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2022 IL App (3d) 210251-U

Order filed February 17, 2022

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2022

<i>In re J.A.,</i>)	Appeal from the Circuit Court
)	of the 9th Judicial Circuit,
a Minor)	Fulton County, Illinois.
)	
(The People of the State of Illinois,)	
)	
Petitioner-Appellee,)	Appeal No. 3-21-0251
)	Circuit No. 20-JA-0051
v.)	
)	
Lynzie A.,)	Honorable
)	Nigel D. Graham,
Respondent-Appellant).)	Judge, Presiding.

PRESIDING JUSTICE O'BRIEN delivered the judgment of the court.
Justices Daugherty and Schmidt concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's conclusion that a minor was abused and neglected was upheld as not against the manifest weight of the evidence. The order finding the mother dispositionally unfit was also affirmed as not against the manifest weight of the evidence.

¶ 2 Respondent mother, Lynzie A., appealed from circuit court orders adjudicating her minor son abused or neglected and finding her to be dispositionally unfit. After a review of the parties' arguments and the record, we affirm.

¶ 3 I. BACKGROUND

¶ 4 The minor, J.A., was born on November 26, 2013. A petition alleging that J.A. was an abused or neglected minor was filed on August 5, 2020. The petition alleged that: (1) J.A. was an abused minor pursuant to section 2-3(2)(iii) of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/2-3(2)(iii) (West 2018)) in that J.A.'s father, Dylan A., had committed the offense of predatory criminal sexual assault of a child or criminal sexual assault against J.A. and (2) J.A. was a neglected minor pursuant to section 2-3(1)(a) of the Act (705 ILCS 405/2-3(1)(a) (West 2018)) in that J.A. was not receiving the support or care necessary for his well-being because Lynzie allowed Dylan to independently supervise J.A. despite the charges against Dylan.

¶ 5 At the adjudicatory hearing, Jody Coots, a child protection specialist, testified she received a hotline report on June 14, 2020, that J.A. had disclosed he was being sexually abused by Dylan. Coots scheduled a forensic interview at the child advocacy center (CAC), which was held on June 18, 2020. After the CAC interview, Dylan was arrested. Coots then met with Lynzie and discussed J.A.'s allegations against Dylan. Lynzie assured Coots that Lynzie would protect J.A. Lynzie sought an emergency order of protection against Dylan on J.A.'s behalf, which was granted on June 23, 2020. Lynzie did not seek a plenary order of protection when the emergency order expired on July 14, 2020. Coots testified that two hotline calls were received in July 2020 regarding J.A. having contact with Dylan. When Coots visited the residence on August 4, 2020, J.A. answered the door. J.A. told Coots that Dylan had been at the home, but Lynzie had been present. J.A. denied that Dylan had stayed all night at the home since Dylan had left. J.A. told Coots that J.A. had gone

on a motorcycle ride with Dylan after Dylan had stopped living at the home. Based on the fact that Lynzie had dropped the order of protection, did not believe J.A.'s allegations, and was allowing contact with Dylan, Coots took protective custody of J.A.

¶ 6 Phyllis Todd was the forensic interviewer who conducted the CAC interview of J.A. Todd's videotaped interview of J.A. was admitted into evidence and played in open court, although it is not included in the record on appeal.

¶ 7 J.A. testified at the adjudicatory hearing that he was seven years old and that he understood the difference between a truth and a lie. J.A. admitted to watching YouTube, but he denied watching videos when his mother and father were not around and denied seeing any grown-up videos where somebody was touching somebody else's private parts. J.A. identified his private parts as his penis and his butt, and J.A. testified that Dylan had touched J.A.'s private parts and had asked J.A. to touch Dylan's private parts. J.A. testified that it usually happened when he was at home alone with Dylan, but it had happened one time at his grandfather's house. J.A. testified that during the time he lived at home with only Lynzie, before being sent to a foster home, J.A. only had contact with Dylan on the telephone and FaceTime. J.A. testified that he was not alone with Dylan, and that he did not go on any motorcycle rides with Dylan after the Department of Children and Family Services (DCFS) was involved.

¶ 8 Lynzie testified that she never left J.A. unsupervised with Dylan after DCFS became involved. During the three-week period after the CAC interview of J.A., Lynzie lived at home with J.A., but she allowed Dylan to visit several days a week for two to three hours each time. Dylan would have dinner with J.A. and Lynzie and help put J.A. to bed, but Lynzie testified that Dylan was never alone with J.A. If Lynzie had to use the bathroom, Dylan would step outside. Lynzie

did allow J.A. to ride on the motorcycle with Dylan for approximately five minutes, while she followed in her vehicle and never lost sight of them.

¶ 9 The circuit court took judicial notice of the criminal proceedings in case No. 20-CF-132, wherein Dylan was charged with predatory criminal sexual assault of a child, the victim being J.A. The docket indicated that probable cause was found at the preliminary hearing, but Dylan had pled not guilty. The circuit court also took judicial notice of the transcript of the shelter care hearing. At the shelter care hearing, Dylan testified that he stayed away from Lynzie and J.A. during the three-week term of the emergency order of protection. After that expired, Dylan testified that he and Lynzie agreed that Dylan would not live at the family home, but that Dylan would come over daily to help with dinner and bedtime, as long as Lynzie supervised his contact with J.A. the entire time. Dylan acknowledged the motorcycle ride with J.A., with Lynzie following in her vehicle.

¶ 10 The circuit court found that the allegations of the petition were proven by a preponderance of the evidence and adjudicated the minor, J.A., to be abused or neglected. The circuit court's finding was based on Dylan's alleged sexual assault of J.A. and the fact that Lynzie then failed to prevent unsupervised contact between J.A. and Dylan. The circuit court found that the motorcycle ride constituted unsupervised contact, in addition to facilitating multiple visits a week between J.A. and Dylan in an attempt to endear J.A. to Dylan. The allegations against Dylan were proven by a preponderance of the evidence. The mother filed a motion to reconsider, arguing that the evidence presented at the adjudicatory hearing did not show that J.A. was abused or neglected by a preponderance of the evidence. The circuit court denied the motion.

¶ 11 At the dispositional hearing, the State presented the family service plan dated January 14, 2021; the dispositional hearing report dated February 10, 2021, with an integrated assessment; and a status update dated April 7, 2021. With respect to Lynzie, the integrated assessment states that

Lynzie did not believe that Dylan sexually abused J.A. Lynzie was not residing in the family home when DCFS initiated its investigation against Dylan, and Dylan had an order of protection against Lynzie, so DCFS initially placed J.A. temporarily on a safety plan with his paternal uncle when Dylan was arrested. After that order of protection expired, and Lynzie agreed to obtain an order of protection against Dylan, J.A. was returned to Lynzie's care. The integrated assessment states that Lynzie then agreed to have the emergency order of protection dismissed because J.A.'s medical examination showed no physical indication of sexual abuse. Since there were no filings or orders that prevented Dylan from having contact with J.A., Lynzie allowed Dylan to visit the home, supervised by her. The recommendations for Lynzie in the integrated assessment to address the reasons J.A. came into care were: (1) individual psychotherapy; (2) psychiatric assessment; and (3) random drug screens. It was also recommended that Lynzie participate in child/parent psychotherapy and domestic violence education, secure employment, and participate in scheduled visits with J.A.

¶ 12 The dispositional report states that J.A. gave independent, credible statements in his CAC interview of sexual assault by Dylan. Lynzie did not believe that Dylan abused J.A., and Lynzie chose not to pursue a plenary order of protection. DCFS took protective custody of J.A. on August 4, 2020, because Lynzie did not pursue the plenary order of protection and continued to allow Dylan to have contact with J.A. The report indicates that Lynzie had been uncooperative with DCFS. In addition to cooperating with DCFS, the report recommends mental health counseling, a domestic violence parenting program, and employment. DCFS requested that it be made the guardian of J.A. and that Lynzie be ordered to cooperate with DCFS and the services recommended in the service plan.

¶ 13 The April 15, 2021, status update indicates that Lynzie continued to not demonstrate understanding as to why J.A. could not see Dylan. Lynzie had been informed of the no contact order between J.A. and Dylan.

¶ 14 Brooke Matykiewicz, a DCFS caseworker, testified at the dispositional hearing on April 15, 2021. Matykiewicz testified that she did not have knowledge that Lynzie had completed any assessments. Lynzie testified that she completed her mental health assessment in late February or early March 2021, and signed a release for DCFS to receive that information. The assessment recommended individual counseling. Lynzie testified that she had completed sexual assault victim counseling when she was 15 or 16 years old. Lynzie anticipated that some of those issues would be worked through during the individual counseling. Lynzie had an initial counseling appointment scheduled for the week after the hearing.

¶ 15 The circuit court found both Lynzie and Dylan to be dispositionally unfit, made J.A. a ward of the court, and named DCFS as the guardian. With respect to Lynzie, the circuit court found her unfit due to her neglect in allowing Dylan access to J.A. The circuit court took particular note of the status update, which noted that Lynzie had little insight into how to protect J.A. The court noted that reasonable efforts and appropriate services aimed at family reunification had been made, but they had not eliminated the necessity for removing J.A. from the home. The court found that both parents had failed to engage in or complete services to correct the issue that necessitated the removal of J.A. The circuit court ordered visitation between J.A. and Lynzie but denied visitation with Dylan. The court ordered Lynzie to complete the services as recommended. The mother appealed the adjudicatory order, the denial of her motion to reconsider, and the dispositional order.

¶ 16 **II. ANALYSIS**

¶ 17 The mother argues that the circuit court erred in finding that J.A. was a neglected minor. The State contends that the evidence was sufficient to support the trial court's finding of neglect. As an initial matter, we note that, in the adjudicatory order, the circuit court checked the second box in subsection (g), neglect due to an injurious environment under section 2-3(1)(b) of the Act, rather than the first box as alleged in the juvenile petition, neglect from lack of support, education, or remedial care under section 2-3(1)(a) of the Act. The circuit court's oral ruling at the close of the adjudicatory hearing, however, found that the neglect allegation of the petition, that J.A. was not receiving the support or care necessary for his well-being because Lynzie allowed Dylan to independently supervise J.A. despite the charges against Dylan, was proven by a preponderance of the evidence. Since a court's oral pronouncement prevails over a conflicting written order, and a court cannot proceed on a basis not contained in the petition, we review the finding that J.A. was neglected pursuant to section 2-3(1)(a) of the Act. *In re William H.*, 407 Ill. App. 3d 858, 866 (2011) ("a court's oral pronouncement of its decision prevails over its written order, should a conflict arise"); *In re J.B.*, 312 Ill. App. 3d 1140, 1144 (2000) (where petition only alleged neglect due to an injurious environment, but the State proceeded on the grounds of inadequate supervision without amending the petition, the adjudication of neglect was reversed).

¶ 18 In determining whether the circuit court makes a minor a ward of the court under the Act, it employs a two-step process. *In re A.P.*, 2012 IL 113875, ¶ 18. The first step is an adjudicatory hearing, wherein the circuit court considers the question of " 'whether the minor is abused, neglected or dependent.' " *Id.* ¶ 19 (quoting 705 ILCS 405/2-18(1) (West 2018)). The focus at this stage of the proceedings is the status of the minor and whether the allegations of the petition are supported by a preponderance of the evidence. *A.P.*, 2012 IL 113875, ¶ 19; 705 ILCS 405/1-3(1) (West 2018). The apportionment of blame for the abuse or neglect between the parents is not

appropriate at this stage of the proceedings. *In re Arthur H.*, 212 Ill. 2d 441, 467 (2004) (at the adjudicatory hearing, the circuit court determines whether the minor is neglected, not whether the parents are neglectful).

¶ 19 The circuit court adjudicated J.A. abused or neglected based on two findings: (1) Lynzie's failure to prevent unsupervised contact between Dylan and J.A. and (2) Dylan's criminal sexual assault of J.A. Lynzie argues that the State failed to meet its burden of proof with regard to the first finding, but Lynzie does not challenge the second finding. Only a single ground for neglect or abuse needs to be proven, so an appellate court may affirm if any of the circuit court's bases for its finding may be upheld. *In re Faith B.*, 216 Ill. 2d 1, 14 (2005). Since the focus at the dispositional stage is whether the minor was neglected or abused, not on whether one parent was neglectful, and there was no challenge on appeal of the circuit court's finding that the allegation that Dylan sexually assaulted J.A. was proven by a preponderance of the evidence, we find that the circuit court's conclusion that the minor was abused or neglected was not against the manifest weight of the evidence.

¶ 20 Additionally, we find that the circuit court's finding that J.A. was neglected was not against the manifest weight of the evidence. Relevant to this appeal, a minor is neglected if he or she "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***." 705 ILCS 405/2-3(1)(a) (West 2018). Neglect is generally defined as the failure to exercise the care that is demanded by the circumstances. *A.P.*, 2012 IL 113875, ¶ 22. The evidence supports the circuit court's finding that Lynzie was not exercising the care demanded by the circumstances brought about by J.A.'s allegations against Dylan. Despite being informed of the allegations against Dylan,

Lynzie not only failed to pursue a plenary order of protection against Dylan, Lynzie allowed Dylan to have numerous hours of contact with J.A. each week, and allowed J.A. to ride alone with Dylan on a motorcycle. This evidence supports the conclusion that it was more probably true than not that J.A. was not receiving the support or care necessary for his well-being because Lynzie was allowing Dylan to independently supervise J.A. despite the charges against Dylan. See *In re A.R.*, 359 Ill. App. 3d 1071, 1074 (2005) (proving allegations of neglect by a preponderance of the evidence means demonstrating that the allegations are more probably true than not).

¶ 21 After a circuit court adjudicates a minor abused, neglected, or dependent, it then proceeds to the second step in the wardship process, which is a dispositional hearing. *A.P.*, 2012 IL 113875, ¶ 21; 705 ILCS 405/2-21(2) (West 2018). At this step, the circuit court considers whether the health, safety, and best interest of the minor require that the minor be made a ward of the court and, if so, determine the proper disposition. 705 ILCS 405/2-22(1) (West 2018); *In re N.B.*, 191 Ill. 2d 338, 343 (2000). The circuit court may make four basic types of dispositional orders with respect to a ward of the court. The minor may be (1) continued in the custody of the minor's parent, guardian, or legal custodian; (2) placed in accordance with section 2-27 of the Act; (3) restored to the custody of the minor's parent, guardian, or legal custodian; or (4) ordered partially or completely emancipated. 705 ILCS 405/2-23(1)(a) (West 2018); *In re M.M.*, 2016 IL 119932, ¶ 18. When a parent has been found responsible for a minor's abuse or neglect, custody will not be restored to that parent until a hearing is held on the best interest of the minor and the fitness of that parent to care for the minor. 705 ILCS 405/2-23(1)(a) (West 2018).

¶ 22 Prior to committing a minor to the custody of a third party, such as DCFS, a trial court must first determine whether the parent is unfit, unable, or unwilling to care for the child, and whether the best interest of the minor will be jeopardized if the minor remains in the custody of

his or her parents. *Id.* § 2-27(1); *M.M.*, 2016 IL 119932, ¶ 21. The standard of proof for a finding of unfitness under section 2-27 is a preponderance of the evidence. *In re April C.*, 326 Ill. App. 3d 245, 257 (2001). We will reverse a circuit court's disposition if the factual findings are against the manifest weight of the evidence or if the circuit court abused its discretion by choosing an inappropriate dispositional order. *Id.*

¶ 23 After considering the dispositional report, status updates, family service plan, and integrate assessment, the circuit court determined that it was in J.A.'s best interest to make him a ward of the court, based on the findings of abuse by Dylan and neglect by Lynzie. Lynzie was found to be unfit for her repeated exposure of J.A. to Dylan, the perpetrator of the abuse against J.A. The circuit court found that reasonable services had been attempted, but removal of the minor was necessary for the minor's health, safety, and welfare. Lynzie argues that the circuit court erred in finding her unfit and in finding that it was in J.A.'s best interest to make him a ward of the court. Lynzie contends that there was no evidence that intact services were not appropriate. The State argues that the finding that Lynzie was unfit was not against the manifest weight of the evidence and it was proper to make J.A. a ward of the court.

¶ 24 The evidence showed that Lynzie's lack of cooperation, lack of insight, ongoing denial of J.A.'s sexual assault claims, and lack of understanding of how to protect J.A. combined to show that Lynzie was unfit. The fact that Lynzie allowed any contact between Dylan and J.A. after being informed of the sexual assault allegations, not to mention unsupervised contact, was clearly a concern for DCFS and the circuit court. Thus, we conclude that the circuit court's finding that Lynzie was dispositionally unfit and that it was in the best interest of J.A. to place him in the custody of DCFS was not against the manifest weight of the evidence.

¶ 25

CONCLUSION

¶ 26 The judgment of the circuit court of Fulton County is affirmed.

¶ 27 Affirmed.