

NOTICE
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2021 IL App (5th) 210032-U
NOS. 5-21-0032, 5-21-0033, 5-21-0034,
5-21-0035 cons.

NOTICE
This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIFTH DISTRICT

<i>In re</i> Ch.W., Ca.W., L.W., and M.W., Minors)	Appeal from the
)	Circuit Court of
(The People of the State of Illinois,)	Madison County.
)	
Petitioner-Appellee,)	
)	
v.)	Nos. 20-JA-195, 20-JA-196,
)	20-JA-197, 20-JA-198
Angela S.,)	
)	Honorable Amy Maher,
Respondent-Appellant).)	Judge, presiding.

JUSTICE WELCH delivered the judgment of the court.
Presiding Justice Boie and Justice Cates concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court’s finding that the minor children were neglected is affirmed where the State proved the allegation by a preponderance of the evidence. Also, the court’s dispositional order, in which the court found respondent mother unfit, is affirmed where the State proved unfitness by clear and convincing evidence.

¶ 2 The respondent mother, Angela S., appeals the adjudicatory order of the circuit court of Madison County finding that she neglected her minor children. Angela S. also appeals

the dispositional order of the court finding that she was an unfit parent. For the reasons that follow, we affirm.

¶ 3

I. BACKGROUND

¶ 4 Ch.W. was born on May 26, 2005, to Angela S. and Beau W. Thereafter, Ca.W. was born on May 15, 2007, L.W. was born on August 7, 2008, and M.W. was born on August 26, 2011. This appeal involves Angela S.'s parental rights to the minor children. However, facts relating to Beau W. will be discussed as necessary to provide relevant background for the issues presented in this appeal.

¶ 5 On September 25, 2020, the State filed four separate juvenile petitions asserting that M.W. (age 9), L.W. (age 12), Ca.W. (age 13), and Ch.W. (age 15) were neglected. The petitions alleged that the minors were neglected as defined by section 2-3(1)(b) of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/2-3(1)(b) (West 2020)) because they were in an environment that was injurious to their welfare in that: (a) Angela S. and Beau W. had substance abuse issues that impaired their ability to adequately care for the minor children; (b) they engaged in domestic violence; (c) a belt fashioned as a tourniquet was observed on Beau W.'s bedroom floor; (d) Angela S. and Beau W. were observed to have track marks on their arms from substance abuse; (e) Angela S. self-reported injecting methamphetamine; (f) they had a prior history with the Illinois Department of Children and Family Services (DCFS) including, but not limited to, prior indicated findings of an environment injurious and inadequate supervision in June 2019; (g) Angela S. had pending criminal charges for possession of methamphetamine; and (h) Beau W. had pending criminal charges for domestic battery and possession of methamphetamine.

¶ 6 Also on September 25, 2020, the trial court entered a temporary custody order as to Angela S., finding that there was an immediate and urgent necessity to remove the minor children from her care and that leaving the children in the home was against their health, welfare, and safety. The court found that there was probable cause for the filing of the petition because Angela S. and Beau W. had substance abuse issues that impaired their ability to adequately care for the minor children. Additionally, the court found that the parents engaged in domestic violence, a belt fashioned as a tourniquet was observed on Beau W.'s bedroom floor, they had track marks on their arms from substance abuse, Angela S. self-reported using methamphetamine, they had a history of DCFS cases, and they both had pending criminal charges. Specifically, Angela S. had been charged with possession of methamphetamine. Thus, temporary custody of the minor children was placed with DCFS.

¶ 7 On October 29, 2020, DCFS prepared a family service plan, which explained the reasons the case was opened. A report was made to DCFS regarding a domestic violence incident between Angela S. and Beau W. in the presence of M.W. DCFS noted that Angela S. had a documented history of perpetrating child abuse or neglect. Specifically, Angela S. and Beau W. had a history of physical violence in the presence of the children. Angela S. previously advised the children to run away from the home and later could not find them. The plan relayed that Angela S. was observed with track marks on her arms, and she stated that she injected methamphetamine two weeks prior. Additionally, a belt fashioned as a drug tourniquet was located in Beau W.'s bedroom. The plan indicated that Angela S. was

homeless and resided with various friends, family members, or Beau W. She was not employed at that time.

¶ 8 The services recommended for Angela S. were to cooperate with Caritas Family Solutions (Caritas), obtain and maintain sobriety, complete domestic violence services and demonstrate skills learned to protect herself and her children from future incidents of domestic violence, complete an integrated assessment interview to determine which services needed to be completed prior to reunification, and obtain and maintain safe and stable housing for herself and her children.

¶ 9 On December 2, 2020, Caritas filed a dispositional hearing report, which indicated that M.W. had been placed in the home of her paternal aunt, where the other three children were already residing. The following information was provided as to Angela S.'s compliance with the service plan. She was marked satisfactory for maintaining contact with her caseworker and agreeing to participate in an integrated assessment. However, she was rated unsatisfactory for obtaining and maintaining sobriety. Although she had indicated that she thought inpatient substance abuse treatment would be beneficial, she had not contacted any facilities. Angela S. also failed to complete any drug testing. She was marked unsatisfactory for domestic violence counseling. She failed to engage in counseling, and she continued to reside with Beau W., with whom she admitted to engaging in domestic violence altercations in the past. Lastly, she was rated unsatisfactory for failing to maintain safe and stable housing because she reported that she resided with friends or with Beau W., with whom she had engaged in domestic violence altercations.

¶ 10 Angela S. was allowed one hour of supervised visitation per week. She failed to confirm at least one visit monthly since visitation had been initiated. During visits that she did attend, she interacted appropriately with L.W. and M.W. Both Ch.W. and Ca.W. refused to attend visitations. The recommended permanency goal was to return home within 12 months for L.W. and M.W., and for private guardianship as to Ch.W. and Ca.W. It was reported that all of the minor children were doing well in their placement and felt safe there.

¶ 11 On December 22, 2020, Caritas filed another dispositional hearing report, which indicated that Angela S. was marked satisfactory for cooperating with Caritas. She had completed the integrated assessment interview and was marked satisfactory for that task. She was rated unsatisfactory for obtaining and maintaining sobriety because she failed to complete any drug tests, she reported during her integrated assessment interview that she had used methamphetamine two weeks prior, and she did not believe that she needed to participate in substance abuse treatment. She was rated unsatisfactory for domestic violence counseling and safe and stable housing because she had not participated in any domestic violence counseling, and she was still living with Beau W., with whom she had engaged in domestic violence altercations in the past.

¶ 12 On January 19, 2021, the trial court held an adjudicatory hearing, during which DCFS child protection specialist Michael King testified. He recounted that he first made contact with the family on September 23, 2020, after a report was made to the agency about a domestic disturbance. King's incident report indicated that the parents had a verbal argument, after which Beau W. tried to let the air out of Angela S.'s tires and put her clothes

in a burn pile in front of M.W. Both Angela S. and Beau W. had a history with DCFS, including “several reports” involving allegations of domestic violence and substance abuse. Although Beau W. denied recent substance abuse, King, who was an experienced substance abuse counselor, observed a belt made into a tourniquet and track marks on Beau W.’s arms. Angela S. also initially denied any substance abuse, but when asked to roll up her sleeves, King observed track marks on her arms. At that point, she admitted to using methamphetamine two weeks prior to the investigation.

¶ 13 At that point, King made the decision to indicate both parents and take protective custody over the minors. M.W. was the only child in Angela S.’s care at the time the investigation was opened, as the older three children were not living with her. King testified that he had safety concerns if the children were returned to the parents’ care because of the ongoing substance abuse issues. Angela S. did not indicate to King that the children were in her care when she used methamphetamine two weeks prior, but King did not recall asking her that question. King spoke to the youngest child, M.W., and she did not indicate any awareness of her parents’ drug use. M.W. told King that she was well taken care of when she was with Angela S., and that her mother was not neglectful or abusive.

¶ 14 King stated he did not find anything in the course of the investigation to show that Angela S. had neglected medical visits, food, or anything else with respect to M.W., and outside of the drug use, all of M.W.’s needs were being met. King had no evidence that Angela S. had been under the influence of drugs while parenting M.W. or that her drug use interfered with her ability to parent M.W. However, King did note that the school principal

indicated to him that M.W. had not been enrolled in school that year. After completing the investigation, King indicated both parents for substantial risk of physical injury/environment injurious to the health and welfare of the child by neglect.

¶ 15 After the hearing, the trial court entered an adjudicatory order on January 20, 2021, finding that the minors were neglected in that they were in an environment that was injurious to their welfare as defined by section 2-3(1)(b) of the Act (*id.*). The court specifically found the minors were neglected for the allegations set forth in the juvenile petitions, which the State had proven by a preponderance of the evidence. In its order, the court found that Angela S. and Beau W. had substance abuse issues that impaired their ability to care for the minors, they engaged in domestic violence, a belt fashioned as a tourniquet was observed in the home, both parents had track marks on their arms from substance abuse, Angela S. self-reported injecting methamphetamine, they had a history with DCFS, and Angela S. had a pending criminal charge for possession of methamphetamine.

¶ 16 On January 25, 2021, Caritas filed another dispositional hearing report, which rated Angela S. satisfactory for cooperating with Caritas and satisfactory/completed for participating in the integrated assessment interview. Angela S. was rated unsatisfactory for obtaining and maintaining sobriety because she had not completed any random drug testing or a substance abuse assessment. She was also marked unsatisfactory for domestic violence counseling and safe and stable housing because she was still living with Beau W.

¶ 17 On February 4, 2021, the trial court held a dispositional hearing, during which Caritas caseworker Sarah Vadnais testified that she was assigned to the case on September

28, 2020. Vadnais met with Angela S. on October 1, 2020, and created a service plan on October 29, 2020. The tasks on Angela S.'s service plan required that she cooperate with the agency, participate in an integrated assessment interview, obtain and maintain sobriety, participate in domestic violence services, and obtain stable and safe housing. Angela S. completed the integrated assessment on December 7, 2020, and her communication with the agency throughout the case was good.

¶ 18 With respect to the tasks of obtaining and maintaining sobriety, Angela S. was required to complete a substance abuse assessment, follow any recommendations made based on the assessment, and participate in random drug screens. Angela S. initially wanted to do inpatient treatment for substance abuse, so she was provided with a list of facilities where she could seek treatment. After she failed to contact any of the inpatient facilities and reported that she did not believe she needed the treatment, she was referred to Chestnut for outpatient treatment in December 2020. She reported to Vadnais that she completed an assessment at Chestnut in late January 2021.

¶ 19 As to the five random drug tests Angela S. was referred for, she had completed one. Vadnais contacted Angela S. via text message when she needed to complete a drug test, because Angela S. reported that was the best way to reach her. She had a Wi-Fi phone so she would not see missed calls if she did not have service, but she would get text messages later once she accessed Wi-Fi again. Vadnais had no reason to believe that Angela S. was not receiving her text messages because she responded to other messages. For two of the missed drug tests, Angela S. did not respond to the text messages and Vadnais did not hear from her for a few days after the missed test. For the third, she responded within a few

minutes to say she did not have identification and was not sure if she would be able to take the test. Vadnais confirmed that Angela S. could take the test without identification; she texted that to Angela S. but did not hear back from her. Vadnais texted her about the fourth test, but she responded after hours to say she had just received the message. Angela S. submitted to the fifth test on February 4, 2021, and it came back positive for methamphetamine.

¶ 20 Angela S. was initially referred to Oasis for domestic violence counseling, but she did not complete the assessment. She contacted Group Interventions to set up a domestic violence assessment on or around January 15, 2021, but to Vadnais's knowledge, the assessment had not yet taken place. Vadnais believed that Angela S. needed domestic violence counseling to learn about healthy relationships, red flags, and what to do in those situations to ensure safety for herself and her children. Vadnais testified that there had been "ongoing concern for years" with respect to domestic violence in this family, and this was the second indicated report of domestic violence.

¶ 21 To satisfy the service plan task of obtaining stable and safe housing, Angela S. needed to find independent housing that would pass a home safety check; or, if she was residing with other people, the home would have to pass the safety check and all members of the home would have to pass a background check. At the time of the hearing, Angela S. was staying with Beau W., and Vadnais did not consider that stable housing because of the ongoing domestic violence concerns. Vadnais did not "feel okay" returning the minor children to the home at that time because she did not know whether the domestic violence

or substance abuse issues had been resolved and could not be sure that the home was safe for the children.

¶ 22 Angela S. received one hour per week for visitation and saw the youngest child, M.W., every week. The oldest two children, Ch.W. and Ca.W., did not want to participate in visitation, and L.W. participated sporadically. According to Vadnais, Angela S. interacted appropriately during visitation; she played with and talked to M.W. Vadnais testified that Ch.W. had been referred to services for life skill classes because of his age, and L.W. had been referred to counseling services based on his wishes and the recommendation of his caregiver. The oldest two children, Ch.W. and Ca.W. did not want to return home to their parents, they did not want to participate in visitation, and they wanted to continue living with their aunt. L.W. went “back and forth” on visiting his parents and returning home to Angela S. M.W. was “willing to go to visits and return home, but she [was] content in her placement also.”

¶ 23 Vadnais testified that she had safety concerns if the children were returned to their parents care at that time, because she did not feel that the conditions that brought the minor children into care had been addressed and there were ongoing domestic violence and substance abuse concerns. Vadnais stated that, in her opinion, the minors should be made wards of the trial court and that custody and guardianship be placed with DCFS. Additionally, Vadnais testified that she did not think Angela S. was fit, able, and willing to care for the minors, and she believed that Angela S. would endanger the health, safety, or well-being of the minors because she was not fully engaged in all her service plan tasks, and she had not corrected the conditions that brought the minors into care.

¶ 24 The guardian *ad litem* (GAL) testified that it was in the best interests of the minor children to be made wards of the court and that custody and guardianship be placed with DCFS. The trial court found that the agency made reasonable efforts, and that the parents were unfit as there was no evidence that they initiated anything more than the bare minimum of the service plans. After the hearing, the court entered a written dispositional order, finding both parents were unfit to care for, protect, train, educate, supervise, or discipline the minors and placement with the parents was contrary to the children’s health, safety, and best interests. The court granted the petition, adjudicated the minors neglected, and made the minors wards of the court. The court placed custody and guardianship with DCFS and granted supervised visitation to the parents.

¶ 25 Angela S. filed her notice of appeal on February 5, 2021.

¶ 26 II. ANALYSIS

¶ 27 Angela S. initially argues that the trial court erred in finding the minor children neglected, as the State failed to prove that they were in an environment that was injurious to their welfare by a preponderance of the evidence. She also asserts that the court erred in finding that she was unfit, because the State failed to prove unfitness by clear and convincing evidence.

¶ 28 A. Neglect

¶ 29 Angela S. initially argues that the State provided insufficient proof that the minor children were neglected. We disagree.

¶ 30 The Act (705 ILCS 405/1-1 *et seq.* (West 2020)) sets forth a step-by-step process for deciding whether a child should be removed from his or her parents and made a ward

of the court. *In re Arthur H.*, 212 Ill. 2d 441, 462 (2004). After a petition for wardship has been filed, and the minor has been placed in temporary custody, the trial court must make a finding that the child is abused, neglected, or dependent before it conducts an adjudication of wardship. 705 ILCS 405/2-21 (West 2020); *Arthur H.*, 212 Ill. 2d at 462. In cases concerning claims of abuse and neglect, the State bears the burden of proving the allegations by a preponderance of the evidence. *In re Davon H.*, 2015 IL App (1st) 150926, ¶ 47. The court has broad discretion when determining the existence of abuse or neglect as it has the best opportunity to observe the demeanor and conduct of the parties and witnesses. *Id.* Thus, the trial court is in the best position to determine the credibility and weight to be given to the witnesses' testimony. *Id.* On review, we will not disturb the court's findings of abuse or neglect unless they are against the manifest weight of the evidence. *In re Tamesha T.*, 2014 IL App (1st) 132986, ¶ 31. A finding is against the manifest weight of the evidence only where the opposite conclusion is clearly evident. *Id.*

¶ 31 Section 2-3(1)(b) of the Act defines a neglected minor to include "any minor under 18 years of age *** whose environment is injurious to his or her welfare." 705 ILCS 405/2-3(1)(b) (West 2020). "Neglect" has been defined as the failure to exercise the care that circumstances justly demand, including both willful and unintentional disregard of parental duty. *In re Kamesha J.*, 364 Ill. App. 3d 785, 792-93 (2006). The term "injurious environment" has been characterized as an amorphous concept that cannot be defined with particularity but has been interpreted to include the breach of a parent's duty to ensure a safe and nurturing shelter for her children. *Arthur H.*, 212 Ill. 2d at 463. Cases involving

abuse, neglect, and wardship are *sui generis* and must be decided based on the unique circumstances. *Id.*

¶ 32 Here, the trial court determined the minor children were neglected by Angela S. due to being in an environment injurious to their welfare pursuant to section 2-3(1)(b) of the Act (705 ILCS 405/2-3(1)(b) (West 2020)). In support of its decision, the court noted that it was giving “minimal weight” to Angela S.’s pending felony cases, as that was not a significant factor in its decision as to whether the allegations in the petition had been proven. Therefore, Angela S.’s contention that the court improperly relied on this as the basis for its finding of neglect is without merit. Instead, the court relied on the evidence of domestic violence occurring between the parents, including the incident that resulted in this case being opened, along with the evidence of Angela S.’s substance abuse. The court gave “credence to Mr. King’s observations as an experienced substance abuse counselor on the nature of the marks on the parents’ arms, and that is substantiated by the mother’s own admission that there was use of Methamphetamine, albeit she distanced herself in time from the date of the investigation, that the investigation was initiated.” As such, the court found the evidence was sufficient to prove the allegations of an environment injurious to the children’s welfare by a preponderance of the evidence.

¶ 33 After careful consideration, we cannot conclude that the trial court’s determination that the minor children were neglected was against the manifest weight of the evidence. As indicated above, the investigation into the present case arose from a report of a domestic disturbance that occurred in the presence of M.W. Both Angela S. and Beau W. had a history with DCFS, including several reports of domestic violence and substance abuse

allegations. King, who was an experienced substance abuse counselor, observed a belt made into a tourniquet in the home as well as track marks on Angela S.'s arms. Thereafter, she admitted to using methamphetamine two weeks prior to the investigation. King testified that he would have safety concerns for the children if they were returned to the parents' care due to the ongoing substance abuse issues.

¶ 34 In light of the foregoing, we conclude Angela S. breached her parental duty to ensure a safe and nurturing shelter for her minor children, which created an environment injurious to their welfare. The record rebuts Angela S.'s claim that the State failed to prove by a preponderance of the evidence that the minor children were neglected. The evidence demonstrated that there were ongoing substance abuse and domestic violence issues in the home that had not been resolved. For these reasons, the trial court's finding that the minor children were neglected as a result of their environment being injurious to their welfare was not against the manifest weight of the evidence.

¶ 35 **B. Fitness**

¶ 36 According to section 2-22(1) of the Act, at a dispositional hearing, the trial court "shall determine whether it is in the best interests of the minor and the public that he be made a ward of the court" and then, if the minor is made a ward of the court, the court "shall determine the proper disposition best serving the health, safety and interests of the minor and the public." *Id.* § 2-22(1). If the court determines that a parent, guardian or legal custodian is "unfit or *** unable, for some reason other than financial circumstances alone, to care for, protect, train or discipline the minor or [is] unwilling to do so," and the best interest of the minor will be jeopardized if the minor remains in the custody of his or

her parents, the court may commit the minor to DCFS for care and services. *Id.* § 2-27(1)(d). On review, the court’s dispositional decision will be reversed only if its findings of fact are against the manifest weight of the evidence or the court abused its discretion by selecting an inappropriate disposition. *In re J.C.*, 396 Ill. App. 3d 1050, 1060 (2009).

¶ 37 In the case before us, the trial court found Angela S. to be “unfit to care for, protect, train, educate, supervise or discipline the minor(s) and placement with her [was] contrary to the health, safety and best interest of the minor(s).” The court found Angela S. to be unfit because she had not yet successfully completed her service plan tasks. On appeal, she contends that the court’s decision was against the manifest weight of the evidence. We disagree.

¶ 38 Vadnais testified at the dispositional hearing that Angela S.’s service plan tasks were to cooperate with the agency, participate in an integrated assessment interview, obtain and maintain sobriety, participate in domestic violence services, and obtain safe and stable housing. Angela S. completed her integrated assessment interview and was rated satisfactory for cooperating with the agency.

¶ 39 However, we find that Angela S. failed to engage in the service plan tasks aimed at resolving the issues that caused this case to be opened. Specifically, with respect to obtaining and maintain sobriety, Angela S. never sought inpatient treatment, which she initially believed would be helpful. Instead, she later reported that she did not need the treatment. After months passed, and Angela S. had not contacted any of the inpatient facilities she had been referred to, Vadnais referred her to Chestnut for outpatient treatment

in December 2020. She reported that she had completed a substance abuse assessment in late January 2021.

¶ 40 Vadnais further testified that Angela S. had been referred for five random drug tests but had only completed one. Although Angela S. asserts on appeal that “there was no indication that [Angela S.] received the two text messages on October 30 or December 23, 2020 regarding scheduling the drug tests,” the trial court heard Vadnais’s testimony that she assumed Angela S. received her text messages and had no reason to believe that Angela S. was not receiving her messages, because she responded to other messages. As to the third missed drug test, Vadnais told Angela S. she could complete it without identification, but Angela S. stopped responding to her messages. Further, the drug test that Angela S. did complete came back positive for methamphetamine. It was for the trial court to weigh this evidence, and we will not substitute its judgment with our own. See *In re A.W.*, 231 Ill. 2d 92, 102 (2008).

¶ 41 We find Angela S.’s argument that Vadnais “essentially blamed [Angela S.], the victim of domestic violence” by requiring her to undergo domestic violence counseling as part of her service plan without merit. Vadnais testified that Angela S. needed domestic violence counseling to learn about healthy relationships, red flags, and what to do in those situations to ensure safety for herself and her children. There had been “ongoing concern for years” with respect to domestic violence in this family, and this was the second indicated report for domestic violence.

¶ 42 The evidence further indicated that Angela S. was still living with Beau W. at the time of the hearing, which contributed to her being rated unsatisfactory as to the service

plan tasks of domestic violence services and obtaining safe and stable housing. Vadnais did not “feel okay” about returning the minor children to the home at that time because she did not know whether the domestic violence or substance abuse issues had been resolved and could not be sure that the home was safe for the children. Vadnais did not feel that the conditions that brought the children into care had been addressed or resolved. Vadnais further opined that Angela S. was not fit, able, or willing to care for the children because she had not fully engaged in her service plan tasks. The GAL likewise testified that it was in the best interests of the minor children to be made wards of the court and that custody and guardianship be placed with DCFS.

¶ 43 Based on the foregoing, the trial court determined that Angela S. was unfit, as there was no evidence that she had initiated anything more than the bare minimum of her service plan. Having carefully considered the record, we cannot say that the court’s finding was against the manifest weight of the evidence.

¶ 44 III. CONCLUSION

¶ 45 For the foregoing reasons, we affirm the judgment of the circuit court of Madison County.

¶ 46 Affirmed.