

NOTICE
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2019 IL App (4th) 180583-U
NO. 4-18-0583
IN THE APPELLATE COURT
OF ILLINOIS

FILED
January 7, 2019
Carla Bender
4th District Appellate
Court, IL

FOURTH DISTRICT

| | | |
|---------------------------------------|---|-------------------|
| <i>In re</i> O.L., a Minor |) | Appeal from the |
| |) | Circuit Court of |
| (The People of the State of Illinois, |) | Macon County |
| Petitioner-Appellee, |) | No. 18JA112 |
| v. |) | |
| Anthony D., |) | The Honorable |
| Respondent-Appellant). |) | Thomas E. Little, |
| |) | Judge Presiding |

JUSTICE STEIGMANN delivered the judgment of the court.
Justices DeArmond and Cavanagh concurred in the judgment.

ORDER

- ¶ 1 *Held:* The appellate court affirmed the trial court’s order finding that O.L. was a neglected minor.
- ¶ 2 Anthony D. and Bianca J. are the biological parents of O.L. (born February 2018). Bianca is also the biological mother of L.J. (born July 2010). L.J.’s biological father is not a party to this case.
- ¶ 3 In May 2018, the State filed a petition for adjudication of neglect, arguing that O.L. was (1) not receiving the proper or necessary care as required by law, (2) in an environment injurious to his welfare, and (3) in an environment which created a substantial risk of physical injury other than by accidental means which would be likely to cause death, disfigurement, impairment of physical or emotional health, or loss or impairment of any bodily function. 705 ILCS 405/2-3(1)(a), (b); (2)(ii) (West 2016). In August 2018, following an adjudicatory hearing, the trial court concluded that O.L. was a neglected minor because he was not receiving the

proper or necessary care as required by law and was in an environment injurious to his welfare.

¶ 4 Anthony appeals, arguing that the trial court’s finding of neglect is against the manifest weight of the evidence. We disagree and affirm.

¶ 5 I. BACKGROUND

¶ 6 A. The Petition for Adjudication of Neglect

¶ 7 In May 2018, the State filed a three-count petition for adjudication of neglect. Count I alleged that O.L. was a neglected minor because he was not receiving the proper or necessary care as required by law. 705 ILCS 405/2-3(1)(a) (West 2016).

¶ 8 Count II alleged that O.L. was a neglected minor because he was in an environment injurious to his welfare. *Id.* § 2-3(1)(b). The State contended that Anthony had “ongoing, untreated mental health issues. He is also under investigation for child sexual abuse of the mother’s other child, [L.J.]. Caseworkers for the intact family case have noted escalating agitation, ‘bizarre comments to and demands of’ caseworkers, and increasingly negative and hostile behaviors requiring police intervention to escort him off Youth Advocate Program property. *** The mother has a number of cognitive deficits and physical health issues. She does not appear to have the ability to maintain protective factors for her children[.]”

¶ 9 Count III alleged that O.L. was a neglected minor because his environment created “a substantial risk of physical injury to such minor by other than accidental means which would be likely to cause death, disfigurement, impairment of physical or emotional health, or loss or impairment of any bodily function.” *Id.* § 2-3(2)(ii).

¶ 10 B. The Adjudicatory Hearing

¶ 11 1. *The State’s Evidence*

¶ 12 In August 2018, the trial court conducted an adjudicatory hearing on the State’s

petition. Alma Taylor, a crisis interventionist for Heritage Behavioral Health Center (Heritage), testified that she completed a mental health assessment of Bianca. Taylor testified that Bianca needed therapy and counseling to learn cognitive and behavioral skills to help cope with her functional impairments and that counseling was recommended in order for her to be more assertive. Taylor testified that Bianca was following through and complying with her treatment.

¶ 13 Christine Foster, a parenting educator at Youth Advocate, testified that she did a parenting assessment of Anthony and Bianca. She explained that this parenting assessment evaluated a parent's (1) expectations, (2) empathy, (3) belief in corporal punishment, (4) family rules, and (5) power and independence. Foster testified that Anthony was "high risk" regarding his expectations and his belief in corporal punishment, "medium risk" regarding family rules and power and independence, and "low risk" regarding empathy. She further testified that Anthony needed to work on his parenting skills and that he did not complete his parenting class.

¶ 14 Foster further testified that Bianca was "high risk" regarding her empathy, her belief in corporal punishment, and in family rules, and "medium risk" regarding her expectations and power and independence. Bianca's high risk for empathy, in Foster's professional experience, related to her mental health. Foster testified that Bianca was reevaluated after completing a parenting course and noted that Bianca "improved overall" in her second evaluation but that she was still "medium risk" or "high risk" in all of the categories.

¶ 15 Trisha Morehead, a case aid worker at Youth Advocate, testified that she supervised visits between the parents and O.L. and that the parents interacted very well with O.L. during the visits.

¶ 16 Taran Reed, a DCFS caseworker assigned to this case, stated there was an allegation that Anthony had sexual contact with L.J. She testified that this allegation was

investigated and that Anthony was required to complete a sex offender evaluation. However, Reed stated that the sex offender evaluation recommended that Anthony not complete sex offender treatment at this time. Instead, the evaluation concluded that the sex offender treatment should be deferred until Anthony addressed his mental health needs and completed a substance abuse assessment.

¶ 17 Reed testified that Anthony went to get a mental health screening at Heritage. She noted that Anthony had previously been diagnosed with schizophrenia, bipolar disorder, and depression. She stated that she was “surprised” that Heritage concluded that Anthony had no mental health problems. She did note, however, that Heritage’s assessment was based on Anthony’s self-reporting. Reed testified that she was trying to find an alternative way for Anthony to receive mental health services and that she had scheduled a psychological assessment for September 2018. On cross-examination, Reed conceded that no charges were ever filed regarding the allegation of sexual misconduct against L.J.

¶ 18 Reed also testified that Anthony had exhibited odd behavior with DCFS. She noted that Anthony had requested multiple copies of various documents, had often showed up unannounced and without an appointment, and had tried to contact various supervisors within DCFS. She further noted that after visits between Anthony and O.L. were terminated, Anthony became erratic and, due to his behavior, the police were called and he was asked to leave Youth Advocate’s property.

¶ 19 Reed testified that Bianca was appointed a housing advocate in order to find suitable housing because she could no longer live in the same household as Anthony. She stated that Bianca was currently living with her mother and was working with her housing advocate to find suitable housing for herself and her children.

¶ 20 Reed also noted that the relationship between Anthony and Bianca “teeter-totters” on a frequent basis and that Anthony is the “dominant one” in the relationship. She believed Bianca had the ability to protect her children but she “just struggles sometimes to show it.”

¶ 21 *2. Anthony’s Evidence*

¶ 22 Clara J., Anthony’s mother, testified about the incident when police were called to Youth Advocate’s property. She stated that Anthony believed that DCFS and Youth Advocate were kidnapping O.L., so he called the police. She also stated that Anthony left the property voluntarily.

¶ 23 Anthony testified that he was employed full-time and worked various part-time jobs. He stated that his work schedule made it difficult to complete his parenting classes. He also stated that he was able to provide housing and food for O.L.

¶ 24 Anthony also stated that he complied with the result of the sex offender evaluation. He noted that his evaluation recommended that he receive mental health treatment. However, when he went to Heritage, they did not recommend any mental health treatment for him.

¶ 25 Anthony also explained that his involvement with DCFS had been a frightening and confusing process and that he often asked for information because he was concerned about O.L. and his case. He also stated that he called the police on the employees of Youth Advocate after his visitation was cancelled because he believed they were kidnapping O.L. He stated that when the police arrived, he explained the situation to them and left the property of his own accord.

¶ 26 On cross-examination, Anthony conceded that as a juvenile, he had sexually abused his brother. He also admitted that he had been previously diagnosed with schizophrenia,

bipolar disorder, and depression. The following exchange occurred regarding his treatment at Heritage and why Heritage concluded that no further treatment was required:

“Q. Now, you told the sex offender evaluator that you had been psychiatrically hospitalized and you had been prescribed medications. You had counseling at St. Mary’s and Heritage and you had been diagnosed with schizophrenia, bipolar disorder, and depression and that the diagnoses was at St. Mary’s hospital in 2003, which was some time ago. Did you tell the evaluator that?”

A. Yes, ma’am.

Q. Why then, [Anthony], when asked by Heritage Behavioral Health Center during the course of your assessment relative to your *** mental health history you reported, ‘not that I know of’?

A. Um, most of ‘em [*sic*] she was talking about she had asked me was most of ‘em [*sic*] in the last couple months to a year.

Q. History doesn’t mean something to you? History?

A. She had stated that within the last six months to a year.”

¶ 27 *3. Closing Argument*

¶ 28 During closing argument, the State conceded that it failed to prove count III and withdrew that count from the petition. However, the State argued that it proved count I and count II by a preponderance of the evidence. The State highlighted Anthony’s mental health issues, his strange behavior with DCFS and Youth Advocate, the allegation of sexual abuse against L.J., and his failure to complete his parenting classes. The State also argued that Bianca was having difficulty maintaining adequate housing.

¶ 29 Bianca argued that the State failed to prove count I and count II by a

preponderance of the evidence, noting that “there’s been no concerns with the mother’s ability to keep her children safe.” Anthony also argued that the State failed to prove count I and count II by a preponderance of the evidence.

¶ 30 C. The Trial Court’s Adjudication of Neglect

¶ 31 Following closing argument, the trial court concluded that the State had proved count I and count II of the petition by a preponderance of the evidence. The court therefore found that O.L. was a neglected minor. The court noted that count III of the petition had been voluntarily withdrawn by the State.

¶ 32 D. The Dispositional Hearing

¶ 33 Following the adjudication of neglect, the trial court conducted an immediate dispositional hearing. The State recommended that O.L. be made a ward of the court, guardianship placed with DCFS, and custody remain with the mother. Anthony and Bianca consented to this arrangement. Based upon this agreement, the trial court concluded that it was in the best interest of O.L. that he be made a ward of the court and placed under the guardianship of DCFS.

¶ 34 E. The Trial Court’s Written Orders

¶ 35 Later in August 2018, the trial court issued an adjudicatory order and a dispositional order. In the adjudicatory order, the court concluded that O.L. “suffers from a lack of support, education, [and] remedial care as defined by 705 ILCS 405/2-3(1)(a)” and “is in an environment that is injurious to the welfare of the minor as defined by 705 ILCS 405/2-3(1)(b)[.]” The trial court based this conclusion on the “mother’s cognitive issues and lack of protective factors; father’s mental health issues; [and] father’s lack of treatment for sex offender & mental health.”

¶ 36 In the dispositional order, the trial court granted physical custody of O.L. to Bianca, granted guardianship to DCFS, and granted Anthony supervised visitation.

¶ 37 This appeal followed.

¶ 38 II. ANALYSIS

¶ 39 Anthony appeals, arguing that the trial court’s finding of neglect is against the manifest weight of the evidence. We disagree.

¶ 40 A. The Applicable Law

¶ 41 As relevant to this case, the Juvenile Court Act of 1987 (Act) defines a neglected minor as follows:

“(a) any minor under 18 years of age who is not receiving the proper or necessary support, education as required by law, or medical or other remedial care recognized under State law as necessary for a minor’s well-being, or other care necessary for his or her well-being, including adequate food, clothing and shelter, or who is abandoned by his or her parent or parents or other person or persons responsible for the minor’s welfare ***; or
(b) any minor under 18 years of age whose environment is injurious to his or her welfare[.]” 705 ILCS 405/2-3(1)(a), (b) (West 2016).

¶ 42 The term “neglect” is defined as the “failure to exercise the care that circumstances justly demand.” (Internal quotation marks omitted.) *In re N.B.*, 191 Ill. 2d 338, 346, 730 N.E.2d 1086, 1090 (2000) (quoting *People ex rel. Wallace v. Labrenz*, 411 Ill. 618, 624, 104 N.E.2d 769, 773 (1952)). Neglect “embraces 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.”

Labrenz, 411 Ill. at 624.

¶ 43 The term “injurious environment” is an amorphous concept that cannot be defined with particularity. *In re Arthur H.*, 212 Ill. 2d 441, 463, 819 N.E.2d 734, 746 (2004). “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.” (Internal quotation marks omitted.) *Id.* (quoting *In re N.B.*, 191 Ill. 2d at 346).

¶ 44 At an adjudicatory hearing, the trial court hears evidence on the State’s petition and determines whether a minor is neglected. *In re Zion M.*, 2015 IL App (1st) 151119, ¶ 23, 47 N.E.3d 252. The State bears the burden of proving the allegations by a preponderance of the evidence, meaning the State must establish that the allegations of neglect are more probably true than not. *In re A.P.*, 2012 IL 113875, ¶ 17, 981 N.E.2d 336. If the State fails to prove the allegations by a preponderance of the evidence, the trial court must dismiss the petition. *Id.*

¶ 45 The trial court’s determination of neglect will not be reversed unless it is against the manifest weight of the evidence. *In re An.W.*, 2014 IL App (3d) 130526, ¶ 55, 17 N.E.3d 878. “A finding is against the manifest weight of the evidence only if it is clearly apparent from the record that the trial court should have reached the opposite conclusion.” *Id.* Under this standard, great deference is given to the trial court because it was in the best position to observe the conduct and demeanor of the parties and the witnesses. *Id.* A reviewing court will not substitute its judgment for that of the trial court on matters of witness credibility, the weight to be given to the evidence, or the inferences to be drawn from the evidence. *Id.* Further, because of “the delicacy and difficulty of child custody determinations, the discretion vested with the trial court is even greater than in an ordinary appeal applying the manifest-weight-of-the evidence standard of review.” *In re A.L.*, 2012 IL App (2d) 110992, ¶ 13, 969 N.E.2d 531. “Only a single

ground for neglect need be proven; when a trial court has found a minor neglected on more than one ground, this court may affirm the trial court’s judgment if any of the bases of neglect is upheld.” *In re Abel C.*, 2013 IL App (2d) 130263, ¶ 28, 998 N.E.2d 175.

¶ 46

B. This Case

¶ 47

In this case, Foster, a parenting educator at Youth Advocate, testified that Anthony was “high risk” regarding his expectations and his belief in corporal punishment, “medium risk” regarding family rules and power and independence, and “low risk” regarding empathy. Foster testified that Anthony needed to work on his parenting skills and that he did not complete his parenting class. She further testified that Bianca was “high risk” regarding her empathy, her belief in corporal punishment, and in family rules, and “medium risk” regarding her expectations and power and independence. Reed, the DCFS caseworker, testified that Bianca was appointed a housing advocate in order to find suitable housing because she could no longer live in the same household as Anthony. She stated that Bianca was currently living with her mother and was working to find suitable housing for herself and her children. Taylor, a crisis interventionist for Heritage, also testified that Bianca needed therapy and counseling to learn cognitive and behavioral skills to help cope with her functional impairments and that counseling was recommended in order for her to be more assertive. Based on this evidence, it is not clearly apparent that the trial court should have reached the opposite conclusion. *An.W.* 2014 IL App (3d) 130576, ¶ 55. Accordingly, the trial court’s decision was not against the manifest weight of the evidence. *Id.*

¶ 48

Moreover, Anthony’s argument fails because he focuses exclusively on his own conduct. However, this court has previously explained as follows:

“the purpose of juvenile court proceedings is to determine the *status* of the

child on whose behalf the proceedings are brought, *not* to determine any particular person’s criminal or civil liability. Specifically, at an adjudicatory hearing involving an allegation of neglect or abuse, the issue before the trial court is whether the particular child is neglected or abused as alleged in the State’s petition and as defined in section 2–3 of the Act.” (Emphases in original.) *In re R.B.*, 336 Ill. App. 3d 606, 614, 784 N.E.2d 400, 407 (2003).

¶ 49 Anthony fails to contest the trial court’s finding as it pertains to Bianca. This court, however, is reviewing whether O.L. was neglected, not whether Anthony was neglectful. *Id.* As such, Anthony fails to demonstrate that the trial court’s decision was against the manifest weight of the evidence.

¶ 50 III. CONCLUSION

¶ 51 For the reasons stated, we affirm the trial court’s judgment.

¶ 52 Affirmed.