

FOURTH DIVISION
Order filed November 27, 2013
Modified upon denial of rehearing January 23, 2014

No. 1-13-1190

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 re ISSAC D. and ANDREW D.,)
Minors,)
)
 Respondents-Appellants,)
)
(THE PEOPLE OF THE STATE OF)
ILLINOIS,)
)
 Petitioner,)
)
v.) No. 12 JA 488-89
)
MONIQUE R.,)
)
 Mother-Respondent-Appellee,)
)
ANDREW D.,) Honorable
) Maureen Delehanty,
 Father-Respondent-Appellee).) Judge Presiding.

PRESIDING JUSTICE HOWSE delivered the judgment of the court.
Justices Lavin and Epstein concurred in the judgment.

ORDER

¶ 1 *HELD:* The trial court's order dismissing the State's

petitions for adjudication of wardship is reversed; the trial court's finding that the State did not prove by a preponderance of the evidence that Issac D. and Andrew D. are abused or neglected is against the manifest weight of the evidence.

¶ 2 After an adjudication hearing on April 15, 2013, the trial court found that the State failed to show by a preponderance of the evidence that minors Issac D. and Andrew D. were abused or neglected. As a result, the trial court dismissed the petitions for adjudication of wardship and the boys were returned to the custody of their mother, Monique R. The custody order was stayed pending this appeal. The public guardian on behalf of the minors now appeals the trial court's finding, arguing that it met its burden of proof at the adjudication hearing. For the reasons that follow, we reverse the trial court's findings and remand this matter for further proceedings.

¶ 3 BACKGROUND

¶ 4 Issac D. (Issac) was born on June 6, 1999 and is 14 years old. Andrew D. (Andrew) was born on July 30, 2002 and is 11 years old. The mother and legal custodian of both boys is Monique R. (Monique). Issac's father is Andrew D. (putative father)¹. Andrew's father is unknown.

¹Andrew D. is only the putative father of Issac, however, for convenience, we refer to Andrew D. as the "putative father" throughout this order.

1-13-1190

¶ 5 On May 2, 2012, Issac and Andrew were taken into protective custody. On May 3, 2012, the State filed petitions for adjudication of wardship for both boys, which were accompanied by motions for temporary custody. The petitions for adjudication of wardship claim that the children were neglected pursuant to section 405/2-3(1)(b) of the Juvenile Court Act (the Act)² because: (1) Monique and the putative father had one previous indicated report; (2) in April 2011, the putative father was found to be in need of services, some of which were outstanding; (3) Monique admitted to using illegal drugs, was inconsistent with her services, had been in a rehabilitation facility, but left before the program was over when her children's placement was disrupted; (4) one of the minors reported that he saw Monique use illegal substances, Monique hit him with a belt when she was high and he was afraid of Monique; and (5) Monique and the putative father had a history of domestic violence. The motions for temporary custody alleged similar facts. The petitions for adjudication also claim that the children were abused pursuant to section 405/2-3(2)(ii) of the Act³ for the same reasons stated

² "Those who are neglected include: *** (b) any minor under 18 years of age whose environment is injurious to his or her welfare," 705 ILCS 405/2-3 (b) (West 2010).

³ "Those who are abused include any minor under 18 years of age whose parent or immediate family member, or any person responsible for the minor's welfare, or any person who is in the

1-13-1190

above. On May 4, 2012, the trial court granted the State's motions for temporary custody and granted the Department of Children & Family Services (DCFS) temporary custody of both boys.

¶ 6 On April 15, 2013, an adjudication hearing was held.

Susanna Ramos, Yeni Jiminez and Lisa Carswell testified at the hearing. Susanna Ramos testified that she was an intact worker for the Association House of Chicago. Her first contact with the family was in approximately October 2011, and she remained on the case through May 3, 2012; however, she was not the initial caseworker on the case. In February 2011, a hotline report was received indicating that the putative father had used corporal punishment on the minors. It was also reported that when Monique confronted the putative father about the corporal punishment, they got into an altercation and the putative father pushed Monique down the stairs. Services were assessed for both parents following this report. Specifically, it was recommended that Monique receive parenting, counseling, anger-management and substance abuse treatment services, and that the putative father

same family or household as the minor, or any individual residing in the same home as the minor, or a paramour of the minor's parent: *** (ii) creates a substantial risk of physical injury to such minor by other than 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).

1-13-1190

receive a mental health assessment, anger management services and parenting services.

¶ 7 As of the date of the February 2011 hotline call, when the case first came to the attention of DCFS, Monique was already involved in a detox program at Haymarket and subsequently Cornell Interventions. To Ramos' knowledge, Monique was sober while she was participating in the drug programs. There was a report in February 2012 that she had relapsed. From the time of her relapse through May 2012, Monique voluntarily enrolled herself into a spiritually-based residential substance abuse program at Dream Center and placed her children with Safe Family while she engaged in treatment. Monique remained in the program at Dream Center until there was a disruption in her children's placement at Safe Family due to the behavior of the boys. Monique left Dream Center before the completion of her program because she was concerned and worried about where the children would live since they could no longer remain at Safe Family. Before the placement was disrupted, Monique was in frequent contact with Safe Family. Ramos ceased working on this case on May 3, 2012 when temporary custody was given to DCFS. As of May 3, 2012, Monique had not completed parenting classes and the putative father had not engaged in a mental health assessment or parenting classes. Monique was still engaged in her substance abuse program as of

1-13-1190

May 3, 2012, and that program was not completed as of that date.

¶ 8 Ramos further testified that during a conversation with Monique on February 10, 2012, Monique admitted that she had relapsed by using Phencyclidine (PCP). Monique was then sent to Association House where she took a drug test that was positive for PCP. Ramos also testified that the putative father was not living with Monique for the duration of the case, although he would visit the children. Ramos testified that Dream Center was a program that Monique found on her own and the Association House of Chicago approved of the program. While at Dream House, Monique was compliant with the services she received. Further, when her children's placement was disrupted in May 2012, Monique only left Dream House for a few days.

¶ 9 Yeni Jiminez testified that she was the program supervisor at Association House of Chicago and was assigned to supervise the family from February 16, 2011 to May 3, 2012. She did not recall why the case was brought to the attention of DCFS. On February 10, 2012, she had a conversation with Monique, during which Monique admitted that she had relapsed with PCP. She was taken to the Association House for a drug screening, which tested positive for PCP. Following the drug screening, she enrolled in an intensive substance abuse program and voluntarily placed her children in the Safe Family Program while she received treatment.

1-13-1190

While the children were with Safe Family, Monique maintained full legal custody of the children and was responsible for their safety and care plan. The children's placement with Safe Family was disrupted because Safe Family could not meet the needs of the minors. On May 3, 2012, when the case was closed due to temporary custody being granted to DCFS, Jiminez testified that temporary custody was granted due to Monique not following through with recommended services as well as Monique's inability to make an alternative care placement for the children. Jiminez testified that she did not recall meeting the putative father, but knew that he was noncustodial during the time that the case was intact.

¶ 10 Lisa Carswell testified that she was assigned to investigate the family in April 2012 on behalf of DCFS, Division of Child Protection. As part of her investigation, she spoke with each child. On May 2, 2012, she spoke with Issac at Mercy Hospital. Issac told her he was aware that his mother was smoking and using drugs, but she did not recall specifically what Issac saw his mother smoke. Issac stated that after she would smoke, her behavior changed and she said stupid stuff. Issac stated that he was afraid to leave school that day because he thought Monique would call the police on him.

¶ 11 Carswell also spoke with Monique that day in Monique's new

1-13-1190

apartment, which she had received pursuant to her participation in a substance abuse program. Monique admitted to smoking PCP in the past with the putative father; however, stated that she was not using at the time. Monique indicated to Carswell that she had been separated from the putative father for three years, and that there had been previous domestic violence with him--he would hit, push, slap and shove her. The altercations, which Monique did not put into any time frame, involved the police. Monique stated that Issac had witnessed domestic abuse. Monique told Carswell that since their separation, there had been one altercation with the putative father. Carswell understood this incident to be the one that resulted in the hotline call.

Monique stated that she was engaging in substance abuse treatment at Dream Center, but not parenting classes because she had not yet received a bus pass. While Monique was at Dream Center, she learned that her children's placement had been disrupted because one of the boys threatened to kill everybody in the house. When Monique learned this information, she checked herself out of Dream Center and went to obtain an apartment for her family.

¶ 12 Carswell also spoke with Andrew at Mercy Hospital. Andrew told her that he has seen his mother smoke green and white stuff that she rolled up, but Carswell could not recall if Andrew said he had seen her do that recently. Carswell did not ask when

1-13-1190

Andrew made these observations. Andrew stated that Monique hits him with a belt and back scratcher on his butt, legs, hands and "some place else." Carswell did not observe any injuries on Andrew. Andrew stated that he and his brother were left home alone many times, however he did not say for how long, how often or when this occurred. Andrew stated that he was scared of his mother and did not want to go back home with her.

¶ 13 Carswell also had a conversation with the putative father by telephone. During their conversation, the putative father informed Carswell that the hotline call had been made after Andrew told Monique that he had spanked him for peeing the bed, which resulted in Monique kicking a door and him pushing Monique down the stairs. As a result, he was charged with domestic battery and served 28 days in jail. He denied any drug use and stated that he was aware that Monique had used drugs but was not sure if she was using them presently. The putative father further informed her that he was unable to take care of the children at this time because he had no stable housing, was illiterate and was having a hard time finding a job. At the end of Carswell's investigation, because Monique wanted to return to the drug treatment program where the children could not live and because Andrew stated he was scared of Monique, she determined that temporary custody was appropriate.

1-13-1190

¶ 14 Carswell testified that the first indicated report from February 2011, when the putative father pushed Monique down the stairs, was the incident that initiated recommendations for services for the parents. She stated that the children witnessed this incident. With respect to her comment that Andrew had seen his mother use drugs, Carswell indicated that she did not ask him when because at the time she spoke with him he had already been at Safe Family for a while. Carswell further stated that Monique's new apartment was a decent size, was clean, had the lights on, and Monique planned to use it as a place for her and her boys to live.

¶ 15 Carswell also testified that during her May 2, 2012 conversation with Issac, Issac stated he was not afraid of his mother, that he wanted to go home with her, and that he didn't like Safe Family. He also told Carswell that Monique only hit him with her hand and only when he was bad. She never left marks on his body. Monique told Carswell that she was willing to engage in further services.

¶ 16 Following the witnesses' testimony, the court's attention was directed to four exhibits that the State entered into evidence. Exhibit No. 1 was a DNA diagnostic result that confirmed the putative father's paternity of Issac. Exhibit No. 2 was Monique's records from her treatment at Haymarket beginning

1-13-1190

in March 2011. The Haymarket records show that Monique began using PCP when she was fifteen years old. They also show a positive test for PCP in March 2011 and indicate a diagnosis of major depressive disorder. Exhibit No. 3 consists of records from the Association House of Chicago, which includes an emergency order of protection and petition for order of protection from April 8, 2011 as well as a document showing the test results from Monique's drug screening on February 10, 2012, which were positive for PCP. Exhibit No. 4 is a DCFS service plan that was approved on February 17, 2012, which shows what services were recommended for Monique and the putative father. There is a comment within exhibit No. 4 stating that Monique admitted to using corporal punishment on her children.

¶ 17 The court heard arguments from all parties after the exhibits were admitted into evidence, and then took a short recess to examine the exhibits. Following recess, the trial court judge found that the State had not met its burden of proof on any of the grounds presented in the petitions. In coming to this ruling, the trial court judge made the following comments:

"There was no question that mother was engaged and committed to services at the time. And the testimony that she was very worried about the children, had been in touch

with them throughout, had been engaged in the services. A parenting class might not have been completed but the unrebutted testimony was that she didn't receive a bus pass for that but had been - - well, the testimony wasn't really clear as to whether or not she had begun, but she had - - none of the State's witnesses knew how much of the parenting class she had done.

The statements from the children were uncorroborated in any way. They were hearsay statements. No one saw any marks on the kids that would corroborate any of the abuse statements. In fact, it was clear that most of the statements that the children had made regarding mother's drug use was unsubstantiated as regards to when they saw it or anything like that. The domestic violence that occurred - - she did the right thing in that. I mean she separated this guy for three years because of domestic violence. He injured her in the incident where he - - I mean he attacked her, threw her down the

1-13-1190

stairs. It's clear she followed through on that if he was incarcerated. What more - - I don't know that that should necessarily be held against her. Again, none of the information taken from the children was corroborated in any way and is hearsay.

She was a concerned mother in my view who had completed a substantial amount of treatment to address her issues. Through no fault or lack of concern or negligence or neglect on her part a placement was disrupted, and she knew there was nowhere - - no placements available for her children. She did what many women would do, many mothers would do, check themselves out and get an apartment."

The trial court judge further commented that Monique was willing to do treatment and engage in services and dismissed the petitions for adjudication of wardship because the State failed to show abuse or neglect by a preponderance of the evidence. The trial court further denied the State's request to stay the order dismissing the case.

¶ 18 The public guardian on behalf of Andrew and Issac now

1-13-1190

appeals the trial court's dismissal of the petitions for adjudication of wardship of Issac and Andrew, claiming that the trial court's findings were against the manifest weight of the evidence that had been presented at the hearing, which showed that the children had (1) witnessed Monique use controlled substances, (2) been subjected to corporal punishment by Monique, and (3) witnessed domestic abuse between Monique and the putative father. For the reasons that follow, we reverse the trial court's rulings.

¶ 19 ANALYSIS

¶ 20 The procedural steps that are required to determine whether a child should be removed from his or her parents and made a ward of the court are set forth in the Juvenile Court Act of 1987 (the Act). 705 ILCS 405/1-1 *et seq.* (West 2010). Upon the filing of a petition for wardship by the State, the Act provides that a temporary custody hearing shall be held during which the court shall determine whether there is probable cause to believe that the child is neglected, whether there is an immediate and urgent necessity to remove the child from the home, and whether reasonable efforts have been made to prevent the removal of the child or that no efforts reasonably can be made to prevent or eliminate the necessity of removal. 705 ILCS 405/2-10 (West 2010).

¶ 21 Following placement of a child in temporary custody, the

1-13-1190

trial court must hold an adjudication hearing where the trial court is to determine whether the child is abused, neglected or dependent. *In re A.P.*, 2012 IL 113875, ¶18 (2012). Section 2-3(b)(1) of the Act defines a "neglected minor" as "any minor under 18 years of age whose environment is injurious to his or her welfare." 705 ILCS 405/2-3(1)(b) (West 2010). "Neglect" is defined as the failure to exercise the care that circumstances justly demand and encompasses both willful and unintentional disregard of parental duty. *In re K.T.*, 361 Ill. App. 3d 187, 200 (2005). An injurious environment is an amorphous concept that cannot be defined with particularity, but has been interpreted to include the breach of a parent's duty to ensure a safe and nurturing shelter for her children. *In re Arthur H.*, 212 Ill. 2d 441, 463 (2004). An "abused minor" includes any minor under 18 years old whose parent 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).

¶ 22 A proceeding for adjudication of wardship "represents a significant intrusion into the sanctity of the family which should not be undertaken lightly." *In re Harpman*, 134 Ill. App. 3d 393, 396-97 (1985). The "paramount consideration" at an

1-13-1190

adjudication hearing is the best interest of the child. *In re N.B.*, 191 Ill. 2d 338, 343 (2000). It is the burden of the State to prove allegations of neglect or abuse by a preponderance of the evidence (*In re Christina M.*, 333 Ill. App. 3d 1030, 1034 (2002)), meaning the State must establish that the allegations of neglect or abuse are more probably true than not. *In re N.B.*, 191 Ill. 2d at 343; *In re M.H.*, 196 Ill. 2d 356, 365 (2001).

"[C]ases involving allegations of neglect and adjudication of wardship are *sui generis*, and must be decided on the basis of their unique circumstances." *Arthur H.*, 212 Ill. 2d at 463.

¶ 23 On review, a trial court's ruling regarding neglect or abuse will not be disturbed unless it is against the manifest weight of the evidence. *In re Arthur H.*, 212 Ill. 2d at 463-64; *In re M.Z.*, 294 Ill. App. 3d 581, 592 (1998). A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident. *In re A.P.*, 2012 IL 113875, ¶17 (2012). The trial court is vested with wide discretion and great deference in child custody proceedings because it has the best opportunity to observe the witnesses' testimony, assess credibility, and weigh the evidence. *In re E.S.*, 324 Ill. App. 3d 661, 667 (2001).

¶ 24 I. Motion to Strike Family Court Conference Report of Proceedings

¶ 25 Prior to addressing the merits of this appeal, we must

1-13-1190

preliminarily address a motion that was taken with the case.

After the public guardian filed its appellant brief, the putative father filed a "Motion to Strike Family Court Conference Report of Proceedings Dated October 30, 2012, Exhibits and Minors Respondents' Brief and Argument," which requests that any and all evidence and testimony submitted on appeal pertaining to the October 30, 2012 Family Court Conference be stricken. The putative father argues that such information was improperly discussed and included in the minors' appellate brief pursuant to Supreme Court Rule 942 and General Order 09-27. In response, the public guardian for the minors states that the information discussed and included in the minors' brief was only included as factual background for this court and was not incorporated into the argument section of the brief. The minors, like the putative father, acknowledge that at the adjudication hearing on April 15, 2013, the trial court was not presented with a transcript of the October 30, 2012 Family Court Conference, and the court was not asked to take notice of the matters that were discussed and submitted at the Family Court Conference on October 30, 2012.

¶ 26 As all parties have recognized, this court will not reverse the trial court's findings made at an adjudication hearing unless those findings are against the manifest weight of the evidence. *In re April C.*, 326 Ill. App. 3d 245, 257 (2001). This standard

1-13-1190

implies that we must consider only the evidence that the trial court considered when making our ruling. Evidentiary material that was never presented to or considered by the trial court will not be considered by a reviewing court. *Paul H. Schwendener, Inc. v. Jupiter Electric Co., Inc.*, 358 Ill. App. 3d 65, 77 (2005); *Groce v. South Chicago Community Hospital*, 282 Ill. App. 3d 1004, 1009 (1996); see *Jenkins v. Wu*, 102 Ill. 2d 468 (1984); see also *In re Saline Branch Drainage District*, 172 Ill. App. 3d 574 (1988). Consequently, as the parties and the record indicate that the trial court did not consider the evidence presented at the October 30, 2012 Family Court Conference⁴, we will grant the putative father's motion, strike any and all references to evidence or testimony elicited at the October 30, 2012 Family Court Conference, and not consider that evidence for purposes of this appeal.

¶ 27 II. Trial Court Did Not Err When It Considered The Mother's Pre-Petition Conduct At The Adjudicatory Hearing

¶ 28 When the trial court dismissed the petitions for adjudication of wardship for Andrew and Issac, it made findings that Monique was engaged and committed to services, had completed

⁴ The minor's response states that the testimony and exhibits from the Family Court Proceeding were "included as background on the case generally, not as evidence that was taken into account by the trial court at adjudication."

1-13-1190

a substantial amount of treatment, had been separated for three years from the putative father who was the source of the domestic violence, and was a concerned mother. The court further found that when Monique learned that her children's placement had been disrupted, she did what many mothers would do and got an apartment in order to provide a home for them.

¶ 29 On appeal, the public guardian argues that the trial court's finding should be reversed because the trial court improperly considered Monique's pre-petition conduct, namely her efforts to engage in substance abuse treatment and efforts to separate herself from an abusive relationship, in making its ruling at the adjudication hearing. In support of this argument, the public guardian cites *In re Kenneth D.*, 364 Ill. App. 3d 797 (2006). We believe the public guardian misinterprets the holding of *In re Kenneth D.* and similar cases.

¶ 30 In *In re Kenneth D.*, the court held that "respondent's subsequent completion of services after the removal of Kenneth was not relevant to the allegations in the petition." *In re Kenneth D.*, 364 Ill. App. 3d at 804. Thus, the court in *In re Kenneth D.* found that evidence of a parent's behavior *after the child had already been removed* from the parent's custody, *i.e.* post-petition behavior, was not relevant to proving or disproving

the allegations in the petition at the adjudicatory hearing.⁵

¶ 31 In contrast to *In re Kenneth D.*, the evidence that was offered with respect to Monique's behavior--engaging in drug treatment and separating herself and the children from domestic abuse--was pre-petition behavior as it occurred before the petitions for adjudication for wardship were filed and before Monique's children were temporarily removed from her custody. Such pre-petition evidence is relevant to allegations in the petitions for adjudication of wardship. As such, it was proper for the trial court to consider evidence of Monique's behavior prior to the filing of the petitions for adjudication of wardship in evaluating current conditions and determining whether the children were neglected and/or abused as defined under the Act at the time the petitions were filed. See *In re Kenneth D.*, 364 Ill. App. 3d at 802 (holding that the child was in an injurious environment because, at the time the petition was filed, there was no evidence that the mother had made progress in ameliorating her drug problems and her compliance with drug screening was erratic and inconsistent.).

¶ 32 III. The State's Allegations Of Domestic Violence,
Corporal Punishment And Drug Use

⁵ "[T]he test for admissibility of post-petition evidence will depend on whether it is relevant to the allegations in the petition." *In re Kenneth D.*, 364 Ill. App. 3d at 805.

1-13-1190

¶ 33 In support of its argument that the trial court erred when it dismissed the petitions for adjudication of wardship, the public guardian cites to issues of domestic abuse, corporal punishment and drug abuse as bases for a finding of neglect or abuse. The trial court found that none of these issues supported a finding of abuse or neglect. For the reasons that follow, we agree with the trial court's findings that the issues of domestic abuse and corporal punishment presented in this case do not warrant findings of neglect or abuse. However, we believe that Monique's longstanding drug abuse and recent relapse do warrant a finding of neglect and, therefore, reverse the trial court's order dismissing the petitions.

¶ 34 A. Allegations Of Domestic Violence

¶ 35 The public guardian argues that the State met its burden at the adjudication hearing because it showed that the children had witnessed physical violence between Monique and the putative father. Specifically, the State points to an episode in January 2011 when the putative father pushed Monique down the stairs resulting in the putative father's arrest, and Monique's statement that the children had seen abuse between herself and the putative father prior to their separation more than three years ago. According to the public guardian's arguments, such evidence is sufficient to establish a finding of neglect and

1-13-1190

abuse. In presenting evidence of longstanding violence between Monique and the putative father, however, the State failed to establish any time frame as to when any of this violence occurred. Accordingly, besides knowing that the putative father pushed Monique down the stairs in January 2011, there is nothing in the record to indicate when any of the other alleged violence occurred. Further, after Carswell interviewed both children, she did not testify that either child mentioned domestic violence between Monique and the putative father outside of the January 2011 incident.

¶ 36 Moreover, Monique separated from the putative father three years prior to the time the petitions were filed and has not lived with him since, thus removing herself and her children from the abusive environment. Thus, while the public guardian argued that the domestic violence was sufficient for a finding of abuse and neglect, based upon the unique facts of this case, we cannot find that Monique failed "to exercise the care that the circumstances warrant[ed]" (*In re Arthur*, 212 Ill. 2d at 463) such that a finding of abuse or neglect based upon domestic violence was warranted.

¶ 37 B. Allegations Of Corporal Punishment

¶ 38 The public guardian also points to corporal punishment by Monique as a basis for a finding of abuse. With respect to

1-13-1190

corporal punishment, besides the statements of the children, the service plan of February 17, 2012 includes a note indicating that Monique admitted to using corporal punishment; however, there is no information as to the extent or nature of the corporal punishment, what circumstances brought about the corporal punishment, or when any instances of corporal punishment occurred. There is no evidence in the record that anyone saw injuries on either child at any time. In fact, upon investigating the case, Carswell testified that she did not see any injuries on the children. Further, there are no medical records in the record pertaining to any injuries suffered by either child as a result of corporal punishment, and Issac testified that Monique only hit him when he was bad and only with the back of her hand.⁶

¶ 39 It is clear that a parent has the "right" to corporally discipline his or her child, a right derived from our constitutional right to privacy. See *In re F.W.*, 261 Ill. App. 3d 894, 898 (1994). But this right, like any other, must be exercised in a "reasonable" manner. *Id.*; *In the Interest of L.M.*, 189 Ill. App. 3d 392 (1989). In considering whether

⁶ Although Andrew stated that Monique hit him with a belt and back scratcher on his butt, legs, hands and "some place else," there is no evidence to corroborate this statement, and it alone cannot be used to make a finding of abuse or neglect. See 705 ILCS 405/2-18(4)(c) (West 2010).

1-13-1190

corporal punishment is excessive, factors worthy of consideration include whether (1) an injury occurred, (2) the punishment was imposed for no reason, (3) the punishment was excessive in the light of the circumstances, and (4) any medical or expert testimony was presented. *In re S.M.*, 309 Ill. App. 3d 702, 706 (2000) (finding no excessive corporal punishment where the record was devoid of any evidence that a belt was used in a vicious manner or for anything other than disciplinary reasons).

¶ 40 Here, there is no evidence of any injuries to the children as a result of corporal punishment, no evidence that the children were hit for no reason, no evidence of the nature and extent of the corporal punishment to even determine if it was excessive, and no medical or expert testimony before this court. As such, we cannot say that the trial court's finding that the children were not abused as a result of corporal punishment was against the manifest weight of the evidence.

¶ 41 C. Allegations Of Drug Use

¶ 42 Last, the public guardian argues that Monique had a history of using drugs, had not yet completed treatment for her drug use issues, and had used drugs in the presence of her children and that these facts create grounds for a neglect finding. While we recognize that drug use in the children's presence may form a *prima facie* case of neglect at the adjudicatory hearing, here,

1-13-1190

the State failed to prove when the children saw Monique using drugs, how often the children saw her using drugs and, most importantly, whether they witnessed her drug use more than once.⁷ In order to establish a *prima facie* case of neglect, there must be repeated instances of drug abuse in the presence of the children, and that evidence was not presented here. See 705 ILCS 405/2-18(2)(g) (West 2010) ("proof that a parent, custodian, or guardian of a minor repeatedly used a controlled substance, as defined in subsection (f) of Section 102 of the Illinois Controlled Substances Act, in the presence of the minor or a sibling of the minor is *prima facie* evidence of neglect."). Thus, the State did not present a *prima facie* case of neglect under section 2-18(2)(g) of the Code as it failed to present evidence of repeated instances of drug use in the presence of Issac and/or Andrew.⁸

¶ 43 However, based on the fact that Monique was addicted to PCP since the age of fifteen and had relapsed as recently as three

⁷ The caseworker Carswell admits that she did not ask the children when they saw Monique use drugs or whether it was more than once.

⁸ It is also worth noting that the evidence presented by the State alleging to show that Monique was using drugs in the presence of her children was based on uncorroborated hearsay statements of the children, which cannot form the basis of a finding of abuse or neglect. See 705 ILCS 405/2-18(4)(c) (West 2010).

1-13-1190

months prior to the State filing the petitions for adjudication of wardship (and after having engaged in multiple substance abuse programs), we find there is sufficient evidence under section 18 (f) to show a *prima facie* case of neglect. 705 ILCS 405/2-18 (West 2008). Section 18(f) of the Juvenile Act states: "proof that a parent, custodian or guardian of a minor repeatedly used a drug, to the extent that it has or would ordinarily have the effect of producing in the user a substantial state of stupor, unconsciousness, intoxication, hallucination, disorientation or incompetence, or a substantial impairment of judgment, or a substantial manifestation of irrationality, shall be prima facie evidence of neglect." 705 ILCS 405/2-18(2)(f) (West 2008). Under the Illinois Controlled Substances Act, phencyclidine, or PCP, is recognized as a hallucinogenic controlled substance; the Act defines "hallucinogen" as "a drug that causes markedly altered sensory perception leading to hallucinations of any type." See 720 ILCS 570/102(u-0.5) & 204(d) (West 2008).

¶ 44 A court may take judicial notice of a fact that is not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. Ill. Evid. R. 201(b) (eff. Jan. 2011). Further, a court may take

1-13-1190

judicial notice of a fact regardless of whether it was requested. Ill. Evid. R. 201(c) (eff. Jan. 2011). Given that PCP is a known hallucinogen⁹, it is clear that the repeated use of PCP since the age of 15 would ordinarily have the effect of intoxicating a person, including Monique, to the extent of causing hallucinations. Therefore, because the State presented evidence that Monique had been addicted to PCP since her early adolescent years, suffered a relapse just three months before the petitions for adjudication were filed, and had not completed her course of substance abuse treatment at the time the petitions were filed, the State has presented a *prima facie* case of neglect at the adjudication hearing and the trial court's findings of no abuse or neglect are contrary to the manifest weight of the evidence. See *In re Z.Z.*, 312 Ill. App. 3d 800, 805 (2000) (finding that an ongoing pattern of substance abuse can create an injurious environment.).

¶ 45 While we recognize and appreciate that Monique made substantial progress in addressing her issues with drug use and domestic violence, such evidence cannot overcome a *prima facie*

⁹ Additionally, based on information from the National Institute of Drug Abuse, the U.S. Department of Health and Services includes Phencyclidine (PCP) as one of four common types of hallucinogens. See NIDA PCP (Phencyclidine). NIDA InfoFacts, <http://www.drugabuse.gov/PDF/Infofacts/PCP06.pdf> Washington (DC), USA: U.S. Department of Health and Services 2006. 1-3.3.

1-13-1190

finding of neglect at the adjudicatory phase of the litigation when determining whether a child should be made a ward of the court. See *In re A.P.*, 2012 IL 113875 (2012).

¶ 46 CONCLUSION

¶ 47 For the above reasons, we reverse the trial court's finding that Issac and Andrew were not neglected and remand this matter for further proceedings consistent with this order.

¶ 48 Reversed and remanded.