2016 IL App (4th) 160248-U

NO. 4-16-0248

FILED
September 1, 2016
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: D.P., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Morgan County
v.	)	No. 15JA12
ALISA BOWDEN,	)	
Respondent-Appellant.	)	Honorable
	)	Jeffery E. Tobin,
	)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Justice Appleton concurred in the judgment.
Justice Steigmann dissented.

ORDER

¶ 1 *Held*: The appellate court reversed, concluding the trial court's finding of abuse or neglect was against the manifest weight of the evidence and too close to applying a *per se* rule of anticipatory neglect.

¶ 2 On August 11, 2015, the State filed a petition for adjudication of wardship, alleging D.P. (born August 8, 2015) was abused or neglected because he "may be subjected to maltreatment in the future because he may reside with a person who has abused or neglected another child." To support this anticipatory neglect allegation, the State relied on prior Department of Children and Family Services (DCFS) cases, in which respondent, Alisa Bowden, voluntarily surrendered her parental rights to her two older children, Au. P. and Al. P. Following an adjudicatory hearing in March 2016, the trial court entered an order adjudicating D.P. abused or neglected pursuant to sections 2-3(1)(b) and (2)(ii) of the Juvenile Court Act of 1987 (Juvenile

Act) (705 ILCS 405/2-3(1)(b), (2)(ii) (West 2014)). The same month, the court entered a dispositional order making D.P. a ward of the court and granting custody and guardianship to DCFS. (705 ILCS 405/2-23(1)(a) (West 2014)).

¶ 3 Respondent mother appeals, asserting the trial court's (1) finding of abuse or neglect based on a theory of anticipatory neglect was against the manifest weight of the evidence; and (2) dispositional findings of unfitness and inability were against the manifest weight of the evidence. Respondent father is not party to this appeal. For the following reasons, we reverse.

¶ 4 I. BACKGROUND

¶ 5 A. Initial Proceedings

¶ 6 Following a hotline report of a substantial risk of injury, DCFS took D.P. into protective custody directly from the hospital after his birth. In August 2015, the State filed a petition for adjudication of wardship, alleging D.P. was abused or neglected because he "may be subjected to maltreatment in the future because he may reside with a person who has abused or neglected another child."

¶ 7 B. Adjudicatory Hearing

¶ 8 In March 2016, the trial court held an adjudicatory hearing and heard the following evidence.

¶ 9 1. *Gabe Nagy*

¶ 10 Gabe Nagy, a child protective investigator with DCFS, testified DCFS first became involved in January 2012, when Au. P. suffered a skull fracture when she was 23 days old. According to Nagy, Au. P. suffered no lasting effects from the fracture and had no other bruises or injuries. The skull fracture was not investigated as a result of domestic violence.

Initially, DCFS instituted an intact-family plan; however, in March 2012, Au. P. was taken into protective custody after respondent father violated the safety plan by being in the home. While Au. P. was in DCFS custody, in September 2013, Al. P. was taken into care shortly after her birth based on the theory of anticipatory neglect due to respondents' unwillingness and inability to complete services. Following an adjudicatory hearing, the trial court found Au. P. neglected and Al. P. abused and neglected.

¶ 11 In July 2014, respondents voluntarily surrendered their parental rights to Au. P. and Al. P. At that time, respondents were not in a stable home and had no steady income. Respondent mother was not yet pregnant with D.P.

¶ 12 According to Nagy, respondent mother took it upon herself to contact DCFS when she learned she was pregnant with D.P. At that time, the cases involving Au. P. and Al. P. were closed and respondent no longer had a service plan in place. Nagy testified it would have been an expectation that the respondents complete the service plan after they surrendered their parental rights to Au. P. and Al. P. However, DCFS would not have assisted with services after respondents surrendered their parental rights.

¶ 13 Nagy testified D.P. was born healthy, with no drugs in his system and no physical signs of abuse or neglect. However, based on the prior DCFS involvement and respondents' failure to complete services in the prior cases, DCFS took D.P. into protective custody shortly after his birth. According to Nagy, at the time D.P. went into protective custody, respondent was living in a clean, furnished apartment and had all the necessary items to care for a newborn.

¶ 14 2. *Vicky Vinyard*

¶ 15 Vicky Vinyard, a child-welfare specialist with DCFS, testified she was the second caseworker assigned to Au. P.'s case and the caseworker for Al. P. and D.P. Vinyard was told

Au. P. sustained the skull fracture when she rolled off respondent mother's arm during breast-feeding. According to Vinyard, respondent mother's prior service plan called for a mental-health assessment, parenting classes, and domestic-violence counseling. Respondent father's prior service plan called for mental-health, substance-abuse, domestic-violence, and anger-management assessments, counseling, and parenting classes. The plan also required respondents to obtain stable housing and a legal source of income.

¶ 16 According to Vinyard, both respondents completed mental-health assessments, but respondent father did not continue services to receive medication for bipolar disorder. During the cases involving Au. P. and Al. P., respondents unsuccessfully attempted to complete parenting classes three times. Respondent father did not complete the domestic-violence or substance-abuse assessments, despite arrangements by DCFS for transportation. Respondent mother worked with a counselor at Hobby Horse House Child Welfare Agency.

¶ 17 The cases involving Au. P. and Al. P. proceeded to termination of parental rights due to respondents' lack of progress in the service plan. The day the fitness hearing was scheduled, respondents voluntarily surrendered their parental rights. At that time, Vinyard told respondent mother her chances of keeping another child would be better if she was not found unfit. Vinyard acknowledged there was no service plan in place following the surrender of respondents' parental rights.

¶ 18 Subsequently, respondent mother notified Vinyard she was pregnant with D.P. Respondent mother asked if DCFS would take protective custody of D.P., and Vinyard told her there would have to be another hotline call prior to D.P. being taken by DCFS. Vinyard testified she made it clear that respondents needed to correct the conditions which led to the cases involving Au. P. and Al. P. According to Vinyard, the conditions had not been corrected

because respondents failed to complete the service plan prior to surrendering their parental rights. Thus, she suggested some services to respondent mother during her pregnancy with D.P.

¶ 19 In July 2015, Vinyard visited respondent's apartment, which was clean and contained various items necessary to care for a newborn. In the time since surrendering their parental rights, respondents had obtained stable housing and a legal source of income. Vinyard further acknowledged there had been no domestic-violence incidents, and respondents had no obligation to engage in any particular services. After D.P.'s birth, Vinyard testified she would have liked to see respondents have a chance to parent D.P. but, because respondents had not corrected the prior conditions, she understood why D.P. was taken into protective custody.

¶ 20 3. *Billy Wilson*

¶ 21 Billy Wilson testified he grew up with respondent mother and was respondent father's cousin. According to Wilson, respondents stayed with various friends and family members during the pendency of the DCFS cases involving Au. P. and Al. P. However, while respondent mother was pregnant with D.P., they had an apartment, which was clean and in decent shape. Wilson testified respondents' situation was stable.

¶ 22 Wilson testified respondent mother told him Au. P. sustained the skull fracture after she rolled off the bed. Despite this, Wilson often allowed respondents to babysit his own children, including overnight visits. In Wilson's opinion, respondents were capable of parenting D.P.

¶ 23 Wilson further testified he never personally witnessed any domestic-violence incidents between respondents. The guardian *ad litem* (GAL) asked if respondent mother ever indicated respondent father physically abused her. Wilson testified respondent mother told him of an incident that occurred when she was pregnant with Au. P. Wilson stated, "they got into a

verbal argument, and I guess he had pulled her hair. But that was the only incident I've ever heard about."

¶ 24 4. *Respondent*

¶ 25 Respondent mother testified she surrendered her parental rights to Au. P. and Al. P. because she had no stable home or income, and she wanted the children to have a home and have their needs met. Approximately two months after surrendering her parental rights, respondent mother began receiving approximately $750 per month in Social Security income. From that time until the present, respondent mother had a stable apartment, income, a bank account, and enough money to cover rent, food, and other necessities.

¶ 26 Respondent mother testified she went to see Vinyard when she learned she was pregnant with D.P. because she wanted to know in advance whether D.P. would be taken into protective custody at the hospital or be allowed to come home. According to respondent mother, Vinyard said "she couldn't use an old case," but if a hotline report was made, DCFS would investigate. Respondent mother testified she had Vinyard inspect her apartment, and Vinyard said the apartment was free from hazards and met DCFS standards. Vinyard also suggested parenting and domestic-violence classes, but respondent mother did not participate in the classes.

¶ 27 According to respondent mother, she pays all of her bills and does her own housecleaning. She does not require assistance in maintaining her apartment or dealing with finances. Respondent mother can read and write well enough to understand and follow instructions such as those found on pill bottles or in recipes. There were emergency numbers saved on her phone and a network of friends and family for support. Respondent mother testified she felt she had the skills to parent D.P. and wanted him back.

¶ 28 On cross-examination, the GAL and respondent mother had the following exchange:

"Q. You told your cousin Billy Wilson that, that [Au. P.] had rolled off a bed, is that correct?

A. Yes.

Q. A 22-day-old child rolled?

A. Yes.

Q. That was your story?

A. Yes.

Q. You also told DCFS that you dropped the baby while you were nursing the baby, isn't that correct?

A. No. Never did.

Q. Never told DCFS—

A. No, I never told DCFS I dropped the baby. I told DCFS she had rolled out of the bed while I was breastfeeding and I fell asleep, but not once said I dropped the baby.

Q. Okay. So you told DCFS it occurred while you were breastfeeding the baby?

A. Yes.

Q. That much is true?

A. Yes."

Respondent mother acknowledged she lied to Dr. Lillpop, Au. P.'s pediatrician. Respondent mother testified, "I had an appointment with [Dr. Lillpop], and I told him that [Au. P.] rolled out

of her air mattress because I had my mom tell me if I didn't say that she rolled out of the air mattress that she was going to be held from me." However, the State elicited no further information regarding the nature of the lie to Dr. Lillpop.

¶ 29 C. Adjudicatory Order

¶ 30 Following the adjudicatory hearing, the special prosecutor argued, "All we have to prove is those cases [(involving Au. P. and Al. P.)] happened and the Court made the findings in those cases." The GAL argued the relevant point in time was August 11, 2015, which was the date of the petition. The GAL acknowledged the testimony regarding stable housing, income, and baby supplies, but argued this was "smoke and mirrors." Instead, the GAL argued respondents never corrected the conditions which led to Au. P. and Al. P. being taken into protective custody, and, therefore, the trial court should find D.P. abused or neglected.

¶ 31 Following argument, the trial court found "the State ha[d] met its burden of proof regarding the allegations in the petition, and that concerns both parents." The court went on to make the following findings:

> "[T]he State has established anticipatory abuse or neglect, and that is specifically based upon the history of the fractured skull to the 22-day-old child. And that is also based upon the failure of both parents to correct the problem areas identified or to comply with the terms of the plan previously set forth in the two earlier cases, and that includes specifically as follows:
>
> The father has failed to successfully complete parenting class. Father has not completed domestic-violence counseling or treatment. The father has not undergone a drug assessment, and

> father has also refused drug drops. Father was in compliance with the mental-health assessment. However, the Court's concerned because there was prescribed medication, and the father has not followed up on the prescribed medication.
>
> Concerning the mother, there's been unsuccessful completion of parenting class. And further, no successful completion of domestic-violence counseling. And the Court specifically finds that a simple passage of time does not work to alleviate the Court's concern concerning the health, safety, and welfare of this child."

Accordingly, the court entered a written order adjudicating D.P. abused or neglected.

¶ 32 D. Dispositional Order

¶ 33 In March 2016, the trial court held a dispositional hearing. Ultimately, the court found respondent parents unfit, unwilling, and unable to care for D.P., placed custody of D.P. with DCFS, and granted DCFS discretion to facilitate supervised visitation.

¶ 34 This appeal followed.

¶ 35 II. ANALYSIS

¶ 36 On appeal, respondent mother argues (1) the trial court's finding of abuse or neglect based upon a theory of anticipatory neglect was against the manifest weight of the evidence; and (2) the dispositional order making D.P. a ward of the court and finding respondents unfit, unwilling, and unable to care for D.P. was an abuse of discretion and against the manifest weight of the evidence. We turn first to the court's finding of abuse or neglect.

¶ 37 The Juvenile Act provides a two-step process to determine whether a child should be removed from parental custody and made a ward of the court. *In re A.P.*, 2012 IL 113875, ¶ 18, 981 N.E.2d 336. As an initial matter, the trial court must conduct an adjudicatory hearing to determine whether the child is abused, neglected, or dependent. *Id.* ¶ 19. A neglected minor includes "any minor under 18 years of age whose environment is injurious to his or her welfare." 705 ILCS 405/2-3(1)(b) (West 2014). An abused minor includes a minor whose parent "creates a substantial risk of physical injury." 705 ILCS 405/2-3(2)(ii) (West 2014).

¶ 38 A. Standard of Review

¶ 39 A parent's interest in the control, custody, and care of his or her child is a fundamental constitutional right. *In re D.W.*, 214 Ill. 2d 289, 310-11, 827 N.E.2d 466, 481 (2005). A proceeding for adjudication of abuse or neglect is " 'a significant intrusion into the sanctity of the family which should not be undertaken lightly.' " *In re Arthur H.*, 212 Ill. 2d 441, 463, 819 N.E.2d 734, 747 (2004) (quoting *In re Harpman*, 134 Ill. App. 3d 393, 397, 480 N.E.2d 873, 875 (1985)). Prior to this adjudication, the State must prove abuse or neglect by a preponderance of the evidence. *In re M.H.*, 196 Ill. 2d 356, 365, 751 N.E.2d 1134, 1141 (2001). In order to terminate parental rights, the State must prove a parent's unfitness by clear and convincing evidence. *Id.* "These burdens underscore the importance of parents' fundamental right in the control, custody, and care of their children and the fact that these rights may not be easily taken away." *Id.*

¶ 40 "[C]ases involving allegations of neglect and adjudication of wardship are *sui generis*, and must be decided on the basis of their unique circumstances." *Arthur H.*, 212 Ill. 2d at 463, 819 N.E.2d at 747. Where, as here, the allegations of abuse or neglect are premised upon a theory of anticipatory neglect, the State seeks to protect children "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." *Id.* at 468, 819 N.E.2d at 749. We will reverse a trial court's ruling of neglect only if it is against the manifest weight of the evidence. *Id.* at 464, 819 N.E.2d at 747.

¶ 41 B. Anticipatory Neglect

¶ 42 Respondent contends the trial court's finding of neglect was made solely on the theory of anticipatory neglect based on Au. P.'s skull fracture and respondents' failure to correct the conditions identified in the cases related to Au. P. and Al. P. Specifically, the court cited respondents' failure to complete the various services required by DCFS in those two cases, including domestic-violence assessments and counseling, substance-abuse treatment (for respondent father), and parenting classes.

¶ 43 Although we recognize the theory of anticipatory neglect, there is no *per se* rule that evidence of neglect of one child conclusively establishes neglect of another child. *Id.* at 468, 819 N.E.2d at 749. Evidence of neglect of one child is insufficient by itself to prove an allegation of abuse or neglect of another child. *Id.* at 486, 819 N.E.2d at 749-50; see also *In re S.R.*, 349 Ill. App. 3d 1017, 1022, 811 N.E.2d 1285, 1289 (2004). "Rather, 'such neglect should be measured not only by the circumstances surrounding the sibling, but also by the care and condition of the child in question.' " *Arthur H.*, 212 Ill. 2d at 468, 819 N.E.2d at 749-50 (quoting *In re Edward T.*, 343 Ill. App. 3d 778, 797, 799 N.E.2d 304, 319 (2003)).

¶ 44 The State argues respondents' failure to complete services during the course of the prior DCFS cases evidences D.P.'s neglect. Respondent contends this evidence alone is not sufficient to sustain a finding of neglect because it is solely related to the prior cases in which

respondents voluntarily surrendered their parental rights. Respondent contends completion of services was no longer required following the voluntary surrender of parental rights.

¶ 45 In our view, a failure to complete services in a DCFS case can certainly form the basis for an anticipatory neglect allegation. See, *e.g.*, *In re R.S.*, 382 Ill. App. 3d 453, 464, 888 N.E.2d 542, 552 (2008); *In re J.C.*, 396 Ill. App. 3d 1050, 1058-59, 920 N.E.2d 1285, 1292 (2009). The failure to complete services is directly related to the circumstances at the time the State seeks to adjudicate another child neglected and can inform the trial court as to a respondent parent's circumstances and current appropriateness as a caretaker. While the parents may have no longer been required to complete the services, the trial court can legitimately consider the impact the failure to complete services has on the ability of the respondent to provide a safe environment for the child in the current case.

¶ 46 However, here, the State seeks to use a prior failure to complete services as evidence of current neglect while failing to present evidence to inform the trial court of the nature of the conditions the services were put in place to correct. Moreover, the State disregards the current circumstances of the minor and respondents. While uncompleted services are relevant, the failure to complete services does not alleviate the trial court's obligation, even when dealing with allegations of anticipatory neglect, to review each case according to its unique facts. Failure to do so comes too close to a *per se* rule of anticipatory neglect. *In re Edricka C.*, 276 Ill. App. 3d 18, 28, 31, 657 N.E.2d 78, 86 (1995) ("[W]here two incidents of abuse and neglect occurred years before [the minor] was born, and he has not ever been abused or neglected, the trial court's findings concerning [the minor] comes too close to a *per se* rule of anticipatory neglect.").

¶ 47 We must bear in mind the State has a burden it must meet at an adjudicatory hearing and the rules of evidence apply. *M.H.*, 196 Ill. 2d at 365, 751 N.E.2d at 1141. The State failed to meet that burden in this case. Although evidence may exist to meet that burden, the State did not introduce such evidence during the adjudicatory hearing. The record is devoid of any evidence informing the trial court of what respondents did to cause DCFS to require the services that were not completed. It is not this court's function to excuse the State's failure on the basis of speculation and conjecture and, thus, deprive the parents of custody of their child.

¶ 48 Although DCFS initially became involved following Au. P.'s skull fracture, it is important to note that DCFS did not remove the child from the home as a result of the skull fracture. The response to the injury was to open an intact-family case. Nagy testified respondent father "was uncooperative, and the safety plan had him to leave the home." "Uncooperative" was never defined or elaborated upon. No testimony or evidence was introduced that abuse or domestic violence drove the requirement that respondent father leave the home. Respondent father's subsequent violation of that safety plan by being present in the home is what ultimately led to DCFS taking protective custody. However, Nagy testified specifically that Au. P.'s skull fracture was not suspected to be a result of domestic violence and was not investigated as such. In fact, Au. P. was adjudicated neglected, not abused.

¶ 49 The only evidence of domestic violence before the trial court was brief testimony by Vinyard and Wilson. Vinyard testified police were called several times during the course of DCFS's involvement with Au. P. and Al. P. However, no formal charges were filed and the record contains no indication of the nature of the incidents or the identity of the perpetrator. Vinyard gave no testimony of any of the underlying circumstances which gave rise to the need

for DCFS's recommended services. Vinyard also testified that no reports of domestic violence had been made since respondents surrendered their parental rights to Au. P. and Al. P.

¶ 50 The mere fact that DCFS required various services and the parents did not complete those services cannot be enough to show the current circumstances pose a risk to the child. The trial court needs some evidence showing why the parents needed those services in the first instance. While respondent is not allowed to relitigate the need for the services in the prior case, it is critical that the trial court, through the evidence in the current case, be informed of the circumstances that led to DCFS requiring the services in the prior case. This evidence would establish that the prior environment was not safe for a child and allow the court to draw the logical inference that because the parents have not completed the services put in place to address those deficiencies, the environment is still not safe. This is particularly important in this case because of the testimony presented regarding the improvements the parents had made and the lack of any reports of domestic-violence incidents or calls to the police since the surrender of the two prior children. Without that evidence, there is no way to determine whether the failure to complete those services, in and of itself, means the current environment is unsafe.

¶ 51 It is true respondent mother admitted she lied to Dr. Lillpop, Au. P.'s pediatrician, but we consider her entire testimony on this point. Respondent mother stated, "I had an appointment with him, and I told him that she rolled out of her air mattress because I had my mom tell me if I didn't say that she rolled out of the air mattress that she was going to be held from me." There were no further questions to clarify the basis of the lie. With no indication as to what respondent mother lied about, the dissent characterizes this as a lie about the cause of the skull fracture. The dissent also claims respondent mother admitted lying about the cause of the skull fracture to Wilson and several doctors. However, respondent mother admitted only that she

lied to Dr. Lillpop. She consistently testified she told Wilson, DCFS, and other doctors Au. P. rolled off the bed while nursing. Although the State did not provide any evidence as to the nature of the lie she told Dr. Lillpop, the testimony suggests she neglected to tell the doctor she fell asleep while breast-feeding the baby. That inference is supported by Vinyard's testimony that respondent mother told her Au. P. sustained the skull fracture when she rolled off respondent mother's arm during breast-feeding. The only explanation in evidence for the cause of the skull fracture is that respondent mother was breast-feeding Au. P., fell asleep, her arms relaxed, and Au. P. rolled out of her arms and off the bed. While respondent mother's lie to Dr. Lillpop might suggest the injury was the result of bad conduct, it is conjecture to say that conduct was almost certainly committed by respondent mother's "sometimes violent paramour." The only evidence supporting this characterization of respondent father is Wilson's testimony that respondent mother told him respondent father pulled her hair once during an argument four years before.

¶ 52 We note the dissent relies on the argument made by the GAL during closing argument to establish the nature and cause of the skull fracture. As the State introduced no evidence to establish any of the statements made by the GAL, we decline to consider this unsubstantiated argument as evidence before the trial court.

¶ 53 There might well be evidence to support a proper adjudication of abuse or neglect based on a theory of anticipatory neglect. Indeed, the State could have called an expert witness to testify as to the nature of the skull fracture or the plausibility of respondent mother's account of how the injury occurred. The State could have elicited specific testimony regarding the nature and extent of the domestic-violence incidents. The State could have established exactly what respondent mother lied to Dr. Lillpop about.

¶ 54 No evidence of past or present abuse was introduced at the adjudicatory hearing, nor was any evidence introduced that tended to show D.P. was in danger of physical injury based on Au. P.'s skull fracture. Again, DCFS did not remove Au. P. from respondents' care based on the skull fracture, and DCFS did not suspect the injury was the result of abuse. While the standard of review in this matter is deferential, it does not relieve the State of its burden and the requirement that it present evidence sufficient to meet that burden. To base a finding of abuse or neglect solely on respondents' failure to complete services without evidence of the prior conditions that led to the imposition of the services, coupled with the facts of the current conditions in this case, comes too close to a *per se* rule of anticipatory neglect or abuse.

¶ 55 The State appears to argue respondent mother's voluntary surrender of her parental rights to Au. P. and Al. P. establishes D.P.'s abuse or neglect. However, the State does not expand upon this position. This evidence is clearly related to the prior DCFS cases, which, while admissible, does not conclusively show D.P. was neglected. As pointed out by respondent mother, the voluntary relinquishment of parental rights is not equivalent to a finding of unfitness and termination of parental rights. Moreover, it is undisputed, at the time of the surrender respondents were homeless and unable to provide for the minor children—a very different circumstance than the position of respondents at the time of the adjudication regarding D.P. The mere fact that respondent mother previously surrendered her parental rights is insufficient to establish D.P. was neglected.

¶ 56 Finally, the State argues respondent mother's failure during her pregnancy with D.P. to engage in any of the services suggested, but not required, by Vinyard was sufficient evidence of current circumstances to support a finding of abuse or neglect. The record shows respondent mother informed Vinyard of her pregnancy with D.P. because she was concerned that

D.P. would be taken into protective care immediately. Vinyard testified she suggested some services, such as parenting classes and a substance-abuse assessment for respondent father. It is undisputed respondent did not engage in those services; however, Vinyard testified none of the services were required. We find this insufficient to prove D.P. was at risk of abuse or neglect.

¶ 57 First, the services Vinyard recommended were suggestions, not requirements. Moreover, while this might be evidence of current circumstances (even though the notion the services were needed is related to the alleged failure to correct conditions in the cases involving Au. P. and Al. P.), it ignores other pertinent evidence of current circumstances. We acknowledge the trial court specifically found the passage of time did not alleviate its concerns about D.P.'s health and safety. However, there was evidence of more than the mere passage of time. Since the closure of the prior cases, respondent mother had obtained and maintained stable housing. That housing was, by all accounts, clean, hazard free, and stocked with the necessary supplies to care for an infant. Respondent mother also had a steady source of income, which was sufficient to cover her rent and all necessities. Respondent mother testified she had never overdrawn her bank account or missed a rent payment. Respondent mother further testified she maintained the apartment and managed the finances without assistance. Although stable housing and income are not the only necessary skills required to parent a child, the State failed to establish, through any evidence other than the failure to complete services in the prior cases, that respondents lacked such skills. Additionally, there had been no reports of domestic-violence incidents since the prior cases closed.

¶ 58 In light of this evidence of the current circumstances, we conclude the trial court's finding of abuse or neglect based on respondents' failure to complete services in a closed case was mere speculation. See *Arthur H.*, 212 Ill. 2d at 477-78, 819 N.E.2d at 755 ("[T]he natural

ties between parents and their children may not be severed on the basis of mere speculation."). Because the court's findings were too close to applying a *per se* rule of anticipatory neglect and because those findings ignored pertinent evidence of the current circumstances, we find the court's adjudication of D.P. abused or neglected was against the manifest weight of the evidence. Accordingly, we reverse the finding of neglect, which invalidates the dispositional order. See, *e.g.*, *S.R.*, 349 Ill. App. 3d at 1023, 811 N.E.2d at 1290.

¶ 59 III. CONCLUSION

¶ 60 For the foregoing reasons, we reverse the trial court's judgment.

¶ 61 Reversed.

¶ 62 JUSTICE STEIGMANN, dissenting.

¶ 63 Because I disagree with the majority's conclusion that the trial court's finding of abuse or neglect was mere speculation and "too close to applying a *per se* rule of anticipatory neglect" (*supra* ¶ 58), I respectfully dissent. In my opinion, this record contains more than just the fact that the earlier child of these parents suffered the dangerous injury of a skull fracture.

¶ 64 At the March 2016 adjudicatory hearing, DCFS worker Gabe Nagy testified that DCFS first became involved with these parents in January 2012, when their 22-day-old child Au. P. suffered a skull fracture that was being investigated by DCFS. Dakota Powell, the father, was uncooperative with DCFS, and the DCFS specialists proposed a safety plan that had him leave the home. Two months later, DCFS received information that he had violated the plan, and DCFS took protective custody of Au. P.

¶ 65 A second child of these parents, Al. P., was born in 2013, and DCFS also took custody of that child. Nagy testified DCFS did so because of the parents' "unwillingness and inability to finish services."

¶ 66 Vicky Vinyard, a DCFS child-welfare specialist who had worked with this family for four years as of the March 2016 adjudicatory hearing, testified about various "duties assigned" to the parents. The mother was to have victim-of-domestic-violence parenting counseling, and they were both to have mental-health assessments. Powell was to do counseling about substance abuse, domestic violence, and anger management. Also, Powell was supposed to be out of the home, but "it was reported that he was in the home, which was a violation of the supervision plan." The parents did not complete any services.

¶ 67 Although Vinyard testified regarding the need for DCFS's recommended services, she provided no information regarding the underlying circumstances which gave rise to the bases

for those recommendations. Nonetheless, her testimony was before the trial court, which, as trier of fact, was entitled to decide what inferences to draw from the fact that the services were recommended and the parents failed to complete them. In an adversarial proceeding like the adjudicatory hearing, mother's counsel could have questioned Vinyard in an attempt to show that there were no legitimate underlying circumstances which gave rise to the need for these recommended services. It is at least possible that the failure of mother's counsel to pursue this point is a reflection of counsel's view that counsel did not want the court to hear Vinyard's response.

¶ 68 Similarly, when Nagy testified that the father "was uncooperative, and the safety plan had him to leave the home," the term "uncooperative" was never defined or elaborated upon. Nonetheless, that testimony was also before the trial court, which was again entitled to draw reasonable inferences from it.

¶ 69 Billy Wilson, Powell's cousin who testified as a witness for respondent mother, testified that the mother told him the father had physically abused her when she was pregnant. Respondent mother also told Wilson that Au. P. suffered the skull fracture when the child "had rolled out of the bed."

¶ 70 Respondent mother testified at the adjudicatory hearing that when Vinyard first learned of respondent mother's pregnancy, Vinyard suggested that respondent mother do parenting and domestic-violence classes. Respondent mother declined to do so.

¶ 71 Respondent mother admitted during her testimony that she told Wilson that Au. P. had rolled off a bed. She also admitted that she told DCFS that Au. P. had rolled out of the bed while respondent mother was breast-feeding her and had fallen asleep. Respondent mother also admitted that she lied to a pediatrician about how the baby's skull fracture occurred.

¶ 72 At the conclusion of the evidence, the GAL argued that this case was before the court because of the "unexplained skull fracture" suffered by Au. P. when she was 22 days old. The GAL further argued that "everybody in this courtroom is a parent and would know from their own common experiences that 22-day-old children cannot physically roll over." He pointed out that concerns about the parents regarding substance abuse, domestic violence, and parenting abilities are not eliminated or mitigated by the fact that they now have a house and income. He added the following: "The most important parenting skill any parent can have for a 22-day-old child is to protect that child from injury. That didn't happen from the child running around falling down some stairs. It had to be either through an accident as a neglect or had to be intentional. And to this day we don't know. We will never know. But we know one thing. It happened when the child was in their care."

¶ 73 The GAL concluded by arguing that the State had clearly met its burden by a preponderance of the evidence, noting that "one skull fracture in a family is enough, your honor. This court has an absolute obligation to protect those who are least able to protect themselves, and that is newborn babies."

¶ 74 The trial court found in favor of the State for having established anticipatory abuse or neglect, and it specifically based its finding upon the history of the fractured skull suffered by 22-day-old Au. P. The court also based its finding "upon the failure of both parents to correct the problem areas identified or to comply with the terms of the plan previously set forth" in the earlier cases.

¶ 75 On this record, I do not see how this court can reverse the trial court's findings and conclude that the trial court's determination is against the manifest weight of the evidence.

¶ 76 In sum, this case shows the following: (1) a serious, life-threatening injury to a 22-day-old child that could not have occurred as a result of the child's own actions; (2) the injury was of such a nature as to strongly suggest it was intentionally caused; (3) respondent mother admitted that she lied about the cause of this injury to respondent father's cousin and to the doctors who were examining the child; and (4) her lying strongly suggests that she knows the injury was caused as a result of bad conduct, almost certainly at the hand of her sometimes violent paramour, Powell, with whom she is again living and who will have access to their new child.

¶ 77 Perhaps the State and DCFS could have presented a stronger case and garnered more evidence about the cause of the skull fracture. However, that is not the issue before this court. Instead, based upon this record, we must decide whether the findings of the trial court that saw and heard these witnesses were contrary to the manifest weight of the evidence. They were not.

¶ 78 Because this record contains no reason to believe that the terrible injury suffered by the earlier child of these parents will not occur in the environment now provided for the new child, the majority commits error in reversing the trial court.

¶ 79 Last, I note that an important point to keep in mind is that the issue before this court is *not* whether the mother should have her parental rights terminated. Instead, the issue is whether the trial court properly adjudicated this child to be a ward of the court based upon anticipatory neglect or abuse and the court's determination that guardianship of the child should be with DCFS, which would then place the child in accordance with his best interest. This distinction is important because the record suggests the mother is trying to work with DCFS to address its concerns and her problems. Her doing so is all to the good, and I would like to see it

continue in the future. However, the *only* way that can occur in this case is if this court affirms the trial court's judgment.

¶ 80 When this court reverses the trial court, the mother's involvement with DCFS will end, and we will never know what additional benefits the mother might have obtained by continuing to work with DCFS. Further, DCFS will be deprived of the opportunity to supervise the circumstances under which the mother may regain custody of this child, particularly if one of those circumstances was to keep this child away from his father.