

2014 IL App (2d) 140167-U
No. 2-14-0167
Order filed June 20, 2014

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

<i>In re</i> TERRELL B., a Minor)	Appeal from the Circuit Court
)	of Winnebago County.
)	
)	
)	No. 13-JA-0414
)	
(The People of the State of Illinois, Petitioner-)	Honorable
Appellee v. Elliot B., Respondent-Appellant.))	Mary Linn Green
)	Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Justices Zenoff and Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held:* The court allowed respondent's counsel's motion for leave to withdraw pursuant to *Anders v. California*, 386 U.S. 738 (1967), and affirmed the trial court's order finding Terrell B. to be an abused and neglected minor.

¶ 2 In January 2014, the trial court adjudicated 16-year-old Terrell B. (Terrell) to be an abused and neglected minor based upon all three counts in the State's petition. In February 2014, the trial court entered a dispositional order and found respondent, Elliot B., to be an unfit parent. Respondent timely appealed the adjudication of abuse and neglect, and counsel was appointed. Pursuant to the procedures set forth in *Anders v. California*, 386 U.S. 738 (1967), counsel now moves to withdraw as counsel on appeal. In his motion, counsel states that he has

read the record and found no issue of arguable merit. Counsel supports his motion with a memorandum of law providing a statement of facts, identification of a potential issue on appeal, and an argument why each lacks arguable merit. See *Anders*, 386 U.S. at 744 (appellate counsel must accompany his request to withdraw with a brief “referring to anything in the record that might arguably support the appeal”). We granted respondent 30 days to respond to the motion to withdraw, and he has not responded. Because we agree with counsel that there are no potentially meritorious issues for appeal, we grant counsel’s motion and we affirm.

¶ 3

I. FACTS

¶ 4 On August 30, 2013, the Illinois Department of Children and Family Services (DCFS) received a hotline report alleging that respondent had locked his 16-year-old son, Terrell, out of his house. It was reported that respondent had locked Terrell out of the home on prior occasions also. Child Protective Services (CPS) worker Jane Whitaker visited respondent’s home in regard to the lock out. At that time Whitaker observed respondent to be intoxicated. Respondent admitted to Whitaker that he had been drinking beer while waiting for Terrell to return home.

¶ 5 On September 10, 2013, the State filed a three-count abuse and neglect petition as to Terrell stemming from an incident that occurred at respondent’s home on September 3, 2013, as discussed below. An amended neglect petition was filed on December 13, 2013. In count I of the amended petition the State alleged that Terrell was abused in that respondent created a substantial risk of physical injury to Terrell, other than by accidental means, which would likely cause death, disfigurement, impairment of physical or emotional health, or loss or impairment of any bodily function, in that respondent grabbed Terrell by the throat and lifted him off the ground. 705 ILCS 405/2-3(2)(ii) (West 2012).

¶ 6 In count II of the amended petition the State alleged that Terrell was an abused minor

because respondent inflicted excessive corporal punishment on him, in that respondent grabbed Terrell by the throat and lifted him off the ground. 705 ILCS 405/2-3(2)(v) (West 2012).

¶ 7 In count III of the amended petition the State alleged that Terrell was a neglected minor in that his environment was injurious to his welfare because respondent had a substance abuse problem which prevented him from properly parenting, thereby placing Terrell at risk of harm. 705 ILCS 405/2-3(1)(b) (West 2012).

¶ 8 An adjudicatory hearing was held on January 13 and 14, 2014. At the hearing, Ariel Haugabook testified that he was a case manager for Youth Services Network. Haugabook said that on September 3, 2013, he brought Terrell back to his home after he stayed at a shelter the night before because he was locked out of his home. When Haugabook and Terrell arrived at respondent's home, respondent and Terrell began to argue. After Terrell took one of respondent's cigarettes, respondent grabbed Terrell by the throat and moved him toward the kitchen. Haugabook exited the house and called the police. When he was outside the house he heard Terrell yell, "get off of me!"

¶ 9 On cross-examination, Haugabook was asked whether he told the officer who arrived on the scene that he actually heard Terrell yelling "you're going to break my neck!" Haugabook said that he did not recall saying that, but that he was being honest with the police officer when he was interviewed immediately after the incident in question.

¶ 10 Sara Hoecherl, a DCFS child protection specialist, testified that during her investigation of this case she spoke with the respondent while he was at the Winnebago County jail. Hoecherl said that respondent admitted to grabbing Terrell around the neck after he took one of his cigarettes. The night before that incident Terrell had run away and had stayed at the Bridge, a crisis emergency shelter. Usually the caseworker at the Bridge would call the parents to come

and pick up their children. However, respondent told a Bridge caseworker that he had drunk too much and could not pick up his son. Respondent told Hoecherl that he had been drinking that day, and that he drank daily, but that it was not a problem for him because he waited until noon to start drinking.

¶ 11 Hoecherl also spoke to Terrell about the incident between him and his father. Terrell told Hoecherl that when he came home from the shelter respondent began yelling at him and accusing him of stealing some of his pain pills. Terrell said he did not want to listen anymore, so he stood up, took a cigarette off the table and went to leave the room. As he turned around, respondent grabbed him by the neck. Terrell said that as respondent shoved him back by the kitchen area he lifted him off the ground. Terrell told Hoecherl that that respondent drank daily, was regularly intoxicated and also used cocaine.

¶ 12 On cross-examination, Hoecherl said that respondent first indicated to her that he had only grabbed Terrell by the arm and pushed him into the kitchen. However, Hoecherl said he later admitted to grabbing Terrell by the throat, but his version at that point was that he then brought Terrell to the ground. Respondent also told Hoecherl that the pills he believed Terrell had stolen from him were prescription pills that respondent took for his back pain as needed. Hoecherl said that Terrell told her that he did not steal the pills. Instead, Terrell said that respondent would sell his own pills when he was drunk, and then he would forget that he sold them. Finally, Hoecherl said that the original investigator did not observe any injuries on Terrell after the incident in question.

¶ 13 Rockford police officer Amy Kennedy testified that on September 3, 2013, she was dispatched to respondent's residence in reference to a domestic battery. When she spoke to Terrell he told her that after he took one of respondent's cigarettes, respondent grabbed him by

the throat, pushed him into the kitchen, and brought him off of his feet against the kitchen sink. Terrell told Kennedy that when he was able to get away he ran outside of the house to the street.

¶ 14 Kennedy also spoke to the respondent at the scene. Respondent told Kennedy that he grabbed Terrell's throat after Terrell took one of his cigarettes. When asked why he grabbed Terrell's throat, respondent answered that he thought he could. Respondent was then arrested on domestic battery charges. On cross-examination Kennedy said that when she spoke to Terrell after the incident she did not observe any marks on his neck.

¶ 15 Respondent testified that he did not have a substance abuse problem. He admitted that he told Hoecherl that he drank every day, but that was not true. He only made that statement because he had just been put in jail and he was very aggravated at the time. He believed that he had been jailed simply because he stopped his son from taking one of his cigarettes. He did not go to pick up Terrell from the shelter because the last time he did so Terrell walked off while he was filling out paperwork.

¶ 16 After hearing the parties' arguments the trial court took the matter under advisement. On January 17, 2014, the court found that the State had proven by a preponderance of the evidence counts I, II and III of the State's petition. An agreed dispositional order was entered on February 13, 2014, finding respondent to be an unfit parent.

¶ 17 II. ANALYSIS

¶ 18 Allegations of abuse or neglect are governed by the Illinois Juvenile Court Act of 1987 (Act). 705 ILCS 405/2-3 (West 2012). One of the definitions of a neglected minor in the Act is "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). An abused minor has been defined as: (1) "any minor whose parents create a substantial risk of physical injury to such minor other than by accidental means

which would be likely to cause death, disfigurement, impairment of emotional health, or loss or impairment of any bodily function”; or (2) a minor whose parent inflicts excessive corporal punishment. 705 ILCS 405/2-3(2)(ii), (v) (West 2012). The Act itself does not define “excessive corporal punishment.” *In re B.H.*, 389 Ill. App. 3d 316, 319 (2009). A parent has a right to corporally punish his child. *In re F.W.*, 261 Ill. App. 3d 894, 898 (1994). However, the parent’s conduct may not exceed the boundaries of reasonable parental discipline. *Id.* The degree of physical injury inflicted upon a child is not the exclusive or determinative factor in evaluating the reasonableness of parental conduct. *Id.* at 903. Other factors to consider include the likelihood of future punishment that might be more injurious, the psychological effects of the discipline on the child, and whether the parent was calmly attempting to discipline the child or whether the parent was lashing out in anger. *Id.*

¶ 19 The State must prove its allegation of neglect or abuse by a preponderance of the evidence. See *In re Arthur H.*, 212 Ill. 2d 441, 463–64 (2004). In other words, the State must prove that the allegations of abuse or neglect are more probably true than not. *Id.* at 464. Upon review, a trial court’s decision will not be reversed unless it is against the manifest weight of the evidence. *Id.* A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident. *Id.*

¶ 20 We agree with counsel that there is no colorable argument that Terrell is not an abused or neglected minor. Count I of the State’s petition alleged that Terrell was abused because respondent created a substantial risk of physical injury to Terrell when he grabbed him by the throat and lifted him off the ground. See 705 ILCS 405/2-3(2)(ii) (West 2012). At the adjudicatory hearing, case manager Haugabook testified that after Terrell took one of respondent’s cigarettes, respondent got angry and grabbed Terrell by the throat. DCFS employee

Hoecherl testified that Terrell told her that respondent grabbed him by the neck, shoved him back into the kitchen, and lifted him off the ground. Hoecherl also said that respondent had admitted to grabbing Terrell by the throat, but he said that he then brought Terrell to the ground. Officer Kennedy testified that Terrell told her a version of events that was similar to Hoecherl's testimony. Although there was no testimony that respondent's actions left physical marks on Terrell, the trial court's determination that respondent's conduct in grabbing Terrell by the throat and picking him off of the ground created a *substantial risk* of physical injury to Terrell was not against the manifest weight of the evidence.

¶ 21 We also find that the trial court did not manifestly err in holding that the State proved by a preponderance of the evidence that Terrell was an abused minor because respondent inflicted excessive corporal punishment on him, as alleged in count II of the State's petition. See 705 ILCS 4015/2-3(2)(v) (West 2012). In that count, the State alleged that respondent inflicted excessive corporal punishment on Terrell when he grabbed him by the throat and lifted him off the ground. Here, respondent's conduct more than exceeded the boundaries of reasonable parental discipline. According to all versions of the event, respondent grabbed Terrell by the neck because Terrell took one of respondent's cigarettes. When police officer Kennedy asked him why he did so, respondent answered that he did it because he thought he could. Also, it was clear that respondent acted in anger when he grabbed Terrell by the neck; this was not the conduct of a parent calmly attempting to discipline a child. For these reasons, the trial court's determination that count II of the petition had been met was not manifestly erroneous.

¶ 22 Finally, the State met its burden as to count III of the petition. There was ample testimony at the adjudicatory hearing that respondent had a substance abuse problem which prevented him from properly parenting, thus placing Terrell at risk of harm. See 705 ILCS

405/2-3(1)(b) (West 2012). Hoecherl testified that respondent told a Bridge caseworker that the reason he could not pick up Terrell from the shelter on September 3, 2013, was because he had had too much to drink. Respondent himself also told Hoecherl that he drank daily, but he said that was not a problem for him because he waited until noon to start drinking. Terrell also told Hoecherl that respondent drank daily, was regularly intoxicated and used cocaine. Accordingly, the trial court's ruling on count III was not against the manifest weight of the evidence.

¶ 23

III. CONCLUSION

¶ 24 After examining the record, the motion to withdraw, and the memorandum of law, we grant the motion to withdraw, and we affirm the judgment of the circuit court of Winnebago County.

¶ 25 Affirmed.