2025 IL App (4th) 241453-U

NOS. 4-24-1453, 4-24-1454, 4-24-1455, 4-24-1456 cons.

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
June 23, 2025
Carla Bender
4th District Appellate
Court, IL

In re K.B., a Minor	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Peoria County
Petitioner-Appellee,	)	Nos. 24JA143
v. (No. 4-24-1453)	)	24JA144
Robert S.,	)	24JA145
Respondent-Appellant).	)	24JA146
_____	)	
	)	
In re Jay. B., a Minor	)	
	)	
(The People of the State of Illinois,	)	
Petitioner-Appellee,	)	
v. (No. 4-24-1454)	)	
Robert S.,	)	
Respondent-Appellant).	)	
_____	)	
	)	
In re R.S., a Minor	)	
	)	
(The People of the State of Illinois,	)	
Petitioner-Appellee,	)	
v. (No. 4-24-1455)	)	
Robert S.,	)	
Respondent-Appellant).	)	
_____	)	
	)	
In re Jaq. B., a Minor	)	
	)	
(The People of the State of Illinois,	)	
Petitioner-Appellee,	)	
v. (No. 4-24-1456)	)	Honorable
Robert S.,	)	David A. Brown,
Respondent-Appellant).	)	Judge Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Presiding Justice Harris and Justice Lannerd concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, holding (1) respondent has not shown the trial court's ruling that the minors were neglected was against the manifest weight of the evidence and (2) respondent's claims of error regarding the dispositional order were barred under the rule of invited error.

¶ 2 Respondent, Robert S., appeals from the trial court's orders finding his minor children or minor putative children, K.B. (born 2024), Jay. B. (born 2019), R.S. (born 2018), and Jaq. B. (born 2022), were neglected and the subsequent orders finding respondent unfit and unable to care for the children. (We note the court also found the children's mother, Diana B., unfit, but she is not a party to this appeal.) Respondent argues that the court's findings of neglect and unfitness were against the manifest weight of the evidence. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On July 16, 2024, the State filed four single-count petitions seeking adjudications of wardship for K.B., Jay. B., R.S., and Jaq.B. Each petition alleged that the child was neglected under section 2-3(1)(b) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(1)(b) (West 2022)) in that their environment was injurious to their welfare. Each petition contained 16 allegations; the tenth allegation described two incidents of domestic violence. The petition concerning K.B. is representative of the others and states as follows:

> "A) [Diana B.] was previously found unfit in [two Peoria County cases]; basis: infant born substance exposed, continued substance abuse ***, there has been no subsequent finding of fitness; cases closed on August 12, 2021, with guardianship to [respondent]; and
>
> B) [Diana B.] has not completed services that would result in a finding of

fitness; and

C) On January 3, 2024, [Diana B.] reported to Peoria Police officers after she returned home from dropping off her children at school, someone kicked in her door ***;

D) On January 26, 2024, [Diana B.] reported to Peoria Police officers she has been caring for her children, [R.S., Jay. B., and Jaq. B.], since September of 2023; stated [respondent] has full custody but will not come and pick the children up;

E) On July 14, 2024, the minor's siblings, [R.S., Jay. B., and Jaq. B.], were found at maternal grandparents' home by [The Illinois Department of Children and Family Services (DCFS)] after [Diana B. and respondent] reported the minors were in Tennessee;

F) [Diana B.] has a substance abuse issue, including cocaine and alcohol; and

G) [Diana B.] tested positive for cocaine at time of [K.B.'s] birth;

H) [K.B.'s] sibling, [R.S.], was born substance exposed to cocaine;

I) On October 23, 2021, [Diana B.] was intoxicated and refused to leave a bar, stated she was pregnant at the time, and had to be physically removed from the bar by Peoria Police officers; and

J) [Diana B. and respondent] has [*sic*] a history of domestic violence as evidenced by:

1) On January 8, 2024, [Diana B.] reported to Peoria Police officers [respondent] 'jumped on her' over and over; officers observed a video by a

witness that showed [Diana B.] running and screaming at [respondent] as he began to drive away, [respondent] stopped his vehicle and approached [Diana B.] and stated for her to leave him alone, [Diana B.] raised her hand while holding a speaker as if she was going to throw it at [respondent] and [he] slapped the speaker out of her hand and [Diana B.] falls to the ground; and

2) On December 22, 2023, [Diana B.] reported to Peoria Police officers, [respondent] pushed her down and pulled her wig off; [respondent] reported [Diana B.] ran toward him and attempted to pepper-spray him, he pushed her hand away and took the pepper-spray away from her, but denied pushing her down; [Diana B.] was pregnant at the time; officers observed video showing [respondent] pushing [Diana B.] to the ground and pulling on [her] wig; and

K) [Respondent] has a substance abuse issue, including cocaine;

L) On December 14, 2023, cocaine was found on [respondent's] person by Peoria Police officers;

M) [Diana B.] was previously indicated by DCFS on November 7, 2018, for Substance Misuse by Neglect; and on December 2, 2019, Substantial Risk of Physical Injury/Environment Injurious to Health and Welfare by Neglect and Inadequate Shelter;

N) [Respondent] was previously indicated by DCFS on November 7, 2018, for Substance Misuse by Neglect, Non-Involved Subject; and

O) [Diana B.] has a criminal history which includes: Resisting a Peace

Officer (09 CM 2442); Resisting a Peace Officer (14 CM 138); Aggravated Battery (15 CF 443); Battery and Mob Action (15 CM 790); Aggravate[d] Battery (2022 CF 146); Criminal Trespass to Land (2022 CM 12); and

P) [Respondent] has a criminal history which includes: pending Unlawful Possession of Controlled Substance (2024 CF 62)."

¶ 5 Respondent filed an answer denying allegations (D), concerning Diana B.'s report respondent had failed to "pick the children up," and (K), that he had a "substance abuse issue." He stipulated the State's witnesses would support allegations (B), that Diana B. had not completed services previously required of her, (G), that Diana B. tested positive for cocaine when K.B. was born, (M), that there were "indicated" findings against Diana B., (O), that Diana B. had a history of criminal convictions, and (P), that a drug possession charge was pending against him.

¶ 6 Diana B. filed answers neither admitting nor denying the allegations.

¶ 7 The adjudication hearing for all the cases took place on September 18, 2024. The State presented evidence consistent with the allegations.

¶ 8 Respondent testified to deny or explain some of the State's allegations. He said his home was in Tennessee. On January 23, 2024, his children (except K.B., who was not yet born) were with him in Memphis, Tennessee. He noted R.S. had "just graduated out of school in Memphis." He explained he had lived in a house near Diana B.'s parents' house for three months in 2023 and 2024, after his house in Memphis was damaged by a falling tree and this was when the physical confrontations with Diana B. occurred. Diana B.'s parents helped him supervise his children, but Diana B. did not have unsupervised contact with the children. Respondent said he came to Peoria, Illinois—apparently around the time of K.B.'s birth—because he wanted to take custody of K.B. before "[his] child went to go to the system."

¶ 9 Concerning the allegations of domestic violence, respondent testified, on January 22, 2023, Diana B. tried to "spray [him] with the mace." He said he did not push Diana B. or pull her wig.

¶ 10 Respondent testified he did not have a substance abuse problem and had paid for drug screens that showed this. He admitted he had been found with a small amount of cocaine on his person but stated the cocaine was in a small pocket in a jacket he had borrowed from his brother; he said he had needed to borrow the jacket because he was visiting from Tennessee and had failed to consider that it was going to be colder in Peoria.

¶ 11 The trial court found all four children were neglected for the following reasons.

¶ 12 The trial court first found that, although the State established Diana B. had made statements claiming she had been caring for the children, the truth of those statements was unclear:

> "Whether the kids were with [Diana B.] or not was not established, and I suspect somebody could've proven that *** the kids were in school at that time, or that—on or about January 3rd, but there was no evidence of that. So I don't know that the kids—[Diana B.] says the kids were in her care and that she took them to school. That's what I know. [Respondent] disputes that the kids were with [her].
>
> With regard to [the allegation Diana B. told the police she had been caring for the children since September 2023 and respondent would not pick them up], the Court finds that that was proven by a preponderance of the evidence. [Respondent once again] denies it, but [Diana B.] stipulated to it and the police officer testified consistent with that."

¶ 13 The trial court concluded it was undisputed that the three older children were at the home of Diana B.'s parents on July 14, 2024. It deemed this to be "kind of contrary" to

respondent's testimony that they had been residing in Tennessee since January 2024.

¶ 14 The trial court found the State had proved that the confrontation in which Diana B. appeared to be preparing to throw a speaker at respondent had occurred as the State alleged. However, it found the State had failed to prove respondent pushed Diana B. to the ground and pulled her wig off. It agreed the State proved Diana B. ran toward respondent and attempted to use pepper spray on him.

¶ 15 The trial court further found, although respondent might have previously had a "substance abuse issue," the State had failed to prove he still had one. It concluded respondent "was certainly found in possession of a controlled substance" and his refusal to admit this, followed by his admission, affected his credibility.

¶ 16 Finally, the trial court found, "[O]verall, the State has proven the material allegations in the petition by a preponderance of the evidence." It found "there was an environment that was injurious to the welfare of the children; anticipatory neglect for the older children, but the younger child clearly [had] an injurious environment." Further, there was "domestic violence, controlled substance issues with [Diana B.], criminality by [respondent]. Overall, that's an injurious environment."

¶ 17 The dispositional hearing took place on October 30, 2024. Respondent, when questioned by his counsel about how he intended to "work on things," answered nonresponsively, objecting to the finding of neglect without addressing counsel's question or the issue of his fitness. The State recommended the trial court find respondent unfit "based on contents of the petition and inadequate supervision of the minors and domestic violence." The State further described the service recommendations for respondent and Diana B. When the court gave respondent's counsel an opportunity to address the recommendations, he was silent concerning the basis on which the

State urged the court to find respondent unfit, but he explicitly agreed with the recommendations for mental health services and parenting services. Counsel did not challenge any requirement for services but asked only for "flexibility" concerning some services.

¶ 18 The trial court found, based on its findings at the adjudicatory hearing and the dispositional hearing report produced by the Center for Youth and Family Solutions, that it was in the best interest of all four children to be made wards of the court. The written dispositional order included a finding respondent was "unfit & unable for some reason other than financial circumstances alone, to care for, protect, train, or discipline the minors" and named DCFS the guardian of the minors. (The dispositional order recognized respondent as the legal father of Jay. B. and R.S., but it stated the fathers of K.B. and Jaq. B. were unknown. We note that neither party raised paternity as an issue in this appeal.)

¶ 19 Respondent timely appealed, and the trial court appointed counsel to represent him. We consolidated the appeals on our own motion. Respondent's appellate counsel initially moved to withdraw in all appeals pursuant to the procedure set forth in *Anders v. California*, 386 U.S. 738 (1967). On February 28, 2025, we denied counsel's motion without prejudice as to appeal No. 4-24-1453 (K.B.) and with prejudice as to appeal Nos. 4-24-1454 (Jay. B.), 4-24-1455 (R.S.), and 4-24-1456 (Jaq. B.); we ordered full briefing in the latter three appeals to address "whether the finding of anticipatory neglect was against the manifest weight of the evidence, along with any other potentially meritorious issues counsel may identify." Counsel elected to file a brief encompassing all four appeals. Briefing was completed on April 11, 2025.

¶ 20 II. ANALYSIS

¶ 21 Initially, we note that this is an accelerated appeal under Illinois Supreme Court Rule 311(a) (eff. July 1, 2018). Under that rule, this court is required to issue its decision within

150 days after the filing of the notice of appeal unless there has been "good cause shown." Ill. S. Ct. R. 311(a)(5) (eff. July 1, 2018). Here, respondent's notice of appeal was filed on November 5, 2024, and this court's disposition was due to be filed by April 4, 2025. That filing deadline has passed. However, this delay is due to a necessary change in the briefing schedule, as this court denied respondent's appellate counsel's motion to withdraw on February 28, 2025, and ordered the parties to fully brief the case, as discussed above. In light of the delay resulting from the new briefing schedule, we find that good cause exists to issue our disposition after the 150-day deadline.

¶ 22 A. The Parties' Arguments

¶ 23 Respondent now argues that the trial court's rulings in the adjudicatory order were against the manifest weight of the evidence as to all four children. Respondent contends the court's findings of fact did not tend to show he contributed to the neglect of Jay. B., R.S., and Jaq. B., so the adjudication was therefore improper as to them. Concerning the adjudication of neglect regarding K.B, he concedes "the State proved that the minor's environment was injurious based on the allegations against the mother." However, he contends his counsel should have sought a finding he did not cause the neglect, and the court should have made that finding.

¶ 24 In response, the State argues that, under the rule in *In re Arthur H.*, 212 Ill. 2d 441, 466 (2004), the issue before the trial court at the adjudicatory hearing is whether the minor is neglected, not who caused the neglect. Thus, the State says respondent's argument fails to address either the propriety of the court's anticipatory neglect finding or its finding K.B. was neglected as the result of an injurious environment. It further argues the evidence supported the finding of anticipatory neglect.

¶ 25 Respondent also argues the trial court's dispositional order was against the manifest weight of the evidence as to Jay. B., R.S., and Jaq. B. because there was no showing he neglected

them. He contends the order was proper as to K.B., but he argues, absent evidence *he* neglected the children, no basis existed to order him to participate in services.

¶ 26 In response, the State contends respondent was unfit because the evidence showed he had an established pattern of criminal activity. It further contends, because respondent acquiesced to the trial court ordering him to participate in services, he is barred under the doctrine of invited error from challenging that order.

¶ 27 B. The Two-Step Process Under the Juvenile Court Act

¶ 28 The Juvenile Court Act provides a two-step process for the trial court to decide whether minors should be removed from their parents' custody and made wards of the court. *In re A.P.*, 2012 IL 113875, ¶ 18. "Step one is the adjudicatory hearing on the petition for adjudication of wardship." *A.P.*, 2012 IL 113875, ¶ 19. "Following the adjudicatory hearing, if a trial court determines that a minor is *** neglected ***, the trial court then moves to step two, *** the dispositional hearing." *A.P.*, 2012 IL 113875 ¶ 21. We address each step in turn.

¶ 29 1. *The Adjudicatory Hearing*

¶ 30 a. The Applicable Law

¶ 31 At the adjudicatory hearing, the court determines whether the minor is abused, neglected, or dependent. 705 ILCS 405/2-18(1) (West 2022). The State must prove its allegations—here, of neglect—by a preponderance of the evidence. *Arthur H.*, 212 Ill. 2d at 463-64. To satisfy the burden of proof for neglect, the evidence need only show the child is neglected; it *need not* show who was responsible for the neglect or whether a particular parent was neglectful. *Arthur H.*, 212 Ill. 2d at 465-66. "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." *Arthur H.*, 212 Ill. 2d at 464. "[A] trial court's ruling of neglect will not be reversed unless it is against the

manifest weight of the evidence." *Arthur H.*, 212 Ill. 2d at 464.

¶ 32 b. This Case

¶ 33 Here, the trial court based its findings that Jay. B., R.S., and Jaq. B. were neglected on the theory of anticipatory neglect stemming from their mother, Diana B., testing positive for cocaine at the time of the birth of K.B. The court also considered that the minors' environment was injurious based on respondent's criminality, Diana B.'s controlled substance issues, and the domestic violence between respondent and Diana B.

¶ 34 Under an anticipatory neglect theory, the State may

> "protect not only children who are the direct victims of neglect or abuse, but also those who have a probability to be subject to neglect or abuse because they reside, or in the future may reside, with an individual who has been found to have neglected or abused another child." *Arthur H.*, 212 Ill. 2d at 468.

Proof one minor is neglected is admissible evidence "on the issue of the neglect of any other minor for whom the parent is responsible." *Arthur H.*, 212 Ill. 2d at 468. However, "there is no *per se* rule that the neglect of one child conclusively establishes the neglect of another child in the same household." *Arthur H.*, 212 Ill. 2d at 468. That said, our supreme court has also recognized that "when faced with evidence of prior neglect by parents, 'the juvenile court should not be forced to refrain from taking action until each particular child suffers an injury.' " *Arthur H.*, 212 Ill. 2d at 477.

¶ 35 On appeal, respondent argues that, because nothing showed *he* had neglected any of the children, the trial court's finding that the children were neglected was against the manifest weight of the evidence. In making this argument, respondent concedes the State proved that K.B. was subjected to an injurious environment in that Diana B. tested positive for cocaine at the time

of the child's birth. Nevertheless, respondent maintains that his attorney "should have motioned for and the trial court should have made the finding that the injurious environment was not caused by the respondent." Respondent's reasoning ignores the purpose of an adjudicatory hearing. As *Arthur H.* explicitly held, the State's burden at an adjudicatory hearing is to show that the minor is neglected, *not* to assign responsibility for the neglect. *Arthur H.*, 212 Ill. 2d. at 465-66. Thus, even if we concluded there was no evidence respondent was neglectful as to any child, that conclusion would not be a basis on which we could hold the neglect findings were against the manifest weight of the evidence.

¶ 36 There is no question that the trial court properly adjudicated K.B. to be a neglected minor. The neglect findings as to the other minors present a closer issue. In reviewing the adjudications of neglect as to Jay. B., R.S., and Jaq. B., we recognize that (1) the trial court found the State failed to prove that respondent left these minors unsupervised in Diana B.'s care, (2) the court also found the State failed to prove that respondent had a current substance abuse issue, (3) the evidence arguably showed that Diana B., not respondent, was the aggressor in the incidents of domestic violence alleged in the neglect petitions, and (4) respondent claimed not to know there was cocaine in his possession in December 2023, and this incident did not occur in the presence of the children. Nevertheless, the evidence reasonably supported a conclusion that the environment for Jay. B., R.S., and Jaq. B. was injurious based on the existence of domestic violence between their parents, Diana B.'s substance abuse problems that resulted in her testing positive for cocaine at the time of K.B.'s birth, and respondent's criminality. The evidence also showed that the family had a history of DCFS involvement and wardship proceedings, which raises concerns that the problems identified in earlier juvenile proceedings had not been fully addressed.

¶ 37 We thus hold that respondent failed to establish the trial court erred in finding the

children neglected.

¶ 38 2. *The Dispositional Hearing*

¶ 39 a. The Standard for Finding Dispositional Unfitness

¶ 40 If the trial court finds the State met its burden at the adjudicatory step, it proceeds to the dispositional step (*A.P.*, 2012 IL 113875, ¶ 21), at which it determines whether it is consistent with the health, safety, and best interest of the minor and the public that the minor be made a ward of the court (705 ILCS 405/2-22(1) (West 2022)). If the court determines the respondents in the proceeding "are unfit or are unable, for some reason other than financial circumstances alone, to care for, protect, train or discipline the minor or are unwilling to do so, and that the health, safety, and best interest of the minor will be jeopardized" if the minor remains in the custody of the respondents, the court may place the child in the custody of a person suitable to be the custodian or guardian. 705 ILCS 405/2-27(1) (West 2022).

¶ 41 The trial court's dispositional order will be reversed only if the court's findings of fact are against the manifest weight of the evidence or if the court committed an abuse of discretion by selecting an inappropriate dispositional order. *In re J.W.*, 386 Ill. App. 3d 847, 856 (2008). A trial court's finding is against the manifest weight of the evidence only if the opposite conclusion is clearly apparent or the decision is unreasonable, arbitrary, or not based on the evidence presented. *In re D.F.*, 201 Ill. 2d 476, 498 (2002).

¶ 42 b. This Case

¶ 43 Here, respondent contends that because the trial court's determination of unfitness as to Jay. B., R.S., and Jaq. B. relied on the same factual basis as the adjudicatory order, it was therefore flawed because the State had failed to show he neglected the three older children. He concedes the "court could have retained wardship as to K.B. due to [Diana B.] testing positive for

cocaine at his birth," and thus did not err in ordering Diana B. to participate in services. However, he contends, because no evidence existed that he was responsible for the neglect of any of the children, no basis existed for the court to order him to participate in services.

¶ 44 In response, the State argues the evidence of respondent's unfitness was sufficient as to all the children. It further argues, because respondent agreed to services, he is estopped from challenging the order for services on appeal under the doctrine of invited error.

¶ 45 For the reasons that follow, we agree with the State that the invited error rule applies here. Indeed, it applies not just to respondent's argument that the requirement for services was improper, but also to his argument that the trial court erred in finding him unfit.

¶ 46 i. *The Invited Error Rule*

¶ 47 "The rule of invited error or acquiescence is a form of procedural default also described as estoppel." *Gaffney v. Board of Trustees of the Orland Fire Protection District*, 2012 IL 110012, ¶ 33. This rule "prohibits a party from requesting to proceed in one manner and then contending on appeal that the requested action was error." *Gaffney*, 2012 IL 110012, ¶ 33. "The rationale for the rule is that it would be manifestly unfair to grant a party relief based on error introduced into the proceedings by that party." *Gaffney*, 2012 IL 110012, ¶ 33. Further, the rule applies not only when a party explicitly agrees to proceed in a given manner, but also when the party acquiesces to so proceeding. *People v. Villarreal*, 198 Ill. 2d 209, 227 (2001) (citing *People v. Schmitt*, 131 Ill. 2d 128, 137 (1989)). As the supreme court has observed:

> "The principle is well recognized that admissions may be implied from conduct as well as expressed by words, and may sometimes be presumed from mere silence. The circumstances which will justify the inference of an omission from acquiescence in the conduct or language of another *** must be such as not only to

> afford an opportunity to act or speak, but also to properly and naturally call for such action or reply from men similarly situated." *Bell v. McDonald*, 308 Ill. 329, 339 (1923).

Further, the supreme court "has viewed cases of acquiescence strictly," such that the ordinary exceptions to the rule of waiver or forfeiture (such as plain error) are inapplicable. *In re Detention of Swope*, 213 Ill. 2d 210, 218 (2004); see *Villarreal*, 198 Ill. 2d at 227-28 (stating the court would not consider a claim under the plain error doctrine when the error was invited).

¶ 48 ii. *Invited Error in This Case*

¶ 49 Here, the invited error rule applies to estop respondent from making both of his arguments related to the dispositional hearing. Given that respondent's counsel specifically agreed to the services required, respondent may not now claim they were improper. See *Gaffney*, 2012 IL 110012, ¶ 33. Similarly, because respondent's counsel declined the opportunity afforded by the trial court to challenge the State's recommendation that respondent be found unfit, respondent cannot now challenge the court's unfitness ruling on appeal. By remaining silent when offered the opportunity to challenge these recommendations, respondent's counsel acquiesced to them. See *Bell*, 308 Ill. at 339. Because respondent's counsel acquiesced below, the invited error rule operates to estop respondent from making an argument inconsistent with that acquiescence on appeal. See *Villarreal*, 198 Ill. 2d at 227 (stating the invited error rule applies when a party has acquiesced to a matter in the trial court).

¶ 50 III. CONCLUSION

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

¶ 52 Affirmed.