

affirm.

¶ 3

I. BACKGROUND

¶ 4 In November 2007, the Sangamon County Regional Office of Education (ROE) was notified D.B. was missing school. Respondent signed an educational plan agreeing to get D.B. to school each day. However, D.B.'s attendance did not improve. Thereafter, respondent repeatedly failed to show up for truancy review board hearings. When respondent finally attended the hearing, she informed the board it was her fault D.B. could not make it to school.

¶ 5 On November 26, 2008, the State filed a petition for adjudication of neglect, alleging D.B., then six years old, was neglected pursuant to section 2-3(1) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(1)(a) (West 2008)) in that he was "not receiving the proper care, specifically educational services[,] necessary for his well being."

¶ 6 A January 2009 letter from Marcie Walters, an ROE truancy caseworker, to the trial court stated D.B., a first grader, had "only attended 50 percent of school" so far that school year and had also missed 60 days of the prior school year. The letter requested D.B. "be found educationally neglected."

¶ 7 During the May 6, 2009, hearing on the State's petition, respondent stipulated to the State's allegations. The trial court adjudicated D.B. neglected but ordered custody and guardianship to remain with respondent. The court then held a dispositional hearing *instanter* and ordered D.B.'s parents to "ensure that the minor is in school every day it is in session and is on time." The court set the matter for a September 2009 review hearing.

¶ 8 In a September 8, 2009, letter to the trial court, truancy caseworker Walters noted, "last year as a [first] grader, [D.B.] was absent 64.5 days and as a Kindergartner [D.B.] missed 60

days of school. This year [D.B.] has missed a half a day already and is late almost everyday."

Walters requested the minors' father be given guardianship of D.B. because of respondent's continued inability to get D.B. to school.

¶ 9 On September 9, 2009, the State filed a motion to modify the dispositional order, alleging respondent violated the terms of the May 2009 dispositional order in that she failed to ensure D.B.'s school attendance. The State requested custody and guardianship of D.B. be placed with his father.

¶ 10 In an October 26, 2009, letter to the trial court, truancy caseworker Walters stated respondent's other child, T.B., was also late to school "almost everyday." The letter requested the court award guardianship to the minors' father, Dennis Balagna. According to the letter, Dennis served in the military, and both he and his wife worked for the Red Cross. Dennis lived in a "large tri-level home in a quiet neighborhood" and both D.B. and T.B. would have their own rooms. The letter also stated Dennis already had joint custody of the children and regular visitations and wanted the opportunity to provide them with a stable environment.

¶ 11 On December 1, 2009, the State filed a motion to withdraw its motion to modify the dispositional order, presumably because respondent had made satisfactory progress. Indeed, in a January 26, 2010, letter to the trial court, truancy caseworker Walters expressed pleasure with D.B.'s progress and asked the court to continue the case generally. On January 28, 2010, the court entered an order to continue the case.

¶ 12 On November 29, 2011, the State filed a petition for adjudication of neglect, alleging T.B., then eight years old, was neglected pursuant to section 2-3(1) of the of the Juvenile Court Act (705 ILCS 405/2-3(1)(a) (West 2010)) in that she was "not receiving the proper care,

specifically educational services necessary for her well being."

¶ 13 In the trial court's December 15, 2011, first appearance order, the court ordered respondent to ensure the minors are in school everyday. The court set the matter for a March 8, 2012, hearing on the State's petition for adjudication of neglect, which was ultimately continued to July 26, 2012.

¶ 14 In an April 25, 2012, letter to the trial court, Tammy Small, an ROE truancy caseworker, stated D.B. had missed 203 and 1/2 days of school since entering kindergarten. His sister, T.B., missed 73 days of school since entering kindergarten. The letter noted T.B., who was attending Lindsay School on a transfer basis, would "most likely" have her transfer revoked because of her "absences and tardies." Small recommended respondent be held in indirect criminal contempt for violating the court's previous orders to ensure the children attend school.

¶ 15 On May 3, 2012, the State filed a petition for adjudication of indirect criminal contempt against respondent, alleging respondent violated the trial court's order the minor children attend school. That same day, the State filed a motion to modify the dispositional order, alleging respondent violated the court's May 6, 2009, and December 15, 2011, orders requiring her to ensure D.B. and T.B. attended school each day.

¶ 16 During the June 28, 2012, contempt hearing, truancy caseworker Small testified D.B. had missed 60 days of kindergarten, 64 and 1/2 days of first grade, and between 25 and 30 days per year of second and third grade. According to Small, of D.B.'s 25 absences this year, 17 of those were unexcused. D.B. also had approximately 30 additional "tardies." With regard to T.B., Small could not recall the exact number of absences but testified T.B. had "more than nine unexcused absences." Small testified respondent had not provided her with a valid excuse to

"cover that many absences." The minors told her they would stay up late and watch movies with respondent. The trial court found respondent not guilty of criminal contempt because it did not find her failure to ensure the minors' attendance was willful or contemptuous. However, the court did find respondent was "incapable of getting the children to school." The court placed D.B. and T.B.'s temporary custody and guardianship with their father.

¶ 17 During a July 26, 2012, adjudicatory hearing on the State's petition for adjudication of neglect as to T.B., the trial court took judicial notice of the testimony taken at the June 28, 2012, hearing on the State's contempt petition as well as the court's finding respondent is incapable of getting her children to school. Small testified T.B. had 23 absences this past school year and 17 of those were unexcused. Small also testified T.B. had 77 absences since 2009, of which "more than 10 percent each year were unexcused." Small also testified T.B.'s transfer to Lindsay School was revoked based on "the absences and tardies." The trial court found T.B. neglected as alleged.

¶ 18 During the August 23, 2012, hearing on the State's petition to modify the dispositional order, the trial court took judicial notice of prior hearings and dispositions in the case. Small testified the children were not able to get to school each day when they lived with respondent. Small noted although the school year had just begun, the children had attended school on time while living with Dennis. Small opined it was in the best interests of the children to remain with their father. Dennis testified he had no difficulty getting the minors to school on time. While D.B. is a little slow getting ready in the morning, Dennis testified he manages by getting the children up "maybe 15 minutes earlier." The court found it was in D.B. and T.B.'s best interest to have their custody and guardianship placed with their father.

¶ 19 This appeal followed.

¶ 20 II. ANALYSIS

¶ 21 On appeal, respondent argues the trial court's orders (1) adjudicating T.B. neglected and (2) placing D.B. and T.B.'s custody and guardianship with their father was against the manifest weight of the evidence.

¶ 22 A. Neglect Adjudication as to T.B. (No. 4-12-0902)

¶ 23 Respondent argues the trial court's orders adjudicating T.B. neglected was against the manifest weight of the evidence. We disagree.

¶ 24 A trial court's finding of neglect will not be disturbed unless its finding is contrary to the manifest weight of the evidence. *In re A.W.*, 231 Ill. 2d 241, 254, 897 N.E.2d 733, 740 (2008). A finding is against the manifest weight of the evidence only if the opposite result is clearly evident. *In re D.S.*, 217 Ill. 2d 306, 322, 840 N.E.2d 1216, 1225 (2005).

¶ 25 Section 2-3(1)(a) of the Juvenile Court Act provides a minor is deemed neglected if the minor is under the age of 18 and is not receiving the proper education as required by law. 705 ILCS 405/2-3(1)(a) (West 2010). Section 2-18(5) of the Juvenile Court Act sets forth a procedure in which to prove a minor educationally neglected:

"In any hearing under this Act alleging neglect for failure to provide education as required by law under subsection (1) of Section 2-3, proof that a minor under 13 years of age who is subject to compulsory school attendance under the School Code is a chronic truant as defined under the School Code shall be *prima facie* evidence of neglect by the parent or guardian in any hearing under this Act." 705

ILCS 405/2-18(5) (West 2010).

A child is truant when the child is subject to compulsory school attendance and "is absent without valid cause from such attendance for a school day or portion thereof." 105 ILCS 5/26-2a (West 2010). Previously, a child was deemed chronically truant when that child was absent without valid cause for 10 percent or more of the previous 180 regular attendance days, *i.e.*, 18 unexcused absences. 105 ILCS 5/26-2a (West 2010). However, effective July 28, 2011, the legislature by amendment changed this definition to reduce the percentage of absences to 5% or more of the previous 180 regular attendance days (105 ILCS 5/26-2a (West Supp. 2011)), *i.e.*, 9 days. Pub. Act 97-218, §5 (eff. July 28, 2011) (2011 Ill. Legis. Serv. 5143, 5144 (West)).

¶ 26 At the July 26, 2012, adjudicatory hearing, the trial court took judicial notice of the testimony from the hearing on the State's contempt petition as well as its June 28, 2012, finding respondent is incapable of getting the minors to school. Small testified T.B. had 17 unexcused absences for the past school year, *i.e.*, more than 9 unexcused days during the previous 180 days of attendance. Respondent does not dispute she was unable to get T.B. to school. Instead, respondent argues no neglect occurred because T.B. was turning in make-up work. However, the issue is not whether the child is falling behind in her school work. Instead, the issue turns on the amount of school days missed. Based on the evidence in the record, we conclude the trial court's finding of neglect was not against the manifest weight of the evidence.

¶ 27 B. Dispositional Order as to T.B. and D.B. (No. 4-12-0903)

¶ 28 Respondent argues the trial court's dispositional order placing D.B. and T.B.'s custody and guardianship with their father was against the manifest weight of the evidence. We disagree.

¶ 29 On review, we will reverse a trial court's dispositional determination only if the court's findings of fact are against the manifest weight of the evidence or if the court abused its discretion by selecting an inappropriate dispositional order. *In re J.W.*, 386 Ill. App. 3d 847, 856, 898 N.E.2d 803, 811 (2008).

¶ 30 In this case, the evidence presented showed respondent was unable to get the children to school each and every day. Over the course of the proceedings, respondent provided a litany of excuses, many of which placed blame on the children themselves. By comparison, Small testified the minors attended school while in Dennis's custody. Dennis testified he had no trouble getting the minors to school. He also testified he did not foresee a reason why he could not get the children to school every day on time in the future. Based on the evidence in the record, we conclude the trial court's dispositional order placing D.B. and T.B.'s custody and guardianship with their father was not against the manifest weight of the evidence.

¶ 31 III. CONCLUSION

¶ 32 For the reasons stated, we affirm the trial court's judgment in case Nos. 4-12-0902 and 4-12-0903.

¶ 33 No. 4-12-0902, Affirmed.

¶ 34 No. 4-12-0903, Affirmed.