school. Kia was living in a shelter with her children. Kia told him that she would discipline her children by pinching them and taking things away. Kia told Joe that Amiyah and Aiden are tardy for school because it was hard to get them up and they took time brushing their teeth. Kia told Joe that Aiden had special needs (autism) and the school was working on an Individualized Education Plan for him.

¶ 10 Joe interviewed Amiyah and Aiden separately. Aiden told Joe that he had enough to eat, was never left home alone, and if he misbehaved his mother would put him in the corner. Amiyah told Joe her mother would put them in a corner or she would by pinch them if they misbehaved. Amiyah told Joe last time Kia had pinched her was the night before. Joe also saw 4-year-old Aeron and did not observe any visible signs of abuse or neglect.

¶ 11 The "F sequence" resulted in an indicated finding, *i.e.*, that credible evidence of the alleged abuse or neglect exists.

¶ 12 About a week later, Joe was assigned to investigate a report from the school that Aiden had tried to jump out of a window ("G sequence"—seventh report to DCFS regarding this family). Aiden told Joe that he wanted get out of the room so he put his leg out of the window. Aiden denied any mistreatment by Kia. Joe also talked to Amiyah who said Kia would whip her when she "keeps doing things over and over." Amiyah said she had enough to eat and that Kia did not curse at the children. On the same day Joe saw Aeron and Austin with no visible signs of abuse or neglect.

¶ 13 Because there had been allegations involving the family, there was a risk to the children, and the possibility of flight. Joe began a safety plan for the four children. Under the safety plan, Kia agreed to supervised visits with the children. The safety plan ended and DCFS took protective custody of the children. A few days later Joe explained to Kia by telephone that DCFS was taking protective custody because an "A sequence" (first report to DCFS) had come in involving cuts, welts, and bruises on Amiyah, and there was a risk of harm to the children. Joe was not the investigator for the "A sequence."

¶ 14 According to records from Beacon Therapeutic Diagnostic and Treatment Center, a mental health agency serving homeless families who reside in shelters, Kia had been receiving services on and off since 2010. Kia received voluntary services including mental health therapy, psychiatric care, and housing services. She was diagnosed with post-traumatic stress disorder and bipolar disorder. She took prescription Vicodin for pain but did not have a prescription. Instead she obtained the Vicodin "from friends." A progress note from February 2013 described Kia as manic, unfocused, and apparently confused about her own medical health and that of two of her

children. Kia said Aiden was autistic but could not recall the doctor who gave that diagnosis. Beacon's records described Kia's belief that Aiden had autism as unfounded, and indicated multiple screenings did not yield an autism diagnosis. Kia lived with her children in a shelter and had lived with friends or in shelter for the past seven years. Most recently she and the children had lived on the CTA Blue Line, washing up in the bathroom at O'Hare airport.

¶ 15 People's Exhibit 2 consisted of Aiden's school records for the 2013-2014 and 2014-2015 school years. The records demonstrated excessive absences and late arrivals at school. In January 2012, the school referred Aiden for counseling due to his behavior and problems with anxiety, depression, social interactions, and conduct. The therapist told the school that he lacked a stable living environment and was not having his basic needs consistently met. Also included in the school records were letters written in September 2014 from the school social worker and a paraprofessional specializing in behavior intervention, as well as an undated letter from the assistant principal. The letters described Aiden's behavior problems and Kia's lack of care and verbal mistreatment. Joe testified that he requested these types of documents in the normal course of his investigations to verify the events. The juvenile court found the school letters were not necessarily prepared in anticipation of litigation and overruled Kia's objection to their admission.

¶ 16 People's Exhibit 3 consisted of Amiyah's school records that demonstrated excessive absences and tardiness. These were admitted into evidence without objection.

¶ 17 People's Exhibit 4 consisted of Aaron's records from Beacon Therapeutic School where he started in April 2013 at age 3. By November, Beacon had concerns about Kia's ability to get Aeron to its program and her lateness for appointments. Beacon started therapy for Kia and

Aeron but as of February 2014, Aeron was frequently absent, and as of April Kia and Aeron were not attending therapy consistently.

¶ 18 People's Exhibits 5 through 8 consisted of the children's medical records from their evaluations on August 20, 2014, after Joe requested they be examined. The juvenile court admitted them as records generated in the normal course of the DCFS investigation that was the investigator's duty.

¶ 19 The juvenile court found all four children neglected due to an injurious environment and Aiden and Amiyah neglected for lack of necessary care. At a dispositional hearing in April 2016, the court adjudicated the children wards of the court and placed Amiyah, Aeron, and Austin with DCFS and Aiden with his biological father.

¶ 20 ANALYSIS

¶ 21 Admissibility of State's Exhibits

¶ 22 Kia argues that the school records regarding Aiden contained three letters that were prepared in anticipation of litigation and thus did not fall within the exception to hearsay encoded by section 2-18(4)(a) of the Juvenile Court Act (705 ILCS 405/2-18(4)(a)(West 2012)),[1] Kia also argues the four children were examined at a health facility as part of a DCFS investigation into suspected abuse and specifically at the request of a DCFS investigator. Kia concludes that the medical reports were not "made in the regular course of business" and therefore were inadmissible

[1] Section 2-18 (4)(a) provides: "Any writing, record, photograph or x-ray of any hospital or public or private agency, whether in the form of an entry in a book or otherwise, made as a memorandum or record of any condition, act, transaction, occurrence or event relating to a minor in an abuse, neglect or dependency proceeding, shall be admissible in evidence as proof of that condition, act, transaction, occurrence or event, if the court finds that the document was made in the regular course of the business of the hospital or agency and that it was in the regular course of such business to make it, at the time of the act, transaction, occurrence or event, or within a reasonable time thereafter." (Emphasis added.) 705 ILCS 405/2-18(4)(a) (West 2012).

¶ 23 The State and the Public Guardian contend that the letters and the medical reports were not created in anticipation of litigation. Instead, they were requested and prepared to assist Joe's investigation, which had many possible outcomes, including no indicated findings.

¶ 24 The State cites *In re Nylani M.*, 2016 IL App (1st) 152262, where this court held that a letter from a child's school regarding issues the child was having at school was properly admitted because it was created to assist DCFS with its services and the child's care. *Id.*, ¶ 39. The mere fact that the letter was eventually used at a parental fitness hearing did not establish its creation was for litigation. *Id.* ¶ 39. We are also guided by *In re Kenneth J.*, 352 Ill. App. 3d 967, 983 (2004) , where a parenting capacity assessment, although created as a result of the ongoing juvenile proceedings, was admissible as a business record; and *In re A.B.*, 308 Ill. App. 3d 227, 236 (1999), finding that client service plans are prepared by DCFS in the regular course of business and their use in an adversarial-type proceeding is of no consequence.

¶ 25 Kia cites *In re A.P.*, where DCFS initiated an investigation after the child was seen in an emergency room. Months later, a separate medical specialist examined the child and wrote a report opining about the cause of the injuries. *In re A.P.*, 2012 IL App (3d) 110191, ¶ 6. The Third District appellate court held that the juvenile court abused its discretion in admitting the consulting physician's report because it was not part of the child's follow-up medical care and not made in the regular course of business. *Id.* ¶¶ 4, 16. Rather, the court found the report was made in anticipation of litigation.

¶ 26 *A.P.* is distinguishable in that the doctor's report admitted in that case was generated solely to establish whether the injuries suffered by the respondent's child were intentionally inflicted, as opposed to accidental. *Id.* ¶ 16. The doctor otherwise had no connection with the child. A conclusion that injuries were intentionally inflicted is not one that is medically

relevant, but pertains only to the State's ability to prove abuse or neglect. In contrast, the records admitted here addressed, respectively, problems the children were experiencing at school and medical evaluations of their health. Reports from school personnel were prepared by individuals who had regular contact with the children in their school settings and address issues that would concern educators and school staff even apart from any DCFS investigation: excessive tardiness, children who arrive at school tired, hungry and disheveled and behavior problems in and out of class. Both types of reports are typically generated by a DCFS investigator in the regular course of an investigation, whether or not the ultimate conclusion is an indicated finding. Further, given the standard of review—abuse of discretion—one court's conclusion that admission of evidence of certain type constituted an abuse of discretion does not automatically dictate the same finding in the context of a different case. We find no abuse of discretion here.

¶ 27 Finally, in what appears to be an afterthought, Kia asserts the exhibits are "completely irrelevant to the facts as alleged in the petitions for adjudication of wardship for all minors." This point has no argument, no citations, and was never argued in the trial court. Therefore, this point is forfeited. See Illinois Supreme Court Rule 341(h)(7) (eff. May 24, 2006).

¶ 28 Finding of Neglect

¶ 29 Alternatively, Kia asks this court to reverse the findings of neglect as to all four children. We must keep in mind that the "paramount consideration" is the best interests of the children. *In Interest of K.G.*, 288 Ill. App. 3d 728, 734-35 (1997).

¶ 30 A "neglected minor" includes any minor under 18 years of age whose environment is injurious to his or her welfare. 705 ILCS 405/2-3(1)(b) (West 2012); *In re Arthur H.*, 212 Ill.2d at 462. Cases involving allegations of neglect are *sui generis*, decided based on their unique

facts. *Id*. at 463. The State has the burden to prove allegations of neglect by a preponderance of the evidence, which means the allegations are more probably true than not. *In re Zion M*., 2015 IL App (1st) 151119. ¶ 23. On appeal, a juvenile court's finding of neglect will not be reversed unless it was against the manifest weight of the evidence. *Arthur*, 212 Ill. 2d at 464. A court's finding is against the manifest weight of the evidence where the opposite conclusion is plainly evident. *Id*.

¶ 31 Finally, "[u]nder the anticipatory neglect theory, the State seeks to protect not only children who are the direct victims of neglect or abuse, but also those who have a probability to be subject to neglect or abuse because they reside, or in the future may reside, with an individual who has been found to have neglected or abused another child." *In re Arthur H*., 212 Ill.2d at 468. In other words, "a parent's treatment of one child is probative of how that parent may treat his or her other children." *Zion M*., 2015 IL App (1st) 151119, ¶ 30. The juvenile court is not forced to refrain from acting until another child is injured. *Id.*

¶ 32 Kia states the findings for Aiden were entered due to Kia's decision to not allow Aiden to be psychiatrically hospitalized, but that Aiden's autism diagnosis led Kia to believe that a hospitalization would not benefit Aiden. The belief, completely unfounded, as well as the simplistic argument ignores the juvenile court's rationale established in the record. The juvenile court noted the record showed multiple instances where necessary services were recommended for Aiden but Kia did not follow up or Kia did not feel the services were necessary. Of particular note is the juvenile court's observation that when services were in place the evidence showed Aiden benefitted.

¶ 33 The record established that Aiden had poor attendance at school and when he did attend he arrived late over half the time. The Crisis Intervention/Client Assessment, dated the day of the

incident at school, described Aiden as "easily agitated and frustrated. Difficulty responding to directions for safety. Continued angry outbursts." Further, the "Risk Assessment" for self-neglect was "severe" and continued disruptive behaviors in school were "severe."

¶ 34 Kia states the school records for Amiyah showed she excelled in school and her medical records show she was current on her immunizations. Kia asserts this proves that Amiyah was not neglected due to an injurious environment. But, the juvenile court specifically found Amiyah's absences and tardinesses at school indicated otherwise and that Kia had lived in shelters on and off for seven years and had repeatedly refused assistance and services. Even though the trial court found excessive corporal punishment as a result of pinching was not proved by a preponderance of the evidence, the finding of neglect due to an injurious environment was not against the manifest weight of the evidence. See *In re Juan M.*, 2012 IL App (1st) 113096, ¶ 65 ("injurious environment" includes "the breach of a parent's duty to ensure a safe and nurturing shelter for his or her children").

¶ 35 Affirmed.