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2017 IL App (3d) 160768-U

Order filed August 29, 2017

IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

2017

|                                       |   |                                      |
|---------------------------------------|---|--------------------------------------|
| <i>In re</i> W.N. and N.N.,           | ) | Appeal from the Circuit Court        |
|                                       | ) | of the 10th Judicial Circuit,        |
| Minors.                               | ) | Peoria County, Illinois,             |
|                                       | ) |                                      |
| (The People of the State of Illinois, | ) |                                      |
|                                       | ) |                                      |
| Petitioner-Appellee,                  | ) | Appeal Nos. 3-16-0768 and 3-16-0769  |
|                                       | ) | Circuit Nos. 16-JA-112 and 16-JA-113 |
| v.                                    | ) |                                      |
|                                       | ) |                                      |
| William N.,                           | ) | Honorable                            |
|                                       | ) | Timothy J. Cusack,                   |
| Respondent-Appellant).                | ) | Judge, Presiding.                    |

PRESIDING JUSTICE HOLDRIDGE delivered the judgment of the court. Justices Wright and Carter concurred in the judgment.

## ORDER

¶ 1 *Held:* The circuit court’s determination that the respondent’s minor children were neglected is not against the manifest weight of the evidence.

¶ 2 The respondent, William N., appeals arguing the circuit court’s determination that the minors, W.N. and N.N., were neglected was against the manifest weight of the evidence.

### 3 FACTS

¶ 4 The respondent and Sami B. are the biological parents of W.N. (born June 10, 2013) and N.N. (born September 3, 2004). Sami is also the biological mother of H.L. (born November 29, 2000) and M.B. (born March 17, 1998). At the time in question, the respondent and Sami were married and lived together with their children and Sami's mother, Sandra B.

¶ 5 On April 26, 2016, the State filed two petitions for adjudication of wardship regarding W.N. and N.N. The one-count petitions alleged that the minors had been neglected because they lived in an injurious environment. The count was separated into three parts. Part A alleged the minors were in an injurious environment due to the respondent engaging in sexual conduct with 16-year-old M.B. by placing his penis in M.B.'s mouth in 2014.<sup>1</sup> Part B discussed the criminal history of Craig L. (the biological father of H.L.). Part C alleged that Craig drove under the influence of alcohol while M.B. was in the vehicle. It further alleged that Craig fled from police officers and crashed the vehicle. The cause proceeded to an adjudicatory hearing.

¶ 6 At the hearing, M.B. (who was 18 at the time of the hearing) testified that she had lived in a house with her mother, grandmother, and H.L., W.N. and N.N. The respondent (M.B.'s stepfather) married M.B.'s mother and moved into the house when M.B. was five or six years old.

¶ 7 According to M.B., the respondent engaged in inappropriate conduct with her when she was 16 years old. The incident occurred during the summer of 2014. On the night of the incident, M.B. had been at the house with her boyfriend. At about 11 p.m., M.B.'s boyfriend left the house. M.B. was in the kitchen, which was located on the first floor of the house. The kitchen had an open doorway that connected to the living room where Sandra slept. At that time, Sandra

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<sup>1</sup>Part A of the petitions also alleged that the respondent committed another act of sexual conduct when M.B. was in first grade. The petitions also alleged that the respondent committed an act of sexual conduct by touching M.B.'s vagina in 2015. However, the circuit court found the State failed to prove these allegations. No issue is raised with these findings on appeal.

was in the living room. The respondent approached M.B. in the kitchen and told her that he had observed M.B. and her boyfriend doing inappropriate things. The respondent told M.B. that he would tell her mother what he had seen unless M.B. performed oral sex on the respondent. M.B. stated that she performed oral sex on the respondent for about a half an hour. The only person M.B. told about the incident was her boyfriend. She told her boyfriend in a letter she wrote the day after the incident. The undated letter was admitted into evidence.

¶ 8 Detective Joseph Vissering, a detective at the Peoria County sheriff's office testified that he was assigned to the Peoria County children's advocacy center. Vissering interviewed the respondent regarding M.B.'s allegation. The respondent told Vissering that he had seen M.B. and her boyfriend "messaging around" on the evening in question. The respondent denied any act of sexual abuse. When asked why M.B. would fabricate such a story, the respondent recalled two recent arguments he had with M.B. The respondent also mentioned that he had genital warts. The respondent was asked if M.B. might be able to describe some aspect of his genitalia and the respondent replied that M.B. would need to have a hidden camera to do so. According to Vissering, M.B. never identified the respondent's genitalia.

¶ 9 Vissering also interviewed M.B. M.B. told Vissering that the incident with the respondent occurred when she was 16 years old. However, unlike M.B.'s testimony that the incident occurred in the summer of 2014, Vissering testified that M.B. told him the incident occurred during the summer of 2015.

¶ 10 The State rested and the respondent called Sandra (M.B.'s grandmother) to testify. Sandra lived at the home with the respondent and M.B. at the time of the incident. She explained that she slept in the living room of the home. The living room was connected to the kitchen with an open doorway and "see-through" space the size of a window.

¶ 11 Sandra recalled hearing a conversation between the respondent and M.B. that occurred in the kitchen. However, unlike M.B. and Vissering who indicated that the incident occurred in the summer, Sandra recalled the conversation happening sometime in the spring. Although she did not listen to the specifics of the conversation, she did recall that the conversation was about M.B.'s boyfriend. When the conversation ended, the respondent approached Sandra and told her to watch M.B. and her boyfriend because they were "getting too familiar." Sandra did not observe any inappropriate conduct between the respondent and M.B.

¶ 12 Sandra spoke with M.B. shortly after the investigation into M.B.'s allegations began. According to Sandra, M.B. told her that she did not know when the abuse occurred or if it even happened. M.B. told Sandra that she could not come forward and tell the truth because she feared that she would be sent to jail.

¶ 13 On cross-examination, Sandra testified that she spoke with Vissering during the investigation. Sandra denied telling Vissering that M.B. was sure her allegations were true. Sandra also stated that she read the letter M.B. had written to her boyfriend, but she believed that the writing in the letter did not sound like M.B. Sandra also reported that M.B. had been involved in a car accident a few months after the alleged sexual abuse which had affected her memory and personality.

¶ 14 The defense rested, and the State recalled Vissering. Unlike Sandra's testimony that M.B. was unsure if the abuse occurred, Vissering stated that Sandra told him M.B. was sure that the sexual abuse had occurred. The State rested.

¶ 15 The court found that the State had proven the allegation that the respondent had sexually abused M.B. when she was 16 years old. Specifically, the court stated,

“So what I have more probably than not is a young girl that gets up to testify that something happened to her in her 16th year, and it amounts to again oral copulation that was somewhat forced upon her, and there’s no sufficient rebuttal to that, to those allegations by any party.”

Therefore, the court concluded that W.N. and N.N. were neglected due to the respondent’s sexual abuse of M.B. The cause proceeded to a dispositional hearing.

¶ 16

#### ANALYSIS

¶ 17

On appeal, the respondent challenges the circuit court’s determination that W.N. and N.N. were neglected in that they were in an injurious environment. Specifically, the respondent argues that the State failed to prove the respondent sexually abused M.B. Whether a child is abused or neglected must be proven by a preponderance of the evidence. 705 ILCS 405/1-3(1) (West 2016). A circuit court’s neglect finding will not be disturbed by a reviewing court unless it is against the manifest weight of the evidence. *In re D.R.*, 354 Ill. App. 3d 468, 474 (2004). A determination is against the manifest weight of the evidence when the record clearly supports the opposite conclusion. *Id.*

¶ 18

A neglected minor includes any minor under 18 years of age whose environment is injurious to their welfare. 705 ILCS 405/2-3(1)(b) (West 2016).

“An ‘injurious environment’ has no static definition and must be defined in terms of the particular facts of a case. [Citation.] In general, a parent neglects [his or] her child when the parent’s conduct exhibits the ‘failure to exercise the care that circumstances justly demand and encompasses both wilful and unintentional disregard of parental duty.’ ” *D.R.*, 354 Ill. App. 3d at 474 (quoting *In re M.K.*, 271 Ill. App. 3d 820, 826 (1995)).

“Sibling abuse may be *prima facie* evidence of neglect based upon an injurious environment.” *In re J.P.*, 331 Ill. App. 3d 220, 235 (2002); 705 ILCS 405/2-18(3) (West 2016).

¶ 19 Here, M.B. testified that when she was 16 years old, the respondent sexually abused her by placing his penis in her mouth. M.B. performed the sexual act, which occurred at a time when W.N. and N.N. lived in the family home. M.B.’s testimony alone, if credible, was sufficient to find by the preponderance of the evidence that the respondent abused M.B. and, thus, created an injurious environment for W.N. and N.N. See 705 ILCS 405/2-18(3) (West 2016) (“[P]roof of the abuse, neglect or dependency of one minor shall be admissible evidence on the issue of the abuse, neglect or dependency of any other minor for whom the respondent is responsible.”). Significantly, the circuit court found M.B. to be a credible witness based on its finding that the State had met its burden. “Because of its ability to observe witnesses and judge their demeanor, the circuit court is in the best position to determine their credibility.” *In re B.W.*, 216 Ill. App. 3d 410, 414 (1991). We, therefore, defer to the circuit court on the issue of credibility.

¶ 20 Despite this, the respondent challenges the circuit court’s neglect determination by arguing that the court failed to correctly weigh the credibility of the witnesses’ testimony. Specifically, the respondent argues that the court failed to give any weight to Vissering’s testimony that the respondent denied the allegation that he sexually abused M.B. and that M.B. never identified the respondent’s genitalia. The respondent also asserts that the court failed to give any weight to Sandra’s testimony that: (1) she never saw the respondent abuse M.B., (2) M.B. made inconsistent statements to her after the investigation began (whether or not the abuse actually occurred), and (3) conflicted with M.B.’s testimony as to the date the incident occurred (summer and spring). Finally, the respondent argues that the court failed to find M.B.’s

testimony incredible based on the disparity in the year M.B. alleged the abuse occurred in her testimony and her interview with Vissering (2014 and 2015).

¶ 21 Essentially, the respondent is asking this court to reweigh the evidence in his favor and substitute our judgment for that of the trier of fact. That is not the role of this court. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224-25 (2009). A reviewing court will not reverse such a finding simply because the respondent claims that a witness was incredible. *People v. Evans*, 209 Ill. 2d 194, 211-12 (2004). It was the responsibility of the trier of fact to determine the credibility of the witnesses, the weight to be given to their testimony, and to resolve any inconsistencies and conflicts in the evidence. *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006). Although the circuit court did not list its specific finding of credibility for each witness on the record, it was not required to do so. It is clear from the totality of the court's comments that it properly considered all of the evidence when making its determination. Based on its neglect finding, the court found M.B. to be a credible witness despite any conflicts between her testimony and the other evidence presented.

¶ 22 In closing, we note that the respondent also argues that the facts alleged in parts B and C of the petitions (regarding Craig's criminal history and his conduct in driving under the influence while M.B. was in the vehicle) did not contribute to the injurious environment of W.N. and N.N. Specifically, the respondent argues that no evidence was presented to infer a nexus between Craig and the minors' environment. We need not address this argument based on our finding that the State proved the minors were neglected due to the respondent's sexual abuse of M.B. The respondent's sexual abuse of M.B. is sufficient to establish the minors were in an injurious environment. See 705 ILCS 405/2-18(3) (West 2016).

¶ 23

## CONCLUSION

¶ 24           The judgment of the circuit court of Peoria County is affirmed.

¶ 25           Affirmed.