2015 IL App (5th) 140529-U

NOS. 5-14-0529, 5-14-0530 (consolidated)

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

In re A.S. and J.C., Minors	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Marion County.
	)	
Petitioner-Appellee,	)	
	)	
v.	)	Nos. 12-JA-35 & 12-JA-36
	)	
Brittani S.,	)	Honorable
	)	Ericka A. Sanders,
Respondent-Appellant).	)	Judge, presiding.

JUSTICE WELCH delivered the judgment of the court.
Justices Chapman and Moore concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court's denial of the respondent's postjudgment challenge to the termination of her parental rights is affirmed where the respondent was not prejudiced by the court's failure to admonish her regarding her appeal rights following the entry of the dispositional orders and where she had waived service of summons and submitted to the court's jurisdiction by appearing at the dispositional hearings and subsequent permanency hearings and not objecting to personal jurisdiction.

¶ 2 The respondent, Brittani S., appeals from an order of the circuit court of Marion County denying her postjudgment challenge to the court's termination of her parental rights to her minor children, J.C. and A.S. For the reasons which follow, we affirm.

¶ 3 As a preliminary matter, because this appeal involves a final order terminating parental rights, Illinois Supreme Court Rule 311(a)(5) (eff. Feb. 26, 2010) requires that, except for good cause shown, the appellate court issue its decision within 150 days of the filing of the notice of appeal. Accordingly, the decision in this case was due on March 21, 2015. The case was placed on the April 8, 2015, oral argument setting and we now issue this Rule 23 order.

¶ 4 The respondent has two children who have different fathers: J.C., born January 23, 2008, and A.S., born January 14, 2011. On April 9, 2012, the State filed separate petitions for adjudications of wardship for J.C. and A.S. The petitions alleged that the minors had been neglected in violation of section 2-3(1)(b) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(1)(b) (West 2012)), based on the fact that their environment was injurious to their welfare in that James S., the minor children's maternal grandfather, caused A.S. to suffer first and second degree burns to more than 43% of her body.

¶ 5 A shelter-care hearing was scheduled for April 10, 2012, in Saline County. On April 9, a summons was issued to the respondent to inform her of the hearing. It was addressed to her parents' residence as the State believed that she lived there. The respondent did not appear at the hearing, but the maternal grandparents and both fathers were present. During the hearing, the respondent's mother informed the court that the respondent was with A.S. in Ohio, which is where A.S. had been taken for medical treatment for her burns. The court then asked the State whether an agreement had been reached on the shelter care proceedings. The State responded as follows: "Judge, when I

spoke to all of the parties about a little after 1:15 we had reached an agreement on all the cases. I believe that still stands." The State explained that the agreement with regard to J.C. was that he would be returned to the grandparents' home and there would be no shelter-care order for him. J.C.'s father indicated that he had no objection to this arrangement. With regard to A.S., the State requested, with the father's agreement, that she be placed in the custody of the Department of Children and Family Services (DCFS). The State explained that the respondent "was made aware of today." Mosier, a caseworker for DCFS who was also present at the hearing, indicated that he had spoken with all interested parties.

¶ 6 After hearing the agreement reached between the parties, the circuit court appointed a guardian *ad litem* (GAL) for the children. The court announced on the record that "[s]ince all parents had notice of this proceeding there won't be a rehearing." The court granted temporary custody of A.S. to DCFS, finding that there was probable cause for the filing of the petition as stipulated to by her father and that it was in her best interest that DCFS be appointed as custodian. The docket entry for this hearing noted that the respondent had received verbal notice of the hearing and the temporary custody order indicated that the respondent had received notice and was not present. No shelter-care order was entered as to J.C.

¶ 7 The adjudicatory hearing was set for June 26, 2012, with regard to both children. The State again sent the respondent notice of the hearing to her parents' address. Thereafter, the State amended the petitions for adjudication, and on June 14, 2012, filed notice by publication to the respondent of the amended petitions and the date of the

adjudicatory hearing. Notice appeared in the Daily Register in Saline County on June 20, 2012.

¶ 8 The respondent did not appear at the adjudicatory hearing and neither did the fathers of the minor children. Consequently, the State requested that the court enter a default adjudicatory order based on the parents' failure to appear, explaining that it had served notice by publication. The State revealed to the court that it had been told that all parties had moved to Marion County and had been living there for a "couple of weeks, if not a month" and requested that the cases be transferred to Marion County. The court entered the default adjudicatory order, finding that the relevant parties had been served with summons, waived service, or had been served by publication; that proof of service was on file; and that a diligent search had been conducted as to each nonappearing parent. The court also found that the minor children were neglected due to an injurious environment and that the neglect was inflicted by a parent, guardian, or legal custodian of the minor children. The court also entered an order transferring the cases to Marion County.

¶ 9 A status hearing was conducted in Marion County on August 8, 2012. The respondent was present in the custody of the Marion County jail and was appointed counsel. An Illinois Mentor report prepared on July 27, 2012, for the hearing revealed that A.S. was in her maternal grandparents' care when she sustained the burns, that her mother was not present at the time of the incident, and that the grandparents were unable to provide an adequate and consistent explanation for the minor child's burns.

¶ 10 Thereafter, DCFS filed its initial service plan for the respondent, which concerned

both children. The plan revealed that there had been previous indicated reports of neglect against both the respondent and her parents, that J.C. had been placed with his father, and that the permanency goal for A.S. was to return home in 12 months. The plan required the respondent to cooperate with caseworkers, improve parenting skills, function without alcohol and drugs, and complete a psychological assessment. An Illinois Mentor report filed September 17, 2012, was prepared in anticipation of the dispositional hearing and indicated that the respondent had been in jail between 5 and 10 times, mostly for failure to appear; that she had an outstanding warrant in Saline County for a probation violation; and that she would be residing in the Saline County jail through October 25, 2012. Another service plan prepared by DCFS was filed on October 25, 2012, which revealed that the respondent had not complied with the recommendations on the plan and that her overall progress was rated as unsatisfactory.

¶ 11 At the dispositional hearing on November 7, 2012, the State informed the circuit court that the following agreement had been reached between the parties with regard to A.S.: that the petition for adjudication as to A.S. be granted; that A.S. be made a ward of the court; that custody and guardianship be placed with DCFS; that the goal was to "return home"; and that the matter be set for a permanency hearing. The respondent's counsel acknowledged that this agreement had been reached, and the court confirmed this with the respondent. Consequently, the court found the respondent unfit and that placement with the respondent would be contrary to the minor's health, safety, and best interest because "she so stipulates; has not completed services." The court found that A.S.'s father has had no involvement with the child and has not engaged in any services.

The court found that it was in the best interest of A.S. for her to be made a ward of the court and that custody and guardianship remain with DCFS with the goal of returning home within 12 months. The court then admonished the respondent that she must cooperate with DCFS and comply with the terms of the service plan or risk termination of parental rights. Although the court's form order stated that appeal rights were given, the respondent was not advised of these rights on the record.

¶ 12 Thereafter, a dispositional hearing was conducted on November 14, 2012, with regard to J.C. The respondent was present at this hearing. Her counsel indicated that the parties had reached an agreement concerning disposition and that custody and guardianship would be placed with DCFS, which the circuit court confirmed with the respondent. The court entered an order that the respondent was unfit and that placement with the respondent would be contrary to the minor's health, safety, and best interest because "she so stipulates; has not completed services." The court found that it was in the best interest of J.C. that he be made a ward of the court. The court further found that J.C.'s father was fit, able, and willing to care for his son and placed guardianship with DCFS and placement with the father. Although the court's form order stated that appeal rights were given, the respondent was not advised of these rights on the record.

¶ 13 A DCFS service plan was filed on April 11, 2013, which indicated that A.S. was still in specialized foster care and that J.C. had been removed from his father's home and placed with another relative after his father was arrested on a domestic-violence charge. The report revealed that the respondent was complying with services and visitation, but had not obtained employment or housing, had admitted to using drugs on March 6, 2013,

would not disclose what type of drugs that she had used, and had been arrested in Saline County on March 18, 2013, for nonpayment of fines. Therefore, the report rated her progress as unsatisfactory. An Illinois Mentor report filed on May 3, 2013, indicated that the respondent was scheduled for release from jail on May 4, 2013, and recommended that custody and guardianship remain with DCFS with the goal of returning home within 12 months.

¶ 14 At the permanency hearing held on May 15, 2013, in both cases, the respondent's counsel stated that he had reviewed the May 3 report and that the respondent agreed with the return-home goal. The court entered a permanency order, finding that the respondent had not made reasonable and substantial progress toward the return of the minor children and leaving custody and guardianship of the minor children with DCFS. At the hearing, the court admonished the respondent about the consequences of not complying with the permanency goals set forth in the report. Another Illinois Mentor progress report filed on November 7, 2013, indicated that the respondent had been arrested twice since the May 2013 permanency hearing, including an October 2013 arrest for violating a no contact/stalking order obtained by the relative with whom J.C. had been placed.

¶ 15 According to the progress report, the respondent had not completed any of the services in her plan, she had quit counseling because she believed her counselor was too involved in her personal business, and she had stopped attending GED courses in March 2013. The report also stated that she had failed to maintain employment, that she had moved four times since the end of May, that one of the homes that she had resided in had been raided three times in the last four months for methamphetamines, that she was living

between her sister's home and the home of some friends, and that she had missed approximately one visitation per month with her children in addition to the visits that she had missed while in jail.

¶ 16 Another permanency hearing was held on November 13, 2013, and the respondent was present with her counsel. During the hearing, the GAL revealed that the respondent had made "little, if any" progress on the service plan and the case had therefore been forwarded for legal screening. Consequently, the circuit court entered a permanency order, finding that the respondent had not made substantial progress toward the return of the minor children and ordering that custody and guardianship remain with DCFS. An Illinois Mentor progress report was filed on January 3, 2014, which reported that visitation between the respondent and the children had been suspended because she had arrived at a probation appointment "extremely high" and a subsequent drug test revealed that she had tested positive for methamphetamine and THC. The report recommended that the permanency goal be changed to substitute care pending termination of parental rights.

¶ 17 On March 25, 2014, the State filed a motion for termination of parental rights as to both children, alleging that the respondent was unfit because she had (1) failed to make reasonable efforts to correct the conditions that were the basis for the minor children's removal within any nine-month period following an adjudication of neglect (750 ILCS 50/1(D)(m)(i) (West 2012)) and (2) failed to make reasonable progress toward the return of the minor children within any nine-month period following an adjudication of neglect,

specifically, March 26 through December 26, 2013 (750 ILCS 50/1(D)(m)(iii) (West 2012)).

¶ 18 Hearings on the motion were set for March 26 and April 23, 2014. The respondent did not appear on either date and was reportedly in custody in Clinton County jail. The hearings were therefore continued so that the respondent could be served and brought to court. Another hearing was scheduled for May 7 and the respondent was not present. J.C.'s foster mother reported that the respondent had been released from Clinton County jail, and that she had failed to appear in another case, which resulted in a warrant being issued for her in Marion County. The respondent's counsel informed the court that he had not been in contact with her. The State reported that it had provided notice to her by publication in April and that it had attempted to serve her by personal service but had been unsuccessful. The State then requested that the case be set for trial. The court noted that the respondent had appeared repeatedly in the case, found that all parties had been properly served, and stated that any challenge to the notice issue needed to be brought as soon as possible.

¶ 19 The fitness hearing was originally scheduled for May 28, 2014, but the respondent's counsel requested a continuance because the respondent was in the Jefferson County jail on a felony retail theft charge. The hearing was rescheduled for July 9, 2014. The respondent appeared on this date with her counsel. She was in the custody of the Marion County jail.

¶ 20 The following testimony was adduced at the hearing. Reagan Nelson, a former caseworker for Illinois Mentor, testified that she had supervised the minor children's

cases from May 2012 until May 2013. She testified that the respondent was required to complete the following services as part of the service plan: parenting; substance abuse assessment and follow all substance abuse recommendations; comply with random drug screens; complete a psychological assessment; and locate and maintain stable housing. She reported that the respondent had made no progress toward the "return home" goal during that time and that the respondent had failed to complete parenting classes.

¶ 21 Betsy Simmons, a child welfare specialist for Illinois Mentor, testified that she initially became involved in the case in May 2013 and her involvement ended in January 2014. She testified that she filed an updated service plan in August 2013 and that she had reviewed the new plan with the respondent and explained the tasks that the respondent was required to complete. Simmons explained that the respondent's service plan contained the following tasks: attend counseling and substance abuse counseling and complete the counseling recommendations; obtain a GED; obtain stable housing for six months; obtain and maintain employment; attend parenting classes; and contact her probation officer. Simmons testified that the respondent did not complete any of the services on the plan from May 2013 through January 2014.

¶ 22 Taylor Gordon, also a caseworker for Illinois Mentor, became involved in the case two weeks after Simmons finished supervising the case. Gordon testified that the respondent had not made any progress during the period of time that she was involved with the case. After hearing the evidence, the circuit court found that the State had proven, by clear and convincing evidence, that the respondent had failed to make

reasonable progress toward the minor children's return during the nine-month period of March 26 through December 26, 2013.

¶ 23 A subsequent best-interest hearing was conducted on August 6, 2014. The respondent did not appear at this hearing. During the hearing, the foster mothers of J.C. and A.S. testified that they wanted to adopt the children. The court found that it was in the minor children's best interests that parental rights be terminated.

¶ 24 Thereafter, on August 11, 2014, the respondent filed, in both cases, a motion to vacate (1) the order of adjudication, (2) the court's finding that the respondent was an unfit parent, and (3) the court's termination of her parental rights. In the motion, the respondent argued that the court's default finding of neglect was in error and that, consequently, all subsequent orders of the court were void. Specifically, the respondent argued that a temporary caregiver's neglect, absent evidence of some fault of the parent, does not constitute an environment injurious to the minor's welfare and that the court must find "some fault with the parent, guardian, or custodian."

¶ 25 In response, the State argued, at the hearing, that there was sufficient evidence to support a finding that the respondent was "at some degree of fault and neglectful and independently neglectful for leaving [the children] with her parents knowing they had previously been indicated for neglecting children." The State also argued that the evidence revealed that the grandparents were not temporary caregivers and instead the children were living with the grandparents and had resided there for approximately one to two months.

¶ 26 Furthermore, the State argued that the respondent's challenge to the adjudicatory orders was barred "as untimely and/or on the basis of *res judicata*." The State noted that the respondent had agreed to the entry of the court's dispositional orders making the minor children wards of the court and placing custody and guardianship with DCFS. The State argued that any appeal from the adjudication of wardship should be dismissed as the adjudicatory order is not a final and appealable order. The State further argued that the respondent failed to file a timely notice of appeal following the entry of the dispositional order thereby making any challenge to the finding of neglect *res judicata*. After hearing arguments, the court denied the respondent's motion based on the "jurisdictional argument presented by [the State]." The respondent appeals, challenging the circuit court's April 2012 shelter-care order, the court's default June 2012 adjudicatory order, and the court's November 2012 dispositional orders. The respondent does not directly attack the court's July 2014 finding that the State proved that she was unfit and the court's August 2014 finding that it was in her children's best interests that her parental rights be terminated.

¶ 27 The respondent first argues that the circuit court's finding that the minor children were neglected was against the manifest weight of the evidence as the evidence presented at the shelter-care hearing and adjudicatory hearing was insufficient to support a finding of neglect against her. In response, the State argues that the respondent's claim with regard to the shelter-care hearing is moot as the hearing is an emergency hearing, which resulted in the issuance of a temporary custody order, and there was a subsequent adjudication of wardship at the dispositional stage in the proceedings where the

respondent was found to be unfit. The State also argues that this court has no jurisdiction to review the sufficiency of the evidence presented at the shelter-care and adjudicatory hearings as the respondent failed to file a notice of appeal within 30 days of the entry of the court's November 7 and November 14, 2012, dispositional orders. Furthermore, the State argues that even if this court has jurisdiction to consider the respondent's claim as to the sufficiency of the evidence at the shelter-care and adjudicatory hearings, this court would have to consider the issues under plain-error review. Under plain-error review, the State argues that there was no error as it was required to prove the minor children were neglected, not that the respondent neglected the children.

¶ 28 Initially, we determine that any challenge to the shelter-care hearing involving A.S., which resulted in the entry of a temporary custody order, is moot. A shelter-care order was not entered as to J.C. During a shelter-care hearing, the circuit court determines whether a minor child requires temporary placement outside the home. *In re J.W.*, 386 Ill. App. 3d 847, 852 (2008). In general, an appeal challenging the findings made in a temporary custody hearing is moot where there is a subsequent adjudication of wardship that is supported by adequate evidence. *Id.* In this case, we conclude that the respondent's contentions concerning the shelter-care hearing are not justiciable as there is a subsequent adjudication of wardship as to A.S. at the dispositional stage of the proceedings, which was agreed to by the respondent, and that it was supported by adequate evidence. Assuming *arguendo* that the issue is justiciable, we note that the record reveals that the entry of a temporary custody order as to A.S. was the agreed outcome of the proceeding despite the respondent's absence.

¶ 29 We now turn to our consideration of the respondent's challenge to the entry of the default adjudicatory order. An adjudication of wardship order is not a final and appealable order. *In re M.J.*, 314 Ill. App. 3d 649, 655 (2000). Instead, with regard to juvenile cases, the dispositional order is generally the final order from which an appeal properly lies. *Id.* Accordingly, the proper method for challenging a finding of neglect is appealing the dispositional order. *In re Leona W.*, 228 Ill. 2d 439, 456 (2008). To properly perfect an appeal, an appellant must file a notice of appeal within 30 days after the entry of a final order. Ill. S. Ct. R. 303(a) (eff. May 30, 2008). Therefore, an appellate court has no jurisdiction to review a finding a neglect where an appellant has not filed a notice of appeal within 30 days after the entry of the dispositional order. *In re Leona W.*, 228 Ill. 2d at 456-57. "Compliance with the rules governing the deadline for filing a notice of appeal is mandatory and jurisdictional." *In re M.J.*, 314 Ill. App. 3d at 654.

¶ 30 Here, the respondent failed to file a notice of appeal challenging the circuit court's finding of neglect within 30 days of the entry of the dispositional order. Therefore, the State argues that this court does not have jurisdiction to consider this issue. However, the respondent counters that her failure to file a notice of appeal is excused where the circuit court failed to admonish her regarding her right to appeal as required by section 1-5(3) of the Juvenile Court Act (705 ILCS 405/1-5(3) (West 2012)). Although the court's November 7 and November 14, 2012, dispositional form orders stated that "appeal rights were given," there is nothing contained in the transcripts of the dispositional hearing indicating that the court advised the respondent of her appeal rights. The State

acknowledges that the respondent was not advised of her right to appeal on record, but argues that the existence of the error does not mean that the respondent has met her burden of proving plain error as she cannot show that she was prejudiced by the lack of admonishment. Overlooking the plain-error argument, we conclude that the circuit court's failure to admonish the respondent as to her appeal rights does not warrant reversal as it was harmless error.

¶ 31 Section 1-5(3) of the Juvenile Court Act (705 ILCS 405/1-5(3) (West 2012)) requires the circuit court to admonish the parties regarding the consequences of an allegation of neglect and having a child being declared a ward of the court as well as the parties' right to appeal following an adjudication of wardship. Specifically, section 1-5(3) of the Juvenile Court Act instructs as follows with regard to the appeal admonishments: "Upon an adjudication of wardship of the court ***, the court shall inform the parties of their right to appeal therefrom as well as from any other final judgment of the court." 705 ILCS 405/1-5(3) (West 2012). However, in a case involving the court's failure to admonish the parents concerning the consequences of not complying with DCFS in neglect proceedings, the Second District concluded that a court's failure to properly admonish the parties in accordance with section 1-5(3) does not require an automatic reversal as it is subject to a harmless-error analysis. *In re Kenneth F.*, 332 Ill. App. 3d 674, 679 (2002). "In proceedings of the present kind, where a primary purpose is to protect the best interests of the children, a harmless-error analysis is particularly appropriate." *Id.*

¶ 32 Here, under the circumstances of the case where the respondent does not indicate how, given her agreement to the entry of the dispositional orders, the outcome of the case would have been different had she been properly admonished as to her appeal rights, where she was represented by counsel at the dispositional hearings and prior status hearing, and where the record overwhelmingly supports the circuit court's termination of the respondent's parental rights, we cannot conclude that the failure to admonish the respondent regarding her appeal rights resulted in prejudice. "An error that prejudices no one should not prevent children, who are the objects of these proceedings, from attaining some level of stability in their lives." *Id.* at 679-80. We want to make clear that our decision is in no way meant to suggest that it is proper for a circuit court to not comply with the statutory requirement to admonish a parent following an adjudication of wardship of their right to appeal. However, in this particular case, where it is clear that the outcome of the case would have remained the same even with proper admonishments, we conclude that the court's failure to admonish the respondent of her appeal rights was harmless error.

¶ 33 The respondent next argues that her due process rights were violated because the State failed to diligently inquire into her whereabouts or comply with the affidavit filing procedure required for serving notice by publication. The respondent argues that the service by publication did not comply with the statutory requirements in that the adjudicatory hearing was conducted 6 days after notice was served by publication when section 2-16(3) of the Juvenile Court Act (705 ILCS 405/2-16(3) (West 2012)) instructs the court not to proceed with an adjudicatory hearing until 10 days after service by

publication. Thus, she contends that the default adjudicatory order, the subsequent dispositional orders, and the subsequent termination order are all void and must be vacated. The respondent appears to acknowledge that she has failed to raise this issue in the circuit court and that it is therefore forfeited. However, she argues that the issue should be addressed under plain-error review.

¶ 34 The State again argues that this court lacks jurisdiction to consider this issue as the respondent did not file a notice of appeal within 30 days of the entry of the dispositional orders. The State further counters that if this court has jurisdiction, the issue is forfeited as it was not raised at the dispositional hearings and therefore may only be reviewed under plain error. Under plain-error review, the State argues that there was no error as the respondent waived service when she appeared at the dispositional hearings and subsequent permanency hearings and failed to object to personal jurisdiction, and that even had notice been proper according to section 2-16, the ultimate outcome of the case, termination of the respondent's parental rights, would have remained the same.

¶ 35 The plain-error doctrine allows a reviewing court to consider unpreserved error when (1) a clear or obvious error occurred and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error, or (2) a clear or obvious error occurred and that error is so serious that it affected the fairness of the judicial process, regardless of the closeness of the evidence. *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007). The first step in a plain-error analysis is to determine whether an error occurred. *Id.*

¶ 36 Here, the State concedes that it did not file the affidavit required by section 2-16(2) of the Juvenile Court Act (705 ILCS 405/2-16(2) (West 2012)) and that the adjudicatory hearing was conducted six days after service by publication. However, the State argues that even though the service by publication did not comply with the statutory requirements, the respondent's appearance at subsequent hearings resulted in her waiving service under section 2-15(7) of the Juvenile Court Act (705 ILCS 405/2-15(7) (West 2012)), which states that the appearance of the minor's legal guardian or custodian, or a person named as a respondent in the petition, in any proceeding under the Juvenile Court Act constitutes waiver of service of summons and submission to the court's jurisdiction, except that the filing of a motion pursuant to section 2-301 of the Code of Civil Procedure (735 ILCS 5/2-301 (West 2012)) does not constitute an appearance.

¶ 37 The adjudicatory hearing where the default order was entered was held on June 26, 2012. The respondent thereafter appeared with counsel at the subsequent August 8, 2012, status hearing and the November 2012 dispositional hearings and did not challenge sufficiency of the notice for the previous June 2012 adjudicatory hearing. Neither the respondent nor her counsel sought to vacate the default adjudicatory order under section 2-1301(e) of the Code of Civil Procedure (735 ILCS 5/2-1301(e) (West 2012)), which allows a court to set aside any nonfinal default judgment, and they failed to file a motion under section 2-301 of the Code of Civil Procedure (735 ILCS 5/2-301 (West 2012)) objecting to the court's personal jurisdiction over the respondent due to insufficient process. Instead, the respondent agreed to the dispositional orders that were entered. Therefore, we conclude that the respondent has waived any objection to personal

jurisdiction by appearing at the subsequent dispositional hearings and permanency hearings and not raising her objection in the circuit court. Accordingly, we find that the respondent's due process rights were not violated.

¶ 38 The respondent also argues that her trial counsel provided ineffective assistance of counsel by not filing a motion attacking the default judgment of adjudication for ineffective service and a motion "as to the trial court's failure to provide the admonishments required following disposition."

¶ 39 Ineffective-assistance-of-counsel claims are evaluated under the standard set forth in *Strickland v. Washington*, 466 U.S. 668 (1984), and adopted by the Illinois Supreme Court in *People v. Albanese*, 104 Ill. 2d 504 (1984). To establish that trial counsel provided ineffective assistance, the defendant must show that her counsel's performance was so deficient that his representation fell below an objective standard of reasonableness, and counsel's deficient performance created a reasonable probability that the outcome of the proceeding would have been different absent counsel's deficient performance. *People v. Palmer*, 162 Ill. 2d 465, 475 (1994). "A defendant's failure to make the requisite showing of either deficient performance or sufficient prejudice defeats an ineffectiveness claim." *Id.*

¶ 40 Assuming *arguendo* that the respondent has not forfeited these arguments on appeal by failing to raise them in the circuit court, as argued by the State, we conclude that the respondent suffered no prejudice by counsel's failure to challenge the incomplete admonishments and the effectiveness of service. As we have previously stated, the respondent was not prejudiced by the court's failure to admonish her with regard to her

appeal rights following the entry of the dispositional orders as the respondent had agreed to the orders, she was represented by counsel during the hearing, it was apparent from the record that the outcome would have remained the same had she been properly admonished, and the evidence presented at the termination hearing overwhelmingly supported the circuit court's decision to terminate the respondent's parental rights. Similarly, we have also already determined that the respondent suffered no prejudice from the State's failure to follow the statutory requirements for service for the adjudicatory hearing as she appeared at the subsequent dispositional hearings and agreed to the entry of the dispositional orders, which found her unfit and gave custody of the minor children to DCFS. As noted by the State, the validity of the default adjudicatory order was a necessary prerequisite to the entry of the agreed dispositional orders. Accordingly, we conclude that the respondent's trial counsel was not ineffective.

¶ 41 Furthermore, assuming *arguendo* that we can address the circuit court's finding of neglect based on the respondent's argument that the State did not present any evidence that she had personally neglected the children, we would still affirm the circuit court's decision. According to our supreme court in *In re Arthur H., Jr.*, 212 Ill. 2d 441, 467 (2004), the only question that needs to be resolved by the circuit court at the adjudicatory hearing is whether the minor children were neglected, not whether the parents were neglectful. The circuit court must first adjudicate the minor children neglected before it then directs its attention to the actions of the parents. *Id.* at 466. Therefore, in this case, because the respondent seeks to challenge the circuit court's default finding of neglect made at the adjudicatory hearing, we conclude that the State was not required to prove

that the respondent neglected her minor children as the focus is solely on the minor children at this stage in the proceedings. The State *was* required to prove that the minor children were neglected, which based on this record, we find that it did.

¶ 42 For the foregoing reasons the judgment of the circuit court of Marion County is hereby affirmed.

¶ 43 Affirmed.