2018 IL App (1st) 172923-U

No. 1-17-2923

Order filed March 29, 2018

Fourth Division



IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

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| *In re* S.C., a Minor | ) | Appeal from the |
| | ) | Circuit Court of |
| (The People of the State of Illinois, | ) | Cook County |
| | ) | |
| Petitioner-Appellee, | ) | |
| | ) | |
| v. | ) | No. 16 JA 1124 |
| | ) | |
| Shelly J., | ) | Honorable |
| | ) | Nicholas Geanopoulos, |
| Respondent-Appellant). | ) | Judge presiding. |

PRESIDING JUSTICE BURKE delivered the judgment of the court.
Justices Gordon and Ellis concurred in the judgment.

**ORDER**

¶ 1 *Held*: We affirm the circuit court's finding following an adjudicatory hearing that the minor was neglected due to an injurious environment where it was not against the manifest weight of the evidence and affirm the court's finding following a dispositional hearing that the respondent was unwilling and unable to parent her child where she waived her challenge by conceding she was unable to parent.

¶ 2 Following an adjudicatory hearing, the circuit court found that the minor, S.C., was neglected due to an injurious environment and later, following a dispositional hearing, found that

S.C.'s mother, respondent, was unable and unwilling to care for, protect, train, or discipline S.C. Respondent now appeals both orders of the circuit court. For the reasons that follow, we affirm.

¶ 3 I. BACKGROUND

¶ 4 S.C. was born on October 15, 2015, to respondent, Shelly J. On December 28, 2016, the State filed a petition for adjudication of wardship for S.C., alleging that she was neglected due to an injurious environment created by respondent, abused due to a substantial risk of physical injury by respondent, and dependent due to being without proper care because of the physical or mental disability of respondent. That same day, a temporary custody hearing took place outside the presence of respondent and Byron C., the putative father, because both of them were incarcerated at the time. The circuit court granted temporary custody of S.C. to the guardianship administrator of the Illinois Department of Children and Family Services (DCFS) without prejudice so a re-hearing could occur in the presence of both parents. A week later, the re-hearing occurred with both of them present, and the court again granted temporary custody of S.C. to the DCFS guardianship administrator. The following month, Byron C. was determined not to be the father of S.C. based on a paternity test, and despite a subsequent search, the actual father could not be determined.

¶ 5 A. Adjudicatory Hearing

¶ 6 On October 10, 2017, the circuit court held an adjudicatory hearing, wherein the sole witness was Ashley Allen, a DCFS investigator, for the State. Allen became involved in the case on December 10, 2016, based on a hotline call reporting allegations of "[s]ubstantial risk of harm." She reviewed a DCFS database and determined that the phone call was a Sequence E

report.[1] There had been three prior indicated reports naming respondent as the perpetrator: Sequence A for "substantial risk of harm" in March 2016, Sequence B for "inadequate supervision" in April 2016 and Sequence D for "substantial risk of harm" in June 2016.[2]

¶ 7 Allen subsequently spoke to Joseph Durr, the case worker for respondent and learned that respondent was a "youth-in-care," residing at a Thresholds facility for teen mothers, and had an outstanding arrest warrant for failing to appear in a previous criminal case. Allen immediately contacted the Thresholds facility to locate respondent and S.C., but was unsuccessful. Allen also conducted a background check of respondent and learned that she had another outstanding warrant for battery to a peace officer for which she was on probation. As part of her probation, respondent was required to "cooperate" with Thresholds' service plan, which included individual therapy, group therapy, mental health and domestic violence services, and required to live at the Thresholds' facility. But, as of December 28, 2016, she had not been compliant with the plan.

¶ 8 Between December 10 and 28, 2016, Allen attempted to locate and make contact with respondent almost daily through various methods, but respondent did not return any of Allen's calls and could not be found. On December 28, 2016, Allen learned that respondent had been arrested in front of S.C. at the home of respondent's friend, who was not part of respondent's service plan. Allen and DCFS subsequently took protective custody of S.C. based on "[r]isk of

[1] According to the DCFS Procedure Manual for Reports of Child Abuse and Neglect, when a new incident of abuse or neglect is reported involving the same family unit, "*i.e.* one previously reported adult and at least one previously reported child," the same State Central Register number is used and a new letter sequence is added, starting with the letter "A" and then using the letters "B," "C," etc. DCFS Procedure Manual § 300.30(h) (Updated Oct. 9, 2015). This court may take judicial notice of the manual as it is a public record. See *Dietz v. Property Tax Appeal Board*, 191 Ill. App. 3d 468, 477 (1989) (taking judicial notice of the Illinois Real Property Appraisal Manual, which was issued by the Department of Revenue, as a public record).

[2] According to the DCFS Procedure Manual for Reports of Child Abuse and Neglect, "[t]he apparent disappearance of sequences is due to sequences *** having been expunged." DCFS Procedure Manual § 300.30(h) (Updated Oct. 9, 2015).

harm," as respondent had prior indicated reports with DCFS, she was "dependent" on DCFS, was "not cooperating" with her service plan and had "unaddressed mental health issues." When Allen took custody of S.C., she did not observe any "physical signs" of abuse or neglect, but determined that S.C. had been neglected based on the evidence discovered during the investigation.

¶ 9 Following Allen's testimony, the State admitted three exhibits into evidence. People's Exhibit No. 1 was a certified copy of conviction, showing that respondent had pled guilty to aggravated battery to a peace officer on September 6, 2016, and was sentenced to six months in the Cook County Department of Corrections as well as probation. The document further showed that, on December 8, 2016, respondent did not appear at a scheduled court date, the State filed a petition for a violation of probation and a warrant was issued for her arrest. On December 28, 2016, the warrant was returned as executed.

¶ 10 People's Exhibit No. 2 were medical documents from Thresholds. Included within these documents were "Psych" notes that stated respondent had a history of "Mood D/O NOS, PTSD, IED, and LD NOS," and her symptoms included "anxiety, delusions, anger with aggression, self-harm, SI, [and] substance abuse." She was diagnosed with attention deficit hyperactivity disorder, intermittent explosive disorder, bipolar disorder, and she "[r]equired" mental health treatment. According to the notes, respondent had been hospitalized eight times "due to aggression" and reported "challenges with controlling anger." The notes documented respondent's incident with the police, where respondent claimed that, while she was protecting her boyfriend from a police officer, "she was struck thus she fought back." The notes also documented multiple other incidents involving respondent, including an "altercation with house

staff" resulting in a "misdemeanor charge," though respondent contended she was "wrongfully accused of assault," and an incident where respondent "push[ed] her GF in an altercation."

¶ 11 People's Exhibit No. 3 contained two DCFS Family Service Plans for respondent, one dated July 1, 2016 and the other January 20, 2016. The most recent service plan stated that respondent was "not ready to be on her own," in part because she had failed to "consistently" comply with the expectations of Thresholds' program and needed "assistance with caring for [S.C.]." The plan stated that independence was respondent's goal, but she had made "Unsatisfactory Progress" toward the goal. She also made unsatisfactory progress in refraining from physical altercations and meeting with her psychiatrist in order to monitor her medication and take them as prescribed. Respondent, however, did make satisfactory progress toward participating in classes pertaining to parenting a newborn and refraining from alcohol and drugs. The plan described respondent's relationship with her family as "good" and remarked that she had been visiting them "much more" and "establishing closer relationships" with them.

¶ 12 Thereafter, the State rested. Respondent did not present any evidence. Following argument, the circuit court found that S.C. had been neglected due to an injurious environment. The court observed that what constitutes neglect based on an injurious environment is an "amorphous concept" that must be decided on a case-by-case basis. The court acknowledged that the State presented no evidence that respondent had injured S.C., but concluded that:

> "the fact that [respondent] had mental health issues, was not compliant with her services, wasn't doing what Thresholds told her to, wasn't complying with – compliant with her criminal case. Picked up a warrant, got arrested in the presence of her child. I think all of these things are sufficient to prove neglect [based on an] injurious environment."

The court entered a written order incorporating by reference its oral findings.

¶ 13 B. Dispositional Hearing

¶ 14 On October 18, 2017, the circuit court held a dispositional hearing. Prior to any testimony, the State admitted into evidence People's Exhibit No. 1, a permanency planning hearing report that included an integrated assessment and current service plan approved on July 24, 2017.

¶ 15 Yeni Rojas, of One Hope United, testified for the State, stating that she had been the supervisor on S.C.'s case since December 2016. At the time the case was initiated, respondent herself was a ward of the court in a different county. As of October 2017, S.C. was living in a long-term foster home in Elmhurst, Illinois, with respondent's adoptive mother that appeared safe and appropriate based on Rojas' most recent home visit. There was some concern about S.C.'s weight, but Rojas had been in contact with S.C.'s foster parent about the issue.

¶ 16 Rojas testified that, in January 2017, respondent was evaluated through an integrated assessment process, which resulted in recommendations of individual therapy, mental health treatment, a psychological evaluation, psychological treatment, substance abuse counseling, parenting classes, and, in the future, parent-child psychotherapy. Rojas acknowledged that respondent had been in Thresholds' program, where she was supposed to be receiving these services, but from January 2017 until June 2017, respondent had not been engaging in the services. According to the staff at Thresholds, respondent "was just running away most of the time, leaving the placement and not following up with the services."

¶ 17 In June 2017, respondent turned 21 years old and was no longer a ward of the court. Thereafter, Rojas had a difficult time confirming her place of residence and locating her until the beginning of October 2017 when respondent called Rojas. Respondent informed Rojas that she

was living in Zion, Illinois, where she was also working full-time at a gas station. The following week, Rojas attempted to visit with her. However, when Rojas arrived where respondent said she was living, respondent was not there. Rojas eventually met respondent later that day at another location and was able to verify that respondent lived at the home in Zion along with her fiancée, her mother and either the children of her fiancée's mother or the children of her fiancée. Rojas' testimony did not make this clear.

¶ 18 During the meeting with respondent, Rojas discussed the recommended services from the integrated assessment and service plan. Respondent asserted that she was aware of her need for services and would "follow up" with them. There was a location nearby for respondent to obtain some of the services, so Rojas instructed her to schedule an intake appointment there. According to Rojas, although respondent had been prescribed psychotropic medication, she was not currently taking them nor was she seeing a psychiatrist. At their meeting, Rojas and respondent also discussed respondent's visitation schedule with S.C. According to Rojas, respondent was entitled to weekly visits, which were to occur on Wednesdays because that was respondent's day off from work. However, respondent did not consistently visit S.C., and her last documented visit was in June 2017. Rojas stated that, between then and October 2017, respondent had been incarcerated for a "period of time." Prior to June 2017, respondent visited S.C. two or three times a month. Respondent explained to Rojas that she did not drive a car and transportation costs prevented her from always visiting S.C. Rojas testified that, although her agency had provided respondent with a Ventra card, respondent recently informed her that she also needed Metra tickets. Respondent was allowed to call S.C. through her foster parent, but had only contacted her once through this method. Respondent, however, told Rojas that she wanted "reunification" with S.C.

¶ 19 Rojas testified that One Hope United's recommendation was for S.C. to be adjudged a ward of the court with the DCFS guardianship administrator appointed as the guardian. The agency believed this was in S.C.'s best interest because respondent needed to follow up with the recommended services in order to provide S.C. a safe environment. The agency's recommended permanency goal was for S.C. to return home in 12 months. Following Rojas' testimony, the State rested. Respondent did not present any evidence.

¶ 20 During argument, the State contended that the circuit court should find respondent unable and unwilling to parent S.C. based on her failure to engage in the recommended services and the fact that she moved to Zion despite knowing S.C. was in Elmhurst. Respondent replied, "[w]e're asking for a finding of just unable only, not unwilling, your Honor," and argued that she had not been regularly visiting S.C. because of the distance between her residence and S.C.'s. Respondent posited that, during her meeting with Rojas, she demonstrated a willingness to engage in the recommended services and wanted to regain custody of S.C.

¶ 21 The circuit court ultimately found that it was in the best interest and welfare of S.C. and the public for her to be adjudged a ward of the court. The court observed that respondent had access to the recommended services, but failed to complete them and noted that, despite S.C. being placed with a relative, respondent was not visiting her. The court determined that, based on the evidence, respondent was both unable and unwilling to care for, protect, train or discipline S.C. The court further found that reasonable efforts had been made to prevent or eliminate the need to remove S.C. from her home and appropriate services aimed at family preservation and family unification had been unsuccessful. The court accordingly placed S.C. in the custody and guardianship of the DCFS guardianship administrator with the right to place S.C. The court entered a written order consistent with its oral rulings.

¶ 22 Respondent timely appealed both orders of the circuit court following the adjudicatory hearing and the dispositional hearing.

¶ 23 II. ANALYSIS

¶ 24 On appeal, respondent contends that the circuit court reached improper findings following both the adjudicatory hearing and dispositional hearing.

¶ 25 The Juvenile Court Act of 1987 (Act) (705 ILCS 405/1-1 *et seq.* (West 2016)) sets forth the procedures and criteria for determining whether to remove a minor from his or her parents' custody and be made a ward of the court. *In re Arthur H.*, 212 Ill. 2d 441, 462 (2004). In making this determination, the circuit court employs a two-step process. *In re A.P.*, 2012 IL 113875, ¶ 18. First, there is an adjudicatory hearing wherein the court determines whether the minor is abused, neglected or dependent. 705 ILCS 405/2-18(1) (West 2016); *In re A.P.*, 2012 IL 113875, ¶ 19. If the court determines that the minor is abused, neglected or dependent, the court holds a dispositional hearing, wherein it determines whether it is in the best interest of the minor and the public for the minor to be made a ward of the court. 705 ILCS 405/2-21(2) (West 2016); *In re A.P.*, 2012 IL 113875, ¶ 21.

¶ 26 A. Adjudicatory Hearing

¶ 27 We begin with the propriety of the circuit court's ruling at the conclusion of the adjudicatory hearing. Respondent argues that its finding of neglect due to an injurious environment was erroneous because: (1) the State failed to present any evidence that S.C. was neglected; (2) its finding was improperly based on a theory of anticipatory neglect; and (3) a parent's diagnosis of a mental illness does not in and of itself constitute neglect.

¶ 28 As previously mentioned, at the adjudicatory hearing, the circuit court must determine whether the minor is abused, neglected or dependent. 705 ILCS 405/2-18(1) (West 2016). Only

neglect is relevant to this appeal. The State has the burden to prove neglect by a preponderance of the evidence, or stated otherwise, the State must prove "that the allegations of neglect are more probably true than not." *In re Arthur H.*, 212 Ill. 2d at 463-64. In pertinent part, the Act defines a neglected minor as "any minor under 18 years of age whose environment is injurious to his or her welfare." 705 ILCS 405/2-3(1)(b) (West 2016). The term "neglect" means "the failure to exercise the care that circumstances justly demand, and encompasses both willful and unintentional disregard of parental duty." *In re Jordyn L.*, 2016 IL App (1st) 150956, ¶ 28. The term "injurious environment" is "an amorphous concept that cannot be defined with particularity, but has been interpreted to include the breach of a parent's duty to ensure a safe and nurturing shelter" for his or her child. *In re Kamesha J.*, 364 Ill. App. 3d 785, 793 (2006).

¶ 29 Each case must be judged on its own unique facts. *In re Jordyn L.*, 2016 IL App (1st) 150956, ¶ 29. Because of this fact-intensive inquiry, on review, the circuit court's finding "of neglect will not be reversed unless it is against the manifest weight of the evidence," which occurs only when "the opposite conclusion is clearly evident." *In re Arthur H.*, 212 Ill. 2d at 464. We give such deference to the circuit court's findings of fact because it is in the best position to observe the testimony of the witnesses, assess their credibility and weigh the relative evidence. *In re Sharena H.*, 366 Ill. App. 3d 405, 415 (2006).

¶ 30 In this case, in finding that S.C. was neglected due to an injurious environment, the circuit court relied primarily on respondent's mental health issues, her noncompliance with the recommended services offered through Thresholds, and her criminal background, which included being arrested in S.C.'s presence. Based on this reasoning, we have no basis to find the opposite conclusion is clearly evident. See *In re Jordyn L.*, 2016 IL App (1st) 150956, ¶ 45 (finding that a respondent's "poor decision making, coupled with her consistent failure to participate in services

as assigned to her, sufficiently" supported the circuit court's finding that her daughter was neglected due to an injurious environment). Although respondent argues that no one, including any one from Thresholds, testified to observing firsthand S.C. being neglected, respondent ignores that, for a significant period of time, she was missing from Thresholds and her location was unknown.

¶ 31 Additionally, respondent's argument that the circuit court's finding of neglect was improperly based on the theory of anticipatory neglect is baseless. "Under 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. However, nothing in our review of the record indicates that the court's finding of neglect was based on anticipatory neglect. The court never used the phrase "anticipatory neglect," and its findings were clearly based on the present living conditions of S.C. with respondent.

¶ 32 Lastly, respondent posits that the circuit court placed too much emphasis on her "vague" mental health condition without proof of a nexus between it and neglect. As highlighted by respondent, this court has previously stated that "[i]t is not enough for the State to show that respondent suffers from a mental illness; it must show that respondent's mental illness places the children in an injurious environment." *In re Faith B.*, 349 Ill. App. 3d 930, 933 (2004), *aff'd in part, remanded in part*, 216 Ill. 2d 1 (2005). However, the record shows that the court did not solely use the fact that respondent had mental health issues in finding that S.C. was neglected due to an injurious environment, but rather considered these issues along with her lack of compliance with the services recommended of her and her criminal background, which included

being arrested in the presence of S.C. Accordingly, the circuit court's finding that S.C. was neglected due to an injurious environment was not against the manifest weight of the evidence.

¶ 33 B. Dispositional Hearing

¶ 34 We now turn to the propriety of the circuit court's ruling at the conclusion of the dispositional hearing. Respondent argues that its finding that she was unable and unwilling to parent S.C. was against the manifest weight of the evidence because the State's evidence showed that she understood her need for services, was interested in completing those services and desired reunification with S.C.

¶ 35 At the dispositional hearing, the circuit court may commit the minor to wardship upon a finding that the minor's parents are unable or unwilling or unfit, for some reason other than financial circumstances alone, to care for, protect, train or discipline the minor and that the health, safety, and best interests of the minor will be jeopardized if she remains in the custody of her parents. 705 ILCS 405/2-27(1) (West 2016); *In re Harriett L.-B.*, 2016 IL App (1st) 152034, ¶ 30. A finding on any one of the grounds alone—unfit, unable or unwilling—is a sufficient basis for removing the minor. *In re Harriett L.-B.*, 2016 IL App (1st) 152034, ¶ 30. The decision must be supported by a preponderance of the evidence. *In re Charles W.*, 2014 IL App (1st) 131281, ¶ 56. The circuit court's decision may only be reversed if its factual findings are against the manifest weight of the evidence or it abused its discretion by choosing an inappropriate dispositional order. *In re Harriett L.-B.*, 2016 IL App (1st) 152034, ¶ 30.

¶ 36 We find *In re Harriett L.-B.* dispositive of respondent's argument. There, at the conclusion of a dispositional hearing, the respondent-mother "asked the [circuit] court that it enter 'a finding of unable only,' " but argued that the State presented no evidence demonstrating that she was unwilling or unfit to parent her daughter. *Id.* ¶ 31. The court subsequently found

respondent both unable and unwilling, but not unfit, to parent her child. *Id.* On review, this court found that, based on respondent's argument or lack thereof, she had "conceded" that she was unable to parent her daughter. *Id.* Because of respondent's concession and because a finding of being unable to parent alone is sufficient to uphold the circuit court's dispositional order, we found that any challenge to the order was "waived" and consequently, "any issue regarding [its] additional finding that respondent was unwilling [was] moot." *Id.*

¶ 37 In this case, as in *In re Harriett L.-B.*, at the close of the dispositional hearing, respondent asserted, "[w]e're asking for a finding of just unable only, not unwilling." The circuit court subsequently found respondent both unable and unwilling, but not unfit, to parent S.C. Consequently, respondent has conceded that she was unable to parent S.C. See *id.* In light of this concession and because a finding of being unable to parent alone will be sufficient to uphold the circuit court's dispositional order, any challenge to the order on that basis is waived and any issue regarding its additional finding that respondent was unwilling to parent S.C. is moot. See *id.*

¶ 38 III. CONCLUSION

¶ 39 For the foregoing reasons, we affirm the orders of the circuit court of Cook County.

¶ 40 Affirmed.