2012 IL App (4th) 120150-U

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NOS. 4-12-0150, 4-12-0151, 4-12-0152 cons.

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: D.M., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Vermilion County
v. (No. 4-12-0150)	)	No. 11JA103
JOHNNY WARD,	)	
Respondent-Appellant.	)	
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In re: Jy. W., a Minor,	)	No. 11JA104
THE PEOPLE OF THE STATE OF ILLINOIS,	)	
Petitioner-Appellee,	)	
v. (No. 4-12-0151)	)	
JOHNNY WARD,	)	
Respondent-Appellant.	)	
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In re: Je. W., a Minor,	)	No. 11JA105
THE PEOPLE OF THE STATE OF ILLINOIS,	)	
Petitioner-Appellee,	)	
v. (No. 4-12-0152)	)	
JOHNNY WARD,	)	
Respondent-Appellant.	)	Honorable
	)	Michael D. Clary,
	)	Judge Presiding.

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

ORDER

¶ 1 *Held*: The trial court's dispositional order making the three minors wards of the court is affirmed because, contrary to respondent's contention on appeal, the court's findings of neglect and abuse are not against the manifest weight of the evidence.

¶ 2 Respondent, Johnny Ward is the father of three children: Je. W., born on

February 9, 2008; Jy. W., born on March 9, 2007; and D.M., born on March 17, 1995. He appeals from a dispositional order making the three children wards of the court. He argues that the findings of neglect and abuse, which the trial court made in an adjudicatory hearing preceding the dispositional hearing, are against the manifest weight of the evidence and that the dispositional order therefore should be reversed. On the contrary, the record contains evidence supporting the findings of neglect and abuse, and consequently, in our deferential review, we affirm the trial court's judgment.

¶ 3 I. BACKGROUND

¶ 4 A. The Petitions for Adjudication of Wardship

¶ 5 On November 15, 2011, the State filed three petitions for adjudication of wardship: a petition corresponding to Je. W., another corresponding to Jy. W., and another corresponding to D.M.. The State alleged that Je. W. and Jy. W. were neglected in two ways: (1) domestic violence occurred in the home while they were present; and (2) respondent was sexually molesting their older sibling, D.M. See 705 ILCS 405/2-3(1)(b) (West 2010). The State alleged that D.M. was neglected by reason of the domestic violence (see *id.*) and that respondent had been sexually abusing her (see 705 ILCS 405/2-3(2)(iii) (West 2010)).

¶ 6 B. The Adjudicatory Hearing

¶ 7 In the adjudicatory hearing on January 11, 2012, the State called two witnesses: a child-protection investigator with the Illinois Department of Children and Family Services (DCFS), Ann Kapella; and a detective with the Danville Police Division, Mike Bransford. They testified substantially as follows.

¶ 8 1. *Ann Kapella*

¶ 9 On October 10, 2011, DCFS received a hotline call regarding respondent and Ella McAfee. (McAfee had a prior history with DCFS and had lost her parental rights to other children, essentially because she suffered from an intellectual deficit that had rendered her unable to protect the children from the risk of harm. Respondent had no prior history with DCFS.) The call alleged that domestic violence had happened in the home while the children were present.

¶ 10 On October 11, 2011, Kapella accompanied a detective, Scott Damilano, to Provena United Samaritans Medical Center (Provena), where McAfee was being treated in the intensive-care unit for injuries she had sustained from the domestic violence. McAfee told them that respondent had accused her of having another man in the house and that he had beaten her with a closet rod while the children were present. Kapella saw bruises on McAfee's arms from where respondent had struck her with the rod. According to McAfee, this was not the first time he had beaten her; he injured her in a domestic dispute about a year before this one.

¶ 11 After interviewing McAfee in the hospital, Kapella and Damilano went to Danville High School, where they spoke with D.M., who was enrolled in the special-education program there. They asked D.M. where she and her two siblings had been staying for the last couple of nights, since their mother's hospitalization. D.M. answered they had been staying at home. At first, she denied her father had been at home with them, but afterward she admitted he had been home both nights, October 9 and 10, 2011.

¶ 12 With what seemed to Kapella a suspiciously flat affect, D.M. denied witnessing any domestic violence on October 9, 2011. D.M. said that after her aunt brought

her home from church in the afternoon of October 9, she was unaware anything was going on until the police showed up later that evening, looking for respondent.

¶ 13 After interviewing D.M. at Danville High School, Kapella accompanied several police officers to the residence, where the police arrested respondent for domestic battery. Kapella testified: "[I]t was then that I observed the other two children. Both of those children have speech delays and aren't incredibly verbal, so they provided me with no information." A paternal aunt, Amy Baker, agreed to allow the three children to stay with her at her residence until matters were sorted out.

¶ 14 The next morning, October 12, 2011, Baker telephoned Kapella and told her she had spoken with D.M. the previous evening; that D.M. had admitted to her she had witnessed parts of the domestic battery on October 9, 2011; and that D.M. now was willing to tell the police what she had witnessed. So, Kapella and a detective, Mike Bransford, interviewed D.M. on October 12, 2011, around 3 p.m., in the Public Safety Building in Danville.

¶ 15 D.M. said, in this interview, that when Baker dropped her off at home after church on Sunday afternoon, October 9, 2011, her parents were not fighting at that time. Nevertheless, her mother began screaming for "Amy" (the aunt), whereupon her father pushed her mother onto their bed, telling her, " 'No one can save you.' " Her mother tried to get away, but her father pushed her back and pushed the door of the bedroom shut. Later, D.M. saw that her mother's hand was severely cut and bleeding, and respondent telephoned Baker to come take her to the hospital.

¶ 16 Bransford wanted to follow up with a taped interview of D.M., and while he

was doing that, Kapella went out into the lobby and spoke with Baker, who informed Kapella that D.M. had told her something more: that respondent had been having sexual contact with D.M. for quite some time. Kapella passed that information on to Bransford, and they decided to speak with D.M. further.

¶ 17 By this time, it was about 4:30 or 4:45 p.m. on October 12, 2011. D.M. told them her father began having oral, anal, and vaginal sex with her in June 2011 in the Danville residence. This had been happening pretty much every day, the most recent occasion being the morning of October 11, 2011, before D.M. went to school. Kapella found D.M. to be credible in this instance because she was very clear in what she was saying and it was difficult and upsetting for her to make these disclosures.

¶ 18 On the advice of DCFS and the police, Baker took D.M. to the emergency room to be examined by a doctor. Without looking at her report, Kapella was unsure when Baker did so, but it would have been within a day or two of D.M.'s speaking with the police.

¶ 19 2. *Mike Bransford*

¶ 20 Bransford testified that McAfee was admitted to the hospital around midnight on October 9, 2011, and that medical personnel took photographs of her injuries a few minutes after her admission. A nurse gave him the photographs, People's group exhibit No. 1. Bransford himself saw McAfee's injuries except for those hidden by the hospital gown. She told Bransford that respondent had inflicted these injuries over a period of several hours before midnight the previous day, using a closet rod. He had hit her with the rod 9 or 10 times and also had thrown a television stand at her, hitting her in the head. She had parried a blow from the rod with her hand, and that was why her hand was bandaged. She said the

two younger children were home while respondent beat her. The oldest child was at church but returned home and was present during a portion of the beating.

¶ 21 On October 12, 2011, Bransford and Kapella interviewed D.M. in the Public Safety Building, and D.M. recounted what happened on October 9, 2011. She said she went to church around 11 a.m. or noon that day and that when she returned home, the door of the residence was locked. She knocked on the door, and respondent unlocked the door and let her in. She could see that her mother had been crying. Her mother attempted to go to the door as if to leave the residence, but respondent grabbed her by the neck, threw her down, saying, " 'Can't nobody save you.' " He then took her to their bedroom, and from inside the bedroom, D.M. heard loud noises as if a beating were being administered.

¶ 22 Later in the day on October 12, 2011, D.M. divulged to Bransford that respondent had been sexually abusing her, starting in the summer of 2011 when the family moved to the Madison Street address in Danville. D.M. said this sexual abuse happened almost every day, the most recent time being the morning before respondent's arrest. She became very emotional and made this disclosure with difficulty.

¶ 23 At the conclusion of Bransford's testimony, the trial court admitted in evidence People's group exhibit No. 1, the photographs of McAfee's injuries; People's group exhibit No. 2, medical records of McAfee's stay in Provena; and People's group exhibit No. 3, medical records of D.M.'s examination by a doctor at Provena. None of these exhibits appears to be in the record on appeal.

¶ 24 The State rested. Neither parent presented any evidence. Nor did the guardian *ad litem* present any evidence.

¶ 25 The trial court found all the allegations in the three petitions proved by a preponderance of the evidence.

¶ 26 C. The Dispositional Hearing

¶ 27 On February 16, 2012, the trial court held a dispositional hearing, in which the State called Amy Semersheim, a caseworker with Catholic Charities. She testified that since February 1, 2012, McAfee had been residing in her own apartment on Harrison Street in Danville and that ever since his release from jail on February 6, 2012, respondent had been residing there with her.

¶ 28 The assistant State's Attorney asked Semersheim:

"Q. And in regards to his criminal case that was pending where Ms. McAfee was the victim, has that case been resolved?

A. Yes."

¶ 29 At the conclusion of the dispositional hearing, the trial court made the minors wards of the court and awarded custody and guardianship of them to DCFS.

¶ 30 This appeal followed.

¶ 31 II. ANALYSIS

¶ 32 If, in an adjudicatory hearing, a trial court finds a minor to be abused, neglected, or dependent, we will give that finding "great deference," overturning it only if it is against the manifest weight of the evidence. *In re C.M.*, 351 Ill. App. 3d 913, 916 (2004). The finding is against the manifest weight of the evidence only if it is "clearly evident," from the record, that the State failed to prove, by a preponderance of the evidence, that the minor was abused, neglected, or dependent. *In re Arthur H.*, 212 Ill. 2d 441, 464

(2004).

¶ 33 Respondent argues that, for four reasons, the trial court's findings of neglect and abuse are against the manifest weight of the evidence. First, respondent states that "[d]uring an interview with the oldest child, D.M., it was determined that the three children were present in the home during the incident, but only D.M. was thought to have been a witness to the incident." Actually, one could reasonably infer that because D.M. was aware of the beating that McAfee was receiving from respondent, the other two children were aware of it, too—especially considering that, according to McAfee's statement, the domestic dispute lasted several hours. It is just that D.M. was the only child with the cognitive ability to put in words what she had witnessed. See *In re Marriage of Gambla*, 367 Ill. App. 3d 441, 463 (2006) ("Where the evidence permits multiple reasonable inferences, the reviewing court will accept those inferences that support the trial court's order."); *In re A.D.R.*, 186 Ill. App. 3d 386, 393 (1989) ("[I]t is not unreasonable for a trial judge to conclude continuing physical abuse by one parent to another will cause emotional damage to a child and thus constitute neglect.").

¶ 34 Second, respondent observes that "[a]t the time of the dispositional hearing, [he] had been released from jail, and the domestic battery case had been resolved." Yes, but "resolved" how? Just because the domestic-battery case has been "resolved," it does not necessarily follow that the domestic battery never happened.

¶ 35 Third, respondent says that "[o]ther than the statement by D.M. that she had been sexually abused by Ward, the state presented no evidence of such abuse." We cannot take respondent's word for that. People's group exhibit No. 3, the medical records of D.M.'s

examination at Provena, does not appear to be in the record. We will construe that omission against respondent by assuming that those records corroborated D.M.'s statement that she had been sexually abused. See *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984) (an appellant has the burden of presenting a sufficiently complete record of proceedings at the trial court level to support a claim of error, and a reviewing court will resolve any doubts arising from the incompleteness of the record against the appellant).

¶ 36 Fourth, respondent points out that "[w]hile McAfee had a prior history with the Department, [he] had no such history." The question, though, is not which parent had a prior history, but whether the record contains evidence of present neglect or abuse. It does.

¶ 37 In short, these four points fail to convince us that the trial court's findings of neglect and abuse are against the manifest weight of the evidence.

¶ 38 III. CONCLUSION

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

¶ 40 Affirmed.