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NOS. 4-10-0885, 4-10-0886, 4-10-0887 cons.

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: Jae. E., a Minor,)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
Petitioner-Appellee,)	Vermilion County
v. (No. 4-10-0885))	No. 10JA80
LATOYA RHODES,)	
Respondent-Appellant.)	
-----)	
In re: Jna. E., a Minor,)	No. 10JA81
THE PEOPLE OF THE STATE OF ILLINOIS,)	
Petitioner-Appellee,)	
v. (No. 4-10-0886))	
LATOYA RHODES,)	
Respondent-Appellant.)	
-----)	
In re: Jaa. E., a Minor,)	No. 10JA82
THE PEOPLE OF THE STATE OF ILLINOIS,)	
Petitioner-Appellee,)	
v. (No. 4-10-0887))	Honorable
LATOYA RHODES,)	Nancy S. Fahey,
Respondent-Appellant.)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Presiding Justice Knecht and Justice McCullough concurred in the judgment.

ORDER

Held: The trial court did not err in its neglect finding where the minor's hearsay statements were properly corroborated.

In May 2010, the State filed a petition for adjudication of wardship of Jae. E. (born February 12, 1996), Jna. E. (born September 15, 1997), and Jaa. E. (born January 8, 2005), the

minor children of Latoya Rhodes, respondent. The minors' father is not a party to this appeal. Following a September 2010 adjudicatory hearing, the trial court found the children to be neglected minors. Respondent appeals, arguing the court erred in its neglect finding. We affirm.

I. BACKGROUND

A. Petition for Wardship

On May 7, 2010, the State filed petitions for adjudication of wardship of the minors. The State's petitions alleged the minors were neglected children 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 2008)) in that their environment was injurious to their welfare due to domestic violence in the home. On May 12, 2010, the trial court entered an order granting the Department of Children and Family Services (DCFS) temporary custody of the minors.

B. Adjudicatory Hearing

1. *Scott Damilano's Testimony*

At the September 22, 2010, adjudicatory hearing, Officer Scott Damilano testified that on May 6, 2010, he spoke with Jae. E. in connection with a domestic-violence complaint filed the previous day. Damilano testified Jae. E. told him she was involved in a verbal fight with respondent over the use of her cell phone. Jae. E. explained the fight became physical and her

father held her down and slapped her across the face. Damilano testified he observed bruises on Jae. E.'s face and arms.

Damilano also testified he interviewed Jae. E.'s father, who stated the incident occurred because her mother tried to take away Jae. E.'s cell phone. He admitted slapping Jae. E. but stated she struck him first. Damilano testified Jae. E.'s father also stated "things got out of control" and admitted he "might have slapped her too hard." However, he denied causing the injuries to her shoulders or arms. Damilano arrested him for domestic battery.

2. Anna Fotte's Testimony

Anna Fotte, a DCFS investigator, testified DCFS received a report of an altercation between Jae. E. and her parents and that Jae. E. had sustained extensive bruising. Fotte explained the altercation centered around Jae. E.'s use of a cell phone. She testified the father held Jae. E. down and was asking respondent to grab the phone. Fotte testified Jae. E.'s father admitted striking her with his open hand and felt he hit her "too hard." Fotte testified she observed bruising on the side of Jae. E.'s face and scrapes on her shoulder blades. The State then introduced photographs of Jae. E.'s injuries into evidence.

Fotte also testified she interviewed Jae. E., who told Fotte her father had hit her with the side of his fist. Fotte explained Jae. E. thought the bruising to her shoulders occurred

while her father was holding her down. Jae. E. also mentioned various incidents where her father grabbed and pushed her, but no details of such incidents were elicited at the hearing. Fotte also interviewed the other two minors. While Jaa. E. was unresponsive, Jna. E. told Fotte her father had grabbed her by the neck and had been rough with her in the past. Jae. E. and Jna. E. told her they felt afraid because every time their mother would ask their father to leave, she would always allow him to come back.

Fotte explained she initially wanted to put a safety plan in place instead of protective custody. However, both of the girls indicated they did not feel respondent would be able to protect them "as far as keeping dad out of the home even though [the father] had offered to leave the home." When Foote asked respondent if she would be willing to keep the father out of the home "she basically said maybe I will and maybe I won't."

3. Respondent's Testimony

According to respondent's testimony, at around 10 or 10:30 p.m., her younger son came downstairs and told her Jae. E. was talking to boys on her cell phone. Respondent testified she was concerned because Jae. E. had been sneaking 18-year-old boys in and out of her grandmother's window. She also testified the phone company was supposed to have shut the phone off. Jae. E.'s father went upstairs to ask Jae. E. for the phone, but she

refused and asked for respondent. When respondent came up to the room, Jae. E.'s father was standing up and Jae. E. was lying down on a futon. Respondent attempted to grab the phone from Jae. E., but Jae. E. held her hands behind her back and refused to give it to her. Respondent then began struggling with Jae. E. to retrieve the phone. Jae. E. braced herself against the futon. Respondent explained she believed Jae. E. bruised and scratched herself on the futon's springs. Jae. E. eventually dropped the phone and respondent picked it up.

Respondent testified Jae. E. continued to scream at her parents to give her back her phone, telling them it was *her* phone, they did not pay the bill, and they could not tell her what to do. At this point, Jae. E. was sitting on her bed and kicking her feet at respondent. Respondent was trying to hold Jae. E. on the bed to get her to stop kicking her. Jae. E. also picked up shoes and perfume bottles and threw them at her father. Respondent testified Jae. E. also hit her father and ripped his shirt. Respondent then observed Jae. E.'s father slap Jae. E. across the face. At that point, everything stopped. Jae. E. ran downstairs and called the police.

Respondent also testified to previous instances of domestic abuse between her and the minors' father. Respondent testified the most recent incident occurred in March 2010 when she called the police because the father became angry and kicked the car.

At the conclusion of the adjudicatory hearing, the trial court found the State had shown neglect as to all three minors in that their environment was injurious to their welfare due to domestic violence in the home.

C. Dispositional Report

On October 15, 2010, DCFS filed a dispositional report. The report indicated past instances of domestic violence. While respondent estimated the last incident was over 10 years ago and she had not filed a police report since then, she also cited an incident occurring in March 2010 where the father became angry and kicked the car. The report recommended, *inter alia*, (1) the court find the parents unfit, (2) the minors remain in foster care, (3) the parents participate in parenting education classes and Family Life Skills, (4) respondent's continued attendance at individual counseling and psychiatric services, and (5) the case be set for an April 2011 permanency review hearing.

D. Dispositional Hearing

At the October 20, 2010, dispositional hearing, the foster-care caseworker clarified the dispositional report's recommendations included the father's participation in anger management and counseling. The State requested the trial court (1) adopt the dispositional report's recommendations, (2) make the minors wards of the court, (3) find the parents unfit, and (4) set the matter for a permanency review in the next six months. Both respondent

and Jae. E.'s father agreed with the report's recommendations.

At the conclusion of the dispositional hearing, the trial court found the parents "unfit or unable for some reason other than financial circumstances alone, to care for, protect, train or discipline the minors or are unwilling to do so, and that the appropriate services aimed at family reunification have been unsuccessful at this point in time."

This appeal followed.

II. ANALYSIS

On appeal, respondent argues the trial court erred in finding the minors neglected. Specifically, respondent contends hearsay statements relating to incidents of domestic violence were uncorroborated and should not have been relied upon by the trial court in determining neglect. We disagree.

A. Standard of Review

At the adjudicatory hearing, the trial court determines whether a minor is neglected. See 705 ILCS 405/2-21(1) (West 2008); *In re A.M.*, 358 Ill. App. 3d 247, 252, 831 N.E.2d 648, 653 (2005). The issue on review is not whether we, sitting as trial judges, would have made the same finding of neglect, but rather whether the trial court's finding is contrary to the manifest weight of the evidence. *In re A.P.*, 179 Ill. 2d 184, 204, 688 N.E.2d 642, 652 (1997) (trial court's finding of whether neglect occurred should not be disturbed on appeal unless it is contrary

to the manifest weight of the evidence). A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident. *In re A.W.*, 231 Ill. 2d 241, 254, 897 N.E.2d 733, 740 (2008).

B. Adjudicatory Hearing

We initially note respondent points out the altercation injuring Jae. E. involved the minor's father and not her. However, the purpose of the adjudicatory hearing is to determine whether the minor is neglected. 705 ILCS 405/1-3(1) (West 2008). The fault of each parent is not an issue at the adjudicatory hearing. See *In re Arthur H.*, 212 Ill. 2d 441, 466-67, 819 N.E.2d 734, 748-49 (2004) (the only question to be resolved at an adjudicatory hearing is whether a child is neglected, and not whether every parent is neglectful). The fact respondent was not directly responsible for the abuse does not preclude a neglect finding. See *In re A.W.*, 231 Ill. 2d 92, 103, 896 N.E.2d 316, 323 (2008) (the issue in a neglect finding is whether the minor was neglected and not which parent was responsible for the neglect). Having found the fault of each parent is not an issue at the adjudicatory hearing, we must next determine whether Jae. E.'s hearsay statements were sufficiently corroborated to support the trial court's finding of neglect.

C. Hearsay Statements

Officer Damilano testified Jae. E. stated her father held

her down and slapped her across the face. Fotte also testified Jae. E. stated her father had hit her with the side of his fist. Section 2-18(4)(c) of the Juvenile Court Act provides the following:

"Previous statements made by the minor relating to any allegations of abuse or neglect shall be admissible in evidence. However, no such statement, if uncorroborated and not subject to cross-examination, shall be sufficient in itself to support a finding of abuse or neglect." 705 ILCS 405/2-18(4)(c) (West 2008).

However, hearsay statements of a minor admitted pursuant to section 2-18(4)(c) may be sufficient to support a finding of neglect where corroboration exists that the neglect occurred. *A.P.*, 179 Ill. 2d at 198, 688 N.E.2d at 649-50. "[C]orroborating evidence of the abuse or neglect requires there to be independent evidence which would support a logical and reasonable inference that the act of abuse or neglect described in the hearsay statement occurred." *A.P.*, 179 Ill. 2d at 199, 688 N.E.2d at 650.

In this case, both Damilano and Foote testified to the statements made by Jae. E. that she was held down and her father hit her across the face. Jae. E.'s statements were corroborated when both Damilano and Foote testified they observed bruising to her face, arms, and shoulders. The State also introduced photographs of the minor's injuries into evidence. See 705 ILCS

405/2-18(1)(e) (West 2008) ("proof of injuries sustained by a minor or of the condition of a minor of such a nature as would ordinarily not be sustained or exist except by reason of the acts or omissions of the parent *** shall be prima facie evidence of abuse or neglect"). Jae. E.'s statements were further corroborated when respondent testified she witnessed the minor's father slapping Jae. E. Finally, Jae. E.'s father *admitted* he struck her and that he might have slapped her too hard.

Respondent argues other statements regarding incidents of past domestic violence amount to uncorroborated hearsay. However, there is no indication in the record the trial court relied on any statements other than the corroborated statements of Jae. E. Moreover, respondent does not cite those other statements or explain how they were uncorroborated. While we recognize there is no *per se* rule that neglect of one minor conclusively establishes neglect of another, proof of neglect of one minor is admissible on the issue of neglect of any other minor for whom the respondent is responsible. *Arthur H.*, 212 Ill. 2d at 468-69, 819 N.E.2d at 749-50; 705 ILCS 405/2-18(3) (West 2008). Further, under the theory of anticipatory neglect, the State seeks to protect those minors who have a probability of being subject to neglect because they reside with an individual who has been found to have neglected another child. *Arthur H.*, 212 Ill. 2d at 468, 464 N.E.2d at 749. The court need not wait until actual physical

harm is suffered by Jna. E. and Jaa. E. prior to taking protective measures. See *Arthur H.*, 212 Ill. 2d at 477, 819 N.E.2d at 754.

In this case, the father resided with respondent and had daily interactions with the minors. Both Jae. E. and Jna. E. stated they felt afraid because every time their mother had asked their father to leave, she would always allow him to come back. In addition, Foote testified respondent appeared unwilling or unable to keep the father out of the home. Thus, the possibility exists the continued presence of the father could subject the remaining minors to similar instances of abuse or neglect.

We believe this to be a close case. Jae. E.'s behavior was certainly provocative and we do not condone it. However, considering the extent of Jae. E.'s bruising and her father's admission that he may have struck her too hard, we cannot say the trial court's finding of neglect due to an injurious environment was against the manifest weight of the evidence.

III. CONCLUSION

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

Affirmed.