[Cite as *State v. Johnson*, 2011-Ohio-6352.]

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

WARREN COUNTY

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	CASE NO. CA2011-05-049
	:	O P I N I O N
- vs -		12/12/2011
	:	
MICHELLE JOHNSON,	:	
Defendant-Appellant.	:	

APPEAL FROM WARREN COUNTY COURT OF COMMON PLEAS
JUVENILE DIVISION
Case No. 10-N025043

David Fornshell, Warren County Prosecuting Attorney, Michael Greer, 500 Justice Drive, Lebanon, Ohio 45036, for plaintiff-appellee

Jeffery E. Richards, 147 Miami Street, P.O. Box 536, Waynesville, Ohio 45068, for defendant-appellant

HENDRICKSON, J.

{¶1} Defendant-appellant, Michelle Johnson, appeals from her conviction in the Warren County Court of Common Pleas for contributing to the unruliness of a child. For the reasons outlined below, we affirm.

{¶2} On November 22, 2010, an attendance officer from the Mason City School District filed a complaint against appellant charging her with one count of contributing to the

unruliness of a child. The complaint alleged appellant failed to send her six-year-old daughter, T.R., to school on 23 different days, 13 of which constituted unexcused absences. Following a bench trial in front of a magistrate, appellant was found guilty of contributing to the unruliness of a child. Over appellant's objections, the magistrate's decision was approved and adopted as an order of the court on April 19, 2011. Appellant now appeals from her conviction, raising one assignment of error for review.

{¶3} Assignment of Error No. 1:

{¶4} "THE COURT ERRED IN FINDING THAT DEFENDANT WAS GUILTY OF CONTRIBUTING TO THE UNRULINESS OF A MINOR."

{¶5} In her sole assignment of error, appellant argues that her conviction for contributing to the unruliness of a child was based on insufficient evidence and was against the manifest weight of the evidence. We disagree.

{¶6} As we have previously stated, "a finding that a conviction is supported by the weight of the evidence must necessarily include a finding of sufficiency." *State v. Harbarger*, Warren App. No. CA2011-05-045, 2011-Ohio-5749, ¶5; *State v. Wilson,* Warren App. No. CA2006-01-007, 2007-Ohio-2298, ¶35. In turn, while a review of the sufficiency of the evidence and a review of the manifest weight of the evidence are separate and legally distinct concepts, this court's determination that appellant's conviction was supported by the manifest weight of the evidence necessarily supports a finding of sufficiency. *State v. Rigdon,* Warren App. No. CA2006-05-064, 2007-Ohio-2843, ¶30, citing *State v. Thompkins,* 78 Ohio St.3d 380, 386, 1997-Ohio-52.

{¶7} A manifest weight challenge concerns the inclination of the greater amount of credible evidence, offered in a trial, to support one side of the issue rather than the other. *State v. Clements,* Butler App. No. CA2009-11-277, 2010-Ohio-4801, ¶19. A court considering whether a conviction is against the manifest weight of the evidence must review

the entire record, weighing the evidence and all reasonable inferences, and consider the credibility of the witnesses. *State v. Hancock,* 108 Ohio St.3d 57, 2006-Ohio-160, ¶39; *State v. James,* Brown App. No. CA2003-05-009, 2004-Ohio-1861, ¶9. However, while appellate review includes the responsibility to consider the credibility of witnesses and weight given to the evidence, these issues are primarily matters for the trier of fact to decide because it is in the best position to judge the credibility of the witnesses and the weight to be given the evidence. *State v. Gesell,* Butler App. No. CA2005-08-367, 2006-Ohio-3621, ¶34; *State v. DeHass* (1967), 10 Ohio St.2d 230, paragraph one of the syllabus. Therefore, the question on review is whether in resolving conflicts in the evidence, the trier of fact clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed. *State v. Good,* Butler App. No. CA2007-03-082, 2008-Ohio-4502, ¶25.

{¶8} Appellant was charged with contributing to the unruliness of a child in violation of R.C. 2919.24(A)(1), a first-degree misdemeanor, that states in relevant part that no person shall "[a]id, abet, induce, cause, encourage, or contribute to a child or a ward of the juvenile court becoming an unruly child." One definition of an "unruly child" under R.C. 2151.022 includes "[a]ny child who is an habitual truant from school and who previously has not been adjudicated an unruly child for being an habitual truant." "'Habitual truant' means any child of compulsory school age who is absent without legitimate excuse for absence from the public school the child is supposed to attend for five or more consecutive school days, seven or more school days in one school month, or twelve or more school days in a school year." R.C. 2151.011.

{¶9} Appellant concedes that T.R. is of compulsory school age and that there does not need to be a determination by the trial court that T.R. is unruly in order for appellant to be found guilty under R.C. 2919.24(A)(1). However, appellant asserts that there was insufficient evidence to show that T.R. was an "habitual truant."

{¶10} At trial, the state presented evidence that T.R. accumulated 14 unexcused absences between the period of August 27, 2010 and November 20, 2010 as documented in the school's attendance reports admitted through the testimony of the school's truancy officer, Rick Huff. Huff testified that an absence is considered "unexcused" when there is no contact made with the school by a parent or when there is no doctor's note or supporting medical documentation provided to the school after the child's accumulation of nine absences. The state also presented three letters as evidence that, according to Huff's testimony, were sent to appellant from the school. According to Huff's testimony, the first letter was sent to appellant following T.R.'s second unexcused absence and included an explanation as to what constitutes an excused and unexcused absence. Huff testified that the second letter was sent to appellant following T.R.'s ninth absence, including both excused and unexcused absences, asking appellant to provide medical documentation for all of T.R.'s future absences during the remainder of the school year. Huff further testified that the third letter was sent to appellant following T.R.'s fifth unexcused absence asking appellant to attend a truancy intervention meeting. Huff's testimony revealed that appellant attended the truancy intervention meeting on November 15, where the school's attendance policy was discussed.

{¶11} In her defense, appellant testified that T.R. suffers from several developmental disabilities and that an individual education plan (IEP) was developed for T.R. in March of 2010, but T.R.'s current teacher "didn't even read the IEP." Additionally, appellant testified that because T.R. "wasn't getting any individual time from her teacher," appellant enrolled T.R. in Ohio Virtual Academy the end of November 2010 or beginning of December 2010, and T.R. began attending Ohio Virtual Academy the first week of December 2010. Further, appellant testified that she drove T.R. to and from school and notified the school by calling or providing either a parent's note or a doctor's note for T.R. for every absence. Appellant

testified that the school's record was incorrect regarding T.R.'s unexcused absences because three of the 14 days the school's record reflected T.R. having an unexcused absence, T.R. was actually at school. Appellant testified that on three occasions she took T.R. to school, and yet still received a call from the school inquiring of T.R.'s whereabouts. According to appellant's testimony, T.R. was later located at school.

{¶12} After a thorough review of the record, we find that appellant's conviction was not against the manifest weight of the evidence. The state provided evidence regarding T.R.'s unexcused absences through the admission of attendance records and Huff's testimony. This testimony indicated that T.R. had 14 unexcused absences in a period of four months. Appellant provided differing testimony regarding T.R.'s absences, testifying that on three of the days the school's record reflected T.R. as having unexcused absences, T.R. was actually at school. However, it is primarily the task of the trier of fact to evaluate the credibility of the witnesses when conflicting testimony is provided. See *Harbarger*, 2011-Ohio-5749. Further, appellant never explained why T.R. missed any of the days documented in the attendance report as unexcused absences to legitimize the absences, nor provided a date as to when she officially withdrew T.R. from the Mason City School District.

{¶13} In light of the foregoing, we cannot say the trial court lost its way or that a manifest miscarriage of justice occurred by believing the testimony of the truancy officer and finding that T.R. was an habitual truant. Therefore, appellant's conviction for contributing to the unruliness of a child is supported by the manifest weight of the evidence. Consequently, this finding is also dispositive of the sufficiency challenge and appellant's sole assignment of error is overruled.

{¶14} Judgment affirmed.

POWELL, P.J., and RINGLAND, J., concur.