NO. 4-10-0801 Order filed 2/25/11

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: B.H., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Sangamon County
v.	)	No. 09JA112
DAN HUDSON,	)	
Respondent-Appellant.	)	Honorable
	)	Esteban F. Sanchez,
	)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Justices Turner and Pope concurred in the judgment.

ORDER

Held: Where the respondent father admitted consuming a six-pack of beer each day as well as regularly using cannabis and where, during visitations, he evinced an inability or unwillingness to soothe the prematurely born, handicapped child, change his diaper, or follow important instructions on how to feed him, the trial court did not make a finding that was against the manifest weight of the evidence by finding that the child was neglected in the sense that he was in an environment injurious to his welfare; nor did the court abuse its discretion by making the child a ward of the court.

Respondent, Dan Hudson, is the father of one-year-old B.H., and he appeals from a dispositional order making B.H. a ward of the court and awarding custody and guardianship of him to the Department of Children and Family Services (DCFS). He argues that the trial court made two errors: (1) adjudicating B.H. to be "neglected" within the meaning of section 2-3(1)(b) of the Juvenile Court Act of 1987 (705 ILCS 405/2-3(1)(b) (West 2008)) and (2) making him a ward of the court and awarding custody and guardianship of him to DCFS.

We do not find the adjudication of neglect to be against the manifest weight of the evidence. Nor do we find an abuse of discretion in the dispositional order. Therefore, we affirm the trial court's judgment.

I. BACKGROUND

A. The Petition To Make B.H. a Ward of the Court

In a petition filed on August 17, 2009, Andrew Affrunti alleged that B.H., born on April 1, 2009, was the son of respondent and Yolanda Frazier and that although for the time being he was in the care of DCFS, he was neglected in the sense that his environment was injurious to his welfare. See 705 ILCS 405/2-3(1)(b) (West 2008). Two circumstances allegedly made his environment injurious: (1) his mother's mental illness and (2) both parents' use of drugs. Consequently, Affrunti requested that the trial court make B.H. a ward of the court.

B. The Shelter-Care Hearing

The trial court held a shelter-care hearing on August 17, 2009. The record does not include a transcript of that hearing, but according to the docket entry for August 17, 2009, the court ordered that B.H. remain in the custody of DCFS until further court order.

C. The Adjudicatory Hearing

On May 13, July 15, and August 5, 2010, the trial court held an adjudicatory hearing. In summarizing the evidence from the adjudicatory hearing, we will pass over the evidence tending to show Frazier's contribution to the injurious environment, because, in his brief, respondent admits that the State presented "bountiful evidence" of her parental inadequacies. Instead, we will concentrate on the evidence tending to show that placing

B.H. in respondent's sole custody likewise would have subjected B.H. to an environment injurious to his welfare.

1. *B.H.'s Medical Condition*

B.H. was born prematurely, with a low birth weight and gastrointestinal problems. Because of his premature birth, he remained in the hospital for some four months.

After B.H. was discharged from the hospital, his medical problems persisted. Consequently, he has needed a higher level of care than the ordinary child.

2. *Respondent's Place of Residence*

During the period when B.H. was in the hospital (May to August 2009), a caseworker from DCFS repeatedly interviewed the parents there. (Jodie Nabel testified to the interviews, but it is unclear that she was always the caseworker who did the interviews.) The caseworker asked respondent where he lived, explaining to him that B.H. needed a stable environment were he to come home. All respondent would divulge was that he was staying at a nephew's house. He would not give the address. He was distant and rather uncommunicative.

3. *Respondent's Use of Alcohol and Cannabis*

When interviewing respondent in the hospital, a DCFS caseworker asked him if he used illegal drugs. Respondent refused to discuss that topic. Nor would he undergo a toxicology test; he remarked, without elaboration, that he had "learned his lesson about that."

While remaining closemouthed about substance abuse, respondent eventually talked about alcohol. In August 2009, he told Nagel that he drank alcohol "on occasion."

She asked him what he meant by "on occasion," and he replied that he drank a six-pack of beer each day.

Later, in the shelter-care hearing on August 17, 2009, respondent testified that he used alcohol and cannabis "regularly." He admitted he had visited B.H. in the hospital while under the influence. It is unclear, however, what he meant by "under the influence," and Nagel admitted that on the few occasions when she saw respondent in the hospital, he did not smell of alcohol or marijuana and he did not appear to be intoxicated.

Even though no one testified to seeing him intoxicated, laboratory testing confirmed that respondent used cannabis often, as he had testified in the shelter-care hearing. He submitted to toxicology testing in the latter half of 2009 and early 2010, while undergoing intensive outpatient treatment at the Triangle Center in Springfield. In the first such test, administered on August 17, 2009, he tested positive for cannabis, and he tested positive on six more occasions thereafter. Because of his continued usage of cannabis and his lack of participation, the Triangle Center discharged him from the program on March 12, 2010, concluding that rehabilitative treatment had been ineffectual in his case.

On the basis of the foregoing evidence, the trial court entered an adjudicatory order on August 5, 2010, finding the second allegation in the State's petition to be proved. The second allegation read as follows: "Said minor is a Neglected Minor in accordance with Section 2-3(1) of the Juvenile Court Act in that the minor's environment is injurious to his welfare as evidenced by his parents' drug use." In other words, the parent's use of drugs would have caused B.H. to be in an environment injurious to his welfare in the event he were placed in the custody of either of them, and in that sense, he was "neglected" within the meaning of section 2-3(1)(b) of the Juvenile Court Act of 1987 (705 ILCS 405/2-3(1)(b)

(West 2008)). Therefore, pending further proceedings, the court ordered that B.H. remain in the custody of DCFS.

D. The Dispositional Hearing

On September 23, 2010, the trial court held a dispositional hearing. At the beginning of the hearing, the court noted it had received a dispositional-hearing report prepared by Taylor Sincavage, a foster-care caseworker at Catholic Charities. The report was filed on August 31, 2010, and it concluded with the following recommendations:

> 1. That [B.H.] be made a ward of the Court.
>
> 2. That DCFS be granted custody and guardianship and the right to consent to medical and dental treatment.
>
> 3. That Yolanda Frazier and Dan Hudson cooperate with all DCFS recommendations.
>
> 4. That DCFS/Catholic Charities be found to have made reasonable efforts.
>
> 5. That the goal for [B.H.] be 'Return Home.' "

Respondent's attorney objected to the fourth recommendation. He contended that DCFS actually had not made "reasonable efforts," because DCFS had not yet visited respondent's residence. A caseworker, unnamed in the transcript, replied that the previous caseworker had refused to go to respondent's residence by herself and that because the present caseworker (the one who was speaking) had been assigned the case only a month ago, he or she had not yet scheduled a home visit. Nevertheless, he or she said, "[W]e can go out there."

The caseworker, however, did not actually testify. In fact, there was no

testimony in the dispositional hearing. The only evidence presented was Sincavage's report. Here are the salient points from the report.

1. *More Information on B.H.'s Medical Condition*

B.H. was born three months premature. Testing at delivery was inconclusive, but it is suspected that he was exposed to drugs and alcohol in utero. Frazier admitted using cannabis during pregnancy, before she knew she was pregnant. Upon B.H.'s discharge from the hospital, DCFS placed him in specialized substitute care with a family named Wescott. He still has digestive and respiratory problems as well as a possible neurological impairment.

2. *Respondent's Attitude About His Drug Use*

On March 4, 2010, in a meeting of the child and family team at the Triangle Center, respondent said he did not understand why his use of drugs would render him unable to take care of B.H. He announced that he would "continue to use marijuana because he ha[d] abused marijuana for over 30 years of his life."

3. *The Degree to Which Respondent Demonstrated Parental Ability During Visitations*

According to Sincavage's report, respondent knows how to play with B.H., but his parenting skills do not appear to extend much further than that. Sincavage writes:

> "Visitation occurs once a week for two hours. The caseworker provides Dan with a calendar with the dates and times his visitation will occur. Dan has attended all of his scheduled visits. He engages [B.H.] in age appropriate play. However, Dan lacks basic parenting skills. He is unable to soothe the baby when he is upset; he does not change the baby's

> diapers and has not followed the advice on feeding that was given to Dan by the foster parent."

So, it appears that, other than playing, the only parental task that respondent has attempted is feeding B.H. The attempt was unsuccessful because B.H. evidently has to be fed in a certain way owing to his gastrointestinal problem and respondent disregarded the foster parent's instructions.

According to the report, the foster parent in turn had received these instructions from medical personnel. The report reads as follows:

> "[B.H.] was placed at a specialized foster home after he was released from the [newborn intensive-care unit] at St. John's hospital. [B.H.] continued to have issues with his gastro-intestinal track [*sic*], bronchitis, and sinus cavity. The foster parent has specific medical instructions on how to care for him while [B.H.] is dealing with these issues. The foster parent has instructed both Dan and Yolanda on how to feed [B.H.] and how to care for him during visits; however, both parents blatantly ignore these instructions. The consequences of those actions by the parents cause the baby great discomfort and will usually end up vomiting up his whole feeding."

Thus, by ignoring the foster parent's instructions, respondent ignored medical instructions that were relevant to B.H.'s well-being--and B.H. ended up suffering for it.

4. *The Care That B.H. Receives From the Wescotts*

The report states that "[B.H.]'s medical issues are still prevalent" but that

according to the foster parent, "the issues are under control by medication that [B.H.] takes every day." The report further notes: "He is doing very well in this placement [with the Wescotts] and is bonded with the foster family. He receives Early Intervention therapies on a weekly basis in the foster home. He participates in Developmental, Physical and Occupational therapies. He will be evaluated for speech therapy when the need arises."

On September 23, 2010, the trial court entered a dispositional order making B.H. a ward of the court and placing him in the custody and guardianship of the guardianship administrator of DCFS.

This appeal followed.

II. ANALYSIS

A. Standard of Review

We will reverse a dispositional order only if (1) the findings of fact underlying the order are against the manifest weight of the evidence or (2) the trial court abused its discretion in the disposition it chose. *In re D.M.*, 395 Ill. App. 3d 972, 977 (2009). A factual finding is against the manifest weight of the evidence only if it is clearly evident that the fact was unproved (see *In re C.N.*, 196 Ill. 2d 181, 224 (2001)), and a decision is an abuse of discretion only if no reasonable person could agree with it (*Schwartz v. Cortelloni*, 177 Ill. 2d 166, 176 (1997)).

B. The Finding of Neglect

The trial court found B.H. to be "neglected" in the sense that placing him in the custody of his mother or father would have been tantamount to placing him in an environment injurious to his welfare. See 705 ILCS 405/2-3(1)(b) (West 2008). According to respondent, that finding is against the manifest weight of the evidence because it lumps

him together with Frazier. Respondent agrees that placing B.H. in Frazier's custody would have subjected him to an injurious environment, but respondent points out that he and Frazier live apart, and he contends that while the State presented ample evidence about Frazier, it presented little evidence about him.

In respondent's view, the only unfavorable evidence the State presented regarding him was that he used alcohol and cannabis, and he insists that this evidence was not enough to prove, by a preponderance of the evidence, that putting B.H. in his custody would be equivalent to putting B.H. in an injurious environment. He argues that just as in *In re Faith B.*, 349 Ill. App. 3d 930, 932 (2004), the appellate court held that the State had to prove a nexus between a parent's mental illness and a risk of harm to the child, so the State had to prove a nexus between respondent's use of alcohol and cannabis and a risk of harm to B.H. He maintains that the State has failed to do so. He asks rhetorically: "If the use of cocaine, heroine [*sic*], marijuana and methodone [*sic*] was not enough for DCFS to take Sharena from her mother [in *In re Sharena H.*, 366 Ill. App. 3d 405 (2006),] how much more deserving of a chance to parent his child is Mr. Hudson who reportedly only uses marijuana and alcohol?"

That question rests on a gross misunderstanding of *Sharena*. Actually, the appellate court held in *Sharena* that the mother's continued drug abuse *was* enough to justify a finding of neglect. The appellate court stated:

> "All of this evidence establishes that respondent's long-standing drug problems were not under control for any sustained period of time between Sharena's birth in October 2002 and the filing of the petition in April 2005. The trial

> court found that respondent's drug problem and inability/refusal to complete treatment caused an injurious environment for Sharena; the court's finding was not against the manifest weight of the evidence." *Sharena*, 366 Ill. App. 3d at 417.

Notably, the appellate court said nothing about drawing a nexus between the drug problem and a risk of harm to the child, because unlike mental illness, which has a myriad of different forms and manifestations, narcotics have a known effect across the board: they undermine the powers of judgment.

Granted, no evidence shows that respondent uses "heavy narcotics" like the mother in *Sharena*, but, arguably, he heavily uses lighter narcotics. A six-pack of beer each and every day is a lot of alcohol, and when one adds cannabis on top of that, a possible explanation emerges for the "blatant" disregard of the foster parent's instructions. Intentionally ignoring medical instructions regarding his infant son's care, knowing that his infant son has serious physical problems, bespeaks an impaired judgment, or so the trial court could infer.

Because of his gastrointestinal and respiratory problems, caring for B.H. is probably a demanding job for the unimpaired; the caregiver has to have all his wits about him. The trial court could have reasonably inferred that respondent neglected to change B.H.'s diapers during all the visitations, and ignored the special instructions for feeding him, because his faculties were dulled, and his sense of initiative was weakened, by the daily consumption of so much beer and cannabis.

Respondent argues, on the other hand, that "it is just as likely that B.H. did

not need to be fed or diapered during Mr. Hudson's visitation as that Mr. Hudson could not perform those tasks." We do not decide, however, what is "just as likely." Rather, it is the trial court's prerogative, as trier of fact, to weigh the probabilities. See *Williams v. Estate of Cross*, 85 Ill. App. 3d 923, 925 (1980). We merely inquire whether there are any "probative facts to support the conclusion of the trial court." *Id.* There are such facts. For example, Sincavage says in his report that "both parents blatantly ignore [the foster parent's] feeding instructions" and as a result cause B.H. to suffer pain and vomit. One naturally would assume, then, that the occasion for feeding B.H. did in fact arise, considering that feeding was done by both parents. And it would make no sense--indeed, it would be misleading--to note that respondent "does not change the baby's diapers" unless the baby's diapers needed changing when respondent was present. In short, respondent comes across, in Sincavage's report, as lackadaisical or unmotivated in taking care of his special-needs son, and it is not unreasonable to attribute this sort of temperament to the admitted heavy consumption of narcotics.

Respondent fails to perceive that this issue of drug abuse renders his living arrangements a moot question. He complains that the caseworker was too afraid to stop by and inspect his living quarters, once he divulged the address. But living quarters, however ideal, cannot compensate for a parent who abuses drugs every day.

C. The Disposition: Making B.H. a Ward of the Court

Respondent says that assuming, *arguendo*, that B.H. was neglected, "the trial court's determination that B.H. be made a ward of the court at the dispositional hearing was against the manifest weight of the evidence." Respondent has the wrong standard of review on this particular issue. Instead, the question is whether the court abused its discretion in

its choice of a disposition. *In re April C.*, 326 Ill. App. 3d 245, 257 (2001). Because B.H. appears to be receiving good care at the Wescotts and because respondent has not demonstrated any practical parenting abilities and appears little inclined to follow important medical instructions as to B.H.'s care, we find no abuse of discretion in the decision to make B.H. a ward of the court and to put him in the custody of DCFS.

III. CONCLUSION

For the foregoing reasons, we affirm the trial court's judgment.

Affirmed.