

NOTICE
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2022 IL App (5th) 220141-U

NO. 5-22-0141

IN THE
APPELLATE COURT OF ILLINOIS

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).

FIFTH DISTRICT

<i>In re</i> J.M., a Minor)	Appeal from the
)	Circuit Court of
(The People of the State of Illinois,)	Champaign County.
)	
Petitioner-Appellee,)	
)	
v.)	No. 21-JA-6
)	
Robert M.,)	Honorable
)	Matthew D. Lee,
Respondent-Appellant).)	Judge, presiding.

JUSTICE CATES delivered the judgment of the court.
Justices Welch and Moore concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court’s determination of neglect was not against the manifest weight of the evidence where Mother admitted and stipulated to the allegations in the juvenile petition and the parties stipulated to a factual basis to proceed with a continuance under supervision. The trial court’s determination that Mother violated the conditions of a continuance under supervision order was not against the manifest weight of the evidence.

¶ 2 The respondent, Robert M. (Father), appeals from the dispositional order of the circuit court of Champaign County. Father claims that the trial court’s finding of neglect was against the manifest weight of the evidence. Father additionally claims that the trial court improperly reached the disposition phase of the proceeding where the trial court’s finding that D.B. (Mother) had violated the continuance under supervision was against the manifest weight of the evidence. For the following reasons, we affirm.

¶ 3

I. BACKGROUND

¶ 4 R.M. is the putative father of J.M., born December 24, 2020. D.B. is J.M.'s biological mother. The day after J.M. was born, Orren Reeves, a Department of Children and Family Services (DCFS) investigator, interviewed Mother and Father at the hospital. Mother and Father were informed that DCFS would take protective custody of J.M. after he was discharged from the hospital. DCFS sought protective custody because Mother and Father each had a prior history with DCFS.

¶ 5 Mother had a history of abusing opiates. Mother's parental rights to her three older children were terminated on November 15, 2019.

¶ 6 Father had a history of domestic violence and prior involvement with DCFS. On March 11, 2017, October 23, 2018, and December 18, 2018, DCFS received reports of allegations where Father was indicated as the perpetrator regarding incidents of domestic violence that involved a substantial risk of physical injury to minors. Those earlier incidents did not involve Mother.

¶ 7 J.M. was taken into protective custody on January 7, 2021. The following day, the State filed a three-count juvenile petition. The State alleged that J.M. was neglected pursuant to section 2-3(1)(b) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(1)(b) (West 2020)) where he was in an environment injurious to his welfare. Count I contained allegations that Mother was named in three prior juvenile cases for J.M.'s siblings where Mother was adjudicated as unfit, and Mother had failed to correct the conditions that brought those children into care. Count II stated that J.M. was in an environment that was injurious to his welfare in that he was exposed to domestic violence when he resided with Mother and Father. Count III contained allegations that J.M. was exposed to substance abuse when he resided with Mother.

¶ 8 The court held a shelter care hearing on January 8, 2021. Reeves testified that Mother had a history of drug abuse and Mother had not completed services required by DCFS in the 2019 termination cases. When J.M. was born, he did not have drugs in his system. Five days after J.M. was born, however, Mother tested positive for benzodiazepines and opioids. The positive test was due to Mother's prescribed medications. Mother had a prescription for an anxiety medication and a prescription for Suboxone, a drug used to treat opioid addiction. Reeves did not believe that Mother was abusing her prescribed medications.

¶ 9 Reeves also testified to an incident where the police and DCFS were called after Father chased Mother with a knife while she was pregnant with J.M. Reeves stated that Mother told Reeves that she had lied to the police about the incident. In fact, Father had not chased Mother with a knife. The incident actually involved J.M.'s maternal grandfather who had hit Father in the head with a baseball bat. Mother was dishonest and blamed the incident on Father because she wanted to protect her own father from facing criminal charges.

¶ 10 During the shelter care hearing, Father's attorney stated that Father was not contesting whether the State had probable cause to support the allegations of neglect in the petition. The parties were concerned with whether there was an immediate and urgent necessity to remove J.M. from his home.

¶ 11 The court found that the State had shown probable cause that J.M. was neglected for each allegation in the petition. The court stated that the issue of whether there was immediate and urgent necessity to remove J.M. was "a very close call." The court denied the State's request for temporary custody and released J.M. from protective custody because of the positive steps Mother had taken to address her opioid addiction. Mother and Father were ordered to submit to random

drug testing twice a week to ensure that J.M. was safe. Mother and Father were also ordered to cooperate with DCFS. The formal written order was entered January 11, 2021.

¶ 12 On March 18, 2021, the matter was set for a pretrial hearing. On that date, count II of the State's petition, regarding allegations of exposure to domestic violence when residing with Mother or Father, was stricken from the petition. The court set the adjudicatory hearing for March 25, 2021.

¶ 13 On March 25, 2021, a status conference was set in lieu of the adjudicatory hearing because the parties agreed to an order of continuance under supervision pursuant to section 2-20 of the Juvenile Court Act (705 ILCS 405/2-20 (West 2020)). The court explained that the continuance under supervision allowed the case to be continued for a six-month period while J.M. remained in the home of Mother and Father. During the six-month period, Mother and Father were required to cooperate with DCFS and abide by conditions set by DCFS in the service plan. If, at the end of that six-month period, Mother and Father met DCFS's conditions, then the court would dismiss the case and there would be no finding or adjudication of neglect. The court further explained that all parties needed to agree to the continuance under supervision.

¶ 14 The State provided a factual basis for the supervision order. The State explained that DCFS took protective custody of J.M. based on Mother's history of having a substance abuse issue with DCFS involvement since 2015. Mother's parental rights of three children were terminated in late 2019 and Mother never completed services required by DCFS for those cases. However, Mother began working on her sobriety in late 2019, after her rights were terminated. Without a DCFS referral, Mother enrolled herself in a drug treatment program after she became pregnant with J.M. to ensure that she had a healthy pregnancy. The State claimed that Mother remained unfit when

she gave birth to J.M. The State believed that Mother was working to regain fitness and that the family would benefit from DCFS support and referrals for services to have long-term success.

¶ 15 Mother admitted and stipulated to the allegations set forth in count I of the State’s petition for adjudication of neglect. Mother and Father stipulated that the State had a factual basis to support the petition and agreed to the continuance under supervision order. No objections were made regarding the continuance under supervision order. The order was entered on March 25, 2021, and the case was continued under supervision until September 24, 2021.

¶ 16 The continuance under supervision order allowed for J.M. to remain at home with Mother and Father. The order stated that, “the court had determined that the minor can be cared for at that home consistent with the health safety and best interest of the minor provided that there is compliance with the terms and conditions set forth by the Department of Children and Family Services.” Mother and Father were ordered to cooperate with DCFS and the Court Appointed Special Advocate (CASA)¹ and comply with the terms of their service plan. DCFS was required to make necessary referrals for services. The court specified that Mother’s service plan would require her to complete any services recommended by DCFS, sign authorizations for DCFS, and cooperate with CASA, including home visits.

¶ 17 On July 27, 2021, the State filed a petition to revoke the court supervision. The State claimed that Mother did not comply with her service plan because she was dishonest with a caseworker and had abused a prescribed narcotic medication. The State additionally alleged that Mother and Father had not completed their service plans because of lengthy waitlists for services.

¹CASA is a nonprofit organization that provides the court with volunteers who advocate for the best interests of abused and neglected children.

The State attached the continuance under supervision order as exhibit 1 and the DCFS service plan as exhibit 2.

¶ 18 The service plan attached as exhibit 2 to the State’s petition to revoke court supervision was dated July 13, 2021. The service plan had a target completion date of September 13, 2021. DCFS identified that Mother required mental health and substance abuse treatment, parenting services, and domestic violence services. DCFS had issues with enrolling Mother in substance abuse and mental health services because of the limited availability of services. Mother had not been referred for parenting services because the caseworker wanted Mother to first focus on mental health and substance abuse issues. An action step under the domestic violence portion of the service plan required Mother to prevent further episodes of domestic violence from occurring within the home and to remove herself and J.M. when necessary to provide for J.M.’s safety. DCFS identified that Father needed domestic violence services, mental health, and substance abuse services. DCFS acknowledged in the service plan that, due to COVID-19, service provider availability was limited.

¶ 19 On September 15, 2021, an amended continuance under supervision order was entered. The order extended the prior order of continuance under supervision through March 24, 2022. The amended order also allowed J.M. to remain in the home of Mother and Father. The court had determined that it was in J.M.’s best interest to remain at home, provided that Mother and Father complied with requirements set forth by DCFS. In addition to cooperating with DCFS, the amended order required Mother and Father to work with CASA, comply with the terms of the service plans, and comply with home visits. Mother and Father were also ordered to complete any services recommended by DCFS, sign authorizations for DCFS, and maintain their sobriety. DCFS was required to make necessary referrals for Mother and Father.

¶ 20 Towards the end of November 2021, Father’s mental health began to deteriorate. On December 17, 2021, Father admitted himself into St. Mary’s Hospital in Decatur, Illinois, for mental health treatment. He was discharged on December 25, 2021. Father was diagnosed with major depressive disorder, chronic posttraumatic stress disorder, chronic cannabis use, bipolar disorder with paranoia, and traumatic brain injury.

¶ 21 On January 10, 2022, while the DCFS caseworker, Richelle Gentry-Flemons, was on a routine visit to the home, she noticed that Father appeared to be in a manic state. Father was pacing in the apartment, and he had called the police. Father accused Mother of trying to kill him and kidnap J.M. Father claimed that Mother was trying to “bring another man into their home.” Mother reported to Gentry-Flemons that “[Father] only comes home Sunday through Monday to wreak havoc” and that Father “stays in Decatur for most of the week until the caseworker visits, and then he returns.” The caseworker advised Mother that she needed to leave the apartment with J.M. until Father’s mental health stabilized and DCFS could establish a safety plan for their case. When Mother was leaving the apartment, Father yelled that he was going to file an order of protection against Mother.

¶ 22 Father filed a petition for an order of protection against Mother on that same day. The court denied the emergency order of protection and set the matter for a plenary order of protection hearing. The court additionally set a status conference in the juvenile proceeding for the day before the plenary order of protection hearing. The court was concerned with the allegations made during the emergency hearing as it related to Mother and Father’s relationship and whether J.M. was being properly cared for at home.

¶ 23 On January 26, 2022, the status conference was held in this case. The State moved forward with the petition to revoke court supervision. At that time, Mother was willing to admit to the

State's petition to revoke court supervision. Father's counsel objected to proceeding on the revocation of court supervision without adequate notice to prepare for the hearing. The court allowed the State to reinstate the petition to revoke continuance of court supervision order that was filed on July 27, 2021, and set the State's petition for hearing on February 9, 2022.

¶ 24 During the January 26, 2022, status conference, Father's counsel additionally argued that the DCFS safety plan prevented Father from having contact with J.M. The State clarified that according to the safety plan, Father was allowed to have supervised visitation once a week.

¶ 25 Prior to the February 9, 2022, hearing, the State amended the allegations against Mother in the petition to revoke continuance of court supervision. The amended allegations stated that, "Mother has not complied fully with the service plan which is attached hereto as Exhibit 2. In addition, the Respondent Mother has not completed the services set forth in the service plan because of lengthy waitlists."

¶ 26 At the February 9, 2022, hearing, the State presented a factual basis by stating:

"Should this matter proceed to hearing, the State would present evidence that both at the time that this original petition to revoke court supervision was filed and reinstated, the Respondent Mother had failed to complete services at that time set forth in the service plan, including her substance abuse treatment, which she remains in, but has not been successfully discharged from yet.

As part of the State's factual basis, the State would also present evidence that the Respondent Mother has not fully complied with the service plan in that she has not provided the caseworker with accurate information about who has been living in the household during the pendency of this case."

¶ 27 The guardian *ad litem* stipulated that the State could call witnesses to testify to the factual basis and Gentry-Flemons was present to testify. Mother admitted and stipulated to the allegations in the amended petition to revoke court supervision and to the factual basis set forth by the State. The court found that Mother knowingly and voluntarily admitted and stipulated to the allegation in the amended petition and there was a factual basis for the admission and stipulation. The court

admonished Mother to comply with her service plan, cooperate with DCFS, and correct any condition that required J.M. to be in care or she risked termination of parental rights. The court then set a dispositional hearing on March 3, 2022, and ordered DCFS to conduct an investigation and submit a written report.

¶ 28 Father did not raise an issue with Mother's stipulation. Father did not stipulate to the State's petition to revoke court supervision and the court proceeded with a hearing on whether Father violated the supervision order. The DCFS caseworker, Gentry-Flemons, testified regarding Father's progress on his service plan. Gentry-Flemons stated that Father had been cooperative. DCFS had a difficult time connecting the family with services, but Father enrolled when services were available. The court found that the State had not proven by a preponderance of the evidence that Father willfully failed to abide by the court order where lengthy waitlists delayed access to services.

¶ 29 The court additionally stated that the factual basis cited by the State for Mother was not identical to the information heard regarding Father. The court clarified that the allegations involving Mother included that she was dishonest with the caseworker regarding her service plan, which supported a finding that Mother violated court supervision. Although the court found that Father remained on supervision, the court required Father to be involved in the dispositional hearing. The court admonished Father that he risked termination of his parental rights if he failed to cooperate with DCFS, comply with the service plan, or correct any condition that required J.M. to be in care.

¶ 30 On February 9, 2022, the court entered an adjudicatory order. The order found J.M. to be neglected by a preponderance of the evidence based on Mother's stipulation to count I of the State's juvenile petition during the March 25, 2021, hearing. The order also found that all parties

stipulated to the factual basis provided and that the factual basis was sufficient to satisfy count I of the State's petition for adjudication.

¶ 31 DCFS submitted a dispositional report on February 25, 2022. The report included information on Father's mental health status and the incident that occurred on January 10, 2022. DCFS claimed that Father struggled with his mental health in the three months prior to the dispositional hearing and Mother remained dependent on Father. DCFS was concerned that Mother would be protective of Father if Father's behavior was inappropriate when he was with J.M. DCFS recommended that DCFS have custody and guardianship of J.M.

¶ 32 The dispositional hearing was held on March 3, 2022. The court first addressed the DCFS dispositional report filed by Gentry-Flemons. The parties stipulated that Gentry-Flemons would testify to the contents of the report. The State explained that Mother was new to recovery when the case was filed, but she had worked hard to remain sober. The State had concerns with Mother's ability to become self-sufficient and protect J.M. from Father. The State, however, believed that Mother was fit, able, and willing to care for J.M. The State argued that Father's mental health had deteriorated from when the initial petition was filed. The State acknowledged that Father changed his treatment to address his mental health issues, but Father needed to be monitored to ensure that he would be capable of taking care of J.M. The State argued that Father was unfit and unable to exercise custody and guardianship of J.M.

¶ 33 Father's counsel argued that Father had cooperated with services throughout the case and had proven that he did not violate the continuance under court supervision. Father wanted J.M. to live with Mother. Counsel argued that the court should find both parents fit, able, and willing to exercise custody and guardianship.

¶ 34 The court found that Mother was fit, willing, and able to exercise custody of J.M. The court considered that Father was not the “at-fault parent” when the initial petition was filed, and that Father did not violate the terms of court supervision. The court further explained that it needed to consider factors identified during the course of the case that gave a basis for removal of the child as well as the original basis for filing the petition. The court considered the DCFS report detailing the recent issues with Father’s mental health where he was admitted to the hospital on December 17, 2021, and had an additional incident on January 10, 2022. The court made a finding that Father was currently unfit, for reasons other than financial circumstances, to care for, protect, train, and discipline J.M.

¶ 35 The court removed custody and guardianship as to Father. Custody remained with Mother and DCFS was given guardianship. J.M. was made a ward of the court. DCFS was given discretion regarding visitation between Father and J.M. Mother and Father were ordered to cooperate with DCFS and comply with their service plans. This appeal followed.

¶ 36 II. ANALYSIS

¶ 37 On appeal, Father claims that the trial court’s finding that J.M. was neglected was against the manifest weight of the evidence. Father additionally argues that trial court’s decision to revoke the continuance under supervision for Mother was against the manifest weight of the evidence and the trial court improperly reached the disposition phase of the proceeding.

¶ 38 “In any proceeding initiated pursuant to the [Juvenile Court] Act, including an adjudication of wardship, the paramount consideration is the best interests of the child.” *In re A.P.*, 2012 IL 113875, ¶ 18. The trial court shall first consider whether the minor is abused, neglected or dependent during an adjudicatory hearing. 705 ILCS 405/2-18(1) (West 2020). The focus of the adjudicatory hearing is to determine whether a child is neglected, and not whether the parents are

neglectful. *In re Arthur H.*, 212 Ill. 2d 441, 467 (2004). The State has the burden to prove allegations of neglect by a preponderance of the evidence. *In re N.B.*, 191 Ill. 2d 338, 345 (2000). A trial court's finding of neglect will not be reversed unless it is against the manifest weight of the evidence. *In re D.S.*, 217 Ill. 2d 306, 322 (2005). A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident. *In re A.P.*, 2012 IL 113875, ¶ 17.

¶ 39 The trial court will proceed to a dispositional hearing after determining at the adjudicatory hearing that the minor was neglected. *In re A.P.*, 2012 IL 113875, ¶ 17. The purpose of the dispositional hearing is not to terminate parental rights, but to decide whether to make the child a ward of the court and to decide what future actions are in the child's best interest. *In re Madison H.*, 215 Ill. 2d 364, 374 (2005).

¶ 40 When the adjudicatory hearing was set, the parties agreed to an order of continuance under supervision pursuant to section 2-20 of the Juvenile Court Act (705 ILCS 405/2-20 (West 2020)), rather than proceeding with the adjudicatory hearing. The trial may enter an order of continuance under supervision under section 2-20(1) of the Juvenile Court Act, which states:

“The court may enter an order of continuance under supervision (a) upon an admission or stipulation by the appropriate respondent or minor respondent of the facts supporting the petition and before proceeding to findings and adjudication, or after hearing the evidence at the adjudicatory hearing but before noting in the minutes of proceeding a finding of whether or not the minor is abused, neglected or dependent; and (b) in the absence of objection made in open court by the minor, his parent, guardian, custodian, responsible relative, defense attorney or the State's Attorney.” 705 ILCS 405/2-20(1) (West 2020).

Additionally, under section 2-20(2) of the Juvenile Court Act:

“If the minor, his parent, guardian, custodian, responsible relative, defense attorney or the State's Attorney, objects in open court to any such continuance and insists upon proceeding to findings and adjudication, the court shall so proceed.” 705 ILCS 405/2-20(2) (West 2020).

¶ 41 The juvenile petition did not contain allegations against Father when the parties proceeded with the continuance under supervision. Mother admitted and stipulated to the facts supporting the

juvenile petition and the State provided a factual basis. The trial court stated that all parties needed to be in agreement and Father was given the opportunity to object to the continuance under supervision order and proceed with an adjudicatory hearing. Nevertheless, Father stipulated that the State presented a factual basis to support the petition for adjudication of neglect and agreed to the continuance under supervision order.

¶ 42 Father now argues on appeal that the court’s finding that J.M. was neglected was against the manifest weight of the evidence. A party forfeits his right to complain of error to which he consented. *In re E.S.*, 324 Ill. App. 3d 661, 670 (2001). Forfeiture aside, we find that Father’s argument has no merit.

¶ 43 A neglected minor, according to the Juvenile Court Act, includes 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). “An injurious environment is 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 his or her children.” *In re Juan M.*, 2012 IL App (1st) 113096, ¶ 65. Where there is evidence of prior neglect by a parent, the court is not required to wait until a child is injured before acting. *In re Kenneth D.*, 364 Ill. App. 3d 797, 801 (2006). A child can be protected under the theory of anticipatory neglect, where the child has a probability to be subjected to neglect while residing with an individual that has been found to have neglected or abused another child. *In re Kenneth D.*, 364 Ill. App. 3d at 801.

¶ 44 In determining whether a minor is neglected, “a custodial parent’s admission and stipulation, *by itself*, may be sufficient to support a finding of abuse or neglect.” (Emphasis in original.) *In re R.B.*, 336 Ill. App. 3d 606, 616 (2003). A stipulation is an agreement between the parties with respect to an issue before the court which removes the need of proof of that fact. *Lee*

v. Chicago Transit Authority, 152 Ill. 2d 432, 462 (1992). An evidentiary stipulation is an acknowledgment of what a witness would testify to if called along with the decision not to challenge testimony that would be given by that witness. *People v. Phillips*, 217 Ill. 2d 270, 284 (2005).

¶ 45 Mother admitted and stipulated that she had failed to correct the conditions that led to the termination of her parental rights of J.M.'s siblings. The State provided a factual basis to support a finding of neglect that included Mother's history of substance abuse with DCFS involvement. Mother had not completed services in the 2019 termination cases of Mother's parental rights. Mother had enrolled herself in a drug treatment program while she was pregnant with J.M., but Mother remained unfit while she worked on completing services.

¶ 46 Mother's admission and stipulation, along with the State's factual basis, was sufficient to adjudicate J.M. as neglected. The trial court's finding of neglect was not against the manifest weight of the evidence.

¶ 47 Father additionally argues that the trial court's finding that Mother violated the conditions of the continuance under supervision was against the manifest weight of the evidence. A reviewing court will not disturb the trial court's revocation of supervision unless it is against the manifest weight of the evidence. *In re Terry H.*, 2011 IL App (2d) 090909, ¶ 14.

¶ 48 Where a party fails to raise an issue before the trial court, the issue is waived and not preserved for review. *In re April C.*, 326 Ill. App. 3d 225, 242 (2001). Mother admitted to violating the supervision order and stipulated to the supporting factual basis. Father did not object or raise any issue with Mother's admission and stipulation to violating the supervision order before the trial court. Waiver aside, we find that Father's argument has no merit.

¶ 49 The continuance under supervision order allowed for J.M. to reside with Mother and Father. The order included that Mother was required to cooperate with DCFS and comply with the terms of the service plan, complete any recommended services, and cooperate with CASA, including home visits and meetings with J.M.

¶ 50 The State's petition to revoke court supervision included that "Mother has not complied, fully, with the service plan." The service plan was created to establish action steps and services for Mother to complete to regain fitness and for the family to remain intact. Mother's service plan required her to complete mental health and substance abuse treatment, parenting services, and domestic violence services. Mother stipulated that she did not fully comply with her service plan, which included the requirement to complete substance abuse treatment.

¶ 51 The State's factual basis stated that, "Mother has not fully complied with the service plan in that she has not provided the caseworker with accurate information about who has been living in the household during the pendency of this case." Gentry-Flemons was present at the hearing and would have been able to testify to Mother's noncompliance with the service plan.

¶ 52 Mother allowed Father to "wreak havoc" when he would stay one night a week with Mother. On January 10, 2022, DCFS required Mother to leave her residence and created a safety plan to protect Mother and J.M. from Father. The trial court became aware of issues related to Mother and Father's relationship and living arrangement in January 2022. Where Mother's service plan required her to complete parenting and domestic violence services, providing DCFS with accurate information about who lived in the household was imperative to ensure that J.M. was being properly cared for at home.

¶ 53 The factual basis was sufficient to show that Mother failed to comply with her service plan in violation of the supervision order. The court's determination that Mother had violated the

supervision order was not against manifest weight of the evidence. The trial court properly proceeded with adjudication and the dispositional stage of the proceeding after it found that the conditions of supervision had not been fulfilled. See 705 ILCS 405/2-20(5) (West 2020).

¶ 54

III. CONCLUSION

¶ 55 For the foregoing reasons, we affirm the decision of the trial court in Champaign County.

¶ 56 Affirmed.