2021 IL App (4th) 200510-U

NO. 4-20-0510

FILED
March 4, 2021
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re J.W., a Minor	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Sangamon County
Petitioner-Appellee,	)	No. 19JA230
v.	)	
Angela W.,	)	Honorable
Respondent-Appellant).	)	Karen S. Tharp,
	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice Knecht and Justice Steigmann concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's neglect finding was not against the manifest weight of the evidence.

¶ 2 On September 16, 2020, the trial court entered an adjudicatory order finding J.W. (born November 11, 2019), the minor child of respondent, Angela W., to be neglected. The court subsequently entered a dispositional order making J.W. a ward of the court and granting custody and guardianship of J.W. to the Department of Children and Family Services (DCFS). Respondent appeals, contending the court's determination that J.W. was neglected was against the manifest weight of the evidence. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On November 26, 2019, the State filed a petition for adjudication of wardship

pursuant to the Juvenile Court Act of 1987 (Act) (705 ILCS 405/1-1 *et seq.* (West 2018)). In the petition, the State alleged J.W.'s environment was injurious to his welfare (*id.* § 2-3(1)(b)) because of respondent's substance abuse issues, respondent's mental health issues, and domestic violence between respondent and her paramour.

¶ 5 An adjudicatory hearing was held on July 30, 2020. At the hearing, the State first presented the testimony of John Hall, a DCFS investigator. Hall testified that on November 14, 2019, he was assigned to investigate allegations of abuse and neglect related to J.W. after J.W. was admitted to the neonatal intensive care unit both for "respiratory distress" and as a result of respondent's "previous positive drug tests." Hall also testified the allegations as to respondent's drug usage while pregnant with J.W. were eventually indicated by DCFS. On cross-examination, Hall acknowledged that J.W. was born premature, his urine and umbilical cord tested negative for controlled substances, and Hall had not obtained a drug drop from respondent after he began his investigation.

¶ 6 The State next called Kara Restagno, a licensed clinical social worker at St. John's Hospital, where J.W. was born. According to Restagno, she first met with respondent on November 11, 2019, prior to J.W.'s birth, after respondent's physician indicated she was "high risk based on [a] toxicology screen that was positive." Restagno testified she met with respondent for approximately an hour and, during their conversation, respondent initially denied that she was "taking any illicit substances." However, later in the conversation, respondent acknowledged that she had "snort[ed]" Ritalin "a couple of times" and that she did not have a prescription for Ritalin. Although respondent did not tell Restagno when she snorted Ritalin, Restagno concluded, because respondent's recent toxicology report was positive for amphetamines, "it must have been recent[ly]

*** [be]cause it only stays in your system for a short period of time." Restagno also testified respondent had tested positive for amphetamines in two prior drug screenings. Restagno additionally testified that respondent told her she was considering placing J.W. for adoption and gave Restagno permission to communicate with the adoption agency. According to Restagno, during their meeting, respondent was "fidgety" and "had a labile mood," which Restagno characterized as "not a common behavior for a woman who is just generally admitted prior to giving birth" and further characterized it as similar to what a person who is "withdrawing from a form of substance" might exhibit. During a later meeting between Restagno and respondent, which occurred after J.W.'s birth, Restagno again observed respondent acting "very fidgety, very labile" and observed respondent try to "pull the tape off of [J.W.'s] face where the NG tube is."

¶ 7 On cross-examination, Restagno was unable to recall when respondent was admitted to St. John's Hospital, when J.W. was born, or whether respondent was taking any medication for pregnancy-related issues. Restagno acknowledged that she did not have any background training in toxicology and that her belief that respondent had consumed Ritalin shortly before her recent drug screening was based upon her knowledge of "the shelf life or how long [Ritalin] stays in the urine," which she obtained from "talk[ing] to the pharmacist."

¶ 8 Respondent testified on her own behalf. According to respondent, she was admitted to Memorial Medical Center on November 4, 2019, with hypertension. The next day, respondent was transferred to St. John's Hospital, and on November 10, medical staff "started the medicines to induce" her labor. According to respondent, J.W. was born at around 12:15 a.m. on November 11, "roughly six weeks" premature. Respondent recalled meeting Restagno at least one day before November 11 and again after giving birth. According to respondent, her conversations with

Restagno were "not about any potential drug use but more about [her] placing [J.W.] up for adoption." During the first meeting, respondent told Restagno that, even before she was admitted to the hospital, she was considering placing J.W. for adoption and had even discussed adoption with a representative from a placement agency. According to respondent, her first meeting with Restagno was not long because she "didn't want anything to do with social work" because she "already had a plan in place."

¶ 9 When respondent met with Restagno after giving birth, she was "feeling woozy or under the influence" as a result of the medications she was taking. Respondent testified, during this meeting, Restagno was "very pushy" about wanting J.W. to be placed for adoption. According to respondent, Restagno called the adoptive agency representative to tell her that respondent had given birth and requested respondent permit the prospective adoptive parents to visit J.W. before respondent had the chance to see him. After about 10 minutes, respondent asked medical staff to remove Restagno from the room, after which the two had no further meetings. Respondent denied that she told Restagno she had used Ritalin and testified, prior to giving birth, she had been placed on "a variety of different medicines," including labetalol. Respondent testified that after J.W. was removed and placed into protective custody, she researched labetalol and learned from the website of "the National Institute of Health" that "[t]here was a drug that routinely made false positives on drug tox screens."

¶ 10 On cross-examination, respondent acknowledged she was not feeling "clear headed" when she spoke to Restagno as a result of the medications she was taking and, as a result, could not "fully remember the conversation that [she] had with her." However, respondent was positive she did not discuss drug use with Restagno during any of their meetings, and she denied

having ever taken Ritalin or any other amphetamine.

¶ 11 After both parties rested, the following exchange occurred between the trial court and respondent's counsel:

> "THE COURT: You mentioned earlier about the medical records.
>
> MS. FRIOLI [(RESPONDENT'S COUNSEL)]: Yes, Judge. I believe that the testimony presented and information ascertained is sufficient based on my conversation with my client.
>
> * * *
>
> THE COURT: I think I need to see the medical records. This has been all over the place. I think I've got to see the medical records.
>
> MS. FRIOLI: Judge, I mean if the [S]tate has rested. I would object to there being any additional evidence. It's the [S]tate's burden to present witnesses and evidence to prove their case. It's not the court's job to do the [S]tate's job for them. And I think in this instance the court inquiring and ascertaining evidence that the [S]tate has not brought before the court or another party has not brought before the court I believe is improper, Judge, and the [S]tate has rested their case.
>
> THE COURT: It is a unique situation. There is case law. I don't have it with me. If the court is confused I can actually call witnesses if I feel it's necessary for me to understand fully the allegations and the evidence. There has been quite a bit of conflicting testimony, granted two different sides. But it would appear to be somewhat cleared up through medical records. *** So I want to see the medical records."

The court then, *sua sponte*, continued the proceeding and directed the State to subpoena respondent's medical records.

¶ 12 On September 16, 2020, the trial court resumed the adjudicatory hearing. At the beginning of the hearing, the court summarized the procedural posture as follows:

> "The issue at the end of the day on July 30th, the State had presented evidence, Ms. Frioli had presented evidence. We'll have further discussion about the issue of rebuttal but—and I believe that everything was done—there was an issue of medical records. I had said at the end of the case that I believed I needed to see the medical records. They had not been presented by the State. They had not been presented by mother—in mother's case. Although both had said that they had wanted to but the records at that time had not been received by anyone. So I had made the comment that I had wanted to see the medical records, due to some questions that I had. I think we reached the end of the day anyway, and we reset it. So we needed to address that.
>
> I told the parties today that I was willing to move forward. Just to avoid the issue—I still believe I can, but to avoid the issue, I believe I can move forward without having those medical records, calling them, in effect, myself. So that was where I was to start the day."

The State then moved to reopen its case-in-chief to present respondent's medical records or to present the records as rebuttal evidence. Respondent objected to the State's motion, and the court ultimately denied the State's motion.

¶ 13 After argument, the court made its oral findings. The court began by referring to

the medical records it had indicated were necessary at the end of the first adjudicatory hearing. The court stated: "After I said, yes, I want to see the medical records. Yes, there's still questions. I think a lot of what I had question[s] on were some of [the] dates of things." The court noted the case "c[a]me down to credibility" and that there were certain discrepancies between Restagno's testimony and respondent's testimony. The court then found Restagno more credible than respondent. At the conclusion of its oral findings, the court stated:

> "So I kind of ran over in my mind. Okay, am I okay. Do I think, yes, a parent who snorted Ritalin admits to snorting Ritalin and now denies it, is that okay? Is that a safe environment for a newborn, completely helpless newborn? And as I ran through all of the evidence over and over in my head, I've given this case a lot of thought, I cannot find that that is a safe environment."

Ultimately, the court determined the State had established by a preponderance of the evidence that J.W.'s environment was injurious to his welfare as a result of respondent's substance abuse, as alleged by the State.

¶ 14 On October 7, 2020, the trial court entered a dispositional order making J.W. a ward of the court and placing custody and guardianship of J.W. with DCFS.

¶ 15 This appeal followed.

¶ 16 II. ANALYSIS

¶ 17 On appeal, respondent contends the trial court's finding that J.W. was neglected was against the manifest weight of the evidence. We disagree.

¶ 18 Before the trial court may proceed to an adjudication of wardship, it must first conduct an adjudicatory hearing to determine whether the minor is abused, neglected, or

dependent. *In re A.P.*, 2012 IL 113875, ¶ 19, 981 N.E.2d 336; *In re Arthur H.*, 212 Ill. 2d 441, 464, 819 N.E.2d 734, 747 (2004). Under section 405/2-3(1)(b) of the Act, a "neglected" minor includes one whose "environment is injurious to his or her welfare." 705 ILCS 405/2-3(1)(b) (West 2018). "Neglect," as used in the Act, is generally defined as "the failure to exercise the care that circumstances justly demand" and encompasses "wilful as well as unintentional disregard of duty." (Internal quotation marks omitted.) *A.P.*, 2012 IL 113875, ¶ 22. The term "injurious environment" includes "the breach of a parent's duty to ensure a safe and nurturing shelter for his or her children." (Internal quotation marks omitted.) *Id.* The terms "neglect" and "injurious environment" are "amorphous, and cases involving such allegations are *sui generis* and must be decided on the basis of their unique facts, including consideration of a parent's past conduct, even a woman's behavior during her pregnancy, to determine whether an injurious environment, and thus neglect, exists for a child after its birth." *In re Harriett L.-B.*, 2016 IL App (1st) 152034, ¶ 26, 50 N.E.3d 1222.

¶ 19 At the adjudicatory hearing, it is the State's burden to prove that the minor was abused, neglected, or dependent by a preponderance of the evidence. *A.P.*, 2012 IL 113875, ¶ 17. The trial court's determination that the State has met this burden and its corresponding finding that the minor is abused, neglected, or dependent will not be reversed on review unless it is against the manifest weight of the evidence. *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.* A court of review gives deference to the trial court's finding of neglect because that court "is in the best position to observe the conduct and demeanor of the parties and the witnesses and has a degree of familiarity with the evidence that a reviewing court cannot possibly obtain." (Internal quotation marks omitted.) *In re A.W.*, 231 Ill. 2d 92, 102, 896 N.E.2d 316, 322 (2008). For this reason, we will not

"substitute [our] judgment for that of the trial court regarding the credibility of witnesses, the weight to be given to the evidence, or the inferences to be drawn." (Internal quotation marks omitted.) *Id.*

¶ 20 Respondent's sole contention on appeal is that the trial court's finding that J.W. was neglected was against the manifest weight of the evidence because the court did not review respondent's medical records before rendering its decision. Specifically, respondent contends that by continuing the adjudicatory hearing for the State to obtain respondent's medical records, the court indicated it was "confused or not convinced" the State had satisfied its burden and, because the court never reviewed the medical records or any other additional evidence, it could not later find the State satisfied its burden to prove J.W. was neglected. We disagree with respondent's contention. The trial court explicitly stated at the beginning of the continued adjudicatory hearing that it was able to proceed with adjudication without reviewing respondent's medical records. Later, in its oral findings, the court stated the main reason it had wanted to review the medical records was to gain clarity on "dates of things," about which the court found neither Restagno, nor respondent, testified clearly. However, the court ultimately determined that resolution of this case did not depend on the date events occurred but instead on evidence of respondent's substance abuse during her pregnancy with J.W. We agree it was not necessary that the trial court review respondent's medical records because sufficient evidence of her substance abuse was presented from which the court could properly determine J.W. was neglected.

¶ 21 The evidence presented at the adjudicatory hearing demonstrated that respondent had a substance abuse problem that made J.W.'s environment after birth injurious to his welfare. See, *e.g.*, *In re J.W.*, 289 Ill. App. 3d 613, 682 N.E.2d 300 (1997); see also *In re J.C.*, 2012 IL App

(4th) 110861, ¶¶ 31-33, 966 N.E.2d 453. Restagno testified that respondent admitted she had previously snorted Ritalin. Although respondent did not say when she last used Ritalin, according to Restagno, because respondent's recent toxicology report was positive for amphetamines, "it must have been recent[ly] *** [be]cause it only stays in your system for a short period of time." Respondent denied that she made this admission and testified she had never used Ritalin or any other amphetamine. The trial court credited Restagno's testimony over that of respondent and inferred from respondent's denial that she had ongoing substance abuse issues which created an injurious environment for a "completely helpless newborn" such as J.W. The trial court's conclusion is also supported by the evidence that respondent tested positive for amphetamines in two prior drug screenings. In light of this evidence, it cannot be said a finding opposite of that reached by the trial court is clearly evident. Accordingly, the trial court's determination that J.W. was neglected was not against the manifest weight of the evidence.

¶ 22 III. CONCLUSION

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

¶ 24 Affirmed.