

NOTICE
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2013 IL App (4th) 130664-U

NO. 4-13-0664

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

December 5, 2013

Carla Bender

4th District Appellate
Court, IL

In re: B.D., T.D., Q.D., and Ale. D., Minors,)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
Petitioner-Appellee,)	Champaign County
v.)	No. 13JA19
LETITIA DAY,)	
Respondent-Appellant.)	Honorable
)	John R. Kennedy,
)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.

Presiding Justice Appleton and Justice Harris concurred in the judgment.

ORDER

¶ 1 *Held:* Due to the appellate record lacking evidence presented at both the adjudicatory and dispositional hearings, the reviewing court presumes the adjudicatory and dispositional orders had a sufficient factual basis and conformed with the law.

¶ 2 In April 2013, the State filed a petition for adjudication of wardship as to T.D.

(born in 2004), Ale. D. (born in 2005), and Q.D. (born in 2006), the adoptive minor children and

biological grandchildren of respondent, Letitia Day. The petition also included another minor,

B.D. (born in 2009), who was also respondent's biological granddaughter. Respondent and her

husband, James Day, had temporary guardianship of B.D. and had filed a petition to adopt her

(Champaign County case No. 13-AD-21). James, who is also the adoptive father of T.D., Ale.

D., and Q.D.; and B.D.'s biological parents, Dannelle and Michael Pasley, are not parties to this

appeal. However, we note James did file a separate appeal (No. 4-13-0665). After an

adjudicatory hearing, the Champaign County circuit court found all four minor children were dependent and neglected. In July 2013, the court made the minor children wards of the court and appointed the Department of Children and Family Services (DCFS) as their guardian.

¶ 3 Respondent appeals, contending the trial court erred by (1) finding the children were dependent or neglected, and (2) removing them from her and James's custody. We affirm.

¶ 4 I. BACKGROUND

¶ 5 The April 2013 petition for adjudication of wardship contained numerous counts. Count I of the petition alleged the four minor children were dependent under section 2-4(1)(b) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-4(1)(b) (West 2012)) because they were minors lacking proper care as a result of the physical disability of their parents, guardians, or custodians. The six other counts alleged neglect pursuant to section 2-3(1)(b) of the Juvenile Court Act (705 ILCS 405/2-3(1)(b) (West 2012)), which defines a neglected minor as "any minor under 18 years of age whose environment is injurious to his or her welfare." First, as to the four minor children, the petition asserted an injurious environment due to (1) respondent and James leaving them in the care of Dannelle, their biological mother, whose parental rights had been terminated as to T.D., Q.D., and Ale. D (In re T.P., No. 06-JA-43 (Cir. Ct. Champaign Co.)) (count II); (2) the unsanitary conditions in respondent and James's residence (count III); and (3) their exposure to substance abuse when they resided with Dannelle (count VI). As to B.D. only, the petition alleged an injurious environment (1) when she resided with Dannelle because Dannelle had failed to correct the conditions that resulted in prior adjudications of her parental unfitness to have custody of T.D., Q.D., and Ale. D (In re T.P., No. 06-JA-43 (Cir. Ct. Champaign Co.)); Ala. D. and Aly. D. (Champaign County case No. 10-JA-

75); and K.D. (Champaign County case No. 12-JA-7)) (count IV); and (2) when she resided with Michael as he failed to correct the conditions that resulted in prior adjudication of his parental unfitness to have custody of T.D., Q.D., and Ale. D (In re T.P., No. 06-JA-43 (Cir. Ct. Champaign Co.)) (count V). Count VII pertained only to T.D. and asserted an injurious environment based on respondent and James's failure to provide him with adequate medical care.

¶ 6 In June 2013, the trial court commenced the adjudicatory hearing. The State presented the testimony of (1) Megan McNeil, DCFS child protection specialist; (2) Cheryl Smith, respondent's neighbor; (3) Jay Loschen, Urbana patrol sergeant; and (4) Mike Cervantes, Urbana police officer. It also presented T.D.'s medical records from his March 2013 hospitalization and evidence of Michael's convictions in Coles County case Nos. 09-CM-653 and 10-CF-159. Moreover, at the State's request, the trial court took judicial notice of one of Dannelle's Champaign County convictions (No. 07-CM-1409) and seven of Michael's Champaign County convictions (Nos. 96-DT-199, 97-CF-1137, 98-CF-967, 02-CF-1041, 04-CF-1825, 05-CM-855, and 06-CM-1469) and all of the orders in the following cases: In re T.P., No. 06-JA-43 (Cir. Ct. Champaign Co.); In re Ala. D., No. 10-JA-75 (Cir. Ct. Champaign Co.); In re K.D., No. 12-JA-7 (Cir. Ct. Champaign Co.); and In re the Adoption of T.P., No. 08-AD-62 (Cir. Ct. Champaign Co.). Respondent testified on her own behalf and presented the testimony of (1) Tanya Eddy, her other daughter; and (2) Teresa Akers, her stepdaughter. She also presented 17 photographs of her and James's residence. James testified on his own behalf and presented Dannelle's testimony. The appellate record contains the complete trial transcripts of the adjudicatory hearing and all of the exhibits but lacks all of the orders of which the trial court took judicial notice. On July 8, 2013, the trial court entered a written order, finding the State had

proved all of the allegations in the petition by a preponderance of the evidence, except for count III, which alleged respondent and James's residence was unsanitary.

¶ 7 On July 29, 2013, the trial court held the dispositional hearing. At the beginning of the hearing, the court made a point of noting it had received two dispositional reports, one concerning B.D. and one addressing the other three children. The only testimony at the dispositional hearing was that of respondent, who testified, in response to the urine test results showing consumption of alcohol, she did not drink alcohol. The appellate record contains a transcript of the dispositional hearing and the dispositional report for the three children but not the one for B.D. On July 31, 2013, the court entered a written order finding respondent was unfit and unable to care for, protect, train, or discipline the minor children. The other parents involved in this case were also found unfit. With regard to respondent and James, the court noted placing the children with them would result in improper contact of the minors with Dannelle. The court then adjudicated the minor children "abused and neglected," made them wards of the court, vacated B.D.'s temporary guardianship with respondent and James, and placed the children's custody and guardianship with DCFS. Last, the court found "no just reason to delay enforcement or appeal."

¶ 8 On August 7, 2013, respondent filed a timely notice of appeal in sufficient compliance with Illinois Supreme Court Rule 303 (eff. May 30, 2008). See Ill. S. Ct. R. 660(b) (eff. Oct. 1, 2001) (providing the rules governing civil cases govern appeals from final judgments in all proceedings under the Juvenile Court Act, except for delinquency cases). Thus, this court has jurisdiction under Illinois Supreme Court Rule 304(a) (eff. Feb. 26, 2010).

¶ 9 II. ANALYSIS

¶ 10 Cases involving dependency and neglect allegations and the adjudication of wardship are *sui generis*, and thus courts must decide them based on their unique circumstances. *In re A.P.*, 2012 IL 113875, ¶ 17, 981 N.E.2d 336. Moreover, in any proceeding brought under the Juvenile Court Act, including an adjudication of wardship, the paramount consideration is the children's best interests. *A.P.*, 2012 IL 113875, ¶ 18, 981 N.E.2d 336.

¶ 11 The Juvenile Court Act provides a two-step process the trial court must utilize to decide whether the minors should become wards of the court. *A.P.*, 2012 IL 113875, ¶ 18, 981 N.E.2d 336. Step one of the process is the adjudicatory hearing, at which the court considers only whether the minors are abused, neglected, or dependent. See 705 ILCS 405/2-18(1) (West 2012); *A.P.*, 2012 IL 113875, ¶ 19, 981 N.E.2d 336. If a trial court determines the minors are abused, neglected or dependent at the adjudicatory hearing, then the court holds a dispositional hearing where the court determines whether it is consistent with the health, safety and best interests of the minors and the public the minors be made wards of the court. *A.P.*, 2012 IL 113875, ¶ 21, 981 N.E.2d 336.

¶ 12 Here, respondent challenges the trial court's findings at both steps of the process.

¶ 13 A. Dependent and Neglect Findings

¶ 14 The State bears the burden of proving dependent and neglect allegations by a preponderance of the evidence, which means it must show the allegations are more probably true than not. See *A.P.*, 2012 IL 113875, ¶ 17, 981 N.E.2d 336. On review, this court will not reverse a trial court's dependent or neglect finding unless it is against the manifest weight of the evidence. See *A.P.*, 2012 IL 113875, ¶ 17, 981 N.E.2d 336. "A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident." *A.P.*, 2012 IL 113875,

¶ 17, 981 N.E.2d 336. Moreover, we note the State need only prove a single ground for neglect, and thus, as in this case, when the trial court has found a minor neglected on several grounds, the reviewing court may affirm if any of the trial court's bases of neglect may be upheld. *In re Faith B.*, 216 Ill. 2d 1, 14, 832 N.E.2d 152, 159 (2005).

¶ 15 Recently, our supreme court has explained the terms "neglect" and "injurious" as follows:

"Generally, neglect is defined as the failure to exercise the care that circumstances justly demand. [Citations.] This does not mean, however, that the term neglect is limited to a narrow definition. [Citation.] As this court has long held, neglect encompasses wilful as well as unintentional disregard of duty. It is not a term of fixed and measured meaning. It takes its content always from specific circumstances, and its meaning varies as the context of surrounding circumstances changes. [Citations.] Similarly, the term injurious environment has been recognized by our courts as an amorphous concept that cannot be defined with particularity. [Citation.] Generally, however, the term injurious environment has been interpreted to include the breach of a parent's duty to ensure a safe and nurturing shelter for his or her children. [Citations.]" (Internal quotation marks omitted.) *A.P.*, 2012 IL 113875, ¶ 22, 981 N.E.2d 336.

Moreover, under section 2-4(1)(b) of the Juvenile Court Act (705 ILCS 5/2-4(1)(b) (West 2012)),

a dependent minor is a minor "who is without proper care because of the physical or mental disability of his parent, guardian or custodian."

¶ 16 Neglect findings, particularly injurious environment rulings, are based on the unique facts of the case. See *A.P.*, 2012 IL 113875, ¶ 17, 981 N.E.2d 336. A dependency finding is also based on the case's circumstances. Respondent asserts no preponderance of evidence showed the children were dependent or neglected. However, the appellate record is lacking a significant amount of facts, as none of the orders from the 12 cases of which the trial court took judicial notice during the adjudicatory hearing are included in the record on appeal. As the appellant, respondent had the burden to present a sufficiently complete record of the trial-court proceedings to support her claim of error. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92, 459 N.E.2d 958, 959 (1984). Absent a sufficient appellate record, a reviewing court will presume the trial court's order was in conformity with the law and had a sufficient factual basis. *Foutch*, 99 Ill. 2d at 392, 459 N.E.2d at 959. Since the missing orders, especially the ones addressing the children's relationship with Dannelle after the termination of her parental rights, are relevant to the issues of dependency and neglect, we presume the trial court's dependent and neglect findings had a sufficient factual basis.

¶ 17 B. Dispositional Order

¶ 18 Under section 2-27(1) of the Juvenile Court Act (705 ILCS 405/2-27(1) (West 2012)), the trial court can remove the minor children's custody from their parents only after determining (1) the parents are either unfit or unable, for some reason other than financial circumstances alone, to care for, protect, train, or discipline the minors or are unwilling to do so, and (2) the minors' best interests will be jeopardized if the minors remain in the custody of their

parents. With a section 2-27 finding of unfitness that does not result in a complete termination of all parental rights, the State's burden of proof is a preponderance of the evidence. *In re April C.*, 326 Ill. App. 3d 225, 238, 760 N.E.2d 85, 96 (2001). A reviewing court will reverse the trial court's determination only if the findings of fact are against the manifest weight of the evidence or if the trial court committed an abuse of discretion by selecting an inappropriate dispositional order. *In re J.W.*, 386 Ill. App. 3d 847, 856, 898 N.E.2d 803, 811 (2008).

¶ 19 The record is also inadequate to address respondent's challenge to the dispositional order. The transcript of the dispositional hearing indicates the evidence presented was respondent's testimony she does not drink alcohol and two dispositional reports, one concerning B.D. and one addressing the other three minor children. The record on appeal does not contain the dispositional report addressing B.D., which would have contained information about Dannelle. In T.D.'s dispositional report, he informed DCFS workers he and the three other minor children had spent most weekends with Dannelle since he was five years old. While respondent denied the children were unsupervised with Dannelle, respondent and James both felt strongly Dannelle as the children's biological mother should have supervised contact with the minor children. Thus, without the dispositional report discussing Dannelle, we cannot address respondent's argument the trial court could have fashioned an order addressing when the children could be in Dannelle's presence. Accordingly, we again presume the trial court's order was in conformity with the law and had a sufficient factual basis. *Foutch*, 99 Ill. 2d at 392, 459 N.E.2d at 959.

¶ 20 III. CONCLUSION

¶ 21 For the reasons stated, we affirm the Champaign County circuit court's judgment.

¶ 22 Affirmed.