2021 IL App (3d) 190666-U

Order filed November 9, 2021

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2021

In re K.L.,	)	Appeal from the Circuit Court
	)	of the 14th Judicial Circuit,
a Minor	)	Whiteside County, Illinois,
	)	
(The People of the State of Illinois,	)	
	)	
Petitioner-Appellee,	)	Appeal No. 3-19-0666
	)	Circuit No. 18-JA-25
v.	)	
	)	
JEANITTE Z.,	)	Honorable
	)	Trish A. Senneff,
Respondent-Appellant).	)	Judge, Presiding.

PRESIDING JUSTICE McDADE delivered the judgment of the court.
Justices Holdridge and Daugherity concurred in the judgment.

ORDER

¶ 1 *Held*: Trial court's judgment finding that State had proven by a preponderance of the evidence that child was neglected was not contrary to the manifest weight of the evidence.

¶ 2 Following an adjudicatory hearing, the court found that K.L. was a neglected minor based on an environment injurious to her welfare. After a subsequent dispositional hearing, respondent, Jeanitte Z., was found to be unfit, and K.L. was made a ward of the court and placed under the

guardianship of the Illinois Department of Child and Family Services (DCFS). On appeal, respondent challenges only the first of these decisions, arguing that the State's evidence at the adjudicatory hearing was insufficient to prove by a preponderance of the evidence that K.L. was a neglected minor. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On July 23, 2018, the State filed a petition for adjudication of wardship in which it alleged that K.L., born July 3, 2014, was a neglected minor and that K.L.'s environment was injurious to her welfare. The petition alleged that respondent, K.L.'s mother, had tested positive for methamphetamine and THC on June 27, 2018, and tested positive for methamphetamine on July 11, 2018. Per the petition, respondent had refused to cooperate with a safety plan implemented by DCFS.

¶ 5 An adjudicatory hearing was held on October 1, 2019. The sole witness at the hearing was April Queckboerner, a child protection specialist with DCFS. Queckboerner was assigned to investigate a hotline report concerning K.L. that was received on June 14, 2019.[1] The report included allegations that respondent was using methamphetamine "and that there was paraphernalia in her home." Respondent's older daughter, L.Z., was also a "named subject" in the report.

¶ 6 On the day the hotline report was received, Queckboerner went to respondent's home, where a man told her that neither respondent nor K.L. was present. The man told Queckboerner that he did not want her to know his name, and she never encountered him after that meeting. That same day, Queckboerner met with L.Z., who was at her father's house. L.Z. reported that

[1]Queckboerner was aware who made the hotline call but could not disclose that person's identity.

she was not currently getting along with respondent, as the two had recently engaged in an argument over L.Z.'s makeup. Queckboerner testified that L.Z. "also was angry at her mother because she says that she had seen a meth pipe in the living room and her mom's bedroom." L.Z. described the pipes to Queckboerner as "circular on one end with a tube." L.Z. reported that one of the items she believed to be a pipe was white, while the other was clear. L.Z. expressed concern for K.L. because "that stuff was laying out where she could see it." L.Z. told Queckboerner that the pipe in the living room was easily accessible.

¶ 7 L.Z. also indicated that respondent was selling THC and methamphetamine. Queckboerner noted that L.Z. "talked about a lot of stuff that day," but that much of it related to concerns about drugs. According to Queckboerner, L.Z. "said there was a dish I think by the box where there's keys in the living room and that it was smashed-up white something that she believed to be drugs." Queckboerner indicated that L.Z. "didn't have any concrete reason" for believing the white powder was drugs, other than that respondent talked about using drugs. Queckboerner believed that L.Z. was 13 or 14 years old, though she allowed on cross-examination that she may have been 12 years old.

¶ 8 Queckboerner was able to establish contact with respondent on June 17, 2018. A safety plan was enacted that day. The safety plan required respondent to avoid illegal drugs, submit to random drug testing, and complete a substance abuse assessment if any of those tests were positive for illegal substances. K.L. was placed in the home of her maternal grandfather, at respondent's request. [2] Later, however, respondent asked that K.L. be moved, because

[2]An assessment report found elsewhere in the record on appeal indicates that, as a part of the safety plan, L.Z. "would return to her father." The record provides no indication of any further proceedings relating to L.Z.

respondent was unable to get along with her father during her visits. K.L. was then placed with her great aunt.

¶ 9 Respondent submitted to drug tests on June 27 and July 11, 2018. The first of those tests was positive for THC and methamphetamine while the second was positive for methamphetamine. Respondent failed to appear for three subsequent requested tests and never completed a substance abuse assessment.

¶ 10 Respondent was originally cooperative with the safety plan, despite often being argumentative and difficult to locate. Queckboerner testified that at some point "[d]uring" the safety plan "[i]t was reported to me by the staff at Whiteside County housing that she was being evicted *** because she was harboring unsafe people in her home in the housing complex." On cross-examination, Queckboerner added that the housing authority had informed her that a person was in respondent's apartment who had been involved in a shooting on the housing property.

¶ 11 On July 20, 2018, respondent's cooperation with the safety plan ceased. In an encounter at respondent's home, respondent told Queckboerner that she had no right to be on her property and no right to see K.L. Respondent was yelling, and Queckboerner called the police to "ensure everyone was safe." Respondent was arrested on an active warrant, of which Queckboerner had been unaware. K.L. was taken into protective custody. Queckboerner recommended that K.L. remain in DCFS custody until respondent was able to resolve "those issues which brought [K.L.] into care."

¶ 12 On cross-examination, Queckboerner stated that she did not know whether L.Z. had used the words "meth pipe" or the words "pipe for drugs" in describing what she had seen at

respondent's home. She was aware of no information corroborating L.Z.'s claim that respondent was selling drugs.

¶ 13 Queckboerner testified that police had been called to respondent's residence on June 10, 2018, due to "an altercation." On that night, "the police had indicated some concern about chemical smell in the apartment." Police were not permitted the enter the apartment. Queckboerner was not aware of any criminal charges having been filed against respondent relating to the events of June 10.

¶ 14 In delivering its ruling, the court observed that L.Z. was a witness who "should have some affinity to her mother whether they had a fight or not, giving pretty graphic descriptions of drug paraphernalia, statements made by Mother concerning drugs." The court also noted that there had been evidence that police were concerned about a "strong chemical smell" in respondent's apartment. The court found that the State had proven the allegations in its petition by a preponderance of the evidence. It adjudicated K.L. a neglected minor.

¶ 15 A dispositional hearing was held on October 29, 2019. The court found it was in the best interest of the minor to be made a ward of the court and placed under guardianship of DCFS. The court also found that the respondent was unfit or unable to care for, protect, train, or discipline K.L. or was unwilling to do so.

¶ 16 II. ANALYSIS

¶ 17 On appeal, respondent challenges only the court's finding that K.L. was a neglected minor based on an environment injurious to her welfare. She asserts that the court's determination to that effect was contrary to the manifest weight of the evidence. Specifically, respondent argues that L.Z.'s report that respondent was selling drugs and the housing authority's report that respondent had harbored a person involved in a shooting were wholly

uncorroborated. She also argues that no evidence was presented showing that she consumed illegal drugs while K.L. was in her care.

¶ 18 Upon the filing of a petition for wardship by the State, the court must conduct an adjudicatory hearing to determine whether the minor in question is abused or neglected. 705 ILCS 405/2-21(1) (West 2018); *id.* § 2-18(1). "[A]ny minor under 18 years of age whose environment is injurious to his or her welfare" is a neglected minor. *Id.* § 2-3(1)(b).

> "[T]he term 'injurious environment' has been recognized by our courts as an amorphous concept that cannot be defined with particularity. [Citations.] In general, 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.' " *In re Arthur H.*, 212 Ill. 2d 441, 463 (2004) (quoting *In re N.B.*, 191 Ill. 2d 338, 346 (2000), quoting *In re M.K.*, 271 Ill.App.3d 820, 826 (1995)).

¶ 19 It is the State's burden to prove an allegation of neglect by a preponderance of the evidence. *Id.* at 463-64. Under the preponderance of the evidence standard, the State must only present evidence that renders the fact in question more likely than not. *People v. Peterson*, 2017 IL 120331, ¶ 37. Evidence that a parent of the minor

> "repeatedly used a drug to the extent that it has or would ordinarily have the effect of producing in the user a substantial state of stupor, unconsciousness, intoxication, hallucination, disorientation or incompetence, or a substantial impairment of judgment, or a substantial manifestation of irrationality, shall be prima facie evidence of neglect." 705 ILCS 405/2-18(2)(f) (West 2018).

¶ 20 A reviewing court will not disturb the trial court's ruling of neglect unless that ruling was contrary to the manifest weight of the evidence. *In re Arthur H.*, 212 Ill. 2d at 464. "A finding is

against the manifest weight of the evidence only if the opposite conclusion is clearly evident." *Id*. In conducting this review, we allow all reasonable inferences in favor of the appellee. *In re Abel C.*, 2013 IL App (2d) 130263, ¶ 19.

¶ 21 L.Z. reported to Queckboerner that she had seen two "meth pipe[s]" or "pipe[s] for drugs" in respondent's home, at least one of which was easily accessible. L.Z. described those pipes in detail. She also suspected that a white powder in the living room was drugs because respondent talked about using drugs. L.Z.'s statements related to respondent's drug use were generally corroborated by respondent's multiple drug tests positive for methamphetamine. The court found L.Z. to be credible, citing her age and her "graphic descriptions of drug paraphernalia." The court discounted the notion that L.Z. was less credible because she was not getting along with respondent at the time of her statements to Queckboerner, presuming that L.Z. had "some affinity to her mother."

¶ 22 The report that police detected a chemical smell emanating from respondent's apartment on June 10, while not itself strongly probative of drug use, was generally corroborative of L.Z.'s statements. To be sure, the trial court incorrectly referenced a "strong chemical smell," despite there being no evidence as to the relative strength of the smell. That misstatement, however, does not negate the fact that there was some corroborative value in that evidence.

¶ 23 Respondent maintains that her positive drug tests on June 27, 2018, and July 11, 2018, are not indicative of K.L. living in an environment injurious to her welfare because K.L. was moved from respondent's apartment on June 17, 2018. She argues that those positive tests establish only that respondent "was positive for the specified illegal substances on the dates she was tested."

¶ 24 Respondent's positive drugs tests, each less than a month removed from K.L.'s placement in her grandfather's home, give rise to a *strong* inference that respondent was consuming drugs while K.L. was in her care. In addition to being supported by L.Z.'s statements about drug paraphernalia in the apartment, it would seem highly unlikely that respondent only began ingesting methamphetamine *after* her daughter was removed from her apartment because of concerns over respondent's drug use, and only *after* a safety plan was implemented requiring respondent to avoid illegal drugs. Relatedly, L.Z.'s statements that multiple pipes were left openly in the home, respondent talked about her drug use, and some drugs may have been left in the open, tend to establish that respondent's use of drugs in the apartment was not an isolated incident.

¶ 25 "Although isolated incidents of a parent's drug usage do not necessarily pose a danger to a child [citation], obviously an ongoing pattern of substantial abuse can create an injurious environment." *In re Z.Z.*, 312 Ill. App. 3d 800, 805 (2000); see also *In re T.S.-P.*, 362 Ill. App. 3d 243, 249 (2005) (finding that illegal drug use in home contributed to environment injurious to welfare); 705 ILCS 405/2-18(2)(f) (West 2018) (establishing that repeated drug use is prima facie evidence of neglect). Furthermore, the evidence in this case demonstrated a breach of respondent's duty to provide safe and nurturing shelter beyond the "obvious" harm of a parent engaging in frequent drug use. Not only did respondent ingest drugs in the home, but she left at least the implements for doing so in places easily accessed by an ambulatory four- or five-year-old child.

¶ 26 We recognize that the evidence in this case is not compelling. The uncorroborated hearsay reports regarding respondent's selling of drugs and housing a person involved in a shooting are of little evidentiary value. The State relied entirely on hearsay and inferences to be

drawn therefrom in attempting to establish that respondent regularly ingested drugs while K.L. was in her care. Still, the court found L.Z. to be credible, and the inferences urged by the State are reasonable. Given the relatively low preponderance of the evidence standard, we cannot say that the court's determination that the State proved K.L. to be a neglected minor was contrary to the manifest weight of the evidence. Indeed, given the seriousness of the circumstances in question, we would prefer to err on the side of protecting the minor.

¶ 27 III. CONCLUSION

¶ 28 The judgment of the circuit court of Whiteside County is affirmed.

¶ 29 Affirmed.