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2012 IL App (4th) 110699-U

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NOS. 4-11-0699, 4-11-0700, 4-11-0701, 4-11-0702 cons.

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: S.H., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Vermilion County
v. (No. 4-11-0699)	)	No. 10JA136
JACOB WAKELAND,)	
Respondent-Appellant.)	
-----)	
In re: C.C., a Minor,	)	No. 10JA112
THE PEOPLE OF THE STATE OF ILLINOIS,)	
Petitioner-Appellee,)	
v. (No. 4-11-0700))	
JACOB WAKELAND,)	
Respondent-Appellant.)	
-----)	
In re: J.S., a Minor,	)	No. 10JA113
THE PEOPLE OF THE STATE OF ILLINOIS,)	
Petitioner-Appellee.)	
v. (No. 4-11-0701))	
JACOB WAKELAND,)	
Respondent-Appellant.)	
-----)	
In re S.W.,	)	No. 10JA114
THE PEOPLE OF THE STATE OF ILLINOIS,)	
Petitioner-Appellee,)	
v. (No. 4-11-0702)	)	Honorable
JACOB WAKELAND,	)	Craig H. DeArmond,
Respondent-Appellant.	)	Judge Presiding.

JUSTICE COOK delivered the judgment of the court.
Justices McCullough and Knecht concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's finding that respondent's minor children were neglected under

section 2-3(1) of the Juvenile Court Act of 1987 was not against the manifest weight of the evidence.

¶ 2 In these consolidated appeals, respondent, Jacob Wakeland, challenges the trial court's dispositional order finding his four children, S.W. (born July 3, 2002), J.S. (born August 24, 2006), S.H. (born March 1, 2007), and C.C. (born May 1, 2007), to be neglected in that their environment was injurious to their welfare. 705 ILCS 405/2-3(1)(b) (West 2008). He claims the court's findings of neglect were against the manifest weight of the evidence. The minors' mothers are not parties to this appeal. Following our review of the record, we affirm the court's judgment.

¶ 3 I. BACKGROUND

¶ 4 In July 2010, S.H. stayed at respondent's home for two weeks as part of a scheduled visit. Tifani Hunt, the mother of S.H., testified that she became concerned after S.H. returned from that visit. Around August 18, 2010, Tifani found S.H. in the bedroom with her five-year-old brother, both of them undressed. When Tifani asked why she was undressed, S.H. replied that she was playing "mommy and daddy." She told Tifani that she learned that from respondent. The next day, Tifani called the Center for Children's Services and made an appointment for S.H. to receive counseling. Later that same month, Tifani observed S.H. put her teddy bears in sexual positions, make actions like the teddy bears were humping each other, and hump her teddy bears. S.H.'s great-aunt, Regina Hunt, testified that she also witnessed S.H. hump her teddy bears. When Regina asked S.H. where she learned to do that, S.H. responded that she saw "Daddy do that to [C.C.]" Tifani and Regina made separate reports to the Department of Children and Family Services (DCFS) hotline concerning S.H.'s sexual behaviors.

Tifani has an order of protection against respondent.

¶ 5 On August 19, 2010, S.H. meet with Anna Foote, a forensic investigator for DCFS, at her great-aunt's house. S.H. did not make any disclosures of abuse.

¶ 6 On August 27, 2010, Natalie Williams, a therapist and intake coordinator at the Center for Children's Services, interviewed S.H. During the interview, S.H. disclosed that respondent hurt her and pointed between her legs. When Williams asked S.H. to point to where she had been touched on an anatomically correct doll, S.H. pointed to the doll's vagina. S.H. also told Williams that respondent hurt her mouth "with his privates" and hurt her sister C.C. As a result of S.H.'s disclosures, Williams called the DCFS hotline.

¶ 7 Subsequently, Foote and Troy Hogren, a police investigator, interviewed S.H. As part of the interview, Foote asked S.H. to identify the different parts of the body on an anatomically correct drawing of a girl. S.H. was able to correctly name the different parts of the body. She also identified the vagina as a "private." When discussing bad touches, S.H. told Foote and Hogren that respondent had touched the inside of her private area with his finger. Hogren testified that S.H. first mentioned respondent's name. During the discussion of bad touches, S.H. further disclosed that respondent "touched my [C.C.]" In another interview, S.H. told Foote that she "went to see [Natalie Williams] today, and told her the truth." At the adjudicatory hearing, Foote testified that as a forensic investigator she had been trained to look for signs that a child had been coached as to what to say and S.H. did not exhibit any of those signs.

¶ 8 As part of the investigation, Hogren and Foote also interviewed S.W., J.S., and C.C. The children were all living with respondent. S.W. and C.C. did not report any

inappropriate touching by respondent. However, at the time of her interview, C.C. was non-verbal. J.S. reported to Foote that respondent used his penis to touch J.S.'s penis. J.S. further mentioned that respondent touched him on the mouth, but stated he "can't tell" what respondent touched him on the mouth with. During subsequent interviews, J.S. did not make any disclosures of abuse. Based on J.S.'s initial disclosures to her and S.H.'s disclosures to Williams, Foote took protective custody of the children.

¶ 9 On September 1, 2010, the State filed separate petitions for adjudication of wardship regarding S.W., J.S., and C.C. On December 2, 2010, the State filed a petition for adjudication of wardship regarding S.H. In the petitions, the State alleged that the children were neglected, as defined under section 2-3(1)(b) of the Juvenile Court Act of 1987 (705 ILCS 405/2-3(1)(b) (West 2008)), in that respondent sexually molested S.H., C.C., and J.S. and exposed all of the children to a pattern of abuse relating to the molestation.

¶ 10 On September 2, 2010, a shelter-care hearing was held concerning C.C., J.S., and S.W. The children were placed in the temporary custody and guardianship of DCFS.

¶ 11 On March 2, 2011, a client service plan was filed by Catholic Charities. The plan recommended that respondent participate in an assessment for counseling services, a sex-offender assessment, and a psychological evaluation. Based on his attorney's recommendation, respondent refused to participate in the recommended services. He attended 21 of 24 offered visits with J.S. and S.W.

¶ 12 On April 28, 2011, an adjudicatory hearing was held. S.H. was allowed to testify in chambers outside the presence of her parents. Initially, she testified that she could not remember if respondent inappropriately touched her. She later testified that respondent touched

her somewhere he should not have, but she could not tell, and did not want to tell how he hurt her. She stated that she did not want to see her father but did not know why. S.H. stated that she told Williams the truth about what happened with respondent. Tifani testified that, in February 2010, S.H. had been in contact with her cousin Shane Hunt, a sex offender. However, Tifani stated that Shane did not have any contact with S.H. during the summer of 2010. Tifani also testified that Shane successfully completed a treatment program and never had unrestricted or unsupervised access to S.H. The trial court found that the State overwhelmingly proved by a preponderance of the evidence that respondent sexually molested S.H., and exposed the other three children to this pattern of abuse.

¶ 13 On May 20, 2011, DCFS filed a dispositional hearing report. According to the report, respondent had an extensive history of substance abuse, demonstrated significant difficulty controlling impulses and anger, and had prior involvement with DCFS. The report noted that respondent refused to participate in the recommended services, because he believed his participation might incriminate him. An addendum to the report was filed on June 23, 2011. The addendum noted that in May 2011 respondent was involved in a bar fight and broke his jaw. The addendum also mentioned that respondent still refused to participate in the recommended services. Both the dispositional hearing report and the addendum found that respondent was unfit or unable to care for, protect, train, or discipline his four children.

¶ 14 On July 1, 2011, a dispositional hearing was held. Emily Zimmerman, a caseworker for Catholic Charities, testified that respondent displayed appropriate affection for his children during scheduled visits, but he also appeared agitated with them. She also testified that the children were bonded with their father. After the hearing, the trial court found respondent

unfit or unable to care for, protect, train, or discipline his children. The court adjudicated the children neglected and wards of the court and placed them in DCFS's custody and guardianship. In making its determination, the court adopted the recommendations set forth in the dispositional report.

¶ 15 This appeal by respondent followed.

¶ 16 II. ANALYSIS

¶ 17 A neglected minor includes "any minor under 18 years of age whose environment is injurious to his or her welfare." 705 ILCS 405/2–3(1)(b) (West 2008). "Because injurious environment is an amorphous concept which cannot be defined with particularity, each case should be reviewed considering the specific circumstances of that case." *In re B.M.*, 248 Ill. App. 3d 76, 79, 618 N.E.2d 374, 376 (1993).

¶ 18 The State has the burden of proving allegations of neglect by a preponderance of the evidence. *In re Faith B.*, 216 Ill. 2d 1, 13, 832 N.E.2d 152, 159 (2005). On review, a trial court's finding will not be overturned unless it is contrary to the manifest weight of the evidence. *In re A.P.*, 179 Ill. 2d 184, 204, 688 N.E.2d 642, 652 (1997). "A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident. [Citation]." *In re Arthur H.*, 212 Ill. 2d 441, 464, 819 N.E.2d 734, 747 (2004). "A parent's behavior toward one minor may be considered when deciding whether a sibling is exposed to an injurious environment. [Citation]." *In re C.M.*, 351 Ill. App. 3d 913, 916, 815 N.E.2d 49, 51-52 (2004).

¶ 19 In this case, the record contained sufficient evidence to support the trial court's finding that S.H. was neglected in that her environment was injurious to her welfare. S.H.

consistently identified respondent as the person who sexually abused her. Specifically, S.H. disclosed to Williams, Foote, and Hogren that respondent touched her vagina with his finger. Those persons each testified and were subject to cross-examination. During S.H.'s interview with Foote and Hogren, she mentioned respondent's name first when discussing "bad touches." The investigators did not suggest to S.H. respondent's name. Further, Foote testified that as a forensic investigator she had been trained to look for signs that a child had been coached as to what to say and S.H. did not exhibit any of those signs. Moreover, S.H. testified *in camera* that respondent hurt her and touched her in a place he should not have. S.H. did not provide further detail as to the inappropriate touches, but testified that she told Williams the truth about how her father hurt her. S.H. also testified that she knew it was "bad" to tell a lie and "good" to tell the truth. Last, both S.H.'s mother and great-aunt testified that they first observed S.H. treating her teddy bears in a sexual manner soon after she returned from visiting respondent. At the adjudicatory hearing, Foote testified that the sexual behaviors exhibited by S.H. can be typical of children who have been abused. Accordingly, the court's finding that S.H. was neglected was not against the manifest weight of the evidence.

¶ 20 We now turn our attention to S.W., J.S., and C.C. Based on the theory of anticipatory neglect, the State alleged that S.W., J.S., and C.C. were neglected, because they were placed at a risk of harm as a result of the neglect of S.H. "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." *Arthur H.*, 212 Ill. 2d at 468, 819 N.E.2d at 749. "[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." 705 ILCS 405/2-18(3) (West 2008). However, "there is no *per se* rule that the neglect of one child conclusively establishes the neglect of another child in the same household." *Arthur H.*, 212 Ill. 2d at 468, 819 N.E.2d at 749.

¶ 21 At the time the sexual abuse against S.H. occurred, S.W., J.S., and C.C. were all in respondent's care. The children lived in a one-bedroom apartment with respondent. C.C. shared the only bedroom in the apartment with respondent. Further, respondent has not taken reasonable steps to correct the condition that led to the removal of his children. He was uncooperative with DCFS and refused to participate in a sex-offender assessment and counseling services assessment. After reviewing the record in accordance with the proper standard of review, we cannot conclude that the "opposite conclusion is clearly evident." *Arthur H.*, 212 Ill. 2d at 464, 819 N.E.2d at 747. Accordingly, we hold that the trial court did not abuse its discretion in determining that S.W., J.S., and C.C. were neglected in that their environment was dangerous to their welfare.

¶ 22 III. CONCLUSION

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

¶ 24 Affirmed.