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FOURTH DIVISION
September 26, 2013

No. 1-13-0337

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

| | | |
|---------------------------------------|---|--|
| <i>In re</i> MAKYLA D., a Minor, |) | Appeal from the |
| Respondent-Appellee, |) | Circuit Court of Cook |
| |) | County, Illinois, Juvenile Justice and |
| (The People of the State of Illinois, |) | Child Protection Department, Child |
| Petitioner-Appellee, |) | Protection Division. |
| |) | No. 12 JA 1029 |
| v. |) | |
| |) | Honorable |
| Shanae W., |) | Marilyn Johnson, |
| Respondent-Appellant). |) | Judge Presiding. |

JUSTICE FITZGERALD SMITH delivered the judgment of the court.
Justices Lavin and Epstein concurred in the judgment.

ORDER

¶ 1 *Held:* The judgment of the circuit court is reversed and the cause is remanded for a new adjudicatory hearing before a different judge. The circuit court failed to follow this court's instructions on limited remand to correct its previous error and provide us with an adequate factual basis upon which to review its adjudicatory order, as it was originally required to do under section 21-1 of the Juvenile Court Act of 1987 (705 ILCS 405/21-1 (West 2010)).

¶ 2 This cause arises from the State's petition for adjudication of wardship of the minor Makyla D. (hereinafter Makyla). At an adjudicatory hearing, the circuit court found that Makyla was neglected by her mother, the respondent, Shanae W. (hereinafter Shanae) based upon (1) a

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lack of care; (2) exposure to an injurious environment; and (3) being a minor under the age of 14, left without supervision for an unreasonable period of time. See 705 ILCS 405/2-3(1)(a), (b), (d) (West 2010)). The circuit court also found that Makyla was abused by Shanae based upon a substantial risk of physical injury. See 705 ILCS 405/2-3(2)(ii) (West 2010). The circuit court further found that Makyla's natural father, Jairame J.-D. (hereinafter Jairame), who is not a party to this appeal, is a "non-custodial" parent. At a subsequent disposition hearing, a different judge of the circuit court found that both the mother and the father were unable and unwilling to care for or protect their daughter and adjudged Makyla a temporary ward of the State, placing her in the guardianship of the Department of Children and Family Services (DCFS).

¶ 3 This appeal is from the trial court's finding at the adjudicatory hearing.¹ Shanae contends that the trial court's finding that Jairame was a non-custodial parent and that Makyla was neglected by Shanae on October 7, 2012, when the minor was found alone wandering in an alleyway behind her house, was against the manifest weight of the evidence. Shanae also contends that the trial court erred when it granted the State's motion at the adjudicatory hearing to take judicial notice of non-hearsay testimony received at the minor's temporary custody hearing. For the reasons that follow, we reverse and remand, with instructions.

¶ 4

I. BACKGROUND

¹Although in her brief, Shanae contends that she is appealing from both the adjudicatory and the dispositional findings of the circuit court, on appeal, she makes arguments only with respect to errors occurring during the adjudicatory proceedings. Accordingly, we are limited to addressing those issues.

¶ 5 Makyla was born on August 30, 2010. The respondent, Shanae, is her mother, and paternity tests have established that Jairame is her father. On October 7, 2012, Makyla was found alone outside in an alley. On October 10, 2012, the State filed a petition for adjudication of wardship for Makyla. The petition alleged that Makyla was neglected, *inter alia*, by being exposed to an injurious environment pursuant to sections 2-3(1)(a) and (b) of Juvenile Court Act of 1987 (Act) (705 ILCS 405/2-1(a), (b) (West 2010)) and that she was abused pursuant to section 2-3(2)(ii) of the Act (705 ILCS 405/2-3(2)(ii) (West 2010)) because there was a substantial risk of physical injury to her by other than accidental means. In support of these allegations the petition alleged the following facts: The minor's father, Jairame, has one prior indicated report for "substantial risk of physical injury/environment injurious to health and welfare by neglect." On October 7, 2012, police personnel found Makyla alone outside in an alley. The police were unable to locate Makyla's parents. Shanae stated that she was informed earlier that day by a neighbor that Jairame had entered her home through a back window and had left Makyla inside unattended. Shanae failed to call police or return home after receiving this information. Jairame stated that he had left Makyla in Shanae's care on October 7, 2012, prior to her being found alone. The minor's parents have an on-going issue of domestic violence against each other while the minor is present. Shanae states that Jairame threatened to kill her. There is an order of protection that limits Jairame's contact with Makyla.

¶ 6 Also on October 10, 2012, the State filed a motion for temporary custody seeking that Makyla be temporarily placed in the guardianship of DCFS. On October 11, 2012, the circuit court granted the motion for temporary custody without prejudice as to the parents. The court

also ordered visitation for both of the minor's parents, with Jairame's visits to be supervised by DCFS and Shanae's visits either supervised or unsupervised at the discretion of DCFS.

¶ 7 A. Temporary Custody Hearing

¶ 8 About a month later, on November 27, 2012, the circuit court held a temporary custody hearing. At that hearing, the State first called DCFS investigator, Carla Belin (hereinafter Belin). Belin testified that on October 8, 2012, she was assigned to investigate the allegation that two-year-old Makyla was found alone in an alley. Belin stated that as part of her investigation she initially conducted background searches through both the Child Abuse and Neglect Tracking System (CANTS) and the Law Enforcement Agencies Data System (LEADS). Belin learned that Jairame had a prior February 2012 indication report for domestic violence against Shanae. Belin stated that according to the notes of the Department of Child Protection (DCP) worker, assigned to investigate that report, Jairame had hit Shanae in the mouth. Belin added, however, that according to those notes Shanae said she was not pressing charges against Jairame because he in fact never hit her, and she had called the police only because she wanted him to leave the house. Belin testified that she also learned that Jairame was on probation for domestic battery in relation to woman who was not Shanae.

¶ 9 Belin further averred that as part of her investigation she next interviewed both Shanae and Jairame. She indicated that both parents were wards of the court and lived in separate independent living organizations (ILOs) funded by the State.² Belin interviewed Shanae on

²The record is bereft of any document or statement of a witness that could explain why either parent is a ward of the State, and whether it be by reason of age or mental or physical

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October 9, 2012, at the DCFS office. Shanae was with her caseworker, Ann Rauen and her mother, the minor's maternal grandmother, Latasha Kerby (hereinafter Latasha). Belin stated that Shanae was very cooperative. According to Belin, Shanae worked as a certified nursing assistant (CNA) for Misericordia Tuesday through Sunday between 2 p.m. to 10 p.m. Shanae told Belin that she and Jairame "shared custody of the child," and that earlier in the week prior to October 7, 2012, Makyla was with her father because Shanae was working. Shanae told Belin that they had "agreed upon a schedule" where Makyla would be taken care of by her father while Shanae was working.

¶ 10 Shanae told Belin that on Saturday, October 6, 2012, Makyla was with Jairame. Jairame visited Shanae's home that day and when she asked him where Makyla was, he told her that she was with "a friend" getting her hair done. Shanae was upset because she wanted to know who the friend was. However, Makyla remained with Jairame through the night and into the following day because Shanae had to work. Shanae told Belin that the following morning, on Sunday, October 7, 2012, she went to work earlier, and was at the office by 1 p.m. Shanae denied that Makyla was in her care and custody between 2 p.m. and 10 p.m. on Sunday, October 7, 2012.

¶ 11 According to Belin, Shanae told her that after she arrived at work on October 7, 2012, at about 1:15 p.m. she received a telephone call from a neighbor, Mariah Newsome, who stated that she saw Jairame with Makyla enter Shanae's apartment through a back window and then leave without Makyla. Shanae then sent a text message to her case worker Ann Rauen asking her what

disability.

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to do. At about 1:45 p.m. Rauen responded back with a text message instructing Shanae to call 911 and to return home immediately to see about her daughter. Shanae, however, did not call 911 and instead remained at work.

¶ 12 Belin testified that first the police and later DCFS took Makyla into protective custody, "because at that point there had been no contact with either parents so we did not know what was the situation and to whom the child was supposed to have been in care." She explained that DCFS "did not know at that point who the parents were or where they were," and "that two year old child was found alone in the alley."

¶ 13 Belin testified that Shanae told her that she remained at work until about 7 p.m. when she was contacted by the police. Shanae told Belin that she was "hysterical" and "very upset" when she found out that Makyla was found alone in the alley. Shanae told Belin that Makyla should have been with her father. Shanae told Belin that she called Jairame.

¶ 14 On cross-examination, Belin acknowledged that Shanae was not hysterical when she was informed by her neighbor that Jairame had been seen leaving her house without Makyla, and that she became hysterical only after "she found out that evening that the baby had been taken into protective custody."

¶ 15 Belin further averred that she was aware that Makyla was found in the alley and taken into protective custody, on October 9, 2010, Shanae obtained an order of protection against Jairame for herself, Makyla, Latasha, Latasha's home, and the daycare provider. When Belin questioned Shanae whether she had completed the domestic violence services recommended by DCFS she admitted that she had not.

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¶ 16 Belin next testified that as part of her investigation, on October 9, 2012, she interviewed Jairame by telephone. Jairame told Belin that Makyla had been in his care for most of the week prior to October 7, 2012, and that they stayed at his aunt's house. On cross-examination, Belin admitted that during that week DCFS received no calls or reports about any problems regarding Makyla.

¶ 17 Belin averred that during her interview with Jairame, Jairame acknowledged that on Saturday, October 6, 2012, he took Makyla to a friend's house to have her hair done. Jairame told Belin that later that evening he brought Makyla back to Shanae's house, because Shanae wanted to see her. At that point they agreed that he would pick Makyla up the following morning at 10 a.m. Jairame told Belin that when he went to pick up Makyla at 10 a.m. on October 7, 2012, she was not ready and he and Shanae "got into an argument." Jairame then left without Makyla, at about 10:45 a.m. He admitted to Belin that he was aware of Shanae's work schedule and that she would have to go to work that afternoon. He did not provide Belin with an explanation as to what he thought would happen to Makyla, but "just kind of left that up to mom to make arrangements."

¶ 18 Belin questioned Jairame about entering Shanae's house through the back window, and Jairame admitted to having done so in the past, but denied having used the window for entry at the time of the incident. Jairame also denied taking Makyla into Shanae's house through the window and then leaving her inside alone.

¶ 19 Belin testified that Jairame told her that at about 4 p.m. on October 7, 2012, he was contacted by the police and informed Makyla had been found alone in the alley. The police came

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to his home and interviewed him, but he told Belin that they did not charge him with anything.

Jairame also told Belin that Shanae had telephoned him very upset screaming that "as a result of him *** the baby was in DCFS custody because he had left her alone."

¶ 20 Belin stated that Jairame admitted to her that after Makyla was taken into DCFS custody, he had called Shane a "f***ing bitch" and threatened to kill her. Jairame explained to Belin, however, that he did not mean what he said and that he had said it only because he was upset and angry in the moment when he found out that Makyla had been taken into DCFS custody.

¶ 21 Belin next testified that as part of her investigation she reviewed the police report regarding the October 7, 2012, incident. Although defense counsel objected to Belin's testimony regarding this police report arguing that it was hearsay and that under the best evidence rule the police report itself should be admitted into evidence, the court overruled this objection. Belin averred that according to that report, prepared by Office Rikowski, the officer arrived at the scene at about 4:37 p.m. and found Makyla alone in the alley behind Shanae's building, with no coat on, although it was 49 degrees Fahrenheit. After someone told the officer where the child lived, he found the back door to Shanae's apartment open, with no one present. After entering the apartment, the officer checked the mail inside the apartment and based on that determined the identify of Makyla and Shanae.

¶ 22 Belin further testified that as part of her investigation into this matter on October 10, 2012, she had a telephone conversation with Mariah Newsome, Shanae's neighbor. Newsome told Belin that she knew both Shanae and Jairame. She stated that in the afternoon of October 7,

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2012, she observed Jairame go into Shanae's apartment through a back window. At that time he was with Makyla. Newsome did not tell Belin that she observed Jairame exit the apartment.

¶ 23 Belin also testified that she spoke to Shanae's mother, Latasha, who told her that both Shanae and Jairame are "very good parents" and that if they had told her they had a problem with daycare, she would have been happy to take care of Makyla on October 7, 2012.

¶ 24 On cross-examination, Belin admitted that after being taken into protective custody on October 7, 2012, Makyla was found to be in good health and age-appropriate in development.

¶ 25 Ann Rauen next testified that she works as a social worker for Kaleidoscope and that she has been Shanae's caseworker since December 2011. Rauen explained that as part of an independent living program, Shanae regularly received counseling on independent living issues, budgeting, and financial support. Shanae was also offered therapy and had participated in it for quite a while before beginning work as a CNA. It was recommended that Shanae engage in domestic violence services after she finished CNA training. She completed an initial intake interview but never followed through because of her school and work schedules.

¶ 26 Rauen testified that Shanae and Jairame did not have a formal care plan for Makyla and that this was one of the things she was attempting to have them work out at around the time of the incident. Rauen explained that when she spoke to both parents it was often "he said/she said," with Jairame claiming that he took care of Makyla because Shanae "needed a break," and Shanae claiming that Jairame had not brought Makyla home on time. Rauen agreed that she spoke to each parent encouraging them to create a formal care plan on more than one occasion.

¶ 27 Rauen testified that on October 7, 2012, she received a text message from Shanae

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informing her that a neighbor had called stating that she had seen Jairame entering Shanae's apartment through the window with their daughter and then coming out alone. Rauen called Shanae and asked her where she was and Shanae told her she was on the bus on her way to work. Rauen told her to turn around and go home. She also asked her to call 911 and to telephone her neighbor and ask her to go to the house to see if Makyla was there alone. Rauen could not remember what Shanae told her in response to this advice, except that she said that "she did not believe that Jairame would do something like that." Rauen next heard from Shanae that evening after Shanae had been picked up at work by the police. Shanae then informed Rauen that "it was true that Jairame had left her child alone and she was on her way to the police station."

¶ 28 On cross-examination, Rauen testified that in her opinion Shanae was a good mother who provided for all of Makyla's needs. Rauen stated that she has never observed any problems in the interaction between Makyla and Shanae or any unusual incidents between them. Rauen also explained that she has had several opportunities to observe Makyla with Jairame, at Shanae's home, where Jairame took care of Makyla while Shanae was completing her CNA training. Rauen testified that Jairame and Makyla definitely have a bond. She admitted that there has never been an instance where she felt it necessary to call the DCFS hotline to try to remove Makyla from Jairame's custody.

¶ 29 Jairame next testified that he has been involved in Makyla's life since she was born and that up until October 7, 2012, he has seen her every day. Jairame stated that he and Shanae had been in an "off-and-on" romantic relationship for about three years, but that he ended the relationship about a week or so before October 7, 2012. Jairame averred that prior to that, he and

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Shanae lived together. Jairame moved out of Shanae's apartment about a week before the incident. He testified, however, that even after he moved out, he continued to take care of Makyla because Shanae had school and work obligations.

¶ 30 Jairame testified that he cared for Makyla for four full days prior to the incident, between October 2 and October 6, 2012. He explained that on October 2, 2012, he watched Makyla while Shanae was at work and that when she came home at about 10:30 p.m., "she asked me can I watch Makyla overnight while she go out and hang out." Jairame said that when he refused, Shanae told him that if he did not take Makyla she would leave Makyla in the house by herself. Jairame testified that he got upset, packed a bag, grabbed Makyla and left. Jairame stated that he called his caseworker, Hannah, and told her about this incident, adding that if Shanae did not want Makyla, he would care for her himself, but that he would need some help from "the system." He testified, however, that he was not offered and did not receive any help.

¶ 31 According to Jairame, Makyla remained with him until Saturday, October 6, 2012. That morning at about 10:30 a.m. he went to Shanae's apartment to pick up some hair products and more outfits for Makyla. He left Makyla in his apartment with his friend Cassandra, who was "doing Makyla's hair." Jairame said that Shanae asked him to bring Makyla back because she missed her and wanted to spend some time with her after work that night. Jairame agreed and brought Makyla to Shanae's apartment on Saturday at about 10:45 p.m. Jairame testified that he and Shanae agreed that he would return the next morning to pick Makyla up before Shanae went to work.

¶ 32 Jairame testified that when he arrived at Shanae's apartment on Sunday morning, October

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7, 2012, Makyla was not yet dressed and he asked Shanae to get her ready. Jairame planned to spend the afternoon in Maywood with his family and wanted to take Makyla with him. Shanae refused to get Makyla ready stating that she had to go shopping before work. According to Jairame, he and Shanae then got into an argument, and he became frustrated and left without Makyla. Asked whether he and Shanae had discussed the care plan for Makyla before he left, Jairame responded "No, I just left."

¶ 33 On cross-examination, Jairame acknowledged that it was his understanding that he would help Shanae by watching Makyla while Shanae worked. He denied agreeing to keep Makyla for "six days straight" starting on October 2, 2012, but agreed that it was his responsibility to take care of Shanae on October 7, 2012, between 2 p.m. to 10 p.m. He acknowledged that he had concerns about who was going to care for Makyla but testified that because he left Shanae's apartment at about 10:45 a.m., he believed that Shanae had "more than enough time" to figure out whether she was going to "call off work" or "take Makyla to her mother's or godmother's house." He admitted, however, that at that point he did not care whether "calling off work" that day might cause Shanae problems at work.

¶ 34 On cross-examination, Jairame also admitted that he did not telephone Shanae or stop by her apartment at any point in the afternoon of October 7, 2012, to find out what had happened with Makyla. He explained, however, that he does not believe that failing to check on Makyla was a bad parenting decision at the time because he believed that Makyla was safe with Shanae. He explained that he knew Shanae for over three years and that she "never, ever did anything like leave my daughter or anything like that. So I felt like she was in good hands at this time."

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When questioned about the previous incident when Shanae had told him she would leave Makyla alone, he explained that he did not believe that she would do so and that both his caseworker and his father had told him that "it's impossible," "she wouldn't do that," and "what mom would leave her daughter alone."

¶ 35 Jairame testified that after leaving Shanae's apartment he picked up his friend Cassandra from his apartment and drove to Maywood to his grandmother's house to visit with family members. The next time he heard anything about Makyla was when Shanae telephoned him later that evening and said, "They got Makyla, you know I had to go to work," and hung up. Jairame telephoned Shanae back and asked her what happened. When Shanae clarified that Makyla was in DCFS custody, Jairame became upset and worried about how Makyla was doing and who was taking care of her and he told Shanae he was going to kill her. On cross-examination, he acknowledged that threatening Shanae while he was on probation for domestic violence in an unrelated case would constitute a probation violation.

¶ 36 Jairame explained that he was contacted by police later that afternoon and that he spoke to them both that evening and once again, about a week later.

¶ 37 Jairame testified that he has a close bond with Makyla and that he loves her very much. Makyla calls him "Dad," and up until October 7, 2012, no one in the community, including his caseworker, has ever complained about his parenting skills. Jairame stated that if he had the opportunity, he would immediately take back custody of his daughter from DCFS, and he would be willing to "work with anybody and everybody to make that happen."

¶ 38 The final witness at the temporary custody hearing was Jairame's caseworker, Hannah

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Karah. Karah testified that she works for Kaleidoscope and that she has been Jairame's caseworker for about nine months. Karah has observed Jairame together with Makyla on five occasions, both at the Kaleidoscope office and at Jairame's apartment. She characterized Jairame as a good parent with a strong connection to his daughter. She stated that Jairame engages Makyla in positive behavior such as playing with her and talking and reading to her. She stated that she has never known Jairame to leave Makyla alone, and believed that Makyla was safe with him.

¶ 39 Karah testified that she was aware that Makyla was in Jairame's custody on October 4, and October 5, 2012. She explained that on October 4, 2012, Jairame telephoned her to inform her that he was scared that Shanae would leave Makyla alone. He said that a few days earlier, Shanae had said that if Jairame did not stay with Makyla that night, "then she'd leave [her] alone and so he took her." In that conversation, Jairame also asked that Karah pick him and Makyla up from Shanae's apartment and drive them to his grandmother's house. Karah did not pick him up, however, because she was advised by her supervisor that Jairame "could find his own way to his grandmother's house." During that conversation, Jairame also asked that something be done to help Shanae. Karah informed him that she was not Shanae's case worker, but that she could help him. To that Jairame responded, "well, she needs help and I'll get therapy just please help because I'm scared." Karah spoke to her supervisor immediately who then talked to Jairame. Karah testified, however, that she did not know if anyone spoke to Shanae after that.

¶ 40 Karah next saw Jairame at the Kaleidoscope office on October 5, 2012, when he came to pick up his check. Makyla was not with him but he stated that she was with him.

¶ 41 Karah further testified that she has spoken to Jairame about what occurred on October 7, 2012. According to Karah, Jairame told her that he knew that Shanae needed to go to work that day and that "the plan previously was that he would take care of Makyla," but that because of an argument with Shanae, he left Makyla with Shanae. Asked whether Jairame had told her what steps he took to ensure that Makyla would be looked after while Shanae worked, Karah stated that Jairame "assumed" that if he left her with Shanae, "that she would be looked after," and that Shanae would generally take Makyla "where she would go, usually to her mother's house actually." Karah agreed, on cross-examination, however, that Jairame "didn't take steps to make sure that [Shanae] didn't leave her child alone."

¶ 42 During the temporary custody hearing, the circuit court received several exhibits into evidence. These included: (1) certified copies of court records regarding the emergency order of protection, sought by Shanae and entered on October 9, 2012, against Jairame; and (2) the dispositional order dated November 20, 2012, terminating that emergency order of protection.

¶ 43 After hearing all the evidence, the circuit court found that there was probable cause that the minor was neglected and that there was immediate and urgent necessity supporting the removal of the minor from her home. She therefore granted the State's motion for temporary custody with prejudice.

¶ 44 B. Motion to Take Judicial Notice of Prior Testimony

¶ 45 Immediately after the temporary custody hearing, on November 29, 2012, the State filed a "Motion for the Court to Take Judicial Notice of Prior Testimony," asking the circuit court to take judicial notice of "all non-hearsay testimony taken [at the temporary custody hearing] on

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November 27, 2012 for purposes of the adjudicatory hearing." In doing so, the State cited to section 2-18(6) of the Juvenile Court Act which permits the court to "take judicial notice of prior sworn testimony or evidence admitted in a prior proceeding involving the same minor" if "the parties were *** represented by counsel at such prior proceedings" and "the taking of judicial notice would not result in admitting hearsay evidence at a hearing where it would otherwise be prohibited." 705 ILCS 405/2-18(6) (West 2010). The State argued that all of the parties had been represented by counsel at the November 27, 2012, temporary custody hearing, and that it sought only the admission of "non-hearsay testimony" taken at that hearing.

¶ 46 C. Adjudicatory Hearing

¶ 47 About a month later, on December 17, 2012, the circuit court conducted an adjudicatory hearing. When the case was called, the State's two witnesses were present, but neither parent was in court. Counsel for both Shanae and Jairame asked that the trial not be conducted until a later date, and counsel for Jairame observed that it was "3:40 p.m." The State asked that the adjudicatory hearing be concluded "today" and the guardian *ad litem* expressed concern over the fact that the trial judge was "going to be leaving us for a little while," beginning on January 4, 2012. The trial judge confirmed that she was "getting ready to go for two months."

¶ 48 After an off-the-record discussion, the State called its first witness, Renee Adkins. Adkins testified that she lives in the vicinity of 6511 North Sacramento and that she does not know either Shanae or Jairame. Adkins stated that just after 4 p.m. on October 7, 2012, she found a little girl in the alley behind her house. Adkins explained that she was walking toward her car which was parked behind her house when she saw the little girl about 20 feet away. She stated

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that the girl appeared to be about two and that she was crying and saying "mommy." There was no one else in the alley, except for two men several houses down loading something onto a truck. The girl was close to a stroller that was at the foot of the stairs of an adjacent apartment building. She started climbing into the stroller as if she were familiar with it. Adkins stated that although it was "chilly" and "jacket weather" outside, the child was wearing only a long sleeve t-shirt and denim pants. Adkins stated that her nose was running, her face was red and she was shivering.

¶ 49 Adkins testified that she approached the girl and asked her where her mommy was, but that the girl did not answer. Adkins then looked around and yelled, "hello, there's a little girl here; is anybody looking for a little girl?" Adkins stated that she went into the building closest to where the little girl was standing next to the stroller and started knocking on doors hoping to find out where the girl lived. Eventually, two different neighbors directed Adkins to the girl's apartment. Adkins said that the front door of that apartment was open. She knocked on the door and yelled "hello, is anybody home, there's a little girl here?" Then she pushed the door open and stepped inside a little bit, repeating her words, and hoping someone would hear her. When she received no response, Adkins dialed 911.

¶ 50 After about 20 minutes the police arrived and Adkins showed them to the apartment. She also gave the police her contact information.

¶ 51 Chicago police officer Rikowski next testified that on October 7, 2012, he was on duty in the vicinity of 6511 North Sacramento, when at about 4 p.m. he received a 911 call reporting that a child was found alone in a nearby alley. Officer Rikowski proceeded to the scene where he was met by Adkins, who was taking care of the two-year old child.

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¶ 52 Officer Rikowski testified that he observed that the little girl was wearing a Micky Mouse shirt with no jacket, that her hands were red and cold to the touch, and that she had "a very snotty nose."

¶ 53 The officer testified that after speaking with Adkins and a few neighbors, he was directed to the girl's apartment, the door of which was unlocked and ajar. Officer Rikowski went inside the apartment to see if the parents were home and "to make sure that no one was hurt or killed in there and that's why [the girl] was wandering around." The officer did not find any adults inside, but searched the apartment to find the parents' address and located Shanae's name on some of her mail. The officer also searched the apartment to determine how the child had gotten out. He stated that "the only way [the girl] got out was through the door because it was open." Officer Rikowski acknowledged that there was a window next to the door of the apartment, but stated that he did not open it and did not know whether it was possible to open it from the outside.

¶ 54 Officer Rikowski stated that he gathered some clothes for the girl from the apartment while he waited for his supervisor to arrive with a child seat. The officer also looked inside the refrigerator and noticed very little food, aside from some moldy macaroni and cheese. Once the officer's supervisor arrived, Officer Rikowski picked up the girl to place her in the child seat and noticed that "her pants were full." The child was then taken to the police station where she was cleaned and changed. She was then transported to Saint Francis Hospital "to be checked out." Officer Rikowski acknowledged that he spent at least an hour at the scene, and that in that time no one approached him claiming to be the parent of the child.

¶ 55 Officer Rikowski averred that later that night, after 9 p.m., at the police station, he spoke

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to Shanae, who had been picked up from work by other officers. Shanae admitted to Officer Rikowski that she was the little girl's mother. Asked whether Shanae appeared upset when he first met her, Officer Rikowski answered, "not really."

¶ 56 Officer Rikowski stated that he asked Shanae if she had an address or telephone number for the little girl's father, and Shanae told him that she did not. When the officer left the room and then returned, he found Shanae talking with the girl's father on her cell phone, trying to blame him and arguing back and forth about whether the child was supposed to be in his care and custody. The officer then asked Shanae, "I thought you didn't have his phone number," at which point Shanae "got agitated towards me." Officer Rikowski stated that over the telephone he tried to tell the father that Shanae was blaming him and that it would be better for him to come into the police station to explain himself but that the father never came. The officer's involvement in the case ended at the close of his shift that night.

¶ 57 After the testimony of the two witnesses, over a relevance objection by Shanae's counsel, the circuit court admitted into evidence the certified statement of disposition and complaint in the case of *People v. Shanae W.*, No. 12 DV 7984, wherein Shanae was charged with a misdemeanor offense of endangering the life/health of a child in violation of section 12-21.6(a) of the Criminal Code of 1961 (720 ILCS 5/12-21.6(a) (West 2010)) in that she:

"wilfully caused or permitted the life or health of a child, under the age of 18, Makyla D[.] (age 2 yrs), daughter of the defendant, by placing the child in circumstances that endangered the child's life/health, when she left Makyla home unattended and proceeded to work, whereupon Makyla was discovered wandering in the alley behind the residence

and not properly clothed for the weather."

¶ 58 The State then asked the circuit court to grant their motion, filed months prior to the adjudicatory hearing, to take judicial notice of prior non-hearsay testimony taken at the temporary custody hearing. Defense counsel for both Shanae and Jairame objected arguing that a lot of the evidence taken at the temporary custody hearing constituted hearsay and that "it would be hard to tell the hearsay from the non-hearsay." Counsel also contended that in adjudication the burden of proof is totally different, and that the State has to prove neglect by a preponderance of the evidence, rather than merely by probable cause, as is the standard for granting the State temporary custody of a child. The court agreed with the State and granted their motion for judicial notice, stating:

"This motion, a motion of these types is often filed in this courtroom. The Court is aware that much more comes in at a [temporary custody] hearing in the way of hearsay than would be allowed in an adjudication. My response to that fact is the Court can read. So your objection is noted but denied."

¶ 59 After the circuit court granted the State's motion, the parties rested. The circuit court then made the following ruling on record:

"I am going to enter the following findings: Neglect, lack of care necessary, neglect home alone, neglect home alone (*sic*), neglect injurious environment, abuse substantial risk of injury.

And I'm going to make a finding that the father, Jairame Davis, Jackson Davis, was noncustodial."

¶ 60 The circuit court also entered a standard written adjudication order form, checkmarking several bases for finding Makyla neglected, including: (1) "a lack of care;" (2) "an injurious environment;" and (3) "because a minor under the age of 14 was left without supervision for an unreasonable period of time." See 705 ILCS 405/2-3-1(a), (b), (d) (West 2010). Similarly, the court found Makyla abused and checkmarked the rubric "a substantial risk of physical injury" in the standard adjudication order form. 705 ILCS 405/2-3-(2)(ii) (West 2010). That order further states that the findings are "based on the evidence admitted at the hearing," and notes (again by checkmark) that Makyla's abuse or neglect "is the result of abuse or neglect inflicted by a parent." Next to that last notation, the circuit court wrote in: "NF [natural father] was non-custodial."

¶ 61 C. Dispositional Hearing

¶ 62 On January 8, 2013, a different judge of the circuit court held a dispositional hearing in Makyla's case. Lynette Allen, the family's caseworker, testified that Makyla has been placed into a non-relative foster home because after CANTS and LEADS searches were conducted none of her family members were found to be suitable for foster care. According to Allen, Makyla is not in need of any specialized services. With respect to the parents, Allen testified that Shanae, who is a ward of the court, is in need of individual therapy, anger management and a juvenile counseling assessment. She has also been referred to agencies that would help her with her pending misdemeanor charge. Jairame is in need of child psycho social therapy, individual therapy, domestic violence therapy, and a juvenile counseling assessment.

¶ 63 According to Allen, Shanae and Jairame both visit with Makyla regularly. She

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acknowledged that there is a bond between Makyla and Shanae and that Makyla gives her mother a kiss and hug every time she sees her. Allen also acknowledged that Makyla appears very happy to see Shanae.

¶ 64 Allen testified, however, that since visitation began, there have been two reported incidents, one involving each parent. Specifically, on January 4, 2013, a police report was made against Shanae for "simple assault." According to Allen, that day Shanae came into the center for a visit with Makyla. When Allen explained to her that the visit would be completely supervised, Shanae became upset and jumped up, unbuttoned her coat and told Allen that she "was going to kick my ass" and "f**k me up," and "that we didn't know whom we were f***ing with," that "we weren't going to take her child away from her." When Allen asked Shanae to calm her voice down and not talk so loudly, Shanae grabbed Makyla in her lap and told Allen "you are going to have to pry my mother f***ing daughter away from me because you ain't taking [her] away from me." According to Allen, another caseworker came into the room and told Shanae to put the child down, but Shanae refused. Allen then explained to her that the visit was over and that she could not act like that in their office and especially not in front of her child. Shanae responded "she done seen it before, she's done heard it before, she'll be ok, she'll get over it." Soon thereafter the police arrived and spoke to Shanae. No charges were filed, however.

¶ 65 Allen also testified that on December 26, 2012, Jairame, who came to visit Makyla, asked to speak with Allen. When Allen arrived at the front desk, Jairame told her that his attorney had informed him that he had been cleared of all charges and he wanted to know why he could not take Makyla with him. Allen told Jairame that they needed to move into the other room because

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there were other people coming through the doors. Jairame said he "wasn't going no mother f***ing where" and that he wanted to know why they were taking Makyla away from them. When Allen told Jairame to talk to his attorney, Jairame picked up Makyla and said he was walking out of the door with her. Allen stood in front of him to stop him and he put her down and grabbed Allen by the arm. One of the male staff approached and told Jairame to keep his hands to himself to contact his attorney. The police were called and Jairame ran out. A report of battery was made but no arrest.

¶ 66 Allen testified that the agency is evaluating both incidents and that she still needs to speak with the parents about services that they need to complete, including therapy. Jairame's visits have been placed on hold until he is engaged in therapy.

¶ 67 Allen testified that neither parent had made substantial progress and she recommended that Makyla be made a ward of the court and be placed under DCFS guardianship.

¶ 68 After hearing all the evidence, the circuit court found that the parents had made "some progress," but that they were unable to care for or protect their daughter. The court warned DCFS that it did not believe that Jairame's visits should be denied until he completed therapy if a police officer was present in the building during visitation, and that it did not want to hear that Jairame had gone for months without a visit because he had not completed therapy. The court then adjudged Makyla a temporary ward of the State, placing her in the guardianship of DCFS, with a permanency goal of returning her home to her parents within 12 months.

¶ 69 D. Appeal and Limited Remand

¶ 70 On January 22, 2013, Shanae filed her notice of appeal, contesting both the circuit court's

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adjudication and dispositional orders. That notice of appeal was granted and on April 8, 2013, Shanae filed her brief with this appellate court. One of the arguments Shanae made in her brief was that the circuit court erred when it failed to provide a factual basis for its adjudication ruling, either in the written order or in court transcripts, in violation of section 2-21 of the Juvenile Court Act (705 ILCS 405/2-21 (West 2010)).

¶ 71 In response, on April 30, 2013, the State filed a "Motion for Limited Remand to Allow Juvenile Court To Complete Adjudication Ruling By Providing Factual Basis." On May 16, 2013, we granted that motion, ordering the circuit court as follows:

"It is *** ordered that within 21 days of the entry of this Order, the Trial Court is to provide a written factual basis, pursuant to 705 ILCS 405/2-21, for the adjudication findings it made on December 17, 2012.

It is further ordered that, within 14 days after the trial court provided the written factual basis for the adjudication findings it made on December 17, 2012, the parties are to file a supplemental record with this Court.

It is further ordered that within 14 days after the trial Court provided the written factual basis for the adjudication findings it made on December 17, 2012, Shanae W. is to file a status report with this Court, indicating whether she intends to raise any additional arguments on appeal."

¶ 72 In response to our order, on June 3, 2013, the circuit court made the following oral pronouncement on record:

"The Court having granted the State's motion to take judicial notice of competent

testimony from the temporary custody hearing on November 27, 2012, this court hereby makes the following findings upon which its conclusions of law are based:

First, that Makyla D[.] is minor born August 30, 2012 (*sic*) and found in Cook County, Illinois.

Two, Shana[e] *** is the mother of the minor.

Three, Jairame *** is the father of the minor whose paternity was established on November 27, 2012.

Four, on October 7, 2012, Renee Adkins *** found Makyla *** in the alley behind 6511 North Sacramento, Chicago, Illinois, and found by Adkins the minor was alone and not in the care of any adult, was not adequately dressed for the weather and that she did not have any outerwear and was cold.

Five, Renee Adkins called 911 pursuant to the response of the Chicago Police Department, Officer Rikowski *** came to the scene and ascertained that Makyla *** had come from the apartment of Shanae*** where the door was found ajar.

Upon entry into [Shanae's] apartment, Officer Rikowski found conditions in the apartment to be messy with clothing lying about and *** no food in the refrigerator.

Six, Jairame *** provided care for his daughter from October 2, to October 6, 2012, at approximately 10:45 p.m. when he left Makyla in the care of Shanae.

Seven, on or about October 4, 2012, Jairame *** expressed concern to his case manager, Hannah Karah *** that his daughter would be left alone by Shanae without a care plan.

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Eight, on October 7, 2012, Jairame went to the apartment of Shanae to pick up his daughter but left after finding that Makyla was not dressed and ready to leave. Jairame knew that Shanae was due at her job at 2 p.m. that day.

Nine, Jairame did not call Shanae or otherwise ascertain a care plan made for Makyla on October 7, 2012.

Ten, on October 27, 2012, Shanae did not call the Chicago police nor return to her apartment when advised to do so by her case manager, Ann Rauen ***

Eleven, at the time protective custody of the minor *** was taken on October 7, 2012, Jairame was on probation for domestic battery.

Based on the foregoing findings of facts, the Court enters following ruling: The existence of neglect, lack of care necessary in violation of 705 ILCS 405/2-3, Subparagraph D, against natural mother, Shanae.

The existence of abuse substantial injury in violation of 705 ILCS 405/2-3, Subparagraph II, versus Shanae and the existence of neglect injurious environment in violation of 705 ILCS 405/2-3, 1B versus Shanae and Jairame entered this day."

¶ 73 On June 3, 2013, we granted the State's motion to file the transcript of the circuit court's oral pronouncement as a supplemental record in this cause of action. On July 2, 2013, Shanae filed a status report with this appellate court acknowledging the supplemental record and stating that she "does not intend to raise any additional arguments on appeal."

¶ 74 II. ANALYSIS

¶ 75 On appeal Shanae contends that: (1) trial court erred when it granted the State's motion

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at the adjudicatory hearing to take judicial notice of non-hearsay testimony received at the minor's temporary custody hearing; (2) the trial court's finding that Jairame was a noncustodial parent was against the manifest weight of the evidence; and (3) the trial court's finding that Makyla was neglected when she was found alone in the alley was against the manifest weight of the evidence because Shanae had no reason to believe that Jairame, who had custody of Makyla that afternoon and was responsible for her care, was not an adequate care-giver.

¶ 76 After a review of the record, for the reasons that shall be articulated below, we are compelled to conclude that we are without a sufficient factual basis upon which to review the circuit court's adjudicatory order, and therefore must remand this cause for a new adjudicatory hearing before a different judge.

¶ 77 We begin by noting that we are baffled that the guardian *ad litem* appointed to represent the minor's interest in this cause of action decided not to file a brief, particularly since his decision to do so came several months after the supplemental record was filed in this court on June 3, 2013.

¶ 78 More importantly, we find problematic the circuit court's response to this court's order that it provide us with "a written factual basis" for its adjudicatory order. On limited remand, we specifically asked the circuit court to "provide a written factual basis *** for the adjudication findings it made on December 17, 2012," since it had originally failed to do so in violation of section 2-21 of the Juvenile Court Act (705 ILCS 405/2-21 (West 2010)). In response to this request, on June 3, 2013, the trial court made an oral pronouncement articulating the "findings upon which its conclusions of law [were] based." Upon review of that oral pronouncement,

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however, we conclude that instead of providing us with a factual basis upon which to review its findings of abuse and neglect entered on December 17, 2012, the circuit court only added ambiguity to its original order, and potentially acted beyond its jurisdiction by changing its written adjudicatory order in several very important respects.

¶ 79 "It is axiomatic that once a notice of appeal is filed with a reviewing court, the lower court loses jurisdiction over that particular case." *Wheatley v. International Harvester Co.*, 166 Ill. App. 3d 775, 777 (1988). "Any actions taken by a court when it has no jurisdiction are null and void. [Citations.]" *Wheatley*, 166 Ill. App. 3d at 777; see also, *Wierzbicki v. Gleason*, 388 Ill. App. 3d 921, 926-27 (2009) ("upon the filing of a notice of appeal, the circuit court is divested of jurisdiction to enter any order involving a matter of substance and thereafter retains jurisdiction only to decide matters independent of and collateral to a judgment."); see also *People ex rel. Barrett v. Board of Commissioners*, 11 Ill. App. 3d 666, 668 (1973) ("[T]he jurisdiction of the trial court extends to all matters put in issue by the pleadings, and such jurisdiction ceases 30 days after the entry of the final judgment or decree."); see also, *In re J.D.*, 317 Ill. App. 3d 445, 448 (2000) (" 'After 30 days have passed, a court is without jurisdiction to vacate or modify its final judgment.' ") (quoting *Western States Insurance Co. v. Weller*, 299 Ill. App. 3d 317, 322 (1998)).

¶ 80 In a juvenile court proceeding, the circuit court's abuse or neglect findings become final when the dispositional order is entered, in this case on November 20, 2012. See *In re Winks*, 150 Ill. App.3d 657, 659-60 (1986). As a final order or judgment, any appeal of the order finding neglect is governed by the rules concerning appeals from civil cases. See Ill. S. Ct. R. 660(b)

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(eff. Oct. 1, 2001). In the present case, once the notice of appeal was filed by Shanae on January 22, 2013, the circuit court lost its jurisdiction over the adjudicatory order, and therefore its ability to change the findings in that order.

¶ 81 Although jurisdiction in the lower court "can be revived when the case is remanded to it by the reviewing court" (*Wheatley*, 166 Ill. App. 3d at 777), in the present case, we specifically limited our remand permitting the circuit court *only* to clarify its original written adjudicatory order, and provide us with the requisite factual basis for that order, so as to conform with section 2-21 of the Juvenile Court Act (705 ILCS 405/2-21 (West 2010)). Nowhere did we permit the trial court to change its findings or enter a new adjudicatory order. As we explicitly stated:

"It is *** ordered that *** the Trial Court is to provide a written factual basis, pursuant to 705 ILCS 405/2-21, *for the adjudication findings it made on December 17, 2012.*"

¶ 82 We are unsure whether the circuit court judge misapprehended our instructions, but it appears from her oral pronouncement that she may have felt free to enter a new order, since after articulating her findings of fact, she stated:

"Based on the foregoing findings of facts, the Court enters following ruling: The existence of neglect, lack of care necessary in violation of 705 ILCS 405/2-3, Subparagraph D, against natural mother, Shanae.

The existence of abuse substantial injury in violation of 705 ILCS 405/2-3, Subparagraph II, versus Shanae and the existence of neglect injurious environment in violation of 705 ILCS 405/2-3, 1B versus Shanae and Jairame entered this day."

¶ 83 However, the record reveals serious contradictions and inconsistencies between the

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original written adjudicatory order and the court's subsequent oral pronouncement. First, contrary to its written adjudication order entered on December 17, 2012, wherein it found Makyla neglected on three basis: (1) "lack of care" (705 ILCS 405/2-3(1)(a) (West 2010)); (2) an "injurious environment" (705 ILCS 405/2-3(1)(b) (West 2010)); and (3) that as a "minor, under age 14" she was "left without supervision for an unreasonable period of time" (705 ILCS 405/2-3(1)(d) (West 2010)) in its oral pronouncement, the circuit court found Makyla was neglected on only two grounds: (1) "lack of care," and (2) "the existence of neglect injurious environment." In doing so, in its oral pronouncement, the circuit court additionally miscited the sections of the statute reflecting those two bases, noting, "[t]he existence of neglect, lack of care necessary in violation of 705 ILCS 405/2-3, Subparagraph D *** [and] the existence of neglect injurious environment in violation of 705 ILCS 405/2-3, 1B." Contrary to the court's oral pronouncement, neglect on the basis of "lack of care" is found in section 405/2-3(1)(a) of the Juvenile Court Act (705 ILCS 405/2-3(1)(a) (West 2010)), rather than section 2-3(1)(d), which articulates neglect on the basis of a "minor, under age 14" being "left without supervision for an unreasonable period of time" (705 ILCS 405/2-3(1)(d) (West 2010)).

¶ 84 What is more, in its oral pronouncement, the circuit court substantially changed its adjudicatory order with respect to Jairame, Makyla's natural father. While in its original written adjudicatory order, the court found Jairame to be "noncustodial" (a fact that Shanae challenged on appeal as against the manifest weight of the evidence), in its subsequent oral pronouncement, the court found that the abuse or neglect of Makyla was "the result of neglect" inflicted by Jairame when he placed Makyla in "an injurious environment." The record specifically reveals

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that in the written adjudicatory order the circuit court noted that the abuse or neglect of the minor was "the result of abuse or neglect inflicted by a parent." Next to that finding, the trial judge wrote by hand: "NF [natural father] non-custodial." Consistent with its written order, during its initial oral pronouncement of its adjudication, on December 17, 2012, the circuit court only stated:

"I am going to enter the following findings: Neglect, lack of care necessary, neglect home alone, neglect home alone (*sic*), neglect injurious environment, abuse substantial risk of injury.

And I'm going to make a finding that the father, Jairame Davis, Jackson Davis, was noncustodial."

Contrary to this finding, in its subsequent oral pronouncement, made on limited remand, the circuit court found that the responsibility for the neglect of the minor was borne equally by Shanae and Jairame, stating, in relevant part:

"Based on the foregoing findings of facts, the Court enters following ruling:

***[t]he existence of neglect injurious environment in violation of 705 ILCS 405/2-3, 1B versus Shanae and Jairame."

¶ 85 While we acknowledge that at an adjudicatory hearing the question before the court is whether the minor was neglected, rather than whether the parents were neglectful (*In re Arthur H.*, 212 Ill. 2d 441, 467 (2004)), the Juvenile Court Act also mandates that:

"If the court finds that the minor is *** neglected ***, the court shall then determine and put in writing the factual basis supporting that *** determination, and

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specify, to the extent possible, the acts or omissions of both or each parents, guardian, or legal custodian that form the basis of the court's findings. That finding shall appear in the order of the court. [Citation.]" (705 ILCS 405/2-21 (West 2010)).

The circuit court cannot simultaneously find that Jairame was a noncustodial parent, whose acts or omissions were irrelevant to the court's finding of neglect, while holding that because of his actions (leaving Shanae's apartment without Makyla) and omissions (without determining Makyla's care plan for that afternoon) Jairame in fact placed Makyla in an injurious environment.

¶ 86 In addition, we note that in its oral pronouncement, intended to clarify its written adjudicatory order and provide us with the requisite factual findings (see 605 ILCS 405/2-21 (West 2010)), the circuit court made several important factual errors. First, the circuit court misstated Makyla's birthday. Instead of the correct date, August 30, 2010, the circuit court stated that the minor was born on August 30, 2012, which would have made her less than a year old at the time of the only incident relevant to her finding of neglect. In addition, the circuit court miscited the date of the only relevant incident upon which its findings of neglect were based, when Makyla was found alone in the alley. Although it initially indicated that this incident occurred on October 7, 2012, later in its oral pronouncement it referred to the date as October 27, 2012.

¶ 87 Considering all of the aforementioned errors, as well as the clear conflicts between the circuit court's oral pronouncement and its original written adjudicatory order, which, on limited remand, the circuit court lacked jurisdiction to change, we are left with an insufficient and muddled record, which permits us only to guess at the circuit court's grounds for finding Makyla

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neglected.

¶ 88 The trial court was given an opportunity to fix its original mistake of failing to provide us with a proper factual basis for its adjudication, as is mandated under section 21-1 of the Juvenile Court Act. (705 ILCS 504/21-1 (West 2010)). The trial judge failed to correct that mistake. This is a child custody case, wherein the best interest of the minor is preeminent. See *In re. N.B.*, 191 Ill. 2d at 343 ("In any proceeding initiated pursuant to the Juvenile Court Act of 1987, including an adjudication of wardship, the 'paramount consideration' is the best interest of the child") (quoting *In re K.G.*, 288 Ill. App. 3d 728, 734 (1997)); see also *Arthur H.*, 212 Ill. 2d at 463 ("A proceeding for adjudication of wardship 'represents a significant intrusion into the sanctity of the family which should not be undertaken lightly.' [Citation.] *** A finding of abuse, neglect or dependence is jurisdictional, ' "without [which] the trial court lacks jurisdiction to proceed to an adjudication of wardship."'). Accordingly, we need to move this case forward and quickly. Therefore, we are without recourse but to remand this cause for a new adjudicatory hearing before a different judge. We further order that the new adjudicatory hearing be held no later than 30 days after the entry of this judgment, and that the appointed trial judge hear all of the evidence anew, without resorting to judicial notice of any prior testimony.

¶ 89

III. CONCLUSION

¶ 90 Accordingly, we reverse and remand for a new adjudicatory hearing before a new judge.

¶ 91 Reversed and remanded, with instructions.