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2015 IL App (3d) 140382-U

Order filed February 26, 2015

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2015

<i>In re S.S.,</i>	)	Appeal from the Circuit Court
	)	of the 12th Judicial Circuit,
a Minor.	)	Peoria County, Illinois,
	)	
(THE PEOPLE OF THE STATE	)	Appeal No. 3-14-0382
OF ILLINOIS,	)	Circuit No. 13 JA 201
	)	
Petitioner-Appellee,	)	The Honorable
	)	David J. Dubicki,
v.	)	Judge, Presiding.
	)	
SHAWNIECE S.,	)	
	)	
Respondent-Appellant).	)	
	)	

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PRESIDING JUSTICE McDADE delivered the judgment of the court.  
Justice Holdridge concurred in the judgment.  
Justice Wright specially concurred.

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**ORDER**

¶ 1 *Held:* The trial court's decision that the minor was neglected as to medical care and due to injurious environment was not against the manifest weight of the evidence.

¶ 2 FACTS

¶ 3 On July 24, 2013, a juvenile petition was filed to determine neglect of minor, S.S., by the mother, respondent, Shawniece S. The petition alleged that the minor, born March 1, 2012, and diagnosed with osteogenesis imperfecti (brittle bones), was neglected as to medical care and due to an injurious environment that threatened her welfare. The claim of neglect as to medical care (Count I) alleged that Shawniece refused/failed to maintain the minor's diet for sufficient development, missed numerous doctor's appointments at OSF Saint Francis Medical Center (OSF), refused in-home assistance with the child's care, and failed to follow through with early intervention programs to ensure proper feeding and development of motor skills. Her case with early intervention was closed several times because of these failures.

¶ 4 With regard to the minor's alleged neglect due to an injurious environment (Count II), the petition repeated the medical neglect facts and also included details of Shawniece's arrest on June 15, 2013, describing her erratic actions first toward the arresting officer and later toward hospital personnel. She was subsequently charged with and pled guilty to resisting a peace officer. On this count, the petition further noted Shawniece's prior positive drug screening while pregnant with the minor as well as information about the minor's father's criminal history.

¶ 5 At the dispositional hearing on May 10, 2014, Nicholas Mason, the officer who arrested Shawniece on June 15, Shawniece, and Loraine Sephus, Shawniece's adoptive mother, all testified. Mason elaborated on the incident that led to Shawniece's arrest.

¶ 6 Shawniece set out reasons why she believed the minor's medical reports (the reports) submitted as exhibits by the State were wrong. The reports from fall 2012 and spring 2013 showed the minor appeared well-developed, well-nourished and active. Her March 2013 report noted her formula change from NeoSure to PediaSure. However, at the minor's 15 month exam in June 2013, she was diagnosed "failure to thrive". The report highlighted that the mother had

not been feeding the minor PediaSure but was still feeding her NeoSure. Shawniece testified and it is also noted in the report that she said PediaSure made the minor sick. She decided to continue feeding her NeoSure, the formula that she stated the minor actually kept down. She supplemented the NeoSure with mashed potatoes, fruit, rice cereal, whole milk, and other foods. Loraine corroborated this statement during her testimony. However, the petition alleged and the report noted that Shawniece said she supplemented the NeoSure with a consistent diet of mashed potatoes and 2% milk. Shawniece stated that when she discussed this issue with Dr. Buehler, the minor's physician at OSF, during the June exam, he told her that PediaSure was all that would be paid for through the governmental assistance program. She did, however, on cross examination, agree that Dr. Buehler also told her that PediaSure was the appropriate formula for the minor's development at that time.

¶ 7 Shawniece attributed the missed doctor's appointments to a lack of transportation and later to a distrust of the physicians at OSF. She took the minor to Shriners Hospital in Chicago in February 2013. She testified that she did this because she had been told by the physicians at OSF at the time of the minor's birth that her daughter might die. Her brief notes that she was told this again in February 2013 by someone with OSF. The physicians at Shriners Hospital told Shawniece that the minor would survive.

¶ 8 Shawniece testified that she worked with Dr. Akesson and other physicians under his instruction at Midwest Orthopedic who cared for the minor's fractures. She stated that Dr. Akesson showed her how to care for the minor's fractures. Thus she did not have a need for in-home nursing care and she did not have a stable home to accommodate the care.

¶ 9 The trial court took all of this into consideration and determined that both counts, neglected minor as to medical care and due to injurious environment, were proven by a

preponderance of the evidence by the State. The minor was made a ward of the Illinois Department of Children and Family Services. This appeal promptly followed.

¶ 10

#### ANALYSIS

¶ 11

We review a trial court's finding of abuse and neglect using a manifest weight of the evidence standard. *In re M.W.*, 386 Ill. App. 3d 186 (2008). Such a finding is against the manifest weight of the evidence if a review of the record clearly demonstrates that the proper result is the one opposite that reached by the trial court. *In re M.K.*, 271 Ill. App. 3d 820 (1995). Upon review of the record in the instant case, we affirm the trial court's decision.

¶ 12

With respect to count one, neglect as to medical care was proven by the State by a preponderance of the evidence. Decisions about the minor's diet and healthcare needs in this type of situation where the child has such compelling medical issues is joint. Instructions, prescriptions, and suggestions of the physicians should work in tandem with parental reports of actual intake and response. Here, reports show Shawniece progressing well with the minor's care during the period of observation prior to the formula change and the prognosis of death. However, it was incumbent upon Shawniece to effectively communicate challenges regarding formula and other healthcare reservations with medical personnel for the best interest of the minor instead of discontinuing services or being non-cooperative. Notwithstanding, Shawniece's clear care and concern for her daughter, using a formula that is no longer developmentally appropriate, missing doctor's appointments, and foregoing in-home assistance when transportation is an issue constitutes neglect. See *In re Arthur H.*, 212 Ill. 2d 441, 467 (noting that at the adjudicatory hearing, the trial judge is to determine whether the child is neglected and not whether the parents are neglectful).

¶ 13 Neglect due to injurious environment was also proven by a preponderance of the evidence. Neglect based on an injurious environment may be found where a parent has breached his or her duty to ensure a safe and nurturing shelter for the child. *In re N.B.*, 191 Ill. 2d 338, 346 (2000). As previously noted, there was medical care neglect. There was also the arrest incident where Shawniece acted erratically towards a police officer and later towards medical personal. The record shows Shawniece's further lack of self-control as she was held in contempt of court for yelling at the judge during the adjudication following the arrest incident. Though none of this occurred in front of the minor, Shawniece's inability to exercise self-control in such serious matters in order to be able to be home and care for her disabled daughter evidences a careless disregard for her parental responsibility. See *In re. S.S.*, 313 Ill. App. 3d 121, 126 (2000)

¶ 14 Though Shawniece argues that her single positive test for marijuana while pregnant with the minor is irrelevant, there is additional evidence that she continues its use. Not only did the minor's stool at birth test positive for the drug, but Shawniece also tested positive for the drug the day she was arrested. During her evaluations that were conducted after the minor was removed from her care, she even self-reported that she uses marijuana regularly. With a child saddled with serious disabilities, such behavior creates an injurious environment.

¶ 15 We note with some optimism the progress Shawniece makes when she has guidance, such as learning from Dr. Akeson how to care for the minor's fractures; the positive reports of the child's condition prior to the need to change the formula; and her more recent psychological review sessions and attendance at parenting classes. She has also been able to secure and maintain a home for herself. This type of assisted development for parents such as Shawniece is the intent of the plan developed after a minor is adjudicated neglected. See *In re O.S.*, 364 Ill. App. 3d 628, 635 (2006) (noting the Act provides for assistance to parents who are failing at

providing the non-injurious environment their minor is entitled to due to a lack of proper skills and information); see also 705 ILCS 405/2–3 (West 2004). Thus, we affirm the trial court’s decision in anticipation of Shawniece’s cooperation with those attempting to help her and her successful completion of the required programs as ordered.

¶ 16

#### CONCLUSION

¶ 17

The judgment of the trial court of Peoria County is affirmed.

¶ 18

Affirmed.

¶ 19

JUSTICE WRIGHT, specially concurring.

¶ 20

I unconditionally affirm the trial court's decision without reference to respondent's future conduct as mentioned in the last sentence of the majority's analysis.