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2023 IL App (3d) 230134-U

Order filed August 25, 2023

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2023

In re L.R.,	)	Appeal from the Circuit Court
	)	of the 18th Judicial Circuit,
a Minor	)	Du Page County, Illinois,
	)	
(The People of the State of Illinois,	)	
	)	
Petitioner-Appellee,	)	Appeal No. 3-23-0134
	)	Circuit No. 21-JA-63
v.	)	
	)	
Katherine K.,	)	Honorable
	)	Demetrios N. Panoushis,
Respondent-Appellant).	)	Judge, Presiding.

JUSTICE BRENNAN delivered the judgment of the court.
Justices Hettel and Albrecht concurred in the judgment.

ORDER

¶ 1 *Held*: We affirm the trial court's adjudication of neglect and dependency as to the minor child.

¶ 2 On December 1, 2022, the trial court adjudicated L.R. a neglected and dependent minor. 705 ILCS 405/2-3(1)(b), 2-4(1)(b) (West 2020). On February 28, 2023, following a dispositional hearing, the trial court made L.R. a ward of the court and found respondent mother, Katherine K.,

unfit to care for, protect, train or discipline L.R.[1] 705 ILCS 405/2-27 (West 2020). Respondent appeals, arguing that the State did not meet its burden to prove the allegations of neglect and dependency by a preponderance of the evidence. For the reasons that follow, we affirm.

¶ 3 I. BACKGROUND

¶ 4 On September 14, 2021, the State filed a neglect and dependency petition for L.R. (born in September 2020), alleging that: (1) L.R. was neglected in that his environment was injurious to his welfare due to respondent's untreated mental health diagnosis (705 ILCS 405/2-3(1)(b) (West 2020)); and (2) L.R. was dependent due to respondent's untreated mental health diagnosis (705 ILCS 405/2-4(1)(b) (West 2020)).[2]

¶ 5 A. Temporary Custody Hearing

¶ 6 On September 15, 2021, the trial court conducted a temporary custody hearing. Respondent stipulated that there was probable cause and urgent and immediate necessity to place guardianship and custody of L.R. with the Department of Children and Family Services (DCFS). The State provided the factual basis, explaining that, if this case were to proceed to shelter care, it would call caseworker Alison Tews. Tews would testify that respondent has received multiple mental health diagnoses and has not been compliant with treatment from her healthcare provider and has refused to participate in counseling. Respondent has at times refused entry to Tews. On

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[1] The trial court also found L.R.'s biological father unfit, but he does not appeal its findings.

[2] The neglect petition cited 705 ILCS 405/2-4(1)(*a*), which states that the minor is dependent because he is without a legal parent, guardian or custodian. However, words used in the petition invoke section 2-4(1)(*b*), which states that the minor is dependent because he is without proper care due to the physical or mental disability of the minor's parent, guardian, or custodian. The entirety of the proceedings implicates section 2-4(1)(b), and respondent never objected or argued otherwise.

September 13, 2021, when Tews was permitted entry, Tews noticed unexplained red marks on L.R. The court accepted respondent's stipulation, granted temporary guardianship and custody to DCFS, and granted supervised visitation to respondent. The court appointed a *guardian ad litem* (GAL) and a court appointed special advocate (CASA) as representatives.

¶ 7 B. Status Hearings and Continuances

¶ 8 The trial court set the adjudicatory hearing for December 7, 2021. One year of delays ensued. The causes ranged from respondent's difficulty in connecting with service providers, to the father's (ultimately empty) representation that he would become more involved and obtain housing, to illness requiring COVID protocol.

¶ 9 At an October 12, 2021, status hearing, the GAL and CASA representatives informed the court that L.R. was placed with the maternal grandfather, who was struggling with physical health issues. L.R. would be moved that week to a traditional foster home. At a November 9, 2021, status hearing, respondent's counsel informed the court that Lutheran Child and Family Services (LCFS) was in the process of setting services for respondent, but "there had been some confusion." She asked to push back the date for the adjudicatory hearing. Service providers informed the court that L.R. had been placed with an experienced foster mother who had brought L.R. up to date with his medical appointments. Respondent's visitation would begin that week.

¶ 10 On January 25, 2022, the parties again asked to continue the adjudicatory hearing. They were "talking about" entering a protective order in favor of the father. Before that, service providers would need to perform a home study. On February 22, 2022, the parents' status remained the same. Service providers updated the court that L.R. was thriving in his foster care home, that his medical care was current, and that he was "doing well with his eating." On March 15, 2022; April 12, 2022; and May 3, 2022, the father remained evasive about his address.

¶ 11 On June 7, 2022, respondent's counsel again moved to continue the adjudicatory hearing. She explained that, although respondent had been present earlier in the day, respondent had since left the waiting room. She had communicated with respondent via e-mail and respondent informed her that she felt ill. Counsel also felt ill and, per office policy, she was required to provide a negative COVID test before continuing. The court "reluctantly" granted the continuance, noting that it would not grant another if respondent again failed to appear without providing a doctor's note. Counsel informed LCFS on the record that she would be calling to set up a child and family team meeting for her client.

¶ 12 In August 2022, the State moved to continue, because its witness from DCFS had left his job and could not be located. In October 2022, the parties agreed to a December 1, 2022, adjudicatory date.

¶ 13 C. Adjudicatory Hearing

¶ 14 On December 1, 2022, the next-scheduled adjudicatory hearing date, respondent's counsel informed the court that, three days earlier, respondent notified her that she was ill, perhaps with COVID or the flu. The next day, respondent indicated that it was not COVID, but that she felt so ill she could not get out of bed. Counsel moved for a continuance, noting that respondent may have testimony that would be relevant to the case. The court asked for a doctor's note. Counsel stated that she did not ask respondent for one and further stated that respondent informed her that someone took her car, so she could not come to court for that reason as well. The court interjected that this was beginning to sound like "my dog ate my homework." The court denied the motion to continue, subject to respondent getting some sort of proof of her story to counsel prior to the afternoon start time. That afternoon, the court asked counsel about respondent's status, and

counsel replied that she wanted to believe that respondent was telling the truth and she must be bedridden, because she had not responded to counsel's inquiries.

¶ 15 The hearing commenced with the State presenting one witness, Alison Tews. Tews testified that she was a caseworker for Evangelical Child and Family Agency (ECFA). She is an intact case manager, meaning that she "help[s] families who are dealing with mental illness, substance abuse, domestic violence and so we help with housing *** and making sure that the kids are safe." Respondent's intact case opened in September 2020, because L.R. was born substance exposed to psychiatric medication. A different caseworker had the case from October to December 2020. Tews was assigned to the case in December 2020, when L.R. was approximately three months old. In December 2020, respondent and L.R. resided in a one-bedroom apartment with respondent's father. The initial goals were to secure less crowded housing, obtain mental health and substance abuse assessments, and place L.R. in protective daycare. Respondent informed Tews that she had been diagnosed with PTSD, OCD, and anxiety. She had been prescribed medication but was not in counseling. "She knew that it was recommended by *** the psychiatrist for her to do counseling, but she did not want to."

¶ 16 According to Tews, it was "clear" that respondent did not take care of herself. She did not brush her hair; it was a "rat's nest." She also picked at her skin such that there were sores all over her legs. Respondent seemed paranoid—she kept on the television to drown out "other voices," wanted to record each person who rang the doorbell, and was convinced the landlord was out to get her.

¶ 17 Between December 2020 and September 2021, Tews communicated with the respondent "quite a bit" and "regularly" visited the apartment. Some visits "went fine" but, during other visits, respondent became "upset when [Tews] asked her to do something." "A few times," respondent

would not let Tews enter but would open the door an inch such that Tews could barely see L.R. This hindered Tews's ability to monitor the safety of the home.

¶ 18 Tews testified to pictures she had taken of the home, which the State presented as Exhibit Nos. 1 and 2. The pictures showed items on the floor and coffee table and were taken at a time when L.R. was crawling and able to reach the items. The items included batteries, prescription medication (though the pills were secured with child-proof lids), coins, a metal clothes hanger, and a plastic garbage bag.

¶ 19 Tews was concerned for L.R.'s development. L.R. was not talking much. L.R. "star[ed] a lot." L.R. stared at crime shows on the television. "Occasionally," there were unexplained red marks on L.R.'s body, though they were not significant enough to warrant medical attention. When Tews asked respondent about the red marks, respondent became defensive and did not provide an answer. Respondent missed doctor's appointments for L.R. She did not take L.R. to his 6-month check-up until he was 8 ½ months old. The doctor instructed respondent to return with L.R. in six weeks, and respondent missed that appointment multiple times. Tews helped L.R. schedule the appointments and, still, she missed them. Tews recalled that, in May 2021, respondent either called or texted her to ask how to put L.R. up for adoption. Respondent later abandoned that inquiry. Tews asked respondent for the identity of L.R.'s father, but respondent refused to disclose that information.

¶ 20 During cross-examination, when asked if L.R. looked malnourished, Tews answered that L.R. looked "very pale." Even though ECFA had provided L.R. with clothes, respondent dressed him in only a diaper.

¶ 21 On redirect examination, Tews elaborated that, when she asked respondent why L.R. did not wear clothes, respondent answered that she did not want to do laundry. When Tews asked

respondent to pick the prescription medications off of the floor, respondent answered: "[Y]ou can just take him, then."

¶ 22 In closing, respondent argued that the State had failed to prove that respondent had an untreated mental illness or that there was a nexus between the mental illness and the lack of care provided to L.R.

¶ 23 The trial court disagreed. It noted that it did not consider respondent's absence from court as evidence of L.R.'s neglect and dependency. Respondent's absence, however, did contribute to the lack of evidence to counter the State's case. While the evidence was not overwhelming, a preponderance of the evidence supported that respondent had an untreated mental illness. The evidence supported that respondent was taking medication of some sort when L.R. was born; L.R. was born substance exposed. The court recounted that the substance exposure triggered the intact family services, which directed respondent:

> "[not to] leave your pills [on the floor], cloth[e] your child, make sure your child is fed, all of those things, and part of the intact services is to cooperate with [ECFA] and allow home visits to make sure that the kid is doing okay.
>
> What is concerning for me and what makes me believe that there was possibly—or was an injurious environment here was the lack of cooperation with that[.]
>
> I don't have a doubt that there was a mental health issue here [and] what I'm resting on [is] the fact that she wasn't following through with what was recommended by ECFA during the intact period of time.
>
> [It's] extra that the house was a mess, that there w[ere] pills, that there w[ere] dangerous things there."

The trial court understood that respondent needed to meet only a "minimal [standard of] parental care," but it concluded: "I think at a preponderance of the evidence, which is a very small burden, I do think *** that the child was neglected and dependent at the time of the filing of the petition."

¶ 24 D. Dispositional Hearing

¶ 25 On February 28, 2023, the trial court conducted the dispositional hearing. CASA submitted its report, dated December 4, 2022, which provided as follows. L.R. was initially placed with his maternal grandfather, who was physically ill and found it difficult to care for him. The grandfather expressed concern for his daughter's ability to provide a safe home for L.R., given her "mental health struggles and drug use." L.R. was then placed in a traditional foster home. L.R.'s foster mother brought L.R. up to date with his medical appointments, and professional healthcare providers documented that L.R. experienced "a 38% delay in all areas including Speech, OT, PT." A physician prescribed a nutritional supplement, and L.R. was slowly but steadily gaining weight. L.R. had previously been drinking only formula, but he was now being introduced to milk and a variety of foods. L.R. had chronic respiratory issues which had not been addressed, but his foster mother took him to specialists, including a pulmonologist, who initially prescribed "strong asthma medications," but more currently advises over-the-counter medications combined with a nebulizer.

¶ 26 Respondent's counsel represented to the court that respondent, who was present, was seeing a psychiatrist, taking her medication, and participating in "talk therapy." Counsel requested that L.R. return home or, in the alternative, that the court set a goal of return home in five months. The GAL disagreed, noting that respondent had not visited L.R. in three months. The GAL anticipated that respondent would argue that she did not understand she was permitted to visit following the adjudication of neglect. Respondent interjected that everyone told her they were on vacation.

¶ 27 The trial court adjudged L.R. a ward of the court. It found respondent unfit to care for, protect, train or discipline L.R. It set a goal of return home in 12 months and instructed respondent to continue communicating with her lawyer, to cooperate with DCFS, and to follow the service plans issued by DCFS. This appeal followed.

¶ 28 II. ANALYSIS

¶ 29 This case comes to us following a two-step process under which the trial court adjudged L.R. to be a ward of the court. See *In re A.P.*, 2012 IL 113875 ¶ 18. Step one is the adjudicatory hearing, at which the court considers only the question whether the minor is abused, neglected or dependent. *Id.* ¶ 19. If the court determines that the minor is abused, neglected, or dependent, it proceeds to step two, the dispositional hearing, at which "the court determines whether it is consistent with the health, safety and best interests of the minor and the public that the minor be made a ward of court." *Id.* ¶ 21. Respondent challenges the court's determination at the adjudicatory hearing that the State proved the allegations of neglect and dependency.

¶ 30 At the adjudicatory hearing, the State must prove the allegations of abuse, neglect, or dependency by a preponderance of the evidence. *In re A.L.*, 2012 IL App (2d) 110992, ¶ 17. This means that the allegations are more probably true than not. *A.P.*, 2012 IL 113875, ¶ 17. The reason for the lower standard of proof at the adjudicatory proceedings *vis-à-vis* the higher standard of proof by clear and convincing evidence at the termination proceedings is that "[a]fter the initial, adjudicatory stage of the proceedings, the parents have numerous opportunities over a lengthy period of time to regain the custody of their children." *In re A.A.*, 324 Ill. App. 3d 227, 239 (2001). To require a heightened standard of proof at the early stages of a case "would not add any protection to the primary interest at the first stage—the welfare of the chil[d]." *Id.* at 240. If the

State fails to prove the allegations of abuse, neglect, or dependence by a preponderance of the evidence, the court must dismiss the petition. *A.P.*, 2012 IL 113875, ¶ 17.

¶ 31 We will defer to a trial court's determination that the State proved its case by a preponderance of the evidence unless that determination is against the manifest weight of the evidence. *A.L.*, 2012 IL App (2d) 110992, ¶ 13. A determination is against the manifest weight of the evidence only if the opposite conclusion is clearly evident. *In re E.L.*, 353 Ill. App. 3d 894, 897 (2004). Further, "given 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." *A.L.*, 2012 IL App (2d) 110992, ¶ 13. Also, we remain mindful that the trial 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." *In re A.W.*, 231 Ill. 2d 92, 102 (2008). As such, we will not substitute our judgment for that of the trial court on such matters as witness credibility, the weight to be given evidence, and the inferences to be drawn from the evidence, even if we would have reached a different conclusion had we been the trier of fact. *Id.*

¶ 32 Here, again, the State alleged that: (1) L.R. was neglected in that his environment was injurious to his welfare due to respondent's untreated mental health diagnosis (705 ILCS 405/2-3(1)(b) (West 2020)); and (2) L.R. was dependent due to respondent's untreated mental health diagnosis (705 ILCS 405/2-4(1)(b) (West 2020)). The question of neglect centers on the child's needs. *In re Interest of J.J.*, 246 Ill. App. 3d 143, 150-51 (1993). The question of dependency, in contrast, focuses on whether the parent's disability interferes with her ability to care for the minor. *Id.* Under either section, it is not enough to simply establish that the respondent has a mental illness. *In re Faith B.*, 349 Ill. App. 3d 930, 933 (2004) (neglect); *J.J.*, 246 Ill. App. 3d at 151

(dependency). Rather, the State must prove that the respondent's mental illness caused the child to be placed in an injurious environment (*Faith B.*, 349 Ill. App. 3d at 933) or interfered with her ability to provide the requisite minimum level of care (*J.J.*, 246 Ill. App. 3d at 151). Though an 'injurious environment' is an amorphous concept, courts have held that the failure to provide a safe and nurturing shelter is statutory neglect. *E.L.*, 353 Ill. App. 3d at 897.

¶ 33 In this case, respondent accepts the standard of review and the deference given to the trial court's credibility assessments and reasonable inferences. However, she disputes that there was sufficient evidence from which the trial court could have inferred that she had a mental health diagnosis and that there was a nexus between her mental health and the lack of care that she gave to L.R. Respondent notes that the State never proved: her exact diagnosis, her prescribed medications, and which prescription medications caused L.R.'s exposure. Further, the record showed *some* treatment of respondent's mental illness; otherwise, respondent presumably could not have obtained the prescription medication. Respondent concedes that it is not impossible to prove the allegations set forth in the petition without a precise diagnosis. She maintains, however, that the lack of a precise diagnosis is emblematic of the general lack of evidence in this case.

¶ 34 We agree with respondent that the evidence in this case is not overwhelming. However, the trial court made that same observation, stressing that the State's burden was merely to prove its case by a preponderance of the evidence. Also, while the State did not hold respondent's failure to attend the adjudicatory hearing against her as evidence of neglect and dependency, it noted that her absence contributed to the shortage of contrary evidence in the case. For the reasons that follow, we determine that the evidence, and the reasonable inferences following therefrom, were sufficient to establish both that respondent had a mental health diagnosis and that her failure to

accept appropriate treatment created an injurious environment for L.R. and interfered with her ability to provide adequate care for L.R.

¶ 35 The evidence supported that respondent had a mental health diagnosis. L.R. was born with psychiatric prescription medication in his system. Respondent herself informed Tews that she had received various diagnoses, including PTSD, OCD, and anxiety. Tews observed respondent behaving in ways that supported a mental health diagnosis: acting paranoid (hearing voices, feeling persecuted), lack of self-care, and self-harm (creating open sores). Tews visited respondent on a regular basis for 10 months, and the trial court reasonably credited her testimony. The evidence also supported that respondent was not receiving appropriate treatment. Respondent admitted to Tews that she was not seeing a counselor or therapist as recommended by her physician.

¶ 36 In addition, the evidence supported that there was a nexus between respondent's mental health and her ability to provide adequate care for L.R. Respondent's lack of self-care transferred over to the home that she provided for L.R. As documented in photographs, Tews observed that respondent's coffee table and floor contained potentially dangerous items that were within L.R.'s reach, including batteries, prescription medication (with child-proof lids), coins, a metal clothes hanger, and a plastic garbage bag. When asked to place the medication out of reach, respondent told Tews to "just take" L.R. The court may have reasonably inferred that this was more than just an angry retort, where respondent also contacted Tews to ask about putting L.R. up for adoption (though respondent later abandoned that line of inquiry). L.R. appeared pale and unengaged (he "stared" a lot). L.R. watched crime shows on television (which respondent kept on to drown out voices). L.R. was rarely clothed in more than a diaper and, when asked why, respondent answered that she did not want to do laundry. Most critical to the trial court, however, was that respondent's mental health interfered with her ability to engage with service providers. At times, respondent

refused to fully open the door for Tews. Respondent refused to obtain mental health and substance abuse assessments as directed by Tews. Respondent also missed several doctor's appointments that Tews had scheduled for L.R.

¶ 37 Respondent argues that service shortages during the COVID pandemic provide at least a partial explanation for her two-month delay in taking L.R. to his six-month doctor's appointment. This argument misstates the evidence. Respondent did not fail to secure a six-month appointment; she missed it. She attended the six-month appointment two months late, in June 2021. She then missed two scheduled nine-months appointments, the last of which was set for July 29, 2021. To Tews' knowledge, L.R. did not attend his nine-month appointment between July 29, 2021, and September 15, 2021, when L.R. was removed from respondent's care. As Tews testified, credibly in the court's view, L.R. did not look well, making it all the more concerning that his growth and development were not being monitored by a doctor.

¶ 38 At the heart of respondent's appeal is the claim that much of the State's evidence is vague. She notes that Tews never photographed the unexplained red marks on L.R., and it was merely Tew's lay opinion that L.R. was behind in his speech and was very pale. Moreover, the record demonstrated that respondent was able to secure housing, with help from service providers. In respondent's view, these evidentiary shortcomings indicate that the State was "grasping" at any indication of neglect rather than providing objective documentation. As discussed, however, the trial court recognized that the evidence was not overwhelming. From its ruling, the trial court did not appear to afford much weight to the unexplained marks on L.R. Rather, the trial court clarified that it was most persuaded by respondent's overall lack of cooperation with service providers. While taking any *single* circumstance in this case—missed doctor's appointments, potentially dangerous items within L.R.'s reach, minimum clothing, and a lack of stimulation and engagement

(apparently delayed speech, staring)—may have been insufficient to support the trial court's findings, the trial court reasonably inferred from the *whole* of the evidence that L.R. was a neglected and dependent minor. Giving proper deference to the court's reasonable inferences and credibility determinations, we cannot say that it is *clearly evident* that L.R. is *not* a neglected and dependent minor.

¶ 39 As a final matter, at the end of her opening brief, respondent criticizes the trial court's February 28, 2023, written dispositional order, noting that the order expressly references only the trial court's prior finding of neglect, not dependency. To be sure, the written dispositional order states that, "On 12/01/22, the minor was found to be a neglected minor," rather than "a neglected and dependent minor." However, respondent did not ask for relief on this point in her opening brief and therefore forfeits any claim to the same. See Ill. S. Ct. R 341(h)(7) (eff. October 1, 2020). Forfeiture aside, we determine that the dispositional order's reference to the December 1, 2022, order does not evince an intent to abandon any aspect of the December 1, 2022, order but merely recounts, albeit imperfectly, the procedural history of the case. Moreover, the trial court's oral explanation at the dispositional hearing satisfies its obligation to explain the basis for its dispositional findings. *In re Madison H.*, 215 Ill. 2d 364, 374-75 (2005) (discussing 705 ILCS 405/2–27 (West 2020)). Both counts in this case—neglect and dependency—turned on respondent's mental health. The trial court explained at the dispositional hearing that the respondent had mental health issues, that the service plans would likely address mental health, and that respondent must comply with the service plans. Respondent hints in her reply brief that a finding of dependency is akin to a finding that the minor is without proper care "through no fault, neglect or lack of concern by the minor's parents," and, thus, the service plans, which address respondent's mental health, leave the dependency adjudication unaccounted for. This argument,

which invokes the language of section 405/4-2(c), is misplaced. See 705 ILCS 405/4-2(c) (West 2020) (a dependent minor is one who is "without proper medical or other remedial care recognized under State law or other care necessary for the minor's well being through no fault, neglect or lack of concern by the minor's parents ***"). Aside from being forfeited as an undeveloped argument raised for the first time in a reply brief, the State never petitioned for a finding of dependency based on section 405/4-2(c), but, rather, sought a finding that L.R. was dependent due to his mother's untreated mental health diagnosis, which, as noted, invokes section 405/4-2(b). 705 ILCS 405/4-2(b) (West 2020). The court's disposition did not leave the dependency adjudication unaccounted for, and the court's order that respondent comply with service plans is directed at both the neglect and dependency adjudications in this case.

¶ 40 III. CONCLUSION

¶ 41 The judgment of the circuit court of Du Page County is affirmed.

¶ 42 Affirmed.