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2014 IL App (4th) 130080-U

NO. 4-13-0080

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

February 7, 2014

Carla Bender

4<sup>th</sup> District Appellate  
Court, IL

In re: C.F., a Minor,	) Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	) Circuit Court of
Petitioner-Appellee,	) Champaign County
v.	) No. 12J3
SHELLEY FAULKNER,	)
Respondent-Appellant	) Honorable
	) Richard P. Klaus and
	) Jeffrey B. Ford,
	) Judges Presiding.

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PRESIDING JUSTICE APPLETON delivered the judgment of the court.  
Justices Knecht and Holder White concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* (1) The trial court commenced the adjudicatory hearing within 90 days as required by section 2-14 of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/2-14 (West 2012)).
- (2) The trial court had authority to continue Champaign County case No. 12-J-3 after it granted the State's motion to dismiss its dependency petition, because the guardian *ad litem's* neglect petition was still open.
- (3) The trial court had authority to issue a warrant for the arrest of the minor, C.F., because of her failure to appear at a remission hearing in an indirect criminal contempt proceeding.
- (4) The trial court did not abuse its discretion by denying a motion for change of venue because (a) the State's motion became moot when the court granted its motion to dismiss the dependency petition and (b) neither respondent nor her counsel filed a motion to transfer venue.

(5) Where the neglect petition did not wholly and absolutely fail to state a cause of action, any defect in the petition was cured by judgment because respondent failed to raise the issue in the trial court.

(6) The appellate court declined to address the merits of respondent's claim that the trial court violated the separation of powers doctrine by dismissing the State's Attorney from the case and appointing a special prosecutor, where respondent did not preserve the issue for appellate review.

(7) Respondent did not preserve for appellate review the issue of whether her due process rights were violated when the trial court allowed the prosecution to introduce evidence of three prior minor-in-need-of-authoritative-intervention cases from Williamson County.

(8) The trial court abused its discretion by granting the special prosecutor's relevancy objection to evidence of respondent's success at homeschooling the minor; the error, however, was harmless.

¶ 2 In April 2012, the Champaign County State's Attorney filed a petition for an adjudication of dependency, alleging that C.F. was a dependent minor. C.F. was taken into temporary custody, and the trial court appointed a guardian *ad litem* (GAL).

¶ 3 On May 15, 2012, the State's Attorney orally moved to dismiss the dependency petition, or, alternatively, to transfer the case to Williamson County, where respondent mother, Shelley Faulkner, and C.F. resided. The GAL objected to the proposed dismissal of the petition and transfer of venue.

¶ 4 On May 22, 2012, the GAL filed a neglect petition, alleging that C.F. was a neglected minor. During a hearing on that date, the State's Attorney again declined to prosecute the dependency petition, and she also refused to prosecute the GAL's neglect petition. The trial court granted the State's motion to dismiss the dependency petition, and the court deferred ruling on whether it would order the State to prosecute the GAL's neglect petition.

¶ 5 In August 2012, Judge Richard P. Klaus "dismissed" the State's Attorney from the case, appointed a special prosecutor to prosecute the GAL's neglect petition, and recused himself from further proceedings in the case.

¶ 6 The following day, the special prosecutor filed a supplemental petition for adjudication of dependency. Judge Jeffrey B. Ford now presided over the case. In December 2012, after hearing evidence, Judge Ford found that C.F. was both neglected and dependent because respondent was unfit and unable to care for C.F.

¶ 7 Respondent appeals, asserting as follows: (1) the trial court erred by denying her *pro se* motion to dismiss because of failure to adjudicate the neglect or dependency petition within 90 days; (2) the trial court lacked authority to continue case No. 12-J-3 after May 25, 2012, when it dismissed all extant counts of the State Attorney's dependency petition; (3) the trial court lacked authority to issue a warrant for C.F.; (4) the trial court erred by failing to transfer the case to Williamson County; (5) the petition for adjudication of neglect failed on its face to state a legally cognizable charge of neglect or to give respondent fair notice of the charge; (6) the trial court exceeded its authority and violated the doctrine of separation of powers by (a) "dismissing" the State's Attorney as prosecutor and (b) replacing her with a special prosecutor of its choosing; (7) the trial court violated due process by allowing the special prosecutor to base the facts in his case for neglect on "cherry-picked" records and testimony from prior Williamson County cases that were determined to be unfounded; and (8) the trial court abused its discretion by barring respondent from presenting evidence of her success at homeschooling C.F. and thereafter basing its finding of neglect in significant part on findings of inadequate homeschooling.

¶ 8 We affirm.

¶ 9

## I. BACKGROUND

¶ 10 On April 24, 2012, the Champaign County State's Attorney filed a petition for adjudication of dependency and shelter care (case No. 12-J-3) alleging that C.F. (born June 12, 1996) was a dependent minor without a parent or guardian willing to care for her. C.F. was taken into temporary custody, and the trial court appointed the court appointed special advocates (CASA) as GAL. The court held two emergency hearings that day. Judge Richard P. Klaus presided over the first hearing. C.F. was a ward of the State of Missouri, and through her court-appointed attorney, Carrie Kmoch, who also was an attorney for CASA, she informed Judge Klaus that she did not wish to return to Missouri. Later that afternoon, a second emergency shelter care hearing was held (Judge John R. Kennedy presiding), during which the court appointed Pam Burnside to replace Kmoch as C.F.'s attorney. The court also granted temporary custody to the Department of Children and Family Services (DCFS). Respondent was not present for these hearings.

¶ 11 On May 3, 2012, respondent appeared before Judge Kennedy for a renewal hearing on the temporary custody order. Respondent was provided with a copy of the temporary custody order at that time, and the trial court granted a continuance so that respondent could retain counsel. That same day, respondent filed a motion for change of judge, which was granted on May 8, 2012. On May 15, 2012, the parties appeared for a status hearing on the State's dependency petition in front of Judge Klaus, who appointed an attorney, David Appleman, to represent respondent. At the hearing, the State's Attorney orally moved to dismiss the dependency petition. Alternatively, she moved that the court transfer the case to Williamson County, where the family resided. The GAL objected to the proposed dismissal and requested a best interest hearing. The GAL also objected to the request to transfer venue. The court noted

that the dependency situation was different now because C.F.'s mother was present. The court asked the State's Attorney to confer with Williamson County. In the meantime, the court took the State's motion to dismiss the dependency petition or transfer the case under submission.

¶ 12 On May 22, 2012, the trial court convened a status hearing, during which the State's Attorney informed the court she had spoken to the Williamson County State's Attorney, who had advised her that (1) no evidence of abuse or neglect from respondent mother toward C.F. was present; (2) all cases filed in Williamson County regarding C.F. were minors-in-need-of-authoritative-intervention (MRAI) cases; and (3) if the case were transferred to Williamson County, the State's Attorney there would dismiss it. The Champaign County State's Attorney told the court she could not prove the dependency petition she had filed and that she would not prosecute the neglect petition filed by the GAL on that day. The neglect petition alleged that C.F. was a neglected minor in that when she resided with respondent, her environment was injurious because she was exposed to the risk of emotional harm.

¶ 13 On May 25, 2012, the trial court held a combined hearing. First, C.F. stipulated to the allegations in the State's petition for indirect criminal contempt, case No. 12-MR-403, *i.e.*, she had failed to abide by the rules of her foster placement in that she had missed her 8:30 p.m. curfew and had stayed out all night. The court then granted the State's motion to dismiss the dependency petition, vacated the temporary custody order, and deferred its ruling on whether the court would order the State to prosecute the GAL's neglect petition. The court sentenced C.F. to two years' probation, including, as a condition, 180 days' detention with credit for time served on the contempt charge. The court released C.F. into respondent's custody and scheduled a remission hearing in 60 days.

¶ 14 On July 25, 2012, neither respondent nor C.F. appeared for the remission hearing in case No. 12-MR-403 or the consolidated status hearing in case No. 12-J-3. Therefore, the trial court issued a bench warrant for C.F. The next day, the court learned C.F. had been in the custody of the Carbondale police department at the time of the remission hearing. The court placed C.F. in detention pending the next remission hearing.

¶ 15 At the August 8, 2012, remission hearing, the Champaign County State's Attorney reiterated her refusal to prosecute the GAL's neglect petition. After hearing arguments from all parties, Judge Klaus stated he respected the State's Attorney's position in refusing to prosecute the neglect petition, whereupon Judge Klaus "dismissed" the State's Attorney from the case and appointed a special prosecutor, Keith Fruehling, to prosecute the neglect petition. The court concluded, "Having ordered the prosecution and granted CASA's motion, the court is recusing itself from further proceedings in this matter."

¶ 16 On August 9, 2012, the State's Attorney filed a motion to vacate the appointment of the special prosecutor. After a short hearing on the matter, the trial court (Judge Ford) denied the motion. Special Prosecutor Fruehling filed a supplemental petition for adjudication of dependency alleging C.F. was (1) a minor without a parent or guardian able to care for her; (2) without proper care because of the mental disability of her parent; and (3) without other care necessary for her well-being through no fault, neglect, or lack of concern by her parent. The court then entered an order for temporary custody and set the adjudicatory hearing for October 30, 2012.

¶ 17 On October 30, 2012, respondent filed a motion to dismiss asserting that the adjudicatory hearing was not held within 90 days as specified in section 2-14 of the Act (705 ILCS 405/2-14(b) (West 2012)). Following a short hearing, the trial court denied the motion,

noting that (1) although the petition was on file in May, it was not called to be prosecuted until August and (2) the objection should have been made when the matter was set for trial. The court then commenced the adjudicatory hearing, but continued it to November 16, 2012, without objection from respondent. On November 16, 2012, the court heard the rest of the State's evidence and continued the case for further evidence on December 19, 2012. On December 19, 2012, after all evidence had been presented, the court found C.F. to be neglected and that, for nonfinancial reasons, respondent was unfit and unable to care for C.F. and that her health, safety, and best interests would be jeopardized if she were returned to respondent's custody.

¶ 18 This appeal followed.

## ¶ 19 II. ANALYSIS

### ¶ 20 A. Denial of the *Pro Se* Motion for Dismissal

¶ 21 On October 30, 2012, when the adjudicatory hearing commenced, respondent filed a motion for dismissal because the 90-day deadline in section 2-14(b) of the Act (705 ILCS 405/2-14(b) (West 2012)) had passed. The trial court denied the motion. On appeal, respondent argues the court thereby erred. The State argues, to the contrary, that the 90-day period was unexpired when the adjudicatory hearing commenced.

¶ 22 The facts relevant to the parties' arguments under this heading are undisputed. The only question is whether, given those undisputed facts, section 2-14(b) required a dismissal of the petitions—a dismissal without prejudice, as section 2-14(c) (705 ILCS 405/2-14(c) (West 2012)) would have stipulated. The meaning and application of a statute are questions of law, which we resolve *de novo*. *1940 LLC v. County of McHenry*, 2012 IL App (2d) 110753, ¶ 6.

¶ 23 Let us begin with the language of the statute. Section 2-14(b) provides as follows:

"(b) When a petition is filed alleging that the minor is abused, neglected or dependent, an adjudicatory hearing shall be commenced within 90 days of the date of service of process upon the minor, parents, any guardian and any legal custodian, unless an earlier date is required pursuant to Section 2-13.1. Once commenced, subsequent delay in the proceedings may be allowed by the court when necessary to ensure a fair hearing." 705 ILCS 405/2-14(b) (West 2012).

¶ 24 On April 24, 2012, the State's Attorney filed a petition alleging that C.F. was "dependent" within the meaning of section 2-4(1)(c) of the Act (705 ILCS 405/2-4(1)(c) (West 2012)). The filing of this petition created a deadline: an adjudicatory hearing had to be commenced within 90 days after "the date of service of process upon the minor, parents, any guardian[,] *and* any legal custodian." (Emphasis added.) 705 ILCS 405/2-14(b) (West 2012). The conjunction "and" suggests that the 90-day clock does not begin ticking until process is served on all of the listed persons, inasmuch as they exist. In the present case, C.F.'s father, Dewayne Faulkner, was served by publication on September 18, 2012. He was the last of the necessary parties to be served or to otherwise come within the trial court's personal jurisdiction. It follows that the 90-day clock did not begin ticking until September 18, 2012, and consequently the adjudicatory hearing commenced soon enough, on October 30, 2012.

¶ 25 B. Authority To Continue Case No. 12-J-3

¶ 26 Next, respondent contends that the trial court lacked authority to continue case No. 12-J-3 after May 25, 2012, because it dismissed all extant counts of the State's Attorney's petition on that date. Specifically, respondent argues that case No. 12-J-3 became "a hollow

shell, an empty vessel with no active cause of action," because the State's dependency petition had been dismissed and the GAL's neglect petition was stuck in a "legal limbo, somewhere between filed and not filed." We disagree.

¶ 27 When the trial court dismissed the State's dependency petition, the GAL's petition for neglect in case No. 12-J-3 was still pending. It is within the court's "discretion to continue a case as he or she deems is appropriate, taking into account the diligence of the parties and whether the continuance best serves the ends of justice, and that decision will not be disturbed upon review absent abuse." *People v. Norris*, 214 Ill. 2d 92, 104-05 (2005). Here, the court deferred ruling on whether it would order the State's Attorney to prosecute the GAL's neglect petition (or the anticipated supplemental dependency petition) until the remission hearing on C.F.'s conviction for indirect criminal contempt in case No. 12-MR-403, noting "if the minor refused to cooperate with the Court's orders then perhaps that will be plenty of evidence that will require prosecution of a petition." The deferral was within the court's discretion and best served the ends of justice by allowing respondent and C.F. 60 days to show the court whether the prosecution of a petition was necessary.

¶ 28 C. The Trial Court's Authority To Issue a Warrant for C.F.'s Arrest

¶ 29 Respondent next asserts that the trial court lacked jurisdiction to issue the warrant for C.F. on "July 27, 2013," because "the cause of action, [No.] 12-J-3, on which it was founded had no legal status" since the court placed the GAL's neglect petition "under submission." The record belies respondent's contention.

¶ 30 First, we note that respondent's argument fails to comply with Illinois Supreme Court Rule 341(h) (7) (eff. Feb. 6, 2013) because it is devoid of citations to authority or the record. Second, the warrant for C.F. was actually issued on July 25, 2012. Third, as indicated in

the record, the warrant was issued in case No. 12-MR-403—the indirect criminal contempt case—because C.F. had failed to appear at the remission hearing. Thus, respondent's presumption that the warrant was issued in case No. 12-J-3 is unwarranted and unsupported by the record.

¶ 31 D. Refusal To Transfer the Case to Williamson County

¶ 32 Next, respondent contends the trial court abused its discretion when it denied her and the State's Attorney's respective motions for change of venue to Williamson County.

According to respondent, the court used the Champaign County venue "to make it difficult (if not impossible) for respondent to defend herself, and even used any failure to appear at a hearing (or expressions of weariness) as 'evidence' that respondent did not care about [C.F.]"

¶ 33 Again, we note that respondent has violated Illinois Supreme Court Rule 341(h)(7) (eff. Feb. 6, 2013) by failing to cite the record or any authority to support her contention that the trial court erred by denying the motions for change of venue. This court is not a depository for the respondent to dump her burden of research and argument. *People v. Snow*, 2012 IL App (4th) 110415, ¶ 11. Because this case involves a minor, however, we will address this issue on the merits.

¶ 34 Our own review of the record fails to find any support for respondent's claim that the trial court used her failure to appear at hearings as evidence that she did not care about her daughter. The record, however, does reveal the following. After the State's Attorney's May 15, 2012, oral motion to transfer venue to Williamson County—which was merely an alternative motion in the event the court denied her primary motion to dismiss the dependency petition—the court asked the State's Attorney to confer with the Williamson County State's Attorney. At the May 22, 2012, hearing, the State's Attorney informed the court she had discussed the case with

the Williamson County State's Attorney, who had told her that if the case were transferred there, she, the Williamson County State's Attorney, would dismiss it due to lack of evidence of abuse or neglect.

¶ 35 At the May 25, 2012, hearing, C.F.'s attorney told the court, "I think that Williamson County has already shown that they [*sic*] cannot provide the structure for this family and the services for this family and the oversight to have the parties participate in a way that's effective." Additionally, the GAL informed the court that C.F. had not lived with her mother for more than a few months or weeks at a time since December 2009. While acknowledging Champaign County was "not the logical choice," the GAL argued it was "the only option right now." The court then granted the State's motion to dismiss the dependency petition, thereby disposing of the State's Attorney's *alternative* motion to transfer venue to Williamson County.

¶ 36 Additionally, respondent never actually filed a motion to transfer venue. At the May 3, 2012, hearing, respondent requested a continuance so that she could obtain an attorney. Respondent requested the continuance as, in her words, "an alternative to transferring the case to our home county of Williamson County, and/or requesting a rehearing of the shelter care hearing." The trial court informed respondent that if it allowed her motion for a continuance to obtain an attorney, her attorney could then file any motions that he deemed appropriate. The court stated, "Maybe one of the motions your lawyer would file is a motion to change venue, I don't know. That's something you would want to discuss with your lawyer." The court then granted respondent a continuance. On that day, she filed a motion to change the judge, which was granted.

¶ 37 At the May 15, 2012, status hearing before Judge Klaus, respondent had not yet obtained private counsel. At that time, the trial court appointed attorney Appleman to represent

her. Counsel Appleman supported the State's motion to dismiss the dependency petition and stated, "[a]s to the alternative for transfer, we certainly would also support that *if the case is not dismissed*." (Emphasis added.) Neither respondent nor her attorney ever actually filed their own (nonalternative) motion to transfer venue. Thus, when the court granted the State's motion to dismiss the dependency petition, the alternative motion to transfer venue filed by the State's Attorney became moot.

¶ 38 We note that at the August 9, 2012, shelter care hearing, while the trial court was admonishing her regarding her rights, respondent stated, "I would just encourage the Court to transfer the case to our home county." However, the court informed respondent "[he was] not dealing with this right now," as he just wanted to make sure she understood her rights. At the conclusion of the shelter care hearing, respondent again stated, "I would like—just like to ask the Court to consider, once again, the transfer to our home county of Williamson, Illinois. I've been traveling roundtrip approximately six hours once a week since [May 3rd]." But respondent was represented at that time, disqualifying her from making any *pro se* motion, and her counsel never made an oral or written motion to transfer venue. See, *cf.*, *People v. James*, 362 Ill. App. 3d 1201, 1205 (2006) ("A defendant has the right either to have counsel represent him or to represent himself. However, a defendant does not have the right to both self-representation and the assistance of counsel. \*\*\* Thus, when a defendant is represented by counsel, the defendant generally has no authority to file *pro se* motions, and the court should not consider them.").

¶ 39 On August 17, 2012, at the request of respondent, the trial court withdrew the appointment of the Champaign County public defender's office so as to allow respondent to proceed *pro se*. Respondent did not, thereafter, file a motion to transfer venue. Thus, no *pro se* motion to transfer venue was before the trial court to deny.

¶ 40 In any event, if we are mistaken about the forfeiture of this issue, Champaign County appears to be a permissible venue because section 2-2(1) of the Act (705 ILCS 450/2-2(1) (West 2012)) provides: "Venue under this Article lies in the county where the minor resides *or is found.*" (Emphasis added.) It appears that in approximately April 2012, C.F. was found in Champaign County as a runaway. By our understanding, she had fled from a placement in St. Louis and had come to Champaign County to live with the father of her child, and that was when she first came to the attention of the Champaign County State's Attorney.

¶ 41 E. A Pleading Defect in the Petition for Adjudication of Neglect

¶ 42 On appeal, respondent challenges the legal sufficiency of the petition for an adjudication of neglect. In the trial court, however, she never complained of any defect in the petition, even though section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2012)) allowed her to do so. Except in delinquency proceedings when a minor's liberty is at stake and except when the Act (705 ILCS 405/1-1 to 7-1 (West 2012)) requires some other procedure, the rules of civil practice in article II of the Code of Civil Procedure (735 ILCS 5/2-101 to 2-2201 (West 2012)) govern juvenile proceedings inasmuch as those rules are apropos. *In re A.B.*, 308 Ill. App. 3d 227, 234 (1999). Section 2-612(c) of the Code of Civil Procedure (735 ILCS 5/2-615(c) (West 2012)) provides: "All defects in pleadings, either in form or substance, not objected to in the trial court are waived," that is to say, forfeited.

¶ 43 There is an exception to this rule of forfeiture: a party may at any time raise the contention that a complaint (or petition) *totally* fails to state a cause of action. *Adcock v. Brakegate, Ltd.*, 164 Ill. 2d 54, 61 (1994). This exception is applicable, however, only if it is impossible to descry a cause of action in the complaint. *Id.* "The exception does not apply

where the complaint states a recognized cause of action, but contains an incomplete or otherwise insufficient statement of that cause of action." *Id.* at 61-62.

¶ 44 So, we ask *de novo* whether the petition for an adjudication of neglect totally fails to state a cause of action. See *Rose v. Hollinger International, Inc.*, 383 Ill. App. 3d 8, 10-11 (2008). Paragraph 4 of the petition alleges as follows:

"4. The respondent minor, [C.F.], is neglected because she is under the age of 18 years and:

a. Her environment is injurious to her welfare in that said environment exposes her to risk of emotional harm when she resides with the respondent mother (705 ILCS 405/2-3(i)(b)) \*\*\*."

¶ 45 Despite the factual vagueness of this allegation, it presents a recognizable cause of action. Section 2-3(1)(b) of the Act (705 ILCS 450/2-3(1)(b) (West 2012)) defines a neglected minor to include "any minor under 18 years of age whose environment is injurious to his or her welfare." The petition does not *totally* fail to state a cause of action. Therefore, we reject respondent's untimely challenge to the legal sufficiency of the petition (see 735 ILCS 5/2-615(c) (West 2012)), and we regard any pleading defects as cured by the judgment (see *In re John Paul J.*, 343 Ill. App. 3d 865, 878 (2003)).

¶ 46 F. Separation of Powers

¶ 47 Next, respondent contends the trial court exceeded its inherent authority and violated the separation of powers doctrine by (1) "dismissing" the State's Attorney and (2) replacing her with a special prosecutor. The State agrees that the court thereby erred, but the State argues that respondent has forfeited this contention of error.

¶ 48 We agree with respondent and the State that the trial court erred by dismissing the State's Attorney and replacing her with a special prosecutor. Even so, respondent has failed to preserve this issue for our review because she never raised the issue in the trial court. The State's Attorney raised the issue, but respondent never raised the issue. "[A]n issue not presented to or considered by the trial court cannot be raised for the first time on review." (Internal quotation marks omitted.) *Daniels v. Anderson*, 162 Ill. 2d 47, 58 (1994).

¶ 49 G. Alleged Due Process Violation

¶ 50 Next, respondent contends that the trial court violated her right to due process by allowing the prosecution to base the facts in its neglect case on "cherry-picked records" and testimony from three prior Williamson County MRAI cases that were unfounded. Specifically, respondent asserts that the three Williamson County MRAI cases, admitted as People's group exhibit Nos. 1 through 3, denied her the due process right to fully examine her accusers and the records upon which they based their accusations. She argues that because these cases were dismissed and determined to be unfounded, she did not get to fully examine her accusers or the records upon which they based their accusations.

¶ 51 Again, we note that respondent's argument fails to comply with Illinois Supreme Court Rule 341(h)(7) (eff. Feb. 6, 2013) because it is devoid of citations to authority or to the applicable pages of the record. Further, the only objection respondent made to the admittance of these exhibits at the trial level was that she had not been given the opportunity to review them. The trial court gave respondent the opportunity to do so in court, but she refused. Thus, she has not preserved this issue for our review.

¶ 52 H. Alleged Abuse of Discretion in an Evidentiary Ruling

¶ 53 Last, respondent asserts that the trial court abused its discretion by barring her from presenting evidence of her success at homeschooling C.F. and then basing its finding of neglect in significant part on a subsidiary finding that respondent had done a poor job homeschooling C.F. See *Timothy Whelan Law Associates, Ltd. v. Kruppe*, 409 Ill. App. 3d 359, 365 (2011) ("Evidentiary rulings are reviewed for an abuse of the trial court's discretion.").

¶ 54 We will quote the questions and answers in which the trial court made the evidentiary ruling in question. Respondent was cross-examining a DCFS social worker, Courtney Field:

"Q. Okay, so in 2009, the very first time [C.F.] came into custody, do you recall her having been enrolled at Carterville Junior High School in 2009? In the seventh grade in Carterville Junior High?

A. I don't specifically recall that.

Q. Okay. So you wouldn't have the records from their testing, after I homeschooled her, in order to get her into the seventh grade at Carterville Junior High?

A. We—There may be something in the record, but we wouldn't have been involved in your homeschooling or your testing. It would have been when she was in foster care.

Q. Right. And whenever you started her in Carbondale High School, you don't recall having her tested academically such that she was then skipped a grade and put in the ninth grade.

MR. FRUEHLING [(special prosecutor)]: Objection.

Relevance.

THE COURT: Objection sustained. It's beyond the scope.

Nobody ever asked about—

RESPONDENT MOTHER: —They allege that I was educationally neglectful.

THE COURT: —education—

RESPONDENT MOTHER: —and I was just trying to . . .

THE COURT: You can step down, ma'am."

¶ 55 For two reasons, we agree that this evidentiary ruling was an abuse of discretion. First, the special prosecutor objected on the ground of irrelevance, not on the ground that the question exceeded the scope of the direct examination. By objecting on the ground of irrelevance, the special prosecutor forfeited any other ground of objection. See *Townsend v. Fassbinder*, 372 Ill. App. 3d 890, 906 (2007). The trial court effectively made an objection for the special prosecutor. Second, to address the objection that actually was made, respondent's question to Field did not seek to elicit irrelevant evidence. Evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Ill. R. Evid. 401 (eff. Sept. 27, 2010). If, by living with respondent, C.F. actually was *not* living in an environment injurious to her welfare, that fact would be of consequence to the determination of the action. "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 his or her children." (Internal quotation marks omitted.) *In re J.B.*, 2013 IL

App (3d) 120137, ¶ 13. If, in fact, C.F. thrived intellectually as a result of the homeschooling that respondent provided, as evidenced by her scoring higher than her grade level in a placement test, that fact would have some tendency to increase the probability that the home respondent provided was a nurturing home and, therefore, not an environment injurious to C.F.'s welfare.

¶ 56           The next question is what should be the result of this erroneous evidentiary ruling. We will reverse the trial court's decision only if the error affected the outcome of the trial. See *Wade v. City of Chicago*, 364 Ill. App. 3d 773, 780 (2006). Even if the court had heard Field's admission that C.F. scored above her grade level in an academic placement test, the court probably still would have found C.F.'s environment to be injurious to her welfare, given the other evidence. Subtracting the concern about lackadaisical homeschooling would not have transformed C.F.'s environment from an injurious environment to a safe and nurturing environment. For the past 15 years, C.F. had lived in at least 45 different residences. On several occasions, she had witnessed her stepfather verbally and physically abusing respondent. She and respondent had actually armed themselves with knives out of fear of this stepfather. It appears that the relationship between C.F. and respondent has been turbulent and traumatic. When C.F. was seven months pregnant, respondent attempted to restrain her by sitting on her abdomen. On another occasion, when C.F. was eight months pregnant, respondent left her alone in St. Louis without making sure she had either food or medicine for her diabetes. Respondent has called C.F. a "bitch" and a "whore." She has punished C.F. by allowing her to eat only peanut butter for a week. All this is according to the court's factual findings, to which we defer (see *In re Pronger*, 118 Ill. 2d 512, 526 (1987)). We conclude the evidentiary ruling was harmless.

¶ 57

### III. CONCLUSION

¶ 58           For the foregoing reasons, we affirm the trial court's judgment.

¶ 59

Affirmed.