2015 IL App (2d) 141139-U
No. 2-14-1139
Order filed May 20, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re ELIJAH J., a Minor	)	Appeal from the Circuit Court
	)	of Winnebago County.
	)	
	)	Nos. 13-JA-590
	)	
	)	
	)	
	)	Honorable
(The People of the State of Illinois, Petitioner-Appellee v. Elisa E., Respondent-Appellant).	)	Mary Linn Green,
	)	Judge, Presiding.

JUSTICE Birkett delivered the judgment of the court.
Justices Zenoff concurred in the judgment.
Justice Jorgensen dissented.

ORDER

¶ 1 *Held*: This court affirmed the judgment of the trial court and held: (1) the trial court's order ruling that respondent's seven-month-old infant was a neglected minor was not against the manifest weight of the evidence; (2) the trial court's failure to put the factual basis for the neglect determination in writing did not necessitate a remand because the court's oral findings adequately informed respondent of the court's factual basis for ruling that her son was a neglected minor; and (3) the trial court's dispositional order holding that guardianship and custody of the minor should remain with DCFS was not an abuse of discretion.

¶ 2 Respondent, Elisa E., appeals from an order of the circuit court of Winnebago County finding her son, Elijah J. (Elijah), to be a neglected minor. On appeal, respondent argues: (1)

the trial court's ruling that the State proved by a preponderance of the evidence that Elijah was a neglected minor was against the manifest weight of the evidence; (2) the trial court erred as a matter of law by failing to state in writing the factual basis supporting its determination that Elijah was neglected as required under section 2-21(1) of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/2-21(1) (West 2012)); and (3) the trial court abused its discretion when it ordered that custody and guardianship of Elijah should remain with the Department of Children and Family Services (DCFS) in its dispositional order. For the following reasons, we affirm.

¶ 3 We initially note that this appeal was accelerated under Supreme Court Rule 311(a) (eff. Feb. 26, 2010). Pursuant to that rule, the appellate court must, except for good cause shown, issue its decision in an accelerated case within 150 days of the filing of the notice of appeal. Ill. S. Ct. R. 311(a)(5) (eff. Feb. 26, 2010). Here, respondent filed her notice of appeal on November 13, 2014. Thereafter, respondent's counsel requested a 5 week extension to file his opening brief, which this court granted. Therefore, the deadline for the reply brief to be filed in this case (although respondent chose not to file one) was set for April 2, 2015, only 11 days before the 150 day period expired. We find these reasons to constitute good cause for this decision to be issued after the time frame mandated in Supreme Court Rule 311(a) (eff. Feb. 26, 2010).

¶ 4 I. BACKGROUND

¶ 5 The record reflects that Elijah was born on December 21, 2013. Five days later, the State filed a neglect petition and alleged that pursuant to the Act, Elijah was a neglected minor in that he was under 18 years of age and his environment was injurious to his welfare. Specifically, the State alleged that Elijah's siblings were removed from the respondent's care and that respondent had failed to cure the conditions which caused the removal of Elijah's siblings, thereby placing

him at risk of harm. 705 ILCS 405/2-3(1)(b) (West 2012). The State also alleged that it was in Elijah's best interest that he be adjudged a ward of the court and that proceedings be held in accordance with the Act.

¶ 6 A. Shelter Care Hearing

¶ 7 On January 2, 2014, a shelter care hearing was held. At the hearing, the trial court initially advised respondent that she would be given the next nine months to make reasonable efforts to try to correct whatever conditions caused Elijah to come into care. To make such reasonable efforts the court told respondent that she needed to: (1) work with the Department of Children and Family Services (DCFS) worker assigned to her; (2) receive any services that were outlined in her plan; and (3) cure or correct whatever conditions caused Elijah to be taken in the first place. The court also informed respondent that if she did not make reasonable efforts after the nine month period that the State could file a motion seeking to terminate her parental rights to Elijah. Respondent indicated that she understood these conditions.

¶ 8 Sarah Meyer, a DCFS investigator, testified that after receiving a report that respondent had given birth on December 21, 2013, she went to Rockford Memorial Hospital and took protective custody of Elijah. Meyer was aware of respondent's previous history with DCFS. Specifically, at the time of the shelter care hearing respondent had three other children in foster care, and in November 2013 the goal was changed to substitute care pending a determination of termination of respondent's parental rights to those children. Respondent has been "indicated" by DCFS on four prior occasions, and based upon that information Meyer was concerned about respondent's ability to parent Elijah properly. Based upon this concern, Meyer opined that Elijah was unable to stay in respondent's home. Meyer recommended that guardianship and custody of Elijah be given to DCFS at that time.

¶ 9 On cross-examination, Myer said that two days after Elijah was born she was in the hospital room with respondent and Elijah was also in the room in a bassinette. Meyer explained to respondent who she was and why she was at the hospital. Respondent then picked up the newborn baby by the arm and pulled him to her chest without supporting his head.

¶ 10 With regard to the case involving Elijah's other siblings, Meyer said that she was able to speak to the assigned caseworker regarding the psychological exam that was done on respondent. The exam was done because respondent had been somewhat compliant with services, but was not making progress. The results of the psychological exam indicated that respondent was not able to care appropriately for her children, and although respondent should continue to receive therapy, it was highly unlikely that respondent would be able to care for her children in the near future. Meyer said that DCFS used the results of that exam in determining whether to take protective custody of Elijah immediately after his birth.

¶ 11 Kathy Carter testified that she met respondent in June 2013 while she was volunteering at Life Center, an organization that gives out food, clothes and medicine to the needy. Carter was a grandmother and a licensed DCFS day care provider, and she was willing to assist respondent if Elijah was placed with her. She had not met respondent's other children, but she had seen Elijah in the hospital after he was born. In Carter's opinion, respondent handled Elijah appropriately in her presence. Carter felt it would be appropriate to place Elijah with respondent. On cross-examination, Carter admitted that she knew respondent had been indicated for neglecting her minor children four times in the past.

¶ 12 Flossie Horde testified that she was a parent educator in an early childhood program that served at-risk families from the prenatal stage through age three. She had previously worked with respondent and her third child, and she opened up a new case in September 2013 when

respondent was pregnant with Elijah. She had seen respondent and Elijah in the hospital and at supervised visits, and respondent was appropriate with him. If Elijah were returned home Horde could help respondent with her parenting skills once a week for an hour and a half. On cross-examination, Horde said that she was aware that DCFS had some charges against respondent, but she had not seen respondent neglect her children.

¶ 13 Respondent testified that she felt it was appropriate for her to take Elijah home because she knew how to take care of him. She was fighting to get her other children back, and had engaged in parenting groups and parenting classes. She had done everything DCFS asked of her to her ability. If she were allowed to take Elijah home she would cooperate with her caseworker, Meyer and Horde. Respondent was not cross-examined.

¶ 14 The State asked the court to take judicial notice of an adjudication order filed on May 16, 2012, where respondent factually stipulated that her other children were neglected. It also requested that the court take judicial notice of a court order dated August 24, 2012, giving custody and guardianship to DCFS, and an order dated November 25, 2013, where following a permanency hearing the court found respondent to have made reasonable efforts but not reasonable progress, and the goal was changed to substitute care pending a determination of termination of parental rights of respondent's other children.

¶ 15 After hearing the arguments of all the parties, the court initially stated that it had reviewed DCFS' statement of facts. It then found that this case involved a newborn whose siblings were also in DCFS custody. It noted that although it viewed these cases separately, it was aware of respondent's history with the other minors and the evaluation results. It appreciated that respondent had help, but it was not help 24-hours a day. The court then found probable cause that Elijah was a neglected minor and that there was an urgent and immediate

necessity to take protective custody of the minor. The court said it was going to give temporary guardianship and custody of Elijah to DCFS with the discretion to place him with a responsible relative, in traditional foster care, or with respondent, if that was appropriate.

¶ 16 B. Adjudicatory Hearing

¶ 17 On May 5, 2014, an adjudicatory hearing was held. DCFS investigator Sarah Meyer testified again and said that Lisa Wells, a caseworker from Youth Services Bureau (YSB), had been assigned to respondent's other children's cases. People's Exhibit 1, the indicated packet containing Meyer's investigation, was then admitted into evidence. In the packet, DCFS alleged that Elijah was at substantial risk of physical injury and that his environment was injurious to his welfare. Specifically, it reported that Elijah was a newborn infant who was unable to protect or care for himself and that if he remained with respondent he would be placed at substantial risk of physical injury. Also, respondent had a history with DCFS and she had four previous indicated reports. In November 2013 the goal for Elijah's other siblings had been changed to substitute care pending a determination of termination of parental rights. In the report, DCFS also reported that respondent had a history of mental health issues which included a diagnosis of intermittent explosive disorder, and a recent psychological evaluation indicated that respondent was not able to appropriately parent her children.

¶ 18 Lisa Wells testified that she was the caseworker for the family, including respondent's other children. Elijah's siblings were placed in a traditional foster care home and had been living in that home for over two years. The goal for the three other children was substitute care pending a determination of termination of parental rights because the parents had not made reasonable progress toward return home in the past. With regard to respondent, Wells indicated that she had visited the children inconsistently and she had missed 85% of the clinical

observation visits that were scheduled in 2013. Respondent had eventually complied with a recommended psychological evaluation in September 2013, and that evaluation indicated that return home of the minors was unsafe. Based upon the totality of these circumstances, Wells said that when Elijah was born in December 2013 she believed that respondent had not corrected the conditions that caused her children to come into care and that Elijah was at risk of harm in respondent's care.

¶ 19 On cross-examination, Wells testified that respondent has missed some of her scheduled visitations with her older children because of her pregnancy with Elijah. However, only about 20% of the missed visits were attributable to respondent's pregnancy. Prior to Elijah's birth respondent had completed parenting skills classes, domestic violence classes, and individual counseling. However, respondent was reluctant to comply with the psychological evaluation, and after she did comply, she was uncooperative with the agency's attempts to have her follow the recommendation of the evaluation that she be evaluated by a psychiatrist.

¶ 20 At the close of its case, the State requested that the court take judicial notice of the three older minors' cases, specifically, the neglect petitions, adjudication and disposition orders, and the permanency review order entered on November 25, 2013, indicating a change of goal to substitute care pending a determination of termination of respondent's parental rights to those minors. There was no objection made, and the court took judicial notice of those documents.

¶ 21 Respondent testified that she believed she had cured the conditions that led to the removal of her three older children. When asked by her attorney whether she understood that the results of her psychological evaluation indicated a diagnosis of intermittent explosive disorder, respondent said that she was not aware of that diagnosis. With regard to visitation, respondent said that she could not attend some of them because she had a high-risk pregnancy, and she had

notes from her doctor to that effect. Respondent was not cross-examined.

¶ 22 After hearing argument from all the parties the court noted that it was going to review the indicated packet and the hearing was concluded. On July 24, 2014, the court said that it had reviewed all of the evidence presented at the adjudicatory hearing, including the testimony the witnesses presented and their credibility, and the arguments of counsel, and it found that the State had met its burden and proven by a least a preponderance of the evidence that Elijah was neglected. The court continued:

> "Specifically, the three older minors have not been returned to the parents' care. This is a baby who is—has no self-protective skills, obviously needs 24 hour care, and there was no evidence that the mother had cured all conditions that had brought the older minors into care. Therefore, the co—court will make the child a ward of the court and temporary guardianship and custody of the minor will be placed with the department, which will have discretion to place with a responsible relative or in traditional foster care."

¶ 23 C. Dispositional Hearing

¶ 24 On October 22, 2014, a dispositional hearing was held. Initially, the Guardian *ad litem* noted that the court should have three reports: (1) the YSB report for the court, submitted on October 7, 2014; (2) a confidential client therapeutic progress report, dated October 2, 2014; and (3) a confidential client therapeutic progress report, dated October 8, 2014. After receiving all the reports the court took judicial notice of them. The therapeutic progress reports indicated that respondent was now participating in individual therapy to address her parenting skills and anger problems. However, one report described an event that occurred on August 11, 2014, during a home visitation where respondent became extremely angry and could not be calmed down so the

visitation had to be terminated. In that report the therapist recommended that future visits take place at the YSB office for safety reasons.

¶ 25 Mary Clark, a friend of respondent, testified that she had known respondent for seven years. Over the years she had seen respondent with her children, and she had never known respondent to be inappropriate with them. She saw respondent with Elijah when respondent visited him, but she was not present for the visits for very long because the agency did not allow others to be present. However, Clark saw respondent showing Elijah affection and changing his diaper. Clark said respondent talked about her children and had cried to Clark because she missed them. If the court would allow Elijah to be returned to respondent Clark would assist respondent and be in the child's life. On cross-examination, Clark testified that she had been at two visits with respondent and Elijah. A worker asked her to leave one visit, and at another visit the Holy Spirit told her to go outside.

¶ 26 Respondent testified that she would like this case to be an "intact case," where she was able to take Elijah home. She would like to have him at home so that she could prove she was willing to take care of him. She currently lived in a one-bedroom home. A worker came to her home and inspected it, and the worker said it passed inspection. Respondent had food, bottles and clothes for Elijah, as well as a playpen, a crib and diapers. When asked whether Elijah had any special needs, respondent said that she could not describe it, but something was wrong with his stomach where he could not hold down milk, so he was on "special milk." She did not know the name of the "special milk" and she never asked the case worker the name of the formula. She also did not know if Elijah was eating any type of cereal or solid food but she thought he might be eating food because she saw some baby food in the diaper bag at a visit. She also did not know the name of Elijah's doctor. She did not think she could go to the doctor appointments,

but she never asked her caseworker about it. Respondent did not know how often a nine-month-old infant would go to the doctor, but she knew that a child should see the doctor whenever the doctor scheduled an appointment.

¶ 27 Respondent testified said that if Elijah were returned home she would continue to work with DCFS and her counselor. At the time of the hearing, she saw Elijah once a week for three hours. She had not asked for increased visitation time because that decision was for the caseworker. Respondent believed that she was ready to have Elijah back home because she had made changes to her life and she was stronger and wiser. When asked about what mistakes she made in the past, respondent admitted to "cussing out" the DCFS workers and getting angry. According to respondent, she did not have an anger management problem because "they" never proved it. She had learned to control her anger over her circumstances by believing and trusting in God.

¶ 28 After hearing arguments from the parties, the trial court noted that it had reviewed the testimony given at the hearing, the arguments of counsel, and the reports admitted into evidence. It then stated:

> "What we have is a child that has some special needs, and special needs in feeding in particular, who has to see special doctors for that.
>
> What we have here also is a mother who loves her child very much. There is no doubt in the court's mind that that's the truth.
>
> What we also have is a mom who is responsible for the child's care for approximately three hours per week with somebody there, being supervised, also with a parent mentor that she has been working with.
>
> So at this time I believe, in the court's opinion, there is no doubt in the court's

> mind that [respondent] is very willing to take on full-time care of little Elijah, but without further training in his special needs and increase in visitation so that she is used to caring for him longer than three hours a week, the court must find that the State has proven at least by a preponderance of the evidence that for, and I am not saying that this is anyone's fault, just for reasons of where we are in this case and the amount of care that she's currently giving to little Elijah, is that we believe that at this time she is not able, but she's very willing to do so."

¶ 29 The court then held that guardianship and custody of Elijah would remain with DCFS, with DCFS having the discretion to place Elijah with a responsible relative or in a traditional foster home. It also directed respondent's caseworker to look into increasing respondent's visitation time with Elijah. In its written order the trial court indicated that it had found respondent to be unfit, unable or unwilling to care for Elijah, and that he was a ward of the court.

¶ 30 II. ANALYSIS

¶ 31 On appeal, respondent contends: (1) the trial court's ruling that the State had proved by a preponderance of the evidence that Elijah was a neglected minor was against the manifest weight of the evidence; (2) the trial court erred as a matter of law by failing to state in writing the factual basis supporting its determination that Elijah was neglected as required under section 2-21(1) of the Act (705 ILCS 405/2-21(1) (West 2012)); and (3) the trial court abused its discretion when it ordered that custody and guardianship of Elijah should remain with DCFS in its dispositional order.

¶ 32 Before we address the merits of respondent's case we must note that the statement of facts presented by respondent's counsel in this case was woefully inadequate. With over 500 pages in the record, 300 pages of which were transcripts of the trial court's proceedings, counsel's

statement of facts is less than a page and a half long. Additionally, although counsel argues on appeal that the trial court's dispositional order was an abuse of discretion, he only devotes three lines in the statement of facts to that hearing, and in those three lines he only provides the dates of the hearing and the trial court's ultimate ruling. Also, although he very briefly refers to the facts presented at the dispositional hearing in the argument section of his brief, he fails to provide record cites for those facts in that section.

¶ 33 Illinois Supreme Court Rule 341(h)(6) (eff. Feb. 6, 2013) requires the appellant to include a statement of facts outlining the pertinent facts accurately and with appropriate reference to the pages of the record on appeal. Ill. S. Ct. R. 341(h)(6) (eff. Feb. 6, 2013). Illinois Supreme Court Rule 341(h)(7) (eff. Feb. 6, 2013) requires that the appellant's brief contain an argument section, "which shall contain the contentions of the appellant and the reasons therefor, with citations of the authorities and the pages of the record relied upon." Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 3013). Here, respondent's counsel has violated both sections (h)(6) and (h)(7) of this rule by failing to provide all the pertinent facts in this case and by failing to cite the record in some argument sections of his brief. The Illinois Supreme Court Rules are not suggestions; they have the force of law and must be complied with. *Szczesniak v. CJC Auto Parts, Inc.*, 2014 IL App (2d) 130636, ¶ 8 (citing *People v. Campbell*, 224 Ill. 2d 80, 87 (2006)). Where a brief has not complied with Rule 341, we may strike the statement of facts or dismiss the appeal should the circumstances warrant. *Id.* (citing *Hall v. Naper Gold Hospitality LLC,* 2012 IL App (2d) 111151, ¶ 9). Given the extremely important nature of this case, and because we have thoroughly reviewed the record and discerned all the pertinent facts necessary to review this appeal, we will neither strike counsel's statement of facts nor dismiss the appeal. However, we strongly admonish counsel to carefully follow the requirements of the supreme court rules in future appeals. We now turn to

the merits of this appeal.

¶ 34 A. Finding of Neglect

¶ 35 Respondent first argues that the trial court's ruling that Elijah was a neglected minor was against the manifest weight of the evidence. Specifically, she claims that the evidence at the adjudicatory hearing proved that she had completed all the services DCFS had requested of her, except for seeing a psychiatrist, and no testimony was presented as to why she needed to see a psychiatrist. Respondent also argues that the State offered little or no evidence to prove that Elijah was neglected, except for the indicated packet relating to the case involving her other children, and the contents of that packet were "hearsay and double hearsay." Finally, respondent alleges that there was no evidence presented "that would suggest that this child, who was only in [respondent's] care for two days, was a neglected minor" under the Act.

¶ 36 "A finding of abuse, neglect, or dependence is a necessary predicate to an adjudication of wardship of a child." *In re N.B.*, 191 Ill. 2d 338, 343 (2000). Pursuant to the Act, a neglected child includes a minor under 18 years of age whose environment is injurious to his or her welfare. 705 ILCS 405/2-3(1)(b) (West 2012). "'[Neglect] embraces willful as well as unintentional disregard of duty. It is not a term of fixed and measured meaning. It takes its content always from specific circumstances, and its meaning varies as the content of surrounding circumstances changes.'" *In re N.B.*, 191 Ill. 2d 338, 346 (2000) (quoting *People ex rel. Wallace v. Labrenz*, 411 Ill. 618, 624 (1952)). Further, an "injurious environment" cannot be defined with particularity. *Id*. (citing *In re M.Z.*, 294 Ill. App. 3d 581, 593 (1998)). Each petition alleging an injurious environment is unique, and must be decided according to the facts of that case. *Id*. (citing *In re K.G.*, 288 Ill. App. 3d 728, 735 (1997)).

¶ 37 Under the theory of anticipatory neglect, the State seeks to protect the children who are

direct victims of neglect or abuse, as well as those who have a probability to be subject to neglect or abuse because "they reside, or in the future may reside, with an individual who has been found to have neglected or abused another child." *In re Arthur H.*, 212 Ill. 2d 441, 468 (2004); 705 ILCS 405/2-18(3) (West 2012). There is no *per se* rule that the neglect of one child proves the neglect of another child in the same household. *Id*. Instead, anticipatory neglect should be measured not only by the circumstances surrounding the siblings, but also by the care and condition of the child in question. *Id.*

¶ 38 It is the burden of the State to prove allegations of neglect by a preponderance of the evidence. *In re Christina M.*, 333 Ill. App. 3d 1030, 1034 (2002). On appeal, a trial court's determination that a child is neglected is entitled to great deference and will not be reversed unless the findings of fact are against the manifest weight of the evidence. *In re D.M.*, 258 Ill. App. 3d 669, 672 (1994). A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident. *In re Edward T.*, 343 Ill. App. 3d 778, 794 (2003).

¶ 39 Based upon our careful review of the record it is clear that the State proved by a preponderance of the evidence that Elijah was a neglected child under the Act. The State's petition alleged that Elijah was neglected because his environment was injurious to his welfare in that his siblings were removed from respondent's care and respondent had failed to cure the conditions which caused her other children to be removed, thereby placing Elijah at harm. 705 ILCS 405/2-3(1)(b) (West 2012). At the adjudicatory hearing, respondent's caseworker testified that the goal for respondent's other children had been changed to substitute care pending a determination of termination of parental rights because the parents had not made reasonable progress toward the goal of having the children returned home in the past. The caseworker noted that respondent had missed many visits with her other children, and she was very reluctant to

comply with the psychological evaluation that DCFS required. When respondent finally did undergo a psychological evaluation, three months before Elijah was born, the results of that evaluation indicated that it would be unsafe to return the older children to respondent. The results of that evaluation also indicated that respondent should be seen by a psychiatrist.

¶ 40 Respondent claims that no evidence was presented at the adjudicatory hearing as to why she would need to be seen by a psychiatrist. We disagree. At the hearing, respondent's attorney specifically noted that the results of her psychological evaluation indicated a diagnosis of intermittent explosive disorder. We also reject respondent's contention that the indicated packet containing information about her other children's case that was admitted into evidence at the adjudicatory hearing constituted "hearsay and double hearsay." It is clear that under section 2-18(3) of the Act, proof of neglect of one minor, although not conclusive proof of neglect of another minor, is admissible evidence on the issue of the neglect of any other minor for whom the parent is responsible. 705 ILCS 405/2-18(3) (West 2012); *In re Arthur H.*, 212 Ill. 2d at 468.

¶ 41 We also reject respondent's claim that there was no evidence presented at the adjudicatory hearing to suggest that Elijah, who had only been in respondent's care for two days, was a neglected minor. As we have previously held, the court properly took judicial notice of the indicated packet, which contained documents about the neglect findings for Elijah's three older siblings. The court also heard evidence that respondent had not changed the conditions that caused her older children to remain in state care. She had not seen a psychiatrist after her caseworker requested her to do so and after the results of the psychological evaluation indicated that she suffered from intermittent explosive disorder. In addition, the results of the psychological evaluation, performed as recently as three months before Elijah was born, indicated that it would not safe for Elijah's siblings to return home. Lastly, the DCFS

investigator testified that when she spoke to respondent in the hospital after giving birth to Elijah, respondent grabbed the two-day old newborn child by his arm and lifted him from his bassinet to her chest without supporting Elijah's head. Although we understand that this situation must have been extremely stressful for respondent, her actions are additional evidence that Elijah was at risk of harm. For all these reasons, the trial court's ruling that Elijah was a neglected minor was not against the manifest weight of the evidence.

¶ 42 B. Written Factual Basis Supporting Neglect Determination

¶ 43 Respondent also argues that the neglect finding must be reversed because the trial court did not make specific, written findings to support the neglect determination as required under section 2-21(1) of the Act. 705 ILCS 405/2-21(1) (West 2012)). She also alleges that the trial court did not make sufficient oral statements to support its neglect determination. Respondent asks that the trial court's ruling that Elijah was a neglected minor be reversed for the court's violation of section 2-21(1) of the Act. 705 ILCS 405/2-21(1) (West 2012). In the alternative, respondent requests that this cause to be remanded for the trial court to make such factual findings.

¶ 44 Section 2-21(1) of the Act provides that if the court finds that a minor is neglected the court shall then determine and put in writing the factual basis supporting that determination. 705 ILCS 405/2-21(1) (West 2012). However, if a reviewing court is able to discern from another source the basis of the trial court's ruling and the respondent was not prejudiced by not having the findings in writing a remand solely to allow the trial court to reiterate its finding in a written order is not necessary. See *In re Z.Z.*, 312 Ill. App. 3d 800, 804 (2000).

¶ 45 Here, respondent correctly notes that the trial court failed to make written findings to support its determination that Elijah was a neglected minor as required under the Act. 705 ILCS

405/2-21(1) (West 2012). However, we disagree with respondent that the trial court did not orally state the factual basis by which it determined that Elijah was neglected. To the contrary, the record reflects that at the conclusion of the adjudicatory hearing, the court specifically stated that it had reviewed all of the evidence presented, including the testimony of the witnesses presented, their credibility, and arguments of counsel. It then found: (1) Elijah's three older siblings had not been returned to the parents' care; (2) Elijah was a baby who had no self-protective skills, and needed 24-hour care; and (3) no evidence was presented at the hearing that respondent had cured all the conditions that had brought Elijah's older siblings into care.

¶ 46 Respondent claims that these statements are vague and do not put her on notice as to why the court found Elijah to be neglected or give her any indication as to what she would have to do to work toward getting Elijah returned to her. She also contends that the trial court's oral findings impeded her ability to appeal the neglect finding because she was unaware of the facts the trial court relied upon in making its determination.

¶ 47 We are not persuaded. Here, the trial court's first two oral findings were specific as to why it ruled that Elijah was a neglected minor on the ground that his environment was injurious to his welfare. With regard to the court's first finding, that Elijah's three other siblings had not been returned to respondent's care, the record is clear that the goal for those children was changed in November 2013 from "return home" to "substitute care pending a determination of termination of parental rights." That change occurred only one month before Elijah was born. That date of that goal change, taken together with the trial court's second finding, that Elijah was a baby who had no protective skills and needed 24 hour care, is a specific basis for finding that Elijah was a neglected minor based upon an injurious environment. Generally, the phrase "injurious environment" includes "the breach of a parent's duty to ensure a 'safe and nurturing

shelter' for his or her children." *In re N.B.*, 191 Ill.2d 338, 346 (2000) (quoting *In re M.K.*, 271 Ill. App. 3d 820, 826 (1995)). Clearly, respondent was incapable of providing a safe and nurturing shelter for Elijah at the time of his birth, or even seven months later at the conclusion of the adjudicatory hearing.

¶ 48 With regard to the court's third finding, that no evidence was presented at the adjudicatory hearing that respondent had cured all the conditions that had brought Elijah's older siblings into care, we agree that this finding should have been more specific. However, the record reflects that at the conclusion of the adjudicatory hearing the trial court specifically said that it was going to review State's Exhibit 1, the indicated packet containing DCFS investigator Meyer's investigation. In that packet, DCFS alleged that Elijah was at substantial risk of physical injury and that his environment was injurious to his welfare. As a rationale for this allegation, it was reported that Elijah was a newborn infant who was unable to protect or care for himself and that if he remained with respondent he would be placed at substantial risk of physical injury. Specifically, the report indicated that respondent had a history with DCFS and had four previous indicated reports. It also noted that respondent has a history of mental health issues which included a diagnosis of intermittent explosive disorder, and that a recent psychological evaluation indicated that respondent was not able to appropriately parent her children. Finally, it noted that in November 2013 the goal for Elijah's other siblings had been changed to substitute care pending termination of parental rights.

¶ 49 In making its oral ruling that Elijah was a neglected minor, the court specifically said that it had reviewed *all* of the evidence presented at the hearing. A review of the DCFS's indicated packet more than adequately shows the basis for the trial court's finding that no evidence was presented at the adjudicatory hearing that respondent had cured all the conditions that had

brought Elijah's older siblings into care. See *In re Kenneth F.*, 332 Ill. App. 3d 674, 684-85 (2002) (trial court's oral ruling satisfied the writing requirement contained in section 2-28 of the Act because in its oral ruling the trial court specifically relied on DCFS and Court Appointed Special Advocates reports, and those reports adequately contained the basis for the court's decision). For all these reasons, we will not remand this cause for the trial court to state in writing the factual basis to support its determination that Elijah was a neglected minor. See *In re Z.Z.*, 312 Ill. App. 3d at 803-04 (remand to require the trial court to make written findings of neglect is a waste of judicial resources where the court made oral findings on the record).

¶ 50 With that said, however, we strongly admonish the trial court to adhere to section 2-21(1) of the Act in the future. 705 ILCS 405/2-21(1) (West 2012). We are aware of two recent cases where this court has had to issue a limited remand for *this particular judge* to make express factual findings as required in the Act before this court could review the merits of the case on appeal. *In re Abel C.*, 2013 IL App (2d) 130263, ¶¶ 20-22; *In re DeShawn T-W.*, 2014 IL App (2d) 130723-U. Nevertheless, the trial court has continued to overlook the Act's requirements regarding written findings. We strongly suggest that in the future the court adhere to these statutory requirements. The written order sets forth the grounds for a termination of parental rights if a parent has made no reasonable efforts to correct the grounds that resulted in the original adjudication. See 750 ILCS 50/1(D)(m) (West 2012). Further, "placing an order of record constitutes the benchmark for rehabilitation and progress in the future." *In re Z.Z.*, 312 Ill. App. 3d at 804.

¶ 51 C. Dispositional Order

¶ 52 Finally, respondent alleges that the trial court abused its discretion when it ordered that guardianship and custody of Elijah remained with DCFS in its dispositional order. Specifically,

she claims that she provided ample evidence that she performed a number of the services that DCFS asked of her, and that she was prepared to bring Elijah home and care for him. She asserts that some of the State's witnesses conceded these facts as well.

¶ 53 In response, the State argues that since respondent's argument on appeal only relates to her *willingness* to care for Elijah she has forfeited review of this issue since she did not also assert that the trial court erred in finding that she was *unfit or unable* to care for him, citing to *In re Lakita B.*, 297 Ill. App. 3d 985, 992 (1998) (custody of a minor can be taken away from a natural parent if the parent is adjudged either unfit, unable or unwilling).

¶ 54 Under the Act, dispositional hearings focus on "whether it is in the best interests of the minor and the public that [the minor] be made a ward of the court." 705 ILCS 405/2-22 (West 2012). Among other placements, the court may commit a minor to DCFS wardship if the court finds that the parents "are unfit or are unable, for some reason other than financial circumstances alone, to care for, protect, train or discipline the minor or are unwilling to do so" and that "the health, safety, and best interest of the minor will be jeopardized if the minor remains in the custody of his or her parents." 705 ILCS 405/2-27(1) (West 2012). At the hearing, the State must establish the parent's inability to care for, protect, train or discipline her children by a preponderance of the evidence. *In re Kelvion V.*, 2014 IL App (1st) 140965, ¶ 23. A dispositional order will be reversed only if the trial court's findings of fact are against the manifest weight of the evidence or if it abused its discretion by selecting an inappropriate dispositional order. *In re Stephen K.*, 373 Ill. App. 3d 7, 25 (2007). An abuse of discretion occurs only where no reasonable person would accept the view adopted by the court. *In re Marriage of DeRossett*, 173 Ill. 2d 416, 422 (1996).

¶ 55 We initially note that we reject the State's claim that respondent has forfeited this issue.

Respondent's argument on appeal is that she presented evidence (and that some of the State's witnesses agreed with that evidence) that she had performed a number of the services that DCFS asked of her, that she was prepared to bring Elijah home, and that she was ready to care for him. These contentions sufficiently challenge the trial court's finding that she was unfit, unable or unwilling to parent Elijah. Having found no forfeiture we now turn to the merits of respondent's argument.

¶ 56 After a careful review of the evidence presented at the dispositional hearing, as well as the reports admitted into evidence, we have determined that the trial court did not abuse its discretion when it held that custody and guardianship of Elijah should remain with DCFS. Although the therapeutic progress reports admitted into evidence at the hearing indicated that respondent was now participating in individual therapy to address her parenting skills and her anger issues, one report described an event that occurred on August 11, 2014, during a home visitation where respondent became so angry that the visit had to be terminated and future visits were recommended to take place at the YSB office for safety reasons. Further, respondent testified at the dispositional hearing that she did not fully understand Elijah's feeding difficulties, and she only saw Elijah three hours per week. More important, respondent continued to deny that she had any anger management problems when she testified at the dispositional hearing, even though the results of the psychological evaluation indicated that she had intermittent explosive disorder, she was in therapy for her anger issues, and the home visitations with Elijah had to be moved to the YSB office for safety reasons after she lost her temper in August 2014.

¶ 57 Here, the trial court believed that respondent loved Elijah very much. However, it also found that Elijah had special needs and that respondent would need training in his special needs, along with an increase in visitation, in order for her to become used to caring for Elijah longer

than three hours per week. Additionally, it was clear that at the time of the dispositional hearing respondent had not yet successfully overcome her anger issues. For these reasons, the trial court did not err in finding that although respondent was willing to take care of Elijah at that time, she was not currently able to safely do so.

¶ 58 III. CONCLUSION

¶ 59 In sum, the trial court's determination that Elijah was a neglected minor was not against the manifest weight of the evidence. Also, the trial court's failure to put the factual basis for its neglect determination in writing did not necessitate a remand since the court's first two oral findings adequately apprised respondent of the court's rationale, and the court's third finding was supported by the DCFS indicated packet, which the trial court noted it had taken into consideration in making its determination of neglect. Finally, the trial court did not abuse its discretion in holding that custody and guardianship of Elijah should remain with DCFS in its dispositional order.

¶ 60 Accordingly, the judgment of the circuit court of Winnebago County is affirmed.

¶ 61 Affirmed.

¶ 62 JUSTICE JORGENSEN, dissenting.

¶ 63 I respectfully dissent. It is this court's obligation to review the trial court's factual findings to determine whether those findings were against the manifest weight of the evidence. We cannot do so where the trial court has failed to make the factual findings required by section 2-21(1) of the Act.

¶ 64 Here, there are no written factual findings. Instead, as the majority notes, the court orally pronounced only that: the older siblings had not been returned to respondent's care; Elijah is an infant who has no self-protective skills and needs 24-hour care; and respondent failed to cure

the conditions that brought Elijah's siblings into care. In my view, these are simply conclusions on the ultimate issue—*i.e.*, did the State establish that respondent failed to cure the conditions that caused the removal of Elijah's siblings, thereby placing him at risk of harm—without any factual findings supporting those findings. Thus, I write separately from the majority because, in my view, even accepting the court's oral pronouncement as a substitute for written findings, the trial court's oral findings still fall short of the specificity required for factual findings under the statute. "If the court finds that the minor is abused, neglected, or dependent, the court shall then determine and put in writing the *factual basis supporting that determination and specify*, to the extent possible, *the acts or omissions or both of the parent, guardian, or legal custodian that for the basis of the court's finding*." (Emphasis added.) 750 ILCS 405/2-21(1) (West 2012). Without the factual basis supporting the court's determination, we are left without factual findings upon which to base our review.

¶ 65 The majority has done an excellent job reviewing the record, cataloguing the evidence therein, and then, based on that evidence, articulating factual findings supporting the trial court's scant oral findings. However, we are not the finders of fact; that is the obligation of the trial court. Rather than surmise which facts the trial court may have relied upon and which she may have excluded from consideration, or speculate on credibility assessments, I would order a limited remand of this case to require the trial judge to make the factual findings required by the Act. Once those factual findings are received, we can then fulfill our role as a court of review to determine whether there was error in the trial court's decision.