

Nos. 1-12-1575 and 1-12-1627 (Consolidated)

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

<i>In re</i> NOAH C., DILLYN O-C., ASIA C., and	)	Appeal from the
AIDEN C., Minors,	)	Circuit Court of
	)	Cook County.
Respondents-Appellees,)	
)	
(The People of the State of Illinois,	)	Nos. 11 JA 487
	)	11 JA 488
Petitioner-Appellee,	)	11 JA 489
	)	11 JA 490
v.)	
)	
Angela O-C. and Mark C.,	)	Honorable
	)	Nicholas Geanopoulos,
Respondents-Appellants.)	)	Judge Presiding.

ORDER

JUSTICE ROCHFORD delivered the judgment of the court.
Justices Karnezis and Cunningham concurred in the judgment.

- ¶ 1 **Held:** Trial court's adjudicatory order finding minors neglected, and its dispositional order making them wards of the court and placing them into the custody and guardianship of the Illinois Department of Children and Family Services, are affirmed where: (1) evidence supporting those orders was properly admitted; (2) evidence of the abuse and neglect of the minor's sibling presented at adjudicatory hearing supported trial court's reliance finding of anticipatory neglect; (3) parents' failure to successfully complete recommended services supported dispositional order; and (4) trial court's rulings did not violate parents' fifth amendment rights against self-incrimination.
- ¶ 2 In these consolidated appeals, respondents-appellants, Angela O-C. (appeal number 1-12-

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1575), and Mark C. (appeal number 1-12-1627) have challenged the trial court's adjudicatory ruling that their four minor children, respondents-appellees, Noah C., Dillyn O-C., Asia C., and Aiden C. (the minors), were abused and neglected due to both a substantial risk of physical injury, and due to living in an environment injurious to their welfare. The trial court's adjudicatory finding was based in part upon evidence of the abuse and neglect of the minor's older half-sister, Janise O., and premised upon a theory of anticipatory neglect. Angela O-C. and Mark C. have also challenged the trial court's dispositional order which, in light of their need to make more progress with respect to the abuse and neglect of Janise O., found them unable to care for the minors, made the minors wards of the court, and placed the minors into the custody and guardianship of the Illinois Department of Children and Family Services (DCFS). For the reasons that follow, we affirm.

¶ 3

I. BACKGROUND

¶ 4 The record reflects that Angela O-C. and Mark C. were married in 2004 and are the biological parents of: (1) Dillyn O-C. (male), born on July 4, 2004; (2) Asia C. (female), born on September 29, 2005; (3) Aiden C. (male), born on October 29, 2006; and (4) Noah C. (male), born on March 30, 2009. In addition, Angela O-C. is the biological mother of two older children resulting from a prior relationship: (1) Nicholas O. (male), born on February 12, 1993; and (2) Janise O. (female), born on January 12, 1996. All of these family members lived together in the family home at the time DCFS became involved with the family in late 2010.

¶ 5 DCFS began its involvement after Janise O. made an allegation that Mark C. had sexually molested her. After an investigation, the State filed petitions for an adjudication of wardship on July 13, 2011, with respect to Noah C. (11 JA 487), Dillyn O-C. (11 JA 488), Asia C. (11 JA 489), and Aiden C. (11 JA 490). In addition, motions requesting that temporary custody of each minor be

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granted to DCFS were also filed on the same day. No such petition or motion was filed with respect to Janise O. because, while she had been living in the family home and was the basis of the initial involvement of DCFS with the family, at the time DCFS reviewed this matter for potential legal action she was living with other relatives in Kentucky. Furthermore, no wardship petition was filed with respect to Nicholas O. because he had reached the age of 18 and was, therefore, no longer a minor.

¶ 6 In the petitions that were filed in this matter, it was alleged that the four minors were: (1) neglected due to an environment injurious to their welfare, pursuant to section 2-3(1)(b) of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/2-3(1)(b) (West 2010)); and (2) abused due to Angela O-C. and Mark C. having created a substantial risk of physical injury, pursuant to section 2-3(2)(ii) of the Act (705 ILCS 405/2-3(2)(ii) (West 2010)). In support of these allegations, the petitions, motions, and supporting affidavits made a number of factual assertions. These included assertions that Angela O-C. had been the subject of one prior DCFS "indicated report"¹ for sexual molestation and for creating a substantial risk of sexual abuse, and that Mark C. had a similar indicated report for sexual penetration, sexual molestation, sexual exploitation, and for creating a substantial risk of sexual injury. The alleged victims with respect to these reports were Janise O. and the minors' cousin, Chelsea W.

¶ 7 The petition, motions, and affidavits further alleged that on or about November 15, 2010, Angela O-C. admitted that Janise O. had previously contended that Mark C. had sexually abused her, but that Angela O-C. did not believe Janise O.'s contention. Furthermore, on or about December

¹ Such a report is made by DCFS "if an investigation determines that credible evidence of the alleged abuse or neglect exists." 325 ILCS 5/3 (West 2010).

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1, 2010, Angela O-C. admitted to being aware of a prior sexual incident involving Mark C. and Chelsea W., and to "not responding appropriately" to that situation. An "intact case" was opened to offer services to the family on or about January 19, 2011, but neither Angela O-C. nor Mark C. had been compliant with those services. Specifically, Angela O-C. had not been compliant with her counseling, and Mark C. had refused to undergo a sex offender evaluation or to sign any of the required paperwork. Finally, Angela O-C. and Mark C. had an unstable living situation and, while the two had a continuing relationship, Mark C.'s current address had not been confirmed.

¶ 8 In light of the State's petitions and motions, a temporary custody hearing was held on July 29, 2011. At the conclusion of this hearing, the trial court entered a host of written orders in which the court: (1) appointed the Cook County public guardian to be the attorney and guardian *ad litem* of the minors; (2) appointed attorneys to represent Angela O-C. and Mark C.; (3) found Mark C. to be the father of each of the four minors in light of his admission of paternity in open court; (4) placed the minors in the temporary custody of DCFS; and (5) allowed Angela O-C. and Mark C. to participate in supervised visits with the minors. Additionally, the trial court entered orders directing that a number of service providers release the medical records of Janise O. to the State and to the public guardian. The record reflects that the minors were subsequently placed in the home of their maternal aunt in November of 2011.

¶ 9 An adjudicatory hearing was held in this matter on multiple dates in January and February of 2012. At the hearing, the trial court was presented with the testimony of: (1) Michael Booker, a DCFS division of child protection investigator; (2) Lynn Henry, an intact family caseworker with Catholic Charities; and (3) Heather Schumacher, a Catholic Charities intact family program supervisor. The trial court also admitted the following exhibits into evidence: (1) the family's DCFS

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service plan, initiated on July 18, 2011; (2) Janise O.'s medical records from the Murray Women's Clinic in Murray, Kentucky; and (3) Janise O.'s mental health records from the Kenneth Young Center in Elk Grove Village, Illinois. However, portions of this testimony, and all of Janise O.'s medical and mental health records, were allowed into evidence over the objections of Angela O-C. and Mark C.

¶ 10 Specifically, Angela O-C. and Mark C. objected to the introduction of any testimony regarding prior statements made by Janise O., as well as the introduction of her records, on the grounds that any such evidence was inadmissible hearsay. Furthermore, both parents asserted that such evidence was not admissible under section 2-18 of the Act (705 ILCS 405/2-18 (West 2010)), which provides a number of evidentiary rules applicable to proceedings under the Act. The trial court rejected this argument, noting that the provisions of the Act were to be interpreted liberally in the best interests of the minors at issue. Thus, the trial court overruled the objections of Angela O-C. and Mark C. and found that both the testimony regarding Janise O.'s prior statements, as well as her medical and mental health records, would be admitted into evidence.

¶ 11 In light of the trial court's ruling, Mr. Booker testified regarding his investigation of this matter. That investigation began in November of 2010, when he conducted initial interviews with both Janise O. and Angela O-C. In Mr. Booker's initial interview with her, Janise O. told him about two interactions with Mark C. that were of a sexual nature. The first occurred within the previous month, when Janise O. returned home after her curfew and after she had been smoking marijuana with friends. Angela O-C. was out looking for Janise O. at the time of her return and Janise O. was, therefore, confronted solely by Mark C. Janise O. told Mr. Booker that Mark C. told her that she was in "serious trouble," but that "if she *** gave him sex, that he would make sure that there was

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no trouble for her."

¶ 12 Janise O. also told Mr. Booker about a prior incident that occurred in Kentucky when she was nine years old. After Angela O-C. went to the grocery store, Mark C. called Janise O. into his bedroom and removed both her clothes and his own. After he told Janise O. to bend over the bed, she "felt his penis on her butt." Janise O. became afraid, and ran to the bathroom. While inside, she could hear Mark C. talking to Nick O. and she was, thereafter, allowed to leave the bathroom without further incident. Janise O. told Mr. Booker that she and her aunt, Freda, informed Angela O-C. about the incident in Kentucky.

¶ 13 In his initial interview with Angela O-C., Mr. Booker asked her about the allegations that had been made against Mark C. Angela O-C. stated that she was unaware of Janise O.'s allegations with respect to the most recent incident until Mr. Booker informed her of them. As far as she recalled, she returned home shortly after Janise O. on the night of the most recent alleged incident, and was informed by Mark C. that Janise O. ran straight into the bathroom. With respect to the allegation of prior sexual abuse by Mark C., she indicated that it had been investigated in Kentucky and Illinois, and "no evidence ever was presented to her that substantiated that it was true."

¶ 14 In December of 2010, Mr. Booker participated in additional interviews with Janise O. and Angela O-C. In his interviews with Angela O-C., she again indicated that she was aware of the allegations of abuse against Janise O. in Kentucky and that Mark C. has been previously investigated in both Kentucky and Illinois. However, Angela O-C. also continued to assert that "no credible evidence had been substantiated against Mark." Mr. Booker also testified the he and Angela O-C. also discussed another alleged incident involving Mark C. and Chelsea W., Angela O-C.'s niece. At first, Angela O-C. denied any knowledge of such an incident, but she did recall the incident after

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being provided with some specific allegations.

¶ 15 Specifically, Mr. Booker related to Angela O-C. that his investigation had revealed an incident in which Chelsea W. alleged that Mark C. sucked her breasts in exchange for money. Counsel for Mark C. objected to this testimony on the grounds that it was hearsay, and the State asked that it be "considered not for the truth of the matter asserted, but for the truth of the conduct." The court ruled that the testimony would be admitted on that basis and, thereafter, Mr. Booker testified regarding Angela O-C.'s response to being presented with this allegation. Mr. Booker testified that Angela O-C. did thereafter recall an incident in which she was given money that Mark C. had allegedly given to Chelsea W., and that "something possibly did happen that day between Mark and Chelsea." She further recalled that she might have subsequently thrown the money in Mark C.'s face and asked him to leave the residence. Additionally, Angela O-C. admitted that she never told Chelsea W.'s mother about this incident and that she was "wrong for not protecting her niece better."

¶ 16 Mr. Booker again spoke with Janise O. on December 8, 2010, after she had made a report at school about additional instances of sexual abuse by Mark C. In that conversation, Janise O. recalled that while she was previously living in Kentucky, Mark C. had "sucked her breasts and licked her vaginal area." She also stated that she was afraid of Mark C. because he had made threats against her and he was the family's "breadwinner."

¶ 17 Thereafter, Mr. Booker scheduled and observed a "Victim Sensitive Interview" with Janise O. in late December of 2010. That interview was conducted by a forensic interviewer, and was observed through a "two-way" mirror by Mr. Booker, a police detective, and an Assistant State's Attorney. During that interview, Janise O.'s statements and allegations were similar to those she had

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made in the past, albeit less detailed. Mr. Booker opined, without any objection, that had Janise O.'s allegations been more detailed during that interview, criminal charges would have been filed against Mark C.

¶ 18 Mr. Booker also interviewed Nick O. during his investigation. Nick O. told Mr. Booker that he had some issues with Janise O. because she was "angry and was always making problems in the home." Nick O. indicated that he was aware of Janise O.'s allegations, and recalled the incident involving Chelsea W. Thus, he was "aware that something was going on" even though he "could never put his finger on it." Still, Nick O. did not believe that the incidents involving Janise O. had occurred and stated that if he thought she was at risk, he would have taken some action. Nevertheless, Nick O. did acknowledge to having "some concerns about Mark and Janise."

¶ 19 In addition to his interviews, Mr. Booker's investigation also included obtaining and reviewing medical records from Kentucky regarding Janice O.'s allegations of sexual abuse there.

¶ 20 During his investigation, Mr. Booker and a police detective also spoke with Mark C. In that conversation, Mr. Booker stated that he was going to "substantiate evidence" against Mark C. with respect to the allegations that had been made against him, and Mark C. denied those allegations.

¶ 21 Finally, Mr. Booker testified that he had filed an indicated report in this matter on the basis of his conclusion that Janise O. has been sexually abused for years, and that Angela O-C. knew about this abuse and took no action. He also noted that Janise O. had never recanted her allegations. Furthermore, Mr. Booker testified that he recommended that Janise O. begin individual therapy to deal with the allegations of abuse, and that Mark C. complete a sex offender evaluation. Mark C. initially indicated that he would be agreeable to such an evaluation, so long as it was not too costly. Lastly, Mr. Booker testified that the initial safety plan that was put in place for the family allowed

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Angela O-C. to maintain custody over Janise O. and the minors, so long as Mark C. lived outside the family home. Additionally, Janise O. was temporally placed with a maternal aunt.

¶ 22 Ms. Henry testified that she was an intact family caseworker with Catholic Charities. In that role, Ms. Henry would typically receive a case from a DCFS investigator, make home visits, and arrange for services to address the issues that caused DCFS to be involved with a family. Ms. Henry had been assigned to this matter on January 19, 2011, after Angela O-C. and Mark C. had been indicated due to the evidence of Mark C.'s sexual molestation of Chelsea W. and his sexual exploitation, molestation, and penetration of Janise O. At that time, Ms. Henry and Mr. Booker participated in a visit with Angela O-C. in the family home.

¶ 23 At that meeting, Ms. Henry discussed the fact that the case had been "indicated," and also discussed the nature of the safety plan and services that were proposed for the family. The safety plan required that Mark C. have no contact with the children, and the services proposed included sex abuse therapy for Janise O. and a sex offender evaluation for Mark C. At the time, Angela O-C. indicated her willingness to participate in the safety plan and the proposed services. Ms. Henry also spoke to Mark C. on the phone the following day. While Mark C. did not agree with the case being indicated, he did agree to complete the recommended services.

¶ 24 Ms. Henry also testified regarding the family's living situation, indicating that while Angela O-C. and Mark C. were still married, Mark C. was not currently living in the family home pursuant to the safety plan. Rather, Ms. Henry understood that Mark C. was living in Carpentersville. Over the course of several months, Ms. Henry made weekly scheduled and unscheduled visits to the family home and never observed any indication that Mark C. was living there. Moreover, none of the minors ever indicated that Mark C. was still living there.

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¶ 25 However, Ms. Henry did observe Mark C. sitting in his car near the family home when she conducted an early morning unscheduled visit in February of 2011. Additionally, in April of 2011, Ms. Henry received a call from Janise O. in which she indicated that she was upset because Mark C. was in the neighborhood. Finally, all of Ms. Henry's visits with Mark C. took place in either the family home or at a McDonald's restaurant, and she was never able to conduct either a scheduled or unscheduled visit with him at the Carpentersville address which he had provided.

¶ 26 With respect to the services that had been arranged in this case, Ms. Henry testified that the initial referral for Janise O.'s sex abuse counseling proved unsuccessful because, in light of Angela O-C.'s denial that any sexual abuse actually occurred, the proposed counseling center would not accept the referral. Janise O. was, therefore, provided with services at the Kenneth Young Center, where she received a mentor and individual and group counseling. Those services continued until Janise O. went to live with her paternal aunt in Kentucky in June of 2011. Ms. Henry was not contacted by Angela O-C. before Janise O. left and, thus, no arrangements had been made for Janise O. to continue her therapy there. Ms. Henry was subsequently able to provide a referral for services in Kentucky to the aunt directly, after Angela O-C. failed to provide Janise O.'s new address there.

¶ 27 Additionally, while Mark C. initially agreed to comply with the proposed services, he subsequently refused to undergo the sex offender evaluation upon the advice of his lawyer. Angela O-C. was ultimately referred for her own counseling in July of 2011. Finally, Ms. Henry generally testified that her family visits were otherwise unremarkable, other than the fact that they began to be more irregular and difficult to schedule in May and June of 2011. Indeed, Ms. Henry had not been in contact with the family for some time before she finally spoke with Angela O-C., and was told that Janise O. had gone to live in Kentucky.

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¶ 28 Ms. Schumacher testified that she was Ms. Henry's supervisor at Catholic Charities. She became more involved in this matter in early July of 2011, when she learned that Ms. Henry had been unable to verify Mark C.'s address by visiting him in his home. After several phone calls and an unsuccessful attempt to complete an unscheduled visit to the Carpentersville address, Ms. Schumacher was able to schedule a visit at Mark C.'s residence on July 8, 2011. Both Angela O-C. and Mark C. were present, and Ms. Schumacher was informed that the house belonged to a family friend. There was some furniture in the home, but Mark C. indicated that he was sleeping on the floor, and there was no electrical service in place. This was the only attempt to visit Mark C. at the Carpentersville address that was successful.

¶ 29 Lastly, Ms. Schumacher testified that in July of 2011, she made a referral to Angela O-C. for individual counseling. She also provided Angela O-C. with a form for her signature that would give consent to the release of information. That form was required to be executed before counseling could begin, but Ms. Schumacher testified Angela O-C. wanted her attorney to review it before she signed it. However, Angela O-C. never returned a completed consent form prior to the initiation of legal proceedings in this matter.

¶ 30 As noted above, the trial court also accepted a number of documents into evidence at the adjudicatory hearing. First, the trial court admitted the family's DCFS service plan without objection. The service plan indicated that while the permanency goal for the minors was that the family remain intact, there had not been satisfactory progress toward achieving that goal. Specifically, the plan noted that this matter was brought to the attention of DCFS due to the report that Mark C. had raped Janise O. in the third grade, and the fact that Angela O-C. was aware the allegations and did not believe anything had occurred.

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¶ 31 Furthermore, the service plan indicated that a safety plan had been in place since January of 2011, which called for Mark C. to live outside the family home and to have no unsupervised visits or overnight visitation with the minors. While the family reported that they were in compliance with these requirements, the service plan also indicated that—upon the advice of legal counsel—neither Angela O-C. nor Mark C. had signed the previous service plan or the safety plan. The admitted service plan itself was, likewise, not signed by either Angela O-C. or Mark C.

¶ 32 With respect to Janise O., the plan stated that after some initial difficulties engaging her in services, she did start participating in individual and group therapy and a mentor program through the Kenneth Young Center. However, in June of 2011, Angela O-C. "decided to send Janise to Kentucky to reside with her paternal relatives." Indeed, Janise O. was reported as living with her paternal aunt, Jenna D., with Jenna D. having been granted custody of Janise O. by a Kentucky court on July 19, 2011. DCFS had provided Jenna D. a referral for Janise O. to continue her services there.

¶ 33 With respect to Mark C., the service plan indicates that he had not successfully engaged in recommended services. Specifically, on the advice of legal counsel, Mark C. had refused to complete a sex offender evaluation, or to sign a DCFS "rights and responsibilities" form, or a Catholic Charities' "Consent to Services" form. With respect to these failures, the service plan indicated:

"This proves to be a barrier to services. The case is stagnant, as a safety plan is in place indicating that Mark can only have supervised visits with his children and cannot reside in the home. [Mark C.] will need to be assessed by a professional who specializes in sexual abuse before the agency can consider lifting the safety plan. He has failed to complete this

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task."

¶ 34 Finally, with respect to Angela O-C., the service plan indicated that a referral had been made for her to engage in her own counseling services. However, and again upon the advice of legal counsel, Angela O-C. was reported to be unwilling "to sign consents nor be engaged in services. This continues to be a barrier in the progression of the case."

¶ 35 The State also introduced, over objection, Janise O.'s medical records from the Murray Women's Clinic in Murray, Kentucky. These records indicate that on September 18, 2005, when Janise O. was nine years old and living with her aunt Freda O. in Kentucky, she was taken to the emergency room of a local hospital. The emergency room records themselves were included within the clinic's files, and they indicate that Janise O. had been in Freda O.'s custody for a month. Janise O. had informed her aunt of an incident involving "Mark" that occurred while Angela O-C. was at the store. Mark had told Janise O. to bend on the bed and "humped" her. Janise O. was released from the emergency room with the understanding that Freda O. would follow up with the Murray Women's Clinic the following morning.

¶ 36 On September 21, 2005, Janise was evaluated by Dr. Kent Hjerpe and a nurse at the women's clinic. During that evaluation, Janise O. recounted three separate incidents involving "Mark" that occurred around July of that year when Janise O.'s mother was at the store. A progress note from the evaluation indicates Janise O. indicated that "[w]hile mama was gone to the store Mark would tell me to come lay down on the bed and spread my legs. He would hump me then until mama came home." In the first two incidents, Mark had "humped" Janise O. while both were fully clothed. In the most recent, however, Janise O. said that "Mark took out his 'private parts' and put his 'private parts' in her 'private parts.'" Dr. Hjerpe's physical exam revealed no bruising or distortion of

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anatomy. Nevertheless, the exam also revealed that the "introitus however appeared to be gapping and the hymen was clearly ruptured with only several hymenal tags noted. After separating the labia, the dilation of the vagina was approximately 2 cm."

¶ 37 Dr. Hjerpe also indicated that he took various cultures from Janise O.'s vagina, but the results of testing on those samples were not available at the time he wrote his report. However, a lab report contained in the clinic's records indicate that while Janise O. tested negative for any sexually transmitted disease or any DNA residue, she did have a vaginal infection that needed to be treated with antibiotics. When the staff at the clinic tried to relay this information to Freda O. in October of 2005, they were informed by Freda O. that "Janise is no longer in her care and she [is] unable to get meds to her. She is aware of the need for antibiotics but states that she has no control of the situation."

¶ 38 Lastly, the State introduced, again over objection, Janise O.'s mental health records from the Kenneth Young Center. These records indicate that shortly after Janise O. returned home from her temporary placement with her aunt, she was hospitalized for five days in January of 2011 for depression, suicidal thoughts, and a history and risk of self injury arising out of allegations of sexual abuse she made to a school counselor. She was diagnosed with major depressive disorder and post-traumatic stress disorder and was, thereafter, treated in an outpatient program.

¶ 39 The Kenneth Young Center records also indicate that, Janise O., then 15 years old, alleged that she has suffered from sexual exploitation at the hands of Mark C. since she was 8 years old. This exploitation included fondling, touching in "sensitive areas," comments of a sexual nature, and had continued off and on over the years. Janise O. described Mark C. as a "rapist," stated that she had been raped in the third grade by Mark C. in Kentucky, and stated that she was fearful of him and

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his eventual return home. She also indicated that "she has never been supported by her mother because when she would tell her mother her mother would accuse her of lying." All of this has caused Janise O. to feel depressed and suicidal, "because she feels she is trapped and there is nowhere else to go with this and she doesn't feel she is getting support from family and others about this issue." At another time, Janise O. indicated that she felt mad "because of all the stuff going on in my life and that my step dad raped me and got away with it." Janise O. indicated that she smoked marijuana "on and off," or every other week, to "calm down and forget about stuff."

¶ 40 These records also include progress notes regarding Janise O.'s participation in counseling and mentoring services between January and July of 2011. Throughout these notes, Janise expressed "frustration" with Angela O-C.'s lack of support and continued to "present as depressed and anxious about her step father returning into the [family] home." The records also include numerous instances of Janise O.'s service providers having difficulty contacting Angela O-C. to coordinate those services and numerous missed appointments. Additionally, Janise O.'s service providers experienced difficulty with getting Angela O-C. to cooperate with certain paperwork requirements regarding Janise O.'s services.

¶ 41 Nevertheless, Janise was reported to be making progress in her group and individual therapy sessions. However, in May of 2011, the progress notes began to indicate that Janise might be relocating to Kentucky to live with her father. The notes indicate that both Janise O. and Angela O-C. indicated that this might be a possibility, and the move might be permanent or temporary. The final progress report from July of 2011 indicates there was no indication that services would be continuing, as Janise O. was now living with her father and aunt in Kentucky. The note also generally indicated that Angela O-C. had not been engaged in Janise O.'s therapy.

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¶ 42 In announcing its ruling at the conclusion of the hearing, the trial court noted that it had considered all of the evidence, including the testimony presented and the documents entered into evidence, even if that evidence was not specifically mentioned in his oral ruling or written order. The court also noted that, under a theory of anticipatory neglect, it did not have to wait until a child is actually injured to make a finding of abuse or neglect as to other children.

¶ 43 The court then specifically noted that Janise O.'s medical records from Murray Women's Clinic showed that she had a ruptured hymen, and that Janise O. had been making allegations of abuse since she was eight years old. The court also noted that while there was no evidence that Mark C. was living in the family home in violation of the safety plan, it was not at all clear that he was living at the Carpentersville address as he claimed. The trial court also noted that Mark C. refused to participate in a sexual offender evaluation, and that it appeared that Angela O-C. sent Janise O. to Kentucky despite the fact that she was engaged in services here in Illinois. In the end, and based upon the "totality of the evidence," the trial court found the State had established that the four minors were neglected due to an environment injurious to their welfare and abused due to a substantial risk of physical injury by a preponderance of the evidence.

¶ 44 The matter then proceeded to a dispositional hearing on May 2, 2012. The sole witness at that hearing was Donna McKenzie, who testified that she had been the minor's caseworker since December of 2011. With respect to the minors, Ms. McKenzie testified that they had been placed with a maternal aunt, and they were generally well cared for. Additionally, Angela O-C. and Mark C.'s supervised visits with the minors occurred regularly, and both the minors and their parents interacted in a loving and appropriate way. The aunt had noticed some "acting out" and other evidence of separation anxiety from Aiden C. and Noah C., however, and Aiden C. had, therefore,

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been referred for and accepted into a therapy program.

¶ 45 Ms. McKenzie also testified regarding the services in place for Angela O-C. and Mark C., which included couples therapy as well as joint and individual sex abuse therapy. Ms. McKenzie had talked with the couples therapist, reviewed the therapist's written report, and testified that this service was generally going well. Both Angela O-C. and Mark C. were engaged in couples therapy and had regular attendance at the therapy sessions. One of the goals for couples therapy was to address the factors that contributed to the minors being removed from the home. However, Ms. McKenzie had not discussed progress on this goal with the therapist, and she did not believe that this goal was treated in great detail in the written report.

¶ 46 However, Ms. McKenzie testified that the individual and joint sex abuse therapy was not progressing as well. Ms. McKenzie stated that she had provided the sex abuse therapist with the medical records introduced at the adjudicatory hearing, and that the point of the therapy was generally to address the allegations made by Janise O. However, the therapist reported to Ms. McKenzie that both Angela O-C. and Mark C. continue to maintain that no abuse had ever taken place. Indeed, the therapist indicated that Angela O-C. asserted that the medical evidence itself "didn't prove anything." Due to the fact that Angela O-C. and Mark C.'s outlook on this matter had not changed at all, the sex abuse therapist was intending to "issue a discharge report because he does not see where the therapy would be helpful at this point." While Ms. McKenzie testified that there was no requirement that either Angela O-C. or Mark C. admit that sexual abuse occurred, there was an expectation that they would make progress in addressing the very issue that caused DCFS to become involved in this matter.

¶ 47 Ms. McKenzie also testified regarding a conversation with Janise O.'s aunt, who had custody

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of her in Kentucky. The aunt indicated that Angela O-C. had recently made an unannounced visit, and during the visit said things to Janise O. that were "hurtful and inappropriate." Specifically, the aunt indicated that during the visit she walked in on Angela O-C. standing over Janise O. and saying "why are you doing this. You don't know what you've caused. You've broken up the family." When Ms. McKenzie talked to Angela O-C. directly about the visit to Kentucky, Angela O-C. said that the visit went very well and that there were "no problems."

¶ 48 In sum, Ms. McKenzie testified she was recommending that the minors be made wards of the court, and that Angela O-C. and Mark C. continue to be allowed only unsupervised visits. In support of this recommendation, Ms. McKenzie recognized that both Angela O-C. and Mark C. had made some progress, and that they both loved the minors. However, she had not seen "substantial progress in the area that's surrounding why the case came in." She indicated that a clinical staffing was to be scheduled within the next month, at which her agency would address the issue of sexual abuse and determine what type of services Angela O-C. and Mark C. would need going forward in order for unsupervised visits to take place and, ultimately, for the family to be reunified.

¶ 49 At the dispositional hearing, the written report of the couples therapist was also entered into evidence. In general, that report conformed to Ms. McKenzie's testimony regarding Angela O-C. and Mark C.'s participation in couples therapy. The report did indicate that the couples therapist could not say what had actually happened with respect to the allegations of sexual abuse. Nevertheless, both Angela O-C. and Mark C. had adamantly denied those allegations and appeared to the therapist to be open, forthright, and honest in their work in therapy.

¶ 50 At the conclusion of the hearing, the trial court recognized that Angela O-C. and Mark C. were engaged in services, were generally compliant, and were regularly participating in appropriate

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visits with the minors. The trial court also recognized that the minors wanted to be with their parents. However, the trial court also noted that those visits continued to be supervised, and that "additional time would be necessary to complete services before the children are returned home." The trial court found that both the clinical staffing and unsupervised visits should take place before the minors were returned to the care of Angela O-C. and Mark C. In light of these findings, the trial court found that both parents were unable to care for, protect, train, or discipline the minors and, that it was in the minors' best interest to be made wards of the court and for them to be placed into the custody and guardianship of DCFS. A permanency hearing was held immediately thereafter, at the conclusion of which the trial court entered an order reflecting a goal that the minors be returned to Angela O-C. and Mark C. within 12 months.

¶ 51 Angela O-C. filed a timely appeal from the trial court's adjudicatory and dispositional orders on May 31, 2012. On June 20, 2012, this court allowed Mark C.'s motion to file a late notice of appeal from the same orders. On July 23, 2012, this court granted the minor's motion to consolidate the two appeals.

¶ 52 II. ANALYSIS

¶ 53 Angela O-C. and Mark C. raise a number of challenges to the trial court's rulings on appeal, and we address each of these arguments in turn.

¶ 54 A. Evidentiary Rulings

¶ 55 We first consider Angela O-C.'s assertion that the trial court improperly admitted into evidence testimony about the hearsay statements of Janise O. and Chelsea W., as well as Janise O.'s

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medical and mental health records.²

¶ 56 Before proceeding further, we make a number of preliminary points. First, the record reflects that a service plan was entered into evidence at the adjudicatory hearing without objection and was, therefore, properly considered by the trial court in its findings and conclusions.

¶ 57 Second, Angela O-C. continues to assert that the trial court improperly allowed hearsay evidence to be admitted when it permitted the introduction of testimony regarding the allegations of abuse with respect to Chelsea W. However, it is well recognized that "an out-of-court statement offered into evidence for some purpose other than to prove the truth of the matter asserted is not hearsay. [Citation.]" *In re Marriage of Roepenack*, 2012 IL App (3d) 110198, ¶ 44. "For example, if a statement is offered to prove its effect on the listener's state of mind, or to show why the listener acted as he did, it is not hearsay." *Luss v. Village of Forest Park*, 377 Ill. App. 3d 318, 334 (2007) (quoting *People v. Evans*, 373 Ill. App. 3d 948, 964 (2007)).

¶ 58 Here, the record clearly reflects that after Mark C. raised a hearsay objection to this testimony at the adjudicatory hearing, the State asked that it be "considered not for the truth of the matter asserted, but for the truth of the conduct." The trial court agreed and then ruled that the testimony would be admitted on that basis. Thus, it is evident that the evidence of the abuse of Chelsea W. was not hearsay, as it was admitted to show the effect of those allegations on Angela O-C.'s state of mind and to show what actions she did or did not take after being informed of those

² While only Angela O-C. raised these issues in her opening brief, Mark C. purports to adopt her arguments on these issues in his reply brief. However, Supreme Court Rule 341(h)(7) (Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008)) clearly states that points not raised in an appellant's opening brief "are waived and shall not be raised in the reply brief, in oral argument, or on petition for rehearing." In any case, because Angela O-C.'s opening brief has clearly put these issue before this court, we need not consider the effect of Mark C.'s waiver of these issues.

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allegations.

¶ 59 Third, we note that Angela O-C. asserts that Janise O.'s medical and mental health records were improperly allowed into evidence because they were not properly admissible pursuant to section 2-18(4)(a) of the Act. 705 ILCS 405/2-18(4)(a) (West 2010). However, other than this general assertion and a citation to the relevant statutory provision, Angela O-C. has provided this court no further analysis or argument with respect to this issue. Again, Supreme Court Rule 341(h)(7) (Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008)), requires that any such argument "shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on," and that parties waive any points not argued on appeal.

¶ 60 Angela O-C.'s waiver of this issue aside, we find that this evidence was, in fact, properly admitted. The decision to admit or exclude evidence generally rests within the sound discretion of the trial court and that decision will not be disturbed absent an abuse of discretion. *Wilbourn v. Cavalenes*, 398 Ill. App. 3d 837, 847 (2010). However, where an evidentiary issue presents a question of statutory construction, we review the trial court's statutory interpretation *de novo*. *In re I.H.*, 238 Ill. 2d 430, 438 (2010).

¶ 61 Section 2-18 of the Act contains a number of provisions regarding the admissibility and significance of various types of evidence. 705 ILCS 405/2-18 (West 2010). Of particular note, with respect to the medical and mental health records admitted in this matter, is section 2-18(4)(a) which provides:

"Any writing, record, photograph or x-ray of any hospital or public or private agency, whether in the form of an entry in a book or otherwise, made as a memorandum or record of any condition, act, transaction, occurrence or event relating to a minor in an abuse, neglect

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or dependency proceeding, shall be admissible in evidence as proof of that condition, act, transaction, occurrence or event, if the court finds that the document was made in the regular course of the business of the hospital or agency and that it was in the regular course of such business to make it, at the time of the act, transaction, occurrence or event, or within a reasonable time thereafter. A certification by the head or responsible employee of the hospital or agency that the writing, record, photograph or x-ray is the full and complete record of the condition, act, transaction, occurrence or event and that it satisfies the conditions of this paragraph shall be prima facie evidence of the facts contained in such certification. A certification by someone other than the head of the hospital or agency shall be accompanied by a photocopy of a delegation of authority signed by both the head of the hospital or agency and by such other employee. " 705 ILCS 405/2-18(4)(a) (West 2010).

Here, there was no argument raised below that the medical and mental health records in question were made in the ordinary course of business, or that they failed to meet the certification or delegation requirements of section 2-18(4)(a). Indeed, both sets of records contained in the record on appeal do, in fact, include the required certifications and delegations. Instead, the question raised below was whether Janise O.'s records can accurately be viewed as having been "made as a memorandum or record of any condition, act, transaction, occurrence or event *relating to* a minor in an abuse, neglect or dependency proceeding." (Emphasis added.) 705 ILCS 405/2-18(4)(a) (West 2010).

¶ 62 However, it is clear that allegations of the sexual abuse of Janise O., and the way Angela O-C. and Mark C. either did or did not properly and successfully address those allegations, were central to these proceedings. Indeed, these concerns formed—at least in part—the basis for the trial

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court's adjudicatory finding of anticipatory neglect with respect to the minors and its dispositional finding that the minors should be made wards of the court. The medical and mental health records of Janise O. contained evidence directly relevant to these issues and were, therefore, properly admissible.

¶ 63 Indeed, our conclusion finds support in a number of previous decisions finding records regarding individuals other than the minor subject to a proceeding under the Act admissible pursuant to section 2-18(4)(a). See *In re M.S.*, 210 Ill. App. 3d 1085, 1095-96 (1991) (parent's medical records); *In re Precious W.*, 333 Ill. App. 3d 893, 900-01 (2002) (medical records of mother and sibling); *In re Kenneth J.*, 352 Ill. App. 3d 967, 983-84 (2004) (mother's parenting assessment report). Therefore, we find that the trial court properly construed section 2-18(4)(a) to allow Janise O.'s medical and mental health records to be admitted into evidence.

¶ 64 The only remaining evidentiary matter raised on appeal is the trial court's rejection of the objections to the introduction of testimony from Ms. Henry and Mr. Booker relating to Janise O.'s statements, including her prior claims of sexual abuse. Specifically, Angel C. contends that because no petition for wardship was pending against Janise O., such testimony was not admissible pursuant to section 2-18(4)(c) of the Act which provides: "Previous statements made by the minor relating to any allegations of abuse or neglect shall be admissible in evidence." 705 ILCS 405/2-18(4)(c) (West 2010).

¶ 65 However, any error in the admission of evidence may be deemed harmless where ample evidence was otherwise properly admitted to support the court's findings. *In re J.C.*, 2012 IL App (4th) 110861, ¶ 29. Here, we need not decide this final evidentiary issue, as we find that the other evidence properly admitted below is sufficient to support the trial court's adjudicatory and

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dispositional orders.

¶ 66

B. Adjudicatory Order

¶ 67 Thus, we next address the challenge to the trial court's adjudicatory order finding the minors abused and neglected.

¶ 68

1. Evidence Admitted at Adjudicatory Hearing

¶ 69 Before proceeding to a discussion of the propriety of the trial court's adjudicatory order, we briefly note that Mark C. appears to base some of his arguments on appeal upon evidence that was not actually admitted at the adjudicatory hearing.

¶ 70

Specifically, Mark C.'s arguments against the trial court's adjudicatory order repeatedly cite to a number of documents contained in the record on appeal, including a version of the DCFS service plan, a copy of the records from Murray Women's Clinic, notes regarding Mr. Booker's various interviews, and records of medical evaluations of the minors that were completed after they were taken into temporary custody. These documents are contained in volume 6 of the record prepared in appeal number 1-12-1575, pages 3 through 176. It is not entirely clear from the record, but it appears that at least some of these documents—file stamped July 29, 2011—may have been admitted at the initial temporary custody hearing. Additionally, the version of the service plan cited by Mark C. appears to have been entered into evidence at the permanency hearing which followed the entry of the trial court's dispositional order.

¶ 71

However, what is clear from the record on appeal is that these documents were not actually entered into evidence at the adjudicatory hearing. As noted above, only three exhibits were entered into evidence at that hearing: (1) the family's DCFS service plan; (2) Janise O.'s medical records from the Murray Women's Clinic; and (3) Janise O.'s mental health records from the Kenneth Young

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Center. The record on appeal contains an entirely separate copy of just these documents. These documents are contained in volume 6 of the record prepared in appeal number 1-12-1575, pages 208 through 249, and in volume 7 of the same record, pages 1 through 181. Moreover, notations on these documents clearly indicate that it is this set of records that was, in fact, entered into evidence at the adjudicatory hearing.

¶ 72 It is axiomatic that a reviewing court must determine sufficiency of the evidence presented at a given hearing based upon the evidence actually presented to the trial court. *In re Bobby F.*, 2012 IL App (5th) 110214, ¶ 23 (2012). Because the documents cited by Mark C. were not entered into evidence at the adjudicatory hearing, we will not consider them on appeal.

¶ 73 2. Legal Framework and Standard of Review

¶ 74 The Act provides a "step-by-step process used to decide whether a child should be removed from his or her parents and made a ward of the court." *In re Arthur H.*, 212 Ill. 2d 441, 462 (2004). Thus, after a petition for wardship has been filed and a child has been placed in temporary custody, the circuit court must proceed to make an adjudicatory finding of abuse, neglect, or dependence, before it conducts a hearing as to wardship. *Id.*; 705 ILCS 405/2-21(1), (2) (West 2010).

¶ 75 Section 2-3(2)(ii) of the Act provides:

"(2) Those who are abused include any minor under 18 years of age whose parent or immediate family member, or any person responsible for the minor's welfare, or any person who is in the same family or household as the minor, or any individual residing in the same home as the minor, or a paramour of the minor's parent:

* * *

(ii) creates a substantial risk of physical injury to such minor by other than

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accidental means which would be likely to cause death, disfigurement, impairment of emotional health, or loss or impairment of any bodily function." 705 ILCS 405/2-3(2)(ii) (West 2010).

¶ 76 Furthermore, section 2-3(1)(b) of the Act provides that a neglected minor 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 2010). Neglect is broadly defined as "the failure to exercise the care that circumstances justly demand and encompasses both willful and unintentional disregard of parental duty." *In re Kenneth D.*, 364 Ill. App. 3d 797, 801 (2006). "Similarly, the term 'injurious environment' has been recognized *** to be an amorphous concept that cannot be defined with particularity." *In re Arthur H.*, 212 Ill. 2d. at 463. Nevertheless, the term has generally been interpreted to include " 'the breach of a parent's duty to ensure a "safe and nurturing shelter" for his or her children.' " *Id.* (quoting *In re N.B.*, 191 Ill. 2d 338, 346 (2000)).

¶ 77 Moreover, our supreme court has recognized the theory of "anticipatory neglect," which flows from the Act's concept of an injurious environment. *Id.* at 468. "Under the anticipatory neglect theory, the State seeks to 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." *Id.* Although the neglect of one child does not conclusively show the neglect of another child, the Act recognizes—as we discussed above—that neglect of one minor is admissible as evidence of the neglect of another minor under a respondent's care. *Id.*; 705 ILCS 405/2-18 (3) (West 2010). Any finding of anticipatory neglect should take into account not only the circumstances surrounding the previously neglected minor, but also the care and condition of the

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minor named in the petition. *In re Arthur H.*, 212 Ill. 2d. at 468. Under this theory, "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.'" *Id.* at 477 (quoting *In re Brooks*, 63 Ill. App. 3d 328, 339 (1978)).

¶ 78 Finally, it is well understood:

"In a proceeding for the adjudication of abused or neglected minors, the State must prove the allegations in the petition by a preponderance of the evidence. [Citations.] "Preponderance of the evidence is that amount of evidence that leads a trier of fact to find that the fact at issue is more probable than not." ' [Citation.] The court's primary concern is the best interests of the children involved. [Citation.] ' "The trial court has the best opportunity to observe the demeanor and conduct of the parties and witnesses and, therefore, is in the best position to determine the credibility and weight of the witnesses' testimony." [Citation.] Cases adjudicating abuse and neglect are *sui generis* and must be decided on their own facts. [Citation.] We will not disturb the trial court's findings that the children have been abused or neglected, unless those findings are against the manifest weight of the evidence, meaning ' "the opposite conclusion is clearly evident or * * * the determination is unreasonable, arbitrary, and not based on the evidence."' [Citation.]" *In re Juan M.*, 2012 IL App (1st) 113096, ¶ 49.

¶ 79

3. Discussion

¶ 80 In this matter, the petitions for wardship alleged that the minors were abused due to a substantial risk of physical injury and were neglected due to an injurious environment. In support of these allegations, the petitions further alleged that both Janise O. and Chelsea W. had made

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allegations of sexual abuse against Mark C. Furthermore, they asserted that Angela O-C. did not believe Janise O., and did not respond appropriately to the similar allegations of Chelsea W. Indicated reports had been made against both Angela O-C. and Mark C. with respect to these allegations. Finally, the petitions alleged that after DCFS became involved in this matter, neither Angela O-C. nor Mark C. complied with recommended services, and that Angela O-C. and Mark C. were married and had a continuing relationship.

¶ 81 At the adjudicatory hearing, the trial court was presented with evidence-contained in the properly admitted testimony, DCFS service plan, and Janise O.'s medical and mental health records-that Janise had been making allegations of sexual abuse against Mark C. since she was nine years old. Specifically, the records from the Murray Women's Clinic show that in September of 2005 Janise O. described three sexual encounters with "Mark" that occurred around July of that year. When Janise O. was examined in September, her hymen was clearly ruptured and her vagina was dilated. In the Kenneth Young Center records, Janise O. is reported to have alleged that she was raped by Mark C. in the third grade, and to have further alleged that she continued to suffer from fondling, touching in "sensitive areas," and comments of a sexual nature from Mark C. off and on over the years.

¶ 82 Evidence was also presented that while Angela O-C. was made aware of Janise O.'s numerous allegations of sexual abuse, she had never believed them and never sought to have Janise O. evaluated or treated. Indeed, evidence was introduced that it was only Janise O.'s aunt in Kentucky that ever sought out any evaluation or treatment for Janise O. Furthermore, when Angela O-C. was presented with similar allegations against Mark C. regarding Chelsea W.-allegations that Angela O-C. herself believed were plausible-she never informed Chelsea W.'s mother and admitted

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that she was "wrong for not protecting her niece better."

¶ 83 The evidence also showed that Angela O-C. was often a barrier to Janise O. obtaining her own recommended services after DCFS became involved. Janise O. missed a number of therapy sessions, and Angela O-C. was both difficult to contact and was also consistently late in completing paperwork necessary for Janise O. to obtain services. Additionally, whether or not Angela O-C. "sent" Janise O. to Kentucky in June or July of 2011, it is clear that Janise O. was still in need of services at that time. Nevertheless, Angela O-C. did nothing to inform DCFS of Janise O.'s relocation, nor did she provide any assistance in the efforts of DCFS to provide a referral for Janise O. to continue with therapy in Kentucky.

¶ 84 Finally, we note that Janise O.'s mental health records indicate Janise O. reported that all of this—Mark C.'s sexual abuse and Angela O-C.'s refusal to believe her and support her—left Janise O. feeling unsupported, trapped, depressed, and suicidal. She was ultimately diagnosed with major depressive disorder and post-traumatic stress disorder, and required both hospitalization and outpatient treatment.

¶ 85 In light of this evidence, we find the trial court's finding that Janise O. was abused and neglected was not against the manifest weight of the evidence. The trial court was presented with evidence of Janise O.'s assertions of sexual abuse at the hands of Mark C., and evidence that Janise O. was fearful of being around him. Those assertions have never been recanted, and were corroborated by medical evidence indicating she exhibited a ruptured hymen and a dilated vagina as a nine year old child. Janise O.'s records also show that she was diagnosed with major depressive disorder and post-traumatic stress disorder as a teenager. Thus, there was significant evidence introduced at the adjudicatory hearing supporting a conclusion that Mark C. did, in fact, sexually

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abuse Janise O.

¶ 86 Furthermore, even if we found that there was insufficient evidence to establish that Janise O. was actually sexually abused by Mark C., there was significant evidence that she was neglected due to Angela O-C. and Mark C.'s consistent unwillingness or inability to properly address Janise O.'s allegations of abuse over the years. *In re Stephen K.*, 373 Ill. App. 3d 7, 20 (2007) ("Illinois courts have held that a child who does not receive appropriate medical evaluations or care is neglected."). There is no evidence that either Angela O-C. or Mark C. attempted to have Janise O. evaluated, treated, or provided with any type of counseling or medical care. Rather, the record shows that Janise O. only received treatment when either her aunt or DCFS took action. Indeed, while living with Angela O-C. and Mark C., Janise O. became so depressed, suicidal, and otherwise at a risk of self-harm, that she required hospitalization on an emergency basis. Notably, even then action was taken only due to the efforts of Janise O.'s school counselor. Both Angela O-C. and Mark C. seem to have determined that Janise O.'s allegations required nothing more than a denial that any such abuse ever took place.

¶ 87 Indeed, even after Janise O. was hospitalized due to her risk of self-injury or suicide, Angela O-C. became a barrier to her daughter's ability to obtain the services she required by failing to communicate with care-providers, complete required paperwork, or make any effort to ensure that Janise O. was provided any services in Kentucky. Overall, we find that this behavior was clearly neglectful, as it represented both a failure to exercise the care that circumstances justly demand (*In re Kenneth D.*, 364 Ill. App. 3d at 801) and a breach of Angela O-C. and Mark C.'s duty to ensure

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a safe and nurturing shelter for Janise O. *In re Arthur H.*, 212 Ill. 2d. at 463.³

¶ 88 Thus, the question becomes whether the evidence of the abuse and neglect of Janise O., when combined with the other evidence introduced at the adjudicatory hearing, also supported a finding that the minors themselves were neglected or abused under a theory of anticipatory neglect. We find that the trial court did not err in concluding that the evidence did in fact support such a finding.

¶ 89 We recognize that under this theory, the abuse or neglect of one child does not conclusively establish the abuse or neglect of another child. *Id.* at 468. Nevertheless, the doctrine of anticipatory neglect recognizes that minors may have a certain "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." *Id.*; see also *In re Erin A.*, 2012 IL App (1st) 120050, ¶ 34 ("The doctrine of anticipatory neglect recognizes that a parent's treatment of one child is probative of how that parent may treat his or her other children."). Thus, the fact that Janise O. was abused and neglected by Angela O-C. and Mark C. is relevant and probative evidence on the question of whether or not the minors were abused due to a substantial risk of physical injury and neglected due to an injurious environment.

¶ 90 Still, any finding of anticipatory neglect must also take into account the care and condition of the minors named in the petition. *In re Arthur H.*, 212 Ill. 2d at 468. We further recognize that there is no evidence that the minors themselves have been subject to sexual abuse, or that their

³ Clearly, much of the evidence of Janise O.'s neglect directly involves Angela O-C. rather than Mark C. Still, the record reflects that Mark C. was Janise O.'s step-father, and was living under the care of both Angela O-C. and Mark C. until Mark C. was removed from the home pursuant to the safety plan. Moreover, it is understood that "the only question to be resolved at an adjudicatory hearing is whether or not a child is neglected, and not whether every parent is neglectful." *In re Arthur H.*, 212 Ill. 2d at 467.

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physical or emotional well-being was otherwise adversely affected by Angela O-C. or Mark C. Further, there was no evidence that they were harmed while the safety plan was in place and Mark C. was not living in the family home.

¶ 91 Nevertheless, the evidence established that neither Angela O-C. nor Mark C. fully complied with recommended services after DCFS became involved with the family. In the months prior to the filing of the petitions in this matter, neither Angela O-C. nor Mark C. were willing to sign the service or safety plans, or to complete various paperwork requirements to ensure that they could participate in recommended services. Indeed, while counseling for Angela O-C. and a sex offender evaluation for Mark C. were recommended, neither party was willing to complete these tasks at the time of the adjudicatory hearing.

¶ 92 Moreover, while Ms. Henry was tasked with making home visits in the family home, she testified that her inability to make contact with Angela O-C. caused those visits to be irregular and sporadic in May and June of 2011. Furthermore, various efforts to verify Mark C.'s living situation, via a scheduled or unscheduled visit at his new address, proved unsuccessful. Additionally, at the sole scheduled visit that was finally arranged, it was observed that Mark C. was purportedly sleeping on the floor and there was no electrical service in the home. Finally, Angela O-C. and Mark C. remain married and, it is evident that at the time of the adjudicatory hearing, they were living apart solely due to the requirements of the safety plan.

¶ 93 On this record, we find that the evidence supports the trial court's finding of anticipatory neglect with respect to the minors. Indeed, the evidence established that, but for the involvement of DCFS, the minor's care and condition would likely involve them living with the two people responsible for the abuse and neglect of Janise O., without the benefit of Angela O-C. and Mark C.

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completing any of those services aimed at addressing that very abuse and neglect. This court has previously affirmed a finding of anticipatory neglect where a sibling was abused and neglected, services were not completed, and the minor at issue was likely to reside with the very individuals responsible for the prior abuse and neglect. *In re Kamesha J.*, 364 Ill. App. 3d 785, 794-95 (2006). We also reiterate 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.'" *In re Arthur H.*, 212 Ill. 2d. at 477 (quoting *In re Brooks*, 63 Ill. App. 3d at 339).

¶ 94 In so ruling, we reject a number of arguments raised by Angela O-C. and Mark C. First, Angela O-C. contends that the trial court never actually made a finding that Janise O. had been abused or neglected. However, the record clearly establishes that the trial court found the preponderance of the evidence established that the State had proven the allegation that the minors were abused and neglected upon a theory of anticipatory neglect. Moreover, the trial court clearly did so in light of the evidence of the abuse and neglect of Janise O.

¶ 95 In announcing its ruling, the trial court indicated it was aware that no petition for wardship had been filed with respect to Janise O. because she was living in Kentucky and was, thus, "not before the Court." Thus, the trial court recognized that it was not being asked to make an adjudication that Janise O. was abused or neglected in support of a wardship petition *with respect to her*.

¶ 96 However, the trial court also stated that pursuant to *In re Arthur H.*, "the Court doesn't have to wait until a child is actually injured on the theory of anticipatory neglect, the Court can make a finding regarding abuse and neglect to other children." *In re Arthur H.*, 212 Ill. 2d at 468. The trial court then went on to discuss the evidence surrounding Janise O.'s abuse and neglect, including the

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evidence of her allegations, her medical records, the fact that Mark C. had not complied with DCFS services, the fact that Janise O. seemed to have been "sent" to Kentucky, and that Mark C.'s current living situation was unclear. This evidence was then compared to "the fact that there is no direct evidence that any of the *other* children were sexually abused" (emphasis added), before the trial court found the minors abused and neglected. Thus, the trial court did indeed conclude that Janise O. was abused and neglected, albeit in the context of applying the doctrine of anticipatory neglect with respect to the minors.

¶ 97 Nor was there anything improper about the trial court making a determination regarding the abuse and neglect of Janise O. so as to support of a finding of anticipatory neglect as to the minors, despite the fact that no wardship petition had been filed with respect to her and she had not been found abused or neglected in any prior court proceeding. Nothing in the Act itself, or in the framework of the theory of anticipatory neglect, precludes the trial court from making that determination. Thus, in the case of *In re T.S-P.*, 362 Ill. App. 3d 243 (2005), the appellate court upheld the trial court's finding of anticipatory neglect on the basis of evidence a deceased sibling had previously been neglected. *Id.* at 248-49. The trial court in that case made an independent assessment of the evidence of prior neglect, despite the fact that no wardship petition had been filed regarding the deceased sibling, nor had the sibling been found to be neglected in any prior proceeding. *Id.*

¶ 98 Second, we distinguish this matter from a number of decisions Angela O-C. and Mark C. cite in support of their assertions. Thus, while our supreme court did reverse a finding of anticipatory neglect in the case of *In re Arthur H.*, the minor at issue there primarily lived with his father and not with the neglected siblings and the mother whose actions led to the finding of neglect. *In re Arthur*

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H. 212 Ill. 2d at 474-77. Furthermore, there was no evidence that the father with primary custody of the minor was neglectful in any way. *Id.* Here, but for DFCS involvement, the minors lived in the same household as Janise O., and were cared for by the very parents involved in Janise O.'s abuse and neglect.

¶ 99 Additionally, while a trial court's finding of anticipatory neglect was also reversed in the case of *In re Edricka C.*, 276 Ill. App. 3d 18 (1995), there the appellate court found this finding to be improper, in part, because: (1) the trial court focused too much attention on prior instances of abuse and neglect that occurred before the minors in question were even born and involved other children who no longer lived in the household; (2) the mother had taken full responsibility for those prior instances of abuse and neglect; and (3) the DCFS caseworker herself indicated that she had no concerns with the minors living with the mother. *Id.* at 29-31. Here, neither Angela O-C. nor Mark C. were willing to meaningfully address the abuse and neglect of Janise O., and Mr. Booker testified that there was indeed a concern for the minors' safety if Mark C. lived in the home.

¶ 100 Finally, while in the case of *In re K.S.*, 365 Ill. App. 3d 566 (2006), the appellate court did find that the father was improperly ordered to undergo a sex offender evaluation, it did so because: (1) the underlying adjudicatory order was based upon stipulated evidence with regard to the mother's neglect; (2) absolutely *no evidence* was ever presented that the father committed sexual abuse; and (3) no finding that such abuse occurred was ever made. *Id.* at 576-79. That is clearly not the situation presented here.

¶ 101 We also reject a number of other challenges made against the trial court's adjudicatory findings. Specifically, Angela O-C. and Mark C. have contended there was no evidence presented that Janise O. was abused or neglected. They alternately contended that any such evidence was

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insufficient and incredible in light of the evidence of Janise O.'s marijuana use, disciplinary and behavioral problems, and a notation questioning the credibility of her claims contained in the records of the Kenneth Young Center. Finally, they cite to purported inconsistencies in Janise O.'s recollections of her sexual abuse, the fact that prior investigations into Janise O.'s allegations were deemed unfounded, and that no criminal charges have ever been filed against Mark C.

¶ 102 First, in light of our discussion above, we obviously reject the argument that there was no evidence of abuse or neglect presented below. Second, we find that these type of arguments, which go directly to the weight of the evidence and to credibility, are best left to the trial court. *In re D.F.*, 201 Ill. 2d 476, 499 (2002) (under a manifest weight of the evidence standard, a reviewing court "must not substitute its judgment for that of the trial court regarding the credibility of witnesses, the weight to be given to the evidence, or the inferences to be drawn"). Again, after reviewing the record and considering the evidence properly presented, we do not find the trial court's adjudicatory findings to be unreasonable, arbitrary, or not based on the evidence. *In re Juan M.*, 2012 IL App (1st) 113096, ¶ 49.

¶ 103 C. Dispositional Order

¶ 104 We next consider the propriety of the trial court's dispositional order, which found Angela O-C. and Mark C. currently unable to care for the minors due to the fact that services had not been completed, made the minors wards of the court, and placed the minors into the custody and guardianship of DCFS.

¶ 105 "Pursuant to section 2-27(1) of the Act, a trial court may commit a minor to wardship upon a determination that the parent is unable, for some reason other than financial circumstances alone, to care for, protect, train or discipline the minor and that the health, safety, and best interests of the

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minor will be jeopardized if the minor remains in the custody of the parent." *In re Gabriel E.*, 372 Ill. App. 3d 817, 828 (2007) (citing 705 ILCS 405/2–27(1) (West 2004)). "The health, safety and interests of the minor remain the guiding principles when issuing an order of disposition regarding the custody and guardianship of a minor ward." *In re Kamesha J.*, 364 Ill. App. 3d at 795. "The trial court's determination regarding this will be reversed only if the factual findings at the dispositional hearing are against the manifest weight of the evidence or if the court abused its discretion by selecting an inappropriate dispositional order." *In re Gabriel E.*, 372 Ill. App. 3d at 828.

¶ 106 While Mark C. contends that the dispositional order should be overturned, he has provided no argument as to why the order was against the manifest weight of the evidence. Instead, Mark C.'s challenge to the dispositional order is limited to his arguments challenging the propriety of the underlying adjudicatory order addressed above, and the constitutional argument we address in the next section. As we have already had occasion to note in this order, Supreme Court Rule 341(h)(7) clearly states that points not raised and properly argued on appeal are waived. Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008).

¶ 107 That waiver aside, we find no evidentiary basis to overturn the trial court's dispositional order, which found both Angela O-C. and Mark C. to be unable to care for the minors, made the minors wards of the court, and placed the minors under the guardianship and custody of DCFS.

¶ 108 The evidence at the dispositional hearing showed that the minors were doing well in their current placement with their maternal aunt, and that Angela O-C. and Mark C.'s visits with the minors were both regular and appropriate. Furthermore, Angela O-C. and Mark C. had been effectively engaged in couples therapy and had made significant progress on a number of therapy

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goals. Finally, the minors wanted to be with their parents, and two of the minors were exhibiting signs of separation anxiety.

¶ 109 Nevertheless, there was also evidence that all of the visits with the minors continued to be supervised. Moreover, Angela O-C. and Mark C. had shown no willingness to meaningfully engage in therapy regarding the abuse of Janise O, either in couples therapy, or in the individual and joint sex abuse therapy. In the context of their therapy sessions, neither Angela O-C. nor Mark C. was willing to admit that such abuse took place, or that there was any evidence of abuse at all. As such, the sex abuse therapist was going to issue a discharge report because the current therapy would not be of further help. A clinical staffing was to be scheduled to address what other services might be able to better address the issues surrounding Janise O.'s allegations of abuse.

¶ 110 We note that in making a dispositional decision, a trial must "consider whether, based on health, safety, and the best interests of the minor[s] *** appropriate services aimed at family preservation and family reunification have been unsuccessful in rectifying the conditions that have led to a finding of unfitness or inability to care for, protect, train, or discipline the minor[s]." 705 ILCS 405/2-27(1.5)(a) (West 2010). Moreover, we have previously recognized that even where a parent completes some recommended services, that fact does not mean that a disposition other than the one entered by the trial court would be in the best interests of the children. *In re Kamesha J.*, 364 Ill. App. 3d at 796. Here, the trial court considered the fact that some services remained incomplete, and that alternative services needed to be considered. The court then found that the planned clinical staffing should take place before unsupervised visits are established, or the minors were returned to the care of Angela O-C. and Mark C. Thus, the trial court's order acknowledged the evidence showing the progress that Angela O-C. and Mark C. had made, but recognized that

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more progress was required before unsupervised visits were allowed and the ultimate goal of reunifying the family could be achieved. In light of this evidence, we find that the trial court's dispositional order finding Angela O-C. and Mark C. unable to care for the minors, making the minors wards of the court, and placing the minors into the custody and guardianship of DCFS, was not against the manifest weight of the evidence.

¶ 111 D. Fifth Amendment Challenge

¶ 112 Finally, we address the contention that the trial court's orders improperly violated Angela O-C. and Mark C.'s fifth amendment rights not to incriminate themselves. We review an alleged violation of an individual's constitutional rights *de novo*. *In re Robert S.*, 213 Ill. 2d 30, 45 (2004).

¶ 113 The fifth amendment to the United States Constitution provides, in relevant part: "No person *** shall be compelled in any criminal case to be a witness against himself." U.S. Const., amend. V. "This prohibition permits a person to refuse to testify against himself at a criminal trial in which he is a defendant and permits him 'not to answer official questions put to him in any other proceeding, civil or criminal, formal or informal, where the answers might incriminate him in future criminal proceedings.' " *In re P.M.C.*, 387 Ill. App. 3d 1145, 1150 (2009) (quoting *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973)). Our supreme court has recognized that "the fifth amendment right against self-incrimination applies to juvenile proceedings," and "a juvenile court may not compel a parent to admit to a crime that could be used against him or her in a subsequent criminal proceeding by threatening the loss of parental rights." *In re A.W.*, 231 Ill. 2d 92, 107-08 (2008). As such, "a trial court may order a service plan that requires a parent to engage in effective counseling or therapy, but may not compel counseling or therapy requiring the parent to admit to committing a crime." *Id.* at 108.

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¶ 114 Angela O-C. and Mark C. assert that the trial court's adjudicatory ruling was improperly based upon Mark C.'s refusal to undergo a sexual offender evaluation. In turn, they contend that the dispositional order was based upon the couple's failure to successfully complete their sex abuse therapy, which resulted from their refusal to admit Janise O. was abused during the course of that therapy. Therefore, they contend that the trial court's adjudicatory and dispositional rulings violated the above principles because they were fundamentally based upon an improper requirement that both Angela O-C. and Mark C. admit to their role in the abuse of Janise O.

¶ 115 We disagree, and are guided by our supreme court's decision in *In re A.W.* In that case, a father appealed from a trial court's finding that his child was neglected and that the minor should be made a ward of the court due to the father's unfitness. *In re A.W.*, 231 Ill. 2d at 95. With respect to these findings, the evidence presented below included progress reports prepared by the father's caseworker, which indicated that he made minimal progress in his recommended sex offender counseling because he "failed to attend regularly and continued to deny the reported incidents of abuse." *Id.* at 98. The father himself testified at the dispositional hearing that "he attended sex offender counseling, but the counselor would not continue the program unless he admitted to committing a sex offense. According to [the father], he was unwilling to incriminate himself and the therapist discharged him unsuccessfully from the program." *Id.*

¶ 116 Our supreme court found that this evidence did not establish a violation of the father's fifth amendment rights. *Id.* at 110. First, the court noted that the trial court *itself* did not specifically require the father to admit any wrongdoing, nor did the trial court order the father to "complete a specific program requiring him to admit abuse." *Id.* at 108. Moreover, citing to a number of decisions from other jurisdictions, our supreme court found that the father "presented no evidence

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that there are no other treatment programs available offering sex offender counseling without requiring an admission of sexual abuse," nor did he make any effort to locate alternative counseling prior to the court proceedings. *Id.* at 109. As such, the record in that case failed to support a conclusion that the trial court's order had the effect of requiring the father to incriminate himself. *Id.*

¶ 117 Here too, neither the trial court's adjudicatory order nor its dispositional order specifically required either Angela O-C. or Mark C. to admit to any abuse, nor did either of those orders require any specific program that would require such an admission. Certainly, the trial court did make reference to Mark C.'s refusal to undergo a sex offender evaluation in support of its adjudicatory ruling. However, there is no evidence whatsoever as to what such an evaluation would entail, nor was there any evidence as to what admissions, if any, Mark C. would have been required to make during the course of such an evaluation.

¶ 118 Moreover, it is apparent that Angela O-C. and Mark C.'s failure to successfully complete sex abuse therapy was based, at least in part, on their denial that Janise O. had been sexually abused. However, Ms. McKenzie testified that DCFS was not requiring such an admission. Moreover, and in light of the failure of the current course of sex abuse therapy, a clinical staffing was to take place shortly after the dispositional hearing to address what *other* types of services Angela O-C. and Mark C. would need going forward. Thus, not only was there no evidence presented that alternative therapy programs were not available to Angela O-C. and Mark C., or that they unsuccessfully made any attempt to locate any such programs, there was evidence that such programs were to be considered.

¶ 119 As such, we find that the record does not support the contention that either the trial court's

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orders, or the services recommended by DCFS in this matter, were necessarily founded upon a requirement that Angela O-C. and Mark C. admit to the abuse of Janise O. Instead, it was Angela O-C. and Mark C.'s failure to complete recommended services and engage in meaningful therapy that was cited as support for the trial court's adjudicatory and dispositional orders. Therefore, we reject the contention that Angela O-C. and Mark C.'s fifth amendment rights were violated.

¶ 120 We briefly note that our resolution of this issue necessarily rejects Mark C.'s reliance upon *In re P.M.C.*, 387 Ill. App. 3d 1145 (2009). That case did indeed involve a father's successful fifth amendment challenge to a trial court's unfitness finding in a proceeding seeking the termination of parental rights. *Id.* at 1152. However, the appellate court specifically distinguished the case of *In re A.W.* by noting that the trial court in the matter before it *did not* base its finding on the fact that the father's refusal to admit to sexual abuse somehow inhibited his engagement in meaningful therapy. *Id.* Rather, the appellate court found that the trial court's determination of unfitness was improper because it was based solely and specifically upon the father's refusal to admit to the sexual abuse in court and the father's testimony that his prior admissions were only made upon the advice of counsel. *Id.* Thus, the appellate court ruled that the trial court's order had the effect of requiring the father to incriminate himself. *Id.* As discussed above, that is not the situation presented in this matter.

¶ 121

III. CONCLUSION

¶ 122 For the foregoing reasons, the adjudicatory and dispositional orders of the circuit court are affirmed.