

No. 1-12-3606

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

IN THE MATTER OF NEVAEH B.,)	
)	
Minor-Respondent-Appellee,)	Appeal from the
)	Circuit Court of
(The People of the State of Illinois,)	Cook County.
)	
Petitioner-Appellee,)	
v.)	
)	No. 11JA361
Dorothy J.,)	
)	
Mother-Respondent-Appellant)	
)	
and)	Honorable
)	Demetrios G. Kottaras,
Lamont B.,)	Judge Presiding.
)	
Father-Respondent).)	

JUSTICE PUCINSKI delivered the judgment of the court.
Presiding Justice Lavin and Justice Fitzgerald Smith concurred in the judgment.

ORDER

HELD: Adjudication and disposition orders in juvenile case affirmed where the court's findings that the minor was abused and neglected and that her mother was unable to care for her were not against the manifest weight of the evidence and where the lower court proceedings were

not conducted in violation of the mother's constitutional rights to procedural due process or effective assistance of counsel.

¶ 1 Following an adjudication hearing under the Juvenile Court Act of 1987 ("Act" or "Juvenile Court Act") (705 ILCS 405/1-1 *et seq.* (West 2010)), the circuit court found that Nevaeh B. was a neglected and abused minor. In the disposition hearing that followed, the trial court concluded that her mother, respondent Dorothy J., was unable to properly care for her daughter and adjudicated Nevaeh a ward of the court. On appeal, Dorothy argues that the circuit court's findings were against the manifest weight of the evidence and that the lower court proceedings were conducted in violation of her constitutional rights to due process and effective assistance of counsel. For the reasons set forth herein, we affirm the judgment of the trial court.

¶ 2

I. BACKGROUND

¶ 3 Dorothy J. is the natural mother of Nevaeh B., born April 7, 2011. Lamont B. is Nevaeh's natural father.¹ Dorothy has a lengthy history of psychiatric illness. She is the mother of two other daughters, Lillian and Jayla, both of whom are no longer in her care. Lillian was taken into

¹ Lamont was not present during the adjudication and disposition hearings. He was, however, represented by an attorney who had been appointed to act on his behalf. Lamont filed a notice of appeal and was granted an extension of time to file a brief in this court. Lamont ultimately elected not to file a brief of his own, but instead chose to adopt Dorothy's brief. Dorothy's brief, however, only challenges the court's adjudication and disposition findings that the court made as they pertain to her and does not contest the findings made with respect to Lamont.

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guardianship when Dorothy was hospitalized for psychiatric treatment. Lillian was not returned to Dorothy's care and was subsequently adopted by her guardians. The adoption was done with Dorothy's approval. Jayla was removed from Dorothy's care after proceedings had been initiated on her behalf by the Illinois Department of Child and Family Services (DCFS). Jayla was placed in the guardianship of the same family that had adopted Lillian. Neither Lillian nor Jayla were living with Dorothy when she gave birth to Nevaeh.

¶ 4 A. Petition for Adjudication of Wardship

¶ 5 On May 31, 2011, the State filed a petition for adjudication of wardship as well as a motion for temporary custody on behalf of Dorothy's third daughter, Nevaeh. In the petition, the State alleged that Nevaeh was "neglected" as that term is defined in the Act (705 ILCS 405/2-3 (West 2008)). Specifically, the State alleged that Nevaeh was subjected to an environment that was injurious to her welfare (705 ILCS 405/2-3(1)(b) (West 2008)). The State further alleged that Nevaeh was "abused" as that term is defined in the Act because she was at "substantial risk for physical injury" (705 ILCS 405/2-3(2)(ii) (West 2008)). In support of its claims of neglect and abuse, the State alleged:

"Mother has two prior indicated reports for substantial risk of physical injury/environment injurious to health and welfare. Mother has two other minors not in her care or custody. Mother has been diagnosed with schizoaffective disorder, bipolar type and cannabis dependence. Mother has a history of non-compliance with her psychotropic medication. On or about December 20, 2009, an intact case was opened to offer services to this family. Mother has been inconsistent with services including

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individual therapy, mental health treatment and substance abuse treatment. Per a Parenting Capacity Assessment completed on or about February 28, 2011, mother is unable to safely parent. Per the Parenting Capacity Assessment, mother is at risk for child maltreatment. Father has not provided DCFS with a stable address."

¶ 6 The State also filed a motion for temporary custody, requesting the court to enter a temporary custody order appointing D. Jean Ortega-Piron, a Guardianship Administrator with the DCFS, as the temporary guardian of Nevaeh. The State's request was immediately granted and the cause subsequently proceeded to an adjudication hearing.

¶ 7 B. The Adjudication Hearing

¶ 8 Michelle Lonzo, an intact family caseworker at One Hope United, testified that she first became acquainted with Dorothy in 2009 after there had been a report of domestic violence involving Dorothy and her boyfriend, Newrule. There was an allegation that Newrule pushed Jayla down a staircase while she was in her stroller. After that incident, Lonzo assessed Dorothy for services and recommended that Dorothy take part in a number of services including parenting classes, domestic violence intervention, and mental health assessments and treatment. In March 2010, Lonzo also recommended that Dorothy receive treatment for substance abuse after Dorothy had informed her that she was smoking marijuana and consuming alcohol. Dorothy did complete a substance abuse assessment but did not complete the treatment program. She also failed to complete any of the other recommended services from December 2009 to September 2010. Dorothy never provided an explanation as to why she failed to participate in any services.

¶ 9 From December 2009 to May 2011, Jayla was not in Dorothy's care. Lonzo had initially

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sought to place Jayla with Lamont, her father, but he was unemployed and "not stable." Jayla was subsequently placed with the same family that had adopted her sister Lillian. Although Dorothy was allowed regular visitation, Lonzo testified that her visits were "inconsistent" and there were periods where Dorothy did not visit Jayla at all. While Lonzo was assigned to the case, Dorothy was hospitalized twice for mental health reasons. Prior to Lonzo's involvement, Dorothy had been diagnosed with schizophrenia and bipolar disorder and had a history of hospitalizations. Dorothy had also been admitted to several nursing homes and group homes and had a history of being non-compliant with her psychotropic medication. During Lonzo's meetings with Dorothy, she made some threatening comments that "concern[ed]" Lonzo. Specifically, Dorothy talked about "wanting to hurt someone if they tried to take away her child."

¶ 10 Although Dorothy initially failed to participate in services, she did take part in a parenting capacity assessment that commenced in August 2010. The assessment was performed by the Community Mental Health Counsel and was completed in early 2011. The assessment was completed by a parenting assessment team, which consisted of two clinical psychologists, a psychiatrist, a social worker, and an assistant psychologist. It involved a series of interviews with Dorothy as well as monitored parent-child interaction. The results of the assessment were that Dorothy "could not parent children and that she would be a high risk for parenting children." At the time that the assessment was performed, Dorothy was pregnant with Nevaeh, her third child.

¶ 11 On May 12, 2011, Lonzo met with Dorothy to talk about Nevaeh. At that time, Nevaeh's whereabouts were "unknown" and Dorothy informed Lonzo that she "would never find her child"

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and "would hurt anybody who came and tried to take her child from her." Lonzo subsequently learned that Nevaeh was in the care of her father. Although Lamont was instructed not to leave Nevaeh alone with Dorothy, Lonzo subsequently learned that unsupervised visitation had taken place. Nonetheless, Lonzo acknowledged that she never observed any signs that Nevaeh had been physically harmed while in her mother's care. Ultimately, based on the results of the prior parenting assessment and the fact that a safety plan with Lamont "was not feasible," a hotline call was placed to DCFS.

¶ 12 Deborah Armand, a child protection specialist with DCFS, testified that she was assigned to Nevaeh's case to investigate the allegations that Nevaeh was at substantial risk for harm and was living in a injurious environment after a hotline call had been placed to her department. When Armand commenced her investigation, she learned that Dorothy was the mother of two other daughters, Lillian and Jayla and was the subject of two prior abuse and neglect reports that had been made to DCFS. A December 2009 report contained an allegation that Jayla was injured during an instance of domestic violence perpetrated by one of Dorothy's former boyfriends. That report also accused Dorothy of medical neglect and alleged that Dorothy failed to seek medical treatment on behalf of her daughter. A March 2010 report contained another allegation that Dorothy was subjecting Jayla to an injurious environment. At the time that Dorothy gave birth to Nevaeh, neither of her other daughters were in her care; rather both girls were "in guardianship."

¶ 13 At the time that Armand had been assigned Nevaeh's case, a DCFS investigator had already attempted to locate Nevaeh, but was unsuccessful. Armand went to Dorothy's residence on May 11, 2011, but she was not present. On May 13, 2011, Armand went to speak with

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Nevaeh's biological father at his residence. Lamont indicated that Nevaeh was in the care of his aunt and provided Armand with his aunt's contact information. After ascertaining Nevaeh's whereabouts, Armand was able to meet with Dorothy later that same day and explain that a report of abuse and neglect had been made to DCFS on behalf of Nevaeh. During their conversation, Dorothy denied that the allegations of abuse and neglect were true. She confirmed that she suffered from mental health issues and had given Nevaeh to Lamont.

¶ 14 Armand made additional attempts to see Nevaeh, but was not able to do so until May 26, 2011, when Dorothy brought her daughter to the office of Michelle Lonzo, a caseworker with whom Armand was working. Armand did not observe any evidence of physical harm to Nevaeh at that time. Armand testified that Nevaeh appeared to be well-nourished and was clothed appropriately. Ultimately, based on Dorothy's mental health status and prior DCFS involvement, Armand concluded that Nevaeh was at risk of harm and took her into protective custody.

¶ 15 After presenting the testimony of Armand and Lonzo, the State entered a number of exhibits into the record, including a multitude of medical records and the 2011 parenting capacity assessment completed by the Community Mental Health Council.

¶ 16 Doctor Deepak Kapoor, a "general psychiatrist" was called to testify on Dorothy's behalf. He testified that he provided treatment to Dorothy on an outpatient basis at Next Level Health Care Outreach (Next Level). Doctor Kapoor explained that his "function was not to assess her mothering capacity, but to see that she [was] psychiatrically treated, if she needed—whatever she needed." He first met Dorothy in January 2010 for an initial assessment. He reviewed her previous medical records, which detailed prior diagnoses for schizophrenia, schizoaffective

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disorder, and bipolar disorder. The records reflected that Dorothy had been hospitalized on "multiple" occasions since childhood and had "some issues of substance abuse." His initial job was to "stabilize" Dorothy and prevent her from "emotional[ly] acting out."

¶ 17 Doctor Kapoor provided psychological treatment to Dorothy from January 2010 to May 2011, and during that time she "improved significantly." Beginning in April 2010, Dorothy routinely attended group therapy twice a week at Next Level. Initially, she was "very disruptive," "had a short fuse" and was "preoccupied with herself." She would routinely leave the group in the middle of a session. Beginning in April 2010, however, Dorothy "became pretty stable." Doctor Kapoor explained that "stable" meant that she was no longer "psychotic, or paranoid, or hallucinating." but that "[s]he still had some character issues." She began "taking more and more responsibility for the groups, organizing the groups, and taking responsibility for herself." Doctor Kapoor never observed signs of Dorothy "acting out" and it was apparent to him that she "was very committed to her progress." Although he found Dorothy to be "emotionally stable," at that point, Doctor Kapoor acknowledged that she was hospitalized on May 10, 2010, for another suicide attempt. At that time, she complained of having auditory hallucinations. Additionally, Doctor Kapoor acknowledged that he suspended Dorothy from attending group therapy for a short period of time in November 2010 after she touched another patient in an inappropriate sexual nature.

¶ 18 In addition to group therapy, Doctor Kapoor testified that he met with Dorothy individually once a month. During the time that he treated her, Doctor Kapoor never saw Dorothy interact with any of her daughters, but they did discuss her relationship with her children

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during her individual therapy sessions. He acknowledged that he reviewed the parenting assessment completed by the Community Mental Health Council and found it to be "pretty comprehensive," but emphasized that he was not consulted even though he had been providing psychological treatment to Dorothy while the assessment was being conducted. Instead, the assessment team relied on previous medical records that were years old. After reading transcripts of interviews between Dorothy and the assessment team, Doctor Kapoor did not believe that Dorothy ever displayed evidence of pathology or inappropriate attitudes toward parenting. Based on his review of the assessment records and the assessment itself, Doctor Kapoor did not find any indications that Dorothy was a threat to her daughter or was incapable of parenting a child. Accordingly, he disagreed with the assessment's conclusion that Dorothy was a "high risk parent." He emphasized that Dorothy's behavior has been "appropriate for over a year" and that she has not acted irresponsibly or in a threatening manner. Based on the improvements that she had made in therapy, he opined that Dorothy was presently capable of caring for Nevaeh.

¶ 19 On cross-examination, Doctor Kapoor acknowledged that he has not had much experience working with parents accused of child abuse or neglect. He also acknowledged that the group therapy sessions that Dorothy attended on a bi-weekly basis did not provide parenting instructions; rather, the topics covered in group therapy involved "how to control your emotions, how to get in touch with your inner self, how outside bad influences can change your behavior, how to avoid bad situations, *** how to keep comradery, how to be a good team player, how to comply with treatment, importance of medications, and [the] importance of psychotherapy." Doctor Kapoor further acknowledged that a person diagnosed with severe mental disorders such

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as schizophrenia, bipolar disorder or schizoaffective disorder would be a high risk parent; however, he did not believe that those diagnoses applied to Dorothy. He explained that "she used to become very histrionic and used the hospital as a stress management; and she would become agitated and start throwing out the symptoms, which people had to pay attention to and admit her; and then she would get released in a day or two, which is not typical of schizophrenia."

Doctor Kapoor opined that Dorothy had an unspecified manipulative personality disorder and that she suffered from post-traumatic stress disorder as a result of her troubled childhood. He did admit that Dorothy's lack of impulse control could pose a danger to a child.

¶ 20 Dorothy testified that she never knew her biological parents and that she was raised by her biological grandfather until the age of 5. While she was in her grandfather's care, he continually raped her. Dorothy was subsequently removed from her grandfather's care and she and her biological brother and sister were subsequently adopted by Mary and John Banks, who already had five biological children. Approximately one month after Dorothy's adoption, one of the Banks' biological sons started raping her. She ran away at the age of 13 and went to a shelter.

¶ 21 Dorothy testified that she was removed from the shelter and taken to a psychiatric ward because was deemed a danger to herself and others after she began attacking other residents and staff. This is not the first time Dorothy exhibited signs of mental illness. Dorothy testified that she was put on medication at the age of 5 because she "started experiencing different behaviors." She cut herself from the age of 13 to the age of 17. After leaving the Banks' residence, Dorothy stayed at various group homes and was hospitalized intermittently because she made threats to harm herself. At the age of 18, she was admitted to Hartgrove Hospital for three months.

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Although she attended therapy, Dorothy testified that she did not talk to her therapist due to her lack of trust. After being discharged from Hartgrove, she stayed at the Individual Advocacy Group home until she was 21 years' old. While there, Dorothy stopped taking her medication, got into several fights and tried to run away. Accordingly, she was readmitted to Hartgrove Hospital. During her various hospitalizations, Dorothy was diagnosed with various mental illnesses including: borderline personality disorder, schizoaffective disorder, paranoid schizophrenia, and bipolar disorder. She denied that she ever experienced auditory or visual hallucinations.

¶ 22 On February 3, 2005, at the age of 20, Dorothy gave birth to her first child, Lillian. During her pregnancy, her doctor took her off all of her psychotropic medication. Although she initially claimed that she was never prescribed any medication following her first pregnancy, Dorothy acknowledged that she was on medication in March 2010. After delivering Lillian, Dorothy testified that she cared for her daughter for approximately one year until she was hospitalized again. Before she was hospitalized, Dorothy agreed to a care plan for someone to take care of Lillian until she was discharged. Dorothy explained that pursuant to the terms of the care plan, she would be reevaluated for 2 weeks following her discharge from the hospital to ensure that she was compliant with her medication and was "no[t] acting out." Dorothy explained that Lillian would be returned to her care if she could provide a safe environment. Ultimately, Lillian was not returned to Dorothy's custody. Although it was never her intention to relinquish custody of Lillian, Dorothy subsequently agreed to an adoption agreement, permitting the guardians who cared for Lillian during her hospitalization to adopt her daughter.

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¶ 23 Dorothy testified that after Lillian's adoption, she became pregnant again and miscarried. She explained that the baby developed spina bifida and died because her prenatal doctor would not let her stop taking her psychotropic medications during her pregnancy. Dorothy's next child, Jayla, was born on May 8, 2009. Jayla was the subject of the parenting capacity assessment completed by the Community Mental Health Counsel in 2011.

¶ 24 In response to questions about the incidents that led to DCFS involvement with respect to Jayla, Dorothy explained that Jayla was injured in December 2009 while in the care of her boyfriend. Dorothy testified that she was not present at the time of the incident and that she only learned of Jayla's injuries after receiving a phone call from her boyfriend. He boyfriend told her that Jayla had accidentally fallen out of her car seat, but Dorothy did not believe him. Dorothy was subsequently charged with child endangerment as a result of this incident. Dorothy testified that several months after this first incident, she was physically attacked by her boyfriend while Jayla was present. Dorothy denied that Jayla was physically harmed during this altercation and denied that she was charged with harming Jayla herself; rather, she was only charged with "putting [Jayla] in harm's way." Dorothy explained that Jayla was ultimately removed from her care when she left her daughter with an ex-boyfriend whom she knew had a temper and Jayla was physically harmed.

¶ 25 Dorothy admitted to some controlled substance use. She testified that she never used controlled substances during any of her pregnancies and that none of her daughters were born drug-exposed. Dorothy explained that she only "took a couple puffs" of marijuana after Jayla was taken away to "relieve [her] stress." She denied having had experience with alcohol or any

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other drugs because her biological parents "were alcoholics and crackheads" and she "did not want to go down that path." Dorothy further denied telling Michelle Lonzo in March 2010 that she was drinking and smoking marijuana and not taking her psychotropic medication.

¶ 26 Dorothy testified that she started receiving counseling at Next Level in 2008. She took part in individual and group therapy sessions. She was taking her medication as prescribed and was "doing all right." It was not until Jayla was taken away that Dorothy stopped taking her medication. Dorothy began seeing Doctor Kapoor at Next Level sometime in 2010. Since working with him, Dorothy testified that she has made progress on her behavior. She is better able to control her anger and has not been involved in a fight in approximately two years. She has also stopped cutting and engaging in other self-abusive behaviors.

¶ 27 Dorothy admitted that she and Doctor Kapoor did not discuss, in detail, her ability to parent her children. They did not discuss the parenting capacity assessment completed by the Community Mental Health Counsel, and Doctor Kapoor did not complete his own assessment. She acknowledged that she sent Nevaeh to her father to prevent having DCFS remove another daughter from her care. Throughout her pregnancy, Dorothy was convinced that DCFS would come and "snatch" her daughter.

¶ 28 After hearing live testimony and reviewing the demonstrative evidence, the court concluded that the State had proven, by a preponderance of the evidence, allegations of abuse and neglect. In the adjudication order, the court stated: "Dorothy has a history of psychiatric disorders and a history of non-compliance with medication. [Dorothy] failed to do services while her intact case was open. A parenting capacity assessment found [Dorothy] at high risk to parent.

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[Dorothy] has unstable housing and employment."

¶ 29 At a subsequent court date, the court, at the request of Lamont's attorney, provided additional explanations for its abuse and neglect findings. Specifically, the court noted Dorothy's lengthy history of psychiatric illness, her lack of compliance with recommended services and the fact that her two other daughters were removed from her care. The court emphasized that "the history is significant."

¶ 30 C. The Disposition Hearing

¶ 31 Marla McClendon, a child welfare specialist with Children's Home and Aid, testified that she was assigned to Nevaeh's case on September 12, 2011. She testified that Nevaeh has been in a foster home with her two older siblings since she was removed from Dorothy's care.

McClendon has visited Nevaeh in the home and has not observed any signs of abuse or neglect. She opined that Nevaeh was "[d]eveloping on target" and that her guardians were meeting all of Nevaeh's needs.

¶ 32 McClendon detailed the list of services that have been recommended for Dorothy, including: individual therapy, a parenting coach program, domestic violence classes, and psychiatric evaluations. McClendon confirmed that Dorothy has consistently attended weekly therapy sessions with Jenny Ferber, a therapist employed by Children's Home and Aid since December 2011. Dorothy also successfully completed a domestic violence class. McClendon opined that after completing that class, Dorothy understood the importance of avoiding relationships that involve domestic violence. She did not believe that Dorothy needed additional services pertaining to domestic violence.

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¶ 33 McClendon testified that following a mental health assessment performed in January 2012, Dorothy was diagnosed as having an "adjustment disorder with a depressed mood." Based on a report submitted by Jenny Ferber, Dorothy's therapist, McClendon indicated that Dorothy has made progress on her treatment goals. Specifically, Dorothy has acknowledged the parenting mistakes she made, which led to DCFS involvement. In addition, Dorothy has stopped using controlled substances and has worked on developing coping mechanisms to control her aggressive behavior; however, her therapist believes that Dorothy still needs to attend additional therapy sessions and work on controlling her aggressive tendencies. McClendon indicated that Dorothy has not yet completed the recommended 13-week parenting coaching program.

¶ 34 McClendon confirmed that in addition to Dorothy's therapy sessions at Children's Home and Aid, Dorothy has also been meeting with her psychiatrist, Doctor Kapoor, every other month. To her knowledge, Doctor Kapoor has not assessed Dorothy's parenting skills. Although Dorothy has been diagnosed with schizophrenia in the past, Doctor Kapoor indicated to McClendon that he did not believe that this was an accurate diagnosis. As of April 2012, Doctor Kapoor had taken Dorothy off all her psychotropic medication and he believed she was doing "okay" without it. McClendon confirmed that she personally has never observed Dorothy exhibit behaviors that would be consistent with a diagnosis of schizophrenia or schizoaffective disorder. Based on various discrepant diagnoses, McClendon informed the court that she recommended that Dorothy undergo additional mental health assessments to accurately determine the mental health afflictions from which she suffered.

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¶ 35 McClendon testified that she has been assisting Dorothy to find permanent housing. Currently, Dorothy is not employed, but she receives social security benefits for her mental illness and McClendon indicated that Dorothy was managing her money well. Dorothy has started attending school at Olive Harvey College and is studying child development. Currently, Dorothy is allowed to visit Nevaeh twice a week. The sessions are four hours long and are supervised by aides at Children's Home and Aid. McClendon testified that Dorothy's visits with Nevaeh have been consistent and that Dorothy's behavior has been "[v]ery appropriate. She is engaged with her daughter. She does activities with her daughter, introduces different toys and plays with her. She feeds her, talks to her, plays with her, hugs her, changes her." Based on Dorothy's behavior during visits, McClendon considered Dorothy to be a "willing," "able," and "fit" mother. McClendon testified that she believed that Dorothy was "capable of parenting her daughter. *** [T]here are services that she needs to complete, but she has done well from what I have observed her interaction with her daughter. Again, that's different from long-term because it's a visit. But what I have seen, she's very appropriate, very loving to [Nevaeh]." Despite the positive interactions that she has observed during Dorothy's visits, McClendon acknowledged receiving reports from Nevaeh's guardians describing instances of disrupted sleep following Nevaeh's visits with her mother. In addition, Nevaeh's guardians reported that Nevaeh would act clingy and sometimes scratch her foster mother after visits with Dorothy.

¶ 36 McClendon indicated that her agency had also recommended services for Nevaeh's father. Lamont completed a parenting class, but did not successfully complete the recommended outpatient substance abuse program or attend individual therapy sessions. Although Lamont was

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also allowed supervised visits with Nevaeh, McClendon testified that he was not consistent in keeping the appointments. Lamont has not seen his daughter since November 2011 and McClendon has not had any contact with him since May 2012.

¶ 37 Ultimately, McClendon opined that it was in Nevaeh's best interest to be made a ward of the court. Although Dorothy had made progress, McClendon indicated that there were still services that she needed to complete and McClendon did not believe that Dorothy was presently physically or mentally able to care for Nevaeh on her own. In addition, Dorothy did not have a stable, long-term housing. McClendon admitted to having concerns that Dorothy's mental health issues would not permit her to fully take care of her daughter.

¶ 38 Doctor Kapoor was called to testify again at the disposition hearing. He reiterated that he had begun treating Dorothy in a group setting since 2010 and had been seeing her on an individual basis since May 2011. Throughout the time that he has treated Dorothy, she has made significant improvement and has become less impulsive and angry. He has not observed Dorothy exhibiting symptoms of schizophrenia, schizoaffective disorder, bipolar disorder or mental retardation even though she has received these diagnoses in the past. He confirmed that he has taken Dorothy off of all her psychotropic medication and continues to see her every two months for approximately 20 to 30 minutes per session.

¶ 39 Doctor Kapoor explained that he believed that Dorothy suffered from an adjustment disorder, which is a disorder in which a person reacts to extraordinary stressors by exhibiting signs of depression, anxiety, and agitation because the person lacks adequate coping skills. He opined that Dorothy's repeated hospitalizations were the result of instability in her life because

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she viewed hospitals as a place of refuge when her life became too stressful. He testified that Dorothy "learned how to fake symptoms and tell the emergency room [personnel] that she was suicidal, and then the staff would admit her." Doctor Kapoor acknowledged that it was possible that Dorothy was currently faking symptoms to manipulate a different diagnosis.

¶ 40 Based on Dorothy's current "emotional stability," Doctor Kapoor opined that she would be able to parent Nevaeh. He did not believe that Dorothy currently posed a risk to her children. He acknowledged, however, that he had never seen Dorothy interact with Nevaeh and that he did not have expertise in evaluating a patient's parenting ability. Doctor Kapoor explained that his opinion about Dorothy's ability to parent was the result of information that Dorothy provided him as well as from the observations that he has made during the time he has worked with her in a therapeutic setting. Doctor Kapoor acknowledged that despite the improvements that Dorothy has made, it was nonetheless possible that the demands of a child could act as a trigger for her and could potentially cause her to feel loss of control and anger. Ultimately, Doctor Kapoor acknowledged that because he had not had enough opportunity to observe Dorothy interact with children, he was unable to reach a conclusion as to Dorothy's ability to control her frustration and utilize proper coping skills if Nevaeh were returned to her care. Accordingly, he agreed that Dorothy was not currently ready for Nevaeh's immediate return home.

¶ 41 Jennifer Ferber, Dorothy's therapist from Children's Home and Aid, testified that she has been meeting with Dorothy since December 2011. Although she was not presently licensed in the State of Illinois, Ferber explained that she was licensed as an advanced practice social worker in Wisconsin and was working toward obtaining her license in Illinois.

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¶ 42 Since working together, Ferber has found Dorothy to be an "open and honest" and cooperative client and testified that Dorothy has made significant progress in therapy. Specifically, Dorothy has made significant progress in controlling her outward displays of aggression. In addition, Dorothy has been "able to, over the course of our treatment, admit and acknowledge and take responsibility for her part in her children's removal" from her care. Specifically, Dorothy acknowledged her role in allowing an abusive boyfriend to harm Jayla. In addition, Ferber testified that Dorothy is better able to process consequences and to consider which behaviors are in the best interest of her children. Ferber confirmed that she has not observed Dorothy display any symptoms or behaviors that meet the diagnostic criteria for schizoaffective disorder or bipolar disorder. Ferber has diagnosed Dorothy as having an adjustment disorder.

¶ 43 Ferber testified that she has had occasion to observe Dorothy and Nevaeh together at the Children's Home and Aid on an informal basis. On those occasions, she has seen Nevaeh act affectionately toward her mother and testified that she "usually runs to [Dorothy] with her arms open waiting for Dorothy to pick her up." Ferber acknowledged that she has not observed Dorothy interact with Nevaeh for extended periods of time, but testified that Dorothy has been "fully attentive" to Nevaeh during the times that Ferber has watched them interact. Ferber indicated that she does not believe that Nevaeh would be put at risk if she were returned to her mother's care but agreed that Dorothy was not ready for Nevaeh to return home immediately. Ferber explained that Dorothy needed to obtain appropriate long-term housing and needed to continue attending therapy sessions to further work on developing and implementing healthy

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coping skills. Ferber recommended that Dorothy be permitted additional visitation with Nevaeh. Specifically, she recommended that the visits be increased to three times per week. In addition, Ferber recommended that Dorothy be permitted to have one hour of unsupervised visitation during each visitation session.

¶ 44 After hearing the testimony and reviewing the demonstrative evidence, the court concluded that Dorothy was unable to care for, protect, or discipline Nevaeh. The court also found that Lamont was both unable and unwilling to care for his daughter and concluded that it was in Nevaeh's best interest to be adjudicated a ward of the court. In a separate order, the court designated the permanency goal for returning Nevaeh to Dorothy's care to be 12 months. Although the court denied Dorothy's request for unsupervised visitation, it ordered an increase of her weekly supervised visitation. In delivering its oral ruling, the court reviewed the testimony of McClendon, Ferber and Doctor Kapoor, and explained:

"Had I not seen such an extensive history of past diagnoses that are conflicting with Dr. Kapoor and Ms. Ferber's opinions of late, I might be a bit more lenient in terms of the visitation, but I cannot ignore it. I just hope to be able to fast track it depending on the type of diagnosis that a psychological [analysis] would in fact yield."

¶ 45 This appeal followed.

¶ 46 II. ANALYSIS

¶ 47 A. Sufficiency of the Adjudication and Disposition Findings

¶ 48 On appeal, Dorothy seeks reversal of the circuit court's adjudication and disposition

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orders.² She argues that the court erred in finding that Nevaeh was a neglected and abused minor following the adjudication hearing. She further argues that the court's disposition finding that she was unable to care for Nevaeh is also not supported by the record.

¶ 49 The State and Public Guardian both respond that Dorothy's claims are without merit. Both parties observe that Dorothy had a long-standing history of mental illness, which has precluded her from successfully parenting Nevaeh, and argue that the court's finding that Nevaeh was an neglected and abused minor was supported by the preponderance of the evidence. Moreover, both parties contend that the court's disposition order concluding that Dorothy was presently unable to care for Nevaeh was similarly not against the manifest weight of the evidence as Dorothy's therapist and psychiatrist both testified that they did not believe Dorothy was ready to immediately care for Nevaeh on a full time basis.

¶ 50 "The Juvenile Court Act is a statutory scheme, created by the legislature, the purpose of which is to secure for each minor subject thereto the care and guidance which will best serve the minor's safety and moral, emotional, mental and physical welfare, and the best interests of the community." *In re Austin W.*, 214 Ill. 2d 31, 43 (2005); 705 ILCS 405/1-2(1) (West 2010). The best interest of the child is the standard applicable to all proceedings under the Juvenile Court Act. *In re Z.L.* 379 Ill. App. 3d 353 (2008). In a juvenile proceeding, the intent is to determine the status of a minor child on whose behalf proceedings have been brought, not to assign criminal

²We note that we will address the arguments raised on appeal in a different order than they are discussed in respondent's brief. We will address the court's adjudication and disposition findings before turning to respondent's constitutional claims.

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or civil liability to any party. *In re R. B.*, 336 Ill. App. 3d 606, 614 (2003). Specifically, in an adjudicatory hearing, the issue is to determine whether or not a minor is abused, neglected or dependent. *In re Austin W.*, 214 Ill. 2d at 43; 705 ILCS 405/2-21(1) (West 2010). It is the State's burden to prove allegations of neglect, abuse or dependency by the preponderance of the evidence. *In re L.H.*, 384 Ill. App. 3d 836, 841 (2008). A preponderance of the evidence is the amount of evidence that leads the trier of fact to find that a condition is "more probable than not." *In re Arthur H.*, 212 Ill. 2d 441, 464 (2004); *In re N.B.*, 191 Ill. 2d 338, 343 (2000). A trial court's determination, in turn, will not be reversed unless it is against the manifest weight of the evidence. *In re Arthur H.*, 212 Ill. 2d at 464; *In re L.H.*, 384 Ill. App. 3d at 841. A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly apparent. *In re Arthur H.*, 212 Ill. 2d at 464; *In re Christopher S.*, 364 Ill. App. 3d 76, 86 (2006).

¶ 51 Pursuant to the Act, an abused minor includes any child "under 18 years of age whose parent *** (ii) creates a substantial risk of physical injury to such minor by other than 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). The Act specifies that a neglected minor, in turn, encompasses "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). Although the phrase "injurious environment," is a "broad and amorphous concept," it "is understood to include 'the breach of a parent's duty to ensure a safe and nurturing shelter for the children.'" *In re Alexis H.*, 401 Ill. App. 3d 543, 557 (2010), quoting *In re A.W.*, 231 Ill. 2d at 254. The term "neglect" is similarly broad, but has generally been "defined as the failure to exercise the care

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that circumstances justly demand and includes both willful and unintentional disregard of parental duties." *In re L.H.*, 384 Ill. App. 3d at 841; see also *In re Gabriel E.*, 372 Ill. App. 3d 817, 822 (2007); *In re Christina M.*, 333 Ill. App. 3d 1030, 1034 (2002). Cases involving allegations of neglect and abuse are *sui generis* and must be resolved by evaluating the unique facts and circumstances present in each case. *In re Arthur H.*, 212 Ill. 2d at 463.

¶ 52 Here, the State proceeded under a theory of anticipatory neglect and abuse. The doctrine of anticipatory neglect and abuse is premised on the recognition that a parent's treatment of one child is probative as to how the parent may treat his or her other children. *In re Erin A.*, 2012 IL App (1st) 120050, ¶ 34. Pursuant to the doctrine of anticipatory neglect, "the State seeks to protect not only children who are direct victims of neglect or abuse, but also those who have a probability of being subject to abuse or neglect because they reside, or in the future may reside, with an individual who has been found to have neglected or abused another child." *In re Arthur H.*, 212 Ill. 2d 441, 468 (2004). This doctrine is codified in section 2-18(3) of the Act. 705 ILCS 4055/2-18(3) (West 2010) ("Proof of the abuse, neglect or dependency of one minor shall be admissible evidence on the issues of abuse, neglect or dependency of any other minor for whom respondent is responsible"). Although sibling abuse may be *prima facie* evidence of abuse or neglect, there is no *per se* rule that the neglect of one child conclusively established neglect of another child. *In re Arthur H.*, 212 Ill. 2d at 478; *In re R.S.*, 382 Ill. App. 3d 453, 461 (2008). Accordingly, the court must consider the care and condition of the child currently in question and not simply the circumstances in existence at the time of prior incidents involving the child's siblings. *In re Arthur H.*, 212 Ill. 2d at 478; *In re R.S.*, 382 Ill. App. 3d at 461. Ultimately,

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however, when the court is faced with prior evidence of parental neglect, it need not, and " '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 328, 339 (1978); see also *In re Walter B.*, 227 Ill. App. 3d 746, 795 (1992) ("[A] court need not and should not wait for repetitious behavior deleterious to a child's well-being before taking ameliorative and prophylactic action").

¶ 53 In many cases, children of parents who suffer from mental illness may be found neglected and abused under the Act. See, e.g., *In re R.S.*, 382 Ill. App. 3d 453, 463-64 (2008) (upholding the trial court's neglect finding where the mother "suffer[ed] from ongoing and well-documented mental health issues" which "limited" her ability to effectively parent her child); *In re John Paul*, 343 Ill. App. 3d 865, 880 (2003) (affirming the trial court's finding of neglect where there was evidence that the mother suffered from "severe borderline personality disorder, which impair[ed] her ability to parent"). However, it is important to note that "the mere fact that a parent has a mental illness does not lead inevitably to the conclusion that children in his or her care are neglected or that their environment is injurious. In order for a parent's mental illness to form the basis of a finding of injurious environment, there must be a nexus between the illness and a risk of harm to the children." *In re Faith B.*, 349 Ill. App. 3d 930, 933 (2004).

¶ 54 Here, the adjudication findings of abuse and neglect were based on respondent's long-standing mental health issues. The testimonial and demonstrative evidence established that Dorothy has received various diagnoses, including schizophrenia, bipolar disorder, and schizoaffective disorder, and that she has been in and out of hospitals for her psychiatric issues since

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childhood. In addition, Dorothy has had a long history of non-compliance with her psychiatric medication. Although Doctor Kapoor, Dorothy's most-recent psychiatrist, did not agree with her prior diagnoses, he acknowledged that a person diagnosed with those types of severe psychiatric illnesses would be a high risk parent. Doctor Kapoor has diagnosed Dorothy with a personality disorder and testified that she has had problems with anger management and impulsive behavior, which could affect her ability to parent. Although he considered Dorothy "stable" since April 2010, he acknowledged that she was hospitalized on May 10, 2010, for suicidal ideation.

¶ 55 In addition to hearing evidence pertaining to Dorothy's mental health, the court also heard evidence pertaining to Dorothy's two other daughters, both of whom were no longer in her care. Dorothy testified that her first daughter Lillian was placed into a guardianship when Dorothy was hospitalized for psychiatric issues and was never returned to her care after her discharge from the hospital. Dorothy's second daughter, Jayla, suffered physical injuries while in her mother's care and was subsequently removed from her care by DCFS officials. Dorothy acknowledged that at the time of Jayla's removal, she was involved in relationship with a man who was physically violent. She further acknowledged leaving her daughter in the care of her ex-boyfriend even though she was aware of his violent tendencies.

¶ 56 Michelle Lonzo, a family caseworker, testified that although Dorothy was permitted to visit Jayla after she placed into guardianship, her visits were inconsistent. In addition, Dorothy never completed all of the services that Lonzo recommended. Dorothy did however, participate in a parenting capacity assessment, which was completed while she was pregnant with Nevaeh. The assessment included a number of observations and conclusions about Dorothy's instability

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and inability to parent. In pertinent part, the assessment emphasized that Dorothy had "not been able to safely and effectively meet her own needs independent of others taking care of her" and had a history of "engaging in inappropriate relationships in order to maintain housing." Based on Dorothy's lengthy history of mental illness and substance abuse as well as her limited insight into the effect of mental health problems on her ability to parent, the assessment expressed concern that there was little likelihood of Dorothy maintaining psychiatric stability while parenting a child. Accordingly, the assessment concluded that Dorothy was at high risk for future maltreatment and neglect.

¶ 57 The record thus reflects that Dorothy suffers from mental health issues which have impacted her ability to successfully parent her child. See, *e.g.*, *In re R.S.*, 382 Ill. App. 3d at 463-64; *In re Faith B.*, 349 Ill. App. 3d at 933; *In re John Paul*, 343 Ill. App. 3d at 880. In addition, the record reflects that Jayla was injured on several occasions while she was in Dorothy's care. Accordingly, we are unable to conclude that the trial court's findings that Nevaeh was exposed to an injurious environment (705 ILCS 2/3(1)(b) (West 2010)) and was at substantial risk for injury (705 ILCS 405/2-3(2)(ii) (West 2010)) are against the manifest weight of the evidence. We thus affirm the circuit court's adjudicatory order.

¶ 58 We turn next to the trial court's disposition order. Pursuant to the Act, once a minor is adjudicated abused or neglected, the cause proceeds to a disposition hearing to determine whether "it is consistent with the health, safety and best interests of the minor and the public that [s]he be made a ward of the court." 705 ILCS 405/2-21(2) (West 2010); *Arthur H.*, 212 Ill. 2d at 464. Like every other proceeding under the Juvenile Court Act, the paramount consideration is

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the best interest of the child. *In re Arthur H.*, 212 Ill. 2d at 464. Pursuant to section 2-27 of the Act, the court may, with the approval of DCFS, place a minor in the temporary guardianship of a suitable individual or couple "[i]f the court determines *** [that] the parents, guardian, or legal custodian of a minor adjudged a ward of the court are unfit or are unable, for some reason other than financial circumstances alone, to care for, protect, train or discipline the minor or are unwilling to do so, and that the health, safety, and bests interest of the minor will be jeopardized if the minor remains in the custody of his or her parents, guardian or custodian ***." 705 ILCS 2/27 (West 2010). "The standard of proof in a trial court's section 2-27 finding of unfitness that does not result in a complete termination of all parental rights is [the] preponderance of the evidence." *In re April C.*, 326 Ill. App. 3d 245, 257 (2001); see also *In re Stephen K.*, 373 Ill. App. 3d at 25. On review, a trial court's determination will only be disturbed if its findings of fact are against the manifest weight of the evidence or if it abused its discretion by selecting an inappropriate disposition order." *In re Stephen K.*, 373 Ill. App. 3d at 25; *In re April C.*, 326 Ill. App. 3d at 258.

¶ 59 Initially, we note that at the outset of the disposition hearing, counsel for Dorothy requested the court to make finding that she was merely "unable" and not "unable and unwilling" to currently parent Nevaeh and the trial court entered a finding consistent with Dorothy's request. Although the court found Lamont to be both unable and unwilling to care for Nevaeh, it found that Dorothy was merely currently unable to parent her daughter. It is well-established that a party is estopped from taking a position on appeal that is different from the one she took in the trial court during the disposition proceedings. See, e.g., *In re Stephen K.*, 373 Ill. App. 3d at 25.

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Waiver aside, we are unable to conclude that the circuit court's finding that Dorothy was currently unable to parent Nevaeh was against the manifest weight of the evidence. Although Dorothy was attending regular therapy sessions and had completed some services, she did not have permanent housing and still had additional services to complete. Moreover, while Dorothy's psychiatrist and her therapist testified that she had made significant progress, both agreed that Dorothy was not prepared to immediately become a full time parent to Nevaeh. In addition, Marla McClendon, a child welfare specialist with Children's Home and Aid, testified that Nevaeh has been in a foster home with her two older siblings since she was removed from Dorothy's care and has been "developing on target." McClendon further testified that Nevaeh's guardians were meeting all of her needs. See, e.g., *In re Stephen K.*, 373 Ill. App. 3d at 26 (affirming the court's disposition finding that it was in the minor's best interest to remain in the guardianship of his foster aunt where his guardian was meeting all of his needs while his mother cooperated with DCFS officials to complete recommended services). Accordingly, based on the record, we conclude that the trial court's disposition finding was supported by the evidence and affirm the order on appeal.

¶ 60

B. Due Process

¶ 61 Having reviewed respondent's challenge to the substantive merit of the trial court's adjudication and disposition orders, we now address her constitutional challenges. Dorothy first contends that the lower court proceedings were conducted in violation of her constitutional right to procedural due process of law. She argues that the medical records and other exhibits entered into evidence by the State were unduly prejudicial and that the court erred in relying on them to

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support its adjudication and disposition findings.

¶ 62 Parents have a constitutional right to maintain care, custody, and control over their children. *In re Andrea F.*, 208 Ill. 2d 148, 165 (2003); *In re Ch. W.*, 408 Ill. App. 3d 541, 550 (2011). Accordingly, proceedings initiated under the Act which may terminate or otherwise deprive a parent's of his or her constitutional right must accord with due process requirements. *In re Andrea F.*, 208 Ill. 2d at 165; see also *In re Arthur H.*, 212 Ill. 2d at 465 (recognizing that proceedings under the Act represent a significant intrusion into the sanctity of the family and should not be undertaken lightly). The hallmarks of due process are notice and an opportunity to be heard. *In re Custody of Ayala*, 344 Ill. App. 3d 574, 586 (2003). Generally, compliance with provisions of the Juvenile Court Act satisfies the constitutional requirements of procedural due process. *In re C.H.*, 408 Ill. App. 3d 541, 550 (2011).

¶ 63 During an adjudicatory hearing conducted pursuant to the Act, the rules of evidence used in civil proceedings apply. 705 ILCS 405/2-18 (West 2008). *In re Alexis H.*, 401 Ill. App. 3d 543, 550 (2010). The trial court is afforded discretion to admit evidence, and its rulings regarding the admission of evidence will not be reversed absent an abuse of discretion. *In re A.W.*, 231 Ill. 2d 241, 256 (2008); *In re Alexis H.*, 401 Ill. App. 3d at 550. To be admissible, the evidence must be relevant. *In re A.W.*, 231 Ill. 2d at 256; *In re Stephen K.*, 373 Ill. App. 3d 7, 29 (2007). Evidence is relevant if it "tends to prove a fact in controversy or renders a matter in issue more or less probable." *In re A.W.*, 231 Ill. 2d at 256.

¶ 64 Section 2-18(4)(i) of the Juvenile Court Act details the admissibility of hospital or any other business records in adjudication and disposition proceedings, and provides as follows:

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"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 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 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." 705 ILCS 405/2-18(4)(i) (West 2010).

¶ 65 During the adjudication hearing, the State introduced eight exhibits. The exhibits included records of Dorothy's psychiatric hospitalizations as well as the parenting assessment completed by the Community Mental Health Counsel in 2011 after Jayla was removed from Dorothy's care by DCFS. Dorothy does not dispute that the records introduced by the State were properly certified business records that met the admissibility requirements of section 2-18(4)(i) of the Act; rather, she argues that the records were improperly admitted because "[t]hey lacked the appropriate relevance" and were "more prejudicial than probative." We cannot agree. Dorothy's mental health problems and hospitalizations were directly relevant to her capacity to successfully parent Nevaeh. In addition, although the parenting assessment was completed on behalf of Dorothy's other daughter Jayla, we do not find that court erred in allowing the State to enter the document into evidence. The purpose of the assessment was to determine respondent's level of adaptive functioning and mental health issues and determine their impact on Dorothy's ability to safely and effectively parent a minor child. Because the State was advancing a theory of

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anticipatory neglect, a parenting capacity assessment completed while Dorothy was pregnant with Nevaeh was certainly relevant and probative of Dorothy's ability to parent her daughter.

¶ 66 Even if we were to accept Dorothy's argument that the court erred in allowing those exhibits into evidence, we would necessarily find the error harmless given that there was ample evidence to support the court's abuse and neglect findings. See, e.g., *In re J.C.*, 2012 IL App (4th) 110861, ¶ 29 (2012) (recognizing that any errors in the admission of evidence during an adjudication hearing is harmless if there was sufficient evidence to support the trial court's adjudication findings). We note that the court heard live testimony detailing Dorothy's psychiatric issues and prior involvement with DCFS, which essentially corroborated the information contained in the State's exhibits. The live testimony alone would have been sufficient to support the trial court's adjudicatory findings of abuse and neglect. Accordingly, we are unable to conclude that the documentary evidence admitted into the record denied Dorothy her right to due process.

¶ 67 In addition to the aforementioned records, Dorothy next argues that the State's use of a posting she made to Facebook was improper and constituted a due process violation. During the adjudication hearing, the State sought to introduce a threatening Facebook entry that Dorothy posted about her custody issues in violation of a prior court order. The State argued that the posting was relevant to rebut the testimony provided by Doctor Kapoor about improvements Dorothy had made in controlling her anger and impulsive behavior. Although the court initially admitted the transcript, it subsequently reversed its ruling. During closing arguments, the court specifically advised the parties that it had not reviewed the Facebook entry and would not consider it during its ruling. Given that the Facebook posting was not entered into evidence and

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was not considered by the court, we are unable to agree that respondent was somehow prejudiced and denied due process by the document.

¶ 68 We are also unpersuaded that Dorothy was unduly prejudiced by a statement made by the assistant State's Attorney during closing arguments in the disposition hearing. In response to comments made by Lamont's attorney about the State's apparent lack of objectivity, the assistant State's Attorney referenced the publicized case of Joseph Wallace, a minor who was killed after he was returned to the custody of his severely mentally ill mother. Specifically, counsel remarked: "I can appreciate counsel's argument about the People not being objective, but I stand before you as an Assistant State's Attorney who came to this building because of the case of Joseph Wallace and that's what I see when I see that stack [of medical records] there." Even if this comment was improper, we note that at the time it was made, the adjudication hearing had concluded and Nevaeh had already been adjudged abused and neglected. Dorothy and her attorney were requesting a dispositional finding that she was unable to care for Nevaeh, a finding which was entered by the circuit court. Based on the record, we do not find that the assistant State's Attorney's comment was prejudicial to Dorothy or that it denied her due process of law.

¶ 69 Finally, Dorothy challenges the Juvenile Court Act itself and argues that the procedures passed into law by the Illinois legislature are insufficient to safeguard the due process rights of both parents and children. She suggests that the rules of evidence applicable to adjudication and disposition proceedings should be narrowed. Moreover, she argues that judges who rule on initial motions for temporary custody should be precluded from presiding over subsequent adjudication and disposition hearings. Because information presented in earlier proceedings is

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"often not admissible in adjudication proceedings," Dorothy suggests that only a judge who has not presided over any pre-adjudication matters can properly and fairly preside over adjudication and disposition hearings.

¶ 70 In *Matthews v. Eldridge*, 424 U.S. 319 (1976), the case relied on by Dorothy, the Supreme Court identified three factors to be considered to determine whether due process requirements were met: (1) the private interests affected by official state action; (2) the risk of erroneous deprivation of this interest through the process utilized, and the value, if any, of additional safeguards; and (3) the government's interest pertaining to the fiscal and administrative burdens that any additional of substitute safeguards would entail." *Matthews*, 424 U.S. at 335; *In re Andrea F.*, 208 Ill. 2d at 165. Applying the *Matthews* factors, we find that the current procedural protections afforded to parents under the Juvenile Court Act are sufficient to satisfy due process requirements.

¶ 71 Courts have recognized that in adjudication and disposition proceedings, both the parent and the child have private interests at stake. *In re D.T.*, 212 Ill. 2d 347, 363 (2004). While the parent has an interest in caring and maintaining a parental relationship with her child, the minor has her own private interest in being properly cared for in a stable environment. Pursuant to the Act, it is axiomatic that a child's best interest takes precedence over the parent's right to custody. See, e.g., *In re S.J.*, 364 Ill. App. 3d 432, 442 (2006). In this case, the procedural safeguards afforded to Dorothy in the lower court proceedings were extensive. She was afforded full, contested evidentiary hearings before a juvenile court judge. She represented by counsel who called witnesses and presented documentary evidence on her behalf. By adhering to the

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"expanded" rules of evidence, the court was permitted to make a fully informed decision as to whether Nevaeh was abused or neglected. Although Dorothy suggests that the types of evidence admissible in juvenile court proceedings should be restricted, we find that this would deter rather than effectuate due process, as courts would be required to make decisions as to what result is in the minor's best interest with limited information. We are similarly unpersuaded that the "additional safeguard" of requiring different judges to preside over different proceedings under the Juvenile Court Act would better ensure that the interests of parents and children are adequately protected. Implementing such a requirement would likely impose additional administrative burden on the State and could potentially result in delay if proceedings had to be transferred to different courtrooms, thereby preventing the matter from being resolved in the expeditious manner required by the Act. See 705 ILCS 405/2-14(a) (recognizing that "serious delay in the adjudication of abuse, neglect or dependency cases can cause grave harm to the minor and the family and *** it frustrates the health, safety and best interests of the minor" and requiring that such matters be resolved "in a just and speedy manner"); see also *In re D.T.*, 212 Ill. 2d at 365 (recognizing that the State has a fiscal and administrative interest in reducing the costs and burden of juvenile court proceedings). Ultimately, based on our consideration of the factors set forth in *Matthews*, we conclude that the proceedings conducted in the lower court in conformance with the specific requirements of the Juvenile Court Act did not violate Dorothy's right to due process.

¶ 72

C. Ineffective Assistance of Counsel

¶ 73 Dorothy next asserts that she was denied her constitutional right to effective assistance of

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trial counsel. Citing the constitutional standard set forth in *Strickland v. Washington*, 466 U.S. 668 (1984), she argues that counsel was ineffective for failing to challenge the sufficiency of the State's petition containing allegations of abuse and neglect and for failing to object to the admissibility of the State's exhibits.

¶ 74 The State and Public Guardian both dispute respondent's characterization of the assistance provided by trial counsel and maintain that Dorothy received effective assistance of counsel during the lower court proceedings. In addition, the State asserts that the *Strickland* standard applies only to criminal or quasi-criminal proceedings. Because abuse and neglect cases do not involve the same degree of liberty interests at issue in other proceedings, the State suggests that the *Strickland* standard is not applicable to the instant case.

¶ 75 The right to counsel in proceedings brought pursuant to the Juvenile Court Act, "flows from the fourteenth amendment to the United States Constitution, as well as from State statutes." *In re Kr. K.*, 258 Ill. App. 3d at 270, 279 (1994). Although the State is correct that abuse and neglect proceedings brought pursuant to the Juvenile Court Act are not criminal or quasi-criminal in nature, courts have nonetheless found the liberty interests of parents involved in such cases are significant and that the *Strickland* standard is applicable to attorneys that represent parents during those proceedings. See, e.g. *In re Kr. K.*, 258 Ill. App. 3d at 279-80 (recognizing that abuse and neglect determinations are often precursors to proceedings to terminate parental rights, and thus parents are entitled to an objective standard of reasonable legal representation during adjudication proceedings). To establish ineffective assistance of counsel pursuant to the *Strickland* standard, the party needs to show that counsel's representation fell below an objective

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standard of reasonableness and that there is a reasonable probability that the trial court outcome would have been different absent counsel's unreasonable performance. *Strickland*, 466 U.S. at 687; *In re Kr. K.*, 258 Ill. App. 3d at 280. The parent alleging ineffectiveness must satisfy both prongs of the *Strickland* standard and such claims may be disposed of if it is clear that the parent suffered no prejudice from counsel's purported errors. *In re Kr. K.*, 258 Ill. App. 3d at 280.

Having set forth the applicable standard, we turn to respondent's first claim of ineffective assistance of counsel and determine whether she was prejudiced by counsel's failure to challenge the sufficiency of the petition filed by the State that contained allegations of abuse and neglect.

¶ 76 To initiate proceedings under the Act, any adult person or agency may file a petition in the circuit court on behalf of a minor child. 705 ILCS 405/2-13(1) (West 2010). The substantive requirements for such a petition are set forth in section 405/2-13 of the Act, which states, in pertinent part: "The petition shall be verified but the statements may be made upon information and belief. It shall allege that the minor is abused, neglected, or dependent with citations to the appropriate provisions of this Act, and set forth (a) facts sufficient to bring the minor under Section 2-3 or 2-4 and to inform the respondents of the cause of action, including but not limited to, a plain and concise statement of the factual allegations that form the basis for the filing of the petition." 705 ILCS 405/2-13(2) (West 2010).

¶ 77 Upon review of the petition filed in the instant case, we find that allegations contained therein were more than sufficient to inform Dorothy of the specific facts substantiating the claims of abuse and neglect. The petition alleged that a parenting capacity assessment was completed on February 28, 2011, a few months before Nevaeh was born. The parenting assessment

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concluded that Dorothy was at risk for child maltreatment and that she was unable to successfully parent a child. In further support of the allegations of abuse and neglect, the petition stated that Dorothy was the parent of two other children, both of whom were no longer in her custody and care. The petition also alleged that Dorothy had a long history of mental health problems and had been diagnosed with various psychiatric illnesses including schizoaffective disorder and bipolar disorder. Finally, the petition asserted that Dorothy had a history of cannabis use and non-compliance with her psychotropic medication. Although Dorothy complains that the same facts were used to support allegations of abuse and neglect, she cites no authority to suggest that such practice is improper. See, *e.g.*, *In re Juan M.*, 2012 IL App (1st) 113096, ¶ 63 (concluding that the same evidence that supported a physical abuse finding was also sufficient to support a finding of abuse due to substantial risk of injury). Because we find that the allegations in the petition were pled with sufficient specificity to inform Dorothy of the basis for the allegations of abuse and neglect and to prepare a meaningful defense, we necessarily conclude that counsel was not ineffective for failing to challenge the sufficiency of the petition.

¶ 78 We similarly find that counsel was not ineffective for failing to challenge the admissibility of the State's exhibits. As set forth above, Dorothy's medical records and the 2011 parenting capacity assessment were admissible as business records pursuant to section 2-18(4)(I) of the Act. 705 ILCS 405/2-18(4)(i) (West 2010). In addition, they were relevant and probative of Dorothy's mental health status and ability to parent. We note that counsel did object to the State's use of the assessment, but the objection was overruled. Even if we were to agree that counsel should have sought to exclude the remaining records, we nonetheless find that Dorothy's

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ineffectiveness claim necessarily fails because she cannot establish that a reasonable probability existed that the results of the adjudication and disposition hearings would have differed if those records were excluded. As we previously noted, the live witnesses, including Dorothy herself, provided testimony that contained the same information delineated in the exhibits. Indeed, the court heard live testimony about Dorothy's lengthy history of mental health problems, hospitalizations, controlled substance use, non-compliance with psychotropic medication, relationships with violent men, and her prior DCFS involvement. Based on the witness testimony alone, the court would have had a sufficient basis to conclude that Nevaeh was exposed to an injurious environment and was at substantial risk for injury. Accordingly, we conclude that respondent's ineffective assistance of counsel claim is without merit.

¶ 79

III. Conclusion

¶ 80 For the reasons explained herein, we affirm the judgment of the circuit court.

¶ 81 Affirmed.