

Nos. 1-13-2380 and 1-13-2698 (Consolidated)

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

No. 1-13-2380

<i>In re</i> ANTHONY S., a Minor,)	Appeal from the
)	Circuit Court of
Respondent-Appellant,)	Cook County.
)	
(The People of the State of Illinois,)	
)	
Petitioner-Appellee,)	No. 13 JA 381
)	
v.)	
)	
Monica S. and Richard S., Sr.,)	Honorable
)	Bernard J. Sarley,
Respondents-Appellees).)	Judge Presiding.

No. 1-13-2698

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Monica S. and Richard S., Sr.,)	Honorable
)	Bernard J. Sarley,
Respondents-Appellees).)	Judge Presiding.

PRESIDING JUSTICE ROCHFORD delivered the judgment of the court.
Justices Lampkin and Reyes concurred in the judgment.

ORDER

¶ 1 *Held:* Circuit court's adjudicatory order, which found that the State had failed to prove the minor abused or neglected and which, therefore, also dismissed the instant petition for wardship, is affirmed where circuit court's findings were not against the manifest weight of the evidence.

¶ 2 These two appeals arise out of a petition for wardship filed by petitioner-appellee and appellant, the People of the State of Illinois (State), pursuant to Article II of the Juvenile Court Act of 1987 (the Act). 705 ILCS 405/2-1, *et seq.* (West 2010). The State filed that petition with regard to respondent-appellant and appellee, the minor Anthony S. Respondents-appellees, Monica S. and Richard S., Sr. (parents), were identified therein as Anthony S.'s parents. The circuit court ultimately entered an adjudicatory order finding that the State had failed to prove Anthony S. abused or neglected and, therefore, dismissed the instant petition for wardship. For the reasons that follow, we affirm.

¶ 3 I. BACKGROUND

¶ 4 These two consolidated appeals are closely related to three other consolidated appeals that involved petitions for wardship filed regarding two of Anthony S.'s three siblings, Ruby S. and Richard S. Those three appeals were addressed in a prior decision filed by this court. *In re Ruby S.*, 2013 IL App (1st) 131372-U.¹ Where appropriate, the following factual background will, therefore, both borrow portions from our prior decision and direct the reader to that decision for a fuller exposition of the relevant history of these related matters. However, because it will place the current consolidated appeals in their proper context, we initially and briefly set out the procedural history of the prior proceedings.

¹ The State also filed a petition for wardship with respect to Julienna S., the eldest daughter of Monica S. and Richard S. Because the underlying adjudicatory and dispositional orders regarding Julienna S. have never been appealed, the proceedings regarding that petition were discussed but not otherwise reviewed in our prior decision; we will do the same here.

¶ 5

A. Prior Proceedings

¶ 6 As noted above, the three prior consolidated appeals arose out of petitions for wardship filed with respect to Anthony S.'s elder siblings, Julienna S., Ruby S., and Richard S., on June 4, 2012. *In re Ruby S.*, 2013 IL App (1st) 131372-U, ¶¶ 2-7. Those petitions generally alleged that Julienna S., Ruby S., and Richard S. were abused and neglected due to: (1) injuries suffered by then seven-month-old Richard S. as a result of abuse; and (2) the failure of Monica S. to seek timely medical care for Richard S.

¶ 7 With respect to the adjudicatory phase of the prior proceedings, the circuit court was presented with a great deal of documentary evidence and testimony regarding Richard S.'s medical history and the investigation into this matter. That evidence generally established that on April 19, 2012, Monica S. brought Richard S. to Dr. Norma Westervelt, the primary care physician for the family's children, due to pain in his right arm. Dr. Westervelt's progress note from that visit indicated that pain and a lack of mobility in Richard S.'s right arm had been observed since April 16, 2012. In addition, the note indicated that Richard had two small bruises on his face.

¶ 8 After x-rays were taken, Richard S. was next provided medical treatment for his right arm on April 25, 2012, when his parents took him to the emergency department at Children's Memorial Hospital. There, Richard S. was observed to have bruises on both sides of his forehead, in the center of his forehead, on his left cheek, and on his right arm. In interviews with treating physicians, a hospital social worker, the police, and DCFS investigators, Monica S. indicated that Richard S. had been cared for by a daycare provider, Rocio De La Torre, and his maternal grandmother in the days preceding his visit to Dr. Westervelt. In addition, Monica S., Richard S., Sr., the maternal grandmother, and Ms. De La Torre provided inconsistent statements

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regarding when a problem with Richard S.'s arm was first observed, when his various bruises were first observed, and how his injuries might have been caused.

¶ 9 The medical records from Children's Memorial Hospital reflect that after all of the diagnostic results were obtained and the parents were interviewed, a conclusion was made that "the constellation of injuries that Richard has sustained are highly concerning for abusive injury." This conclusion was based upon the fact that: (1) no explanation for the fractures had been provided, and the explanation provided for the bruising would not account for the injuries to Richard S., a non-ambulatory seven-month-old infant; (2) bruising to the cheek and upper arm is "rare and always concerning" in non-ambulatory infants; and (3) the two humerus fractures were "highly specific for inflicted injury." The circuit court was also presented with a June 1, 2012, "Multi-Disciplinary Pediatric Education and Evaluation Consortium" (MPEEC) summary report of Richard S.'s injuries and the investigation into this matter, which was completed by two of the doctors that treated Richard S. at Children's Memorial Hospital. After summarizing the information obtained from all of these sources, the report concluded: "Richard's constellation of injuries is the result of physical abuse."

¶ 10 Finally, the circuit court was provided with expert opinion testimony regarding the nature of Richard S.'s injuries, including testimony of three doctors that treated Richard S. at Children's Memorial Hospital and a doctor retained on behalf of Monica S. The treating doctors all generally testified consistently with the earlier findings; *i.e.*, that Richard S. had suffered two recent humerus fractures, a fracture of the left tibia that was less recent and had healed or was healing, and multiple bruises. These injuries were consistent with abuse. Monica S.'s expert witness, in turn, opined that Richard S. only suffered a single right humerus fracture and a

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possible fracture of the left tibia that was not recent. In his written report and testimony, Monica S.'s expert opined that none of Richard S.'s injuries were indicative of abuse.

¶ 11 On April 22, 2013, the circuit court entered adjudicatory orders finding Richard S. to have been abused, and all three of the older siblings to have been neglected. In announcing its adjudicatory ruling, the circuit court first noted that all of the expert witnesses agreed that Richard S. had sustained a fracture of the right humerus. While the experts disagreed as to whether this fracture was caused by child abuse, the circuit court found the State's witnesses more credible and persuasive on this issue. The circuit court, therefore, found that the State had established that Richard S. was abused, with that finding based solely on the evidence of the fracture to his right humerus. Indeed, after acknowledging the disputed evidence regarding the other alleged fractures, the circuit court indicated that it would not make a finding as to those allegations.

¶ 12 Moreover, with respect to the finding of abuse as to Richard S., the circuit court further concluded that it was "unable to name a perpetrator of the physical abuse" because there were a number of people who had custody of Richard S. during the relevant period. Thus, the circuit court could not determine if Richard S. was injured while in the care of Monica S., Richard S., Sr., his maternal grandmother, or the daycare facility. As a result, the circuit court concluded that the State had not established that any of the three older siblings were abused due to a substantial risk of physical injury.

¶ 13 Regarding the allegations of neglect, the circuit court initially concluded that Monica S. first noticed a problem with Richard S.'s right arm on April 16, 2012, and not on April 18, 2012, as she later maintained. Monica S., thus, waited three days, until April 19, 2012, to seek treatment for that injury, and the circuit court found that this evidence established Richard S. was

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also neglected because he did not receive necessary care. The circuit court finally concluded that, in light of this finding with respect to Richard S., "it also follows" that Richard S., Ruby S., and Julienna S. were all neglected because their environment was injurious to their welfare. No party appealed from those adjudicatory rulings.

¶ 14 The matter then proceeded to the dispositional phase, where the documentary evidence and the testimony presented reflected that, in the opinion of the caseworker and each of the therapists involved in this matter, there were no safety concerns and that it was in the minors' best interests to be returned to the custody of their parents under an order of protection. This recommendation was based upon: (1) the results of a recent clinical staffing; (2) the significant progress the parents had made in their individual and couples therapy, as well as in their parenting coaching; (3) observations of the parents' visits with the minors, including monthly unannounced observations of their daily unsupervised visits with Julienna S.; (4) discussions with Julienna S., Ruby S., and the minors' paternal grandparents, who were providing foster care; and (5) the fact that there had been no unusual incidents involving the minors since they had been taken into temporary custody.

¶ 15 However, and as we acknowledged in our prior decision (*id.* at ¶ 93), the State and the public guardian did raise significant questions regarding the services provided and to be provided to the parents, and the impact that such questions might have had upon the foundations for the recommendations offered by the caseworker and the therapists involved in this matter. Specifically, questions were raised regarding whether: (1) the circuit court's adjudicatory rulings were properly and fully processed by the caseworker, the therapists, and the parents prior to the dispositional hearing; (2) the parents' therapists had a full understanding of the nature of Richard S.'s injuries; and (3) the parents themselves fully understood their role in the abuse and neglect of

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Richard S., if they understood that Richard S. was in fact abused, and if they would be able to address any future medical needs that might arise with their children.

¶ 16 Thereafter, on May 1, 2013, the circuit entered dispositional orders finding Monica S. and Richard S., Sr. fit, willing and able to parent and that it was in all three of the older siblings' best interests to return them to the care and custody of their parents. In announcing its prior dispositional ruling, the circuit court noted that it had considered all of the evidence presented at both the adjudicatory and dispositional hearings, and further reiterated that it had not named a perpetrator of Richard S.'s abuse in its adjudicatory findings. It also noted that there had been no prior indicated reports with respect to the minors. The court then found that there appeared to be a bond between the minors and the parents, there had been no unusual incidents involving the minors, and reasonable services had been provided to the parents and that the parents had made substantial progress in those services. The circuit court also noted that Julienna S. had done well in her unsupervised visits with her parents.

¶ 17 While the court acknowledged that the public guardian had raised questions about both the services provided in this matter and the credibility of the testimony provided by the caseworkers and therapists, the court also noted that all of the witnesses recommended that the minors be returned home and no contrary opinions or evidence had been presented. The circuit court said that it would, therefore, "concur with the recommendation of the witnesses," and it then found the parents fit, willing and able to care for, protect, train, and discipline the minors and it was in the minors' best interests to be returned home under an order of protection.

¶ 18 The public guardian and the State filed appeals challenging the dispositional orders with respect to Ruby S. and Richard S. As noted above, no appeal was filed from the adjudicatory or dispositional orders entered with respect to Julienna S., and the record reflects that she was in fact

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returned home under an order of protection. On May 8, 2013, this court entered an order staying the circuit court's dispositional orders as to Ruby S. and Richard S. and returning those two minors to the temporary custody of the Department of Children and Family Services (DCFS) pending resolution of those appeals.

¶ 19 On May 21, 2013, in light of the entry of this court's stay of the dispositional orders, the circuit court entered orders which granted the parents unsupervised daytime visits with Ruby S. and Richard S. at the discretion of DCFS. Ruby S. and Richard S. filed a petition for leave to appeal challenging those orders. They also filed a motion requesting that the orders allowing unsupervised visits be stayed. On June 7, 2013, this court granted both the petition for leave to appeal and the request for a stay of the orders allowing unsupervised visits, and we thereafter consolidated the three prior appeals.

¶ 20 Upon review, we ultimately concluded: (1) the circuit court's dispositional orders were not against the manifest weight of the evidence; and (2) in light of this ruling, the appeal from the subsequent visitation orders should be dismissed as moot. Therefore, in an order entered on November 1, 2013, we affirmed the circuit court's dispositional orders, vacated our prior stay of those dispositional orders, and remanded the matter for further proceedings consistent with that order. *Id.*

¶ 21 **B. Instant Proceedings**

¶ 22 Returning to the instant proceedings, the record reflects that—shortly after he was born—Anthony S. was placed with his maternal grandmother under a safety plan due to the prior removal of his siblings from the care of Monica S. and Richard S., Sr. On April 18, 2013, the State filed a petition for an adjudication of wardship with respect to Anthony S. Also filed on that date were motions requesting that temporary custody of Antony S. be granted to the DCFS

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guardianship administrator. The petitions, motions, and supporting affidavits made a number of factual and legal assertions in support of these requests.

¶ 23 Specifically, the State alleged that Anthony S. is a minor born on February 14, 2013, and was the child of Monica S. and Richard S., Sr. The petition further alleged that Anthony S. was neglected because his environment was injurious to his welfare, pursuant to section 2-3(1)(b) of the Juvenile Court Act. 705 ILCS 405/2-3(1)(b) (West 2010). Anthony S. was also alleged to be abused because he was at a substantial risk of physical injury, pursuant to section 2-3(2)(ii) of the Juvenile Court Act. 705 ILCS 405/2-3(2)(i), 2-3(2)(ii) (West 2010). In support of these assertions, the petition contained the following factual allegations:

"Mother and father have three other minors currently in the temporary custody of DCFS. On or about April 25, 2012, this minor's sibling [Richard S.] was hospitalized and observed to have multiple bruises to various parts of his body. This minor's sibling was diagnosed with the following fractures: left tibia, left proximal humeral and right proximal humeral. Per medical personnel this minor's sibling's fractures were in different stages of healing. Mother and father have made inconsistent statements as to how this minor's sibling was injured. Mother delayed seeking medical treatment for this minor's sibling. Per medical personnel this minor's sibling's injuries were the result of physical abuse. Mother and father have made inconsistent statements as to how this minor's sibling was injured. Mother delayed seeking medical treatment for this minor's sibling. Per medical personnel this minor's sibling's injuries were the result of physical abuse. Mother and father are in need of on-going DCFS recommended services including therapy and parenting services. Mother and father reside together."

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¶ 24 On April 22, 2013, the same day the circuit court entered its adjudicatory orders finding Richard S. to have been abused and each of the three older siblings to have been neglected, the circuit court also held an initial temporary custody hearing with respect to Anthony S. In connection with this hearing, the circuit court entered a host of written orders in which: (1) the Cook County public guardian was appointed to be the attorney and guardian *ad litem* of Anthony S.; (2) attorneys were appointed to represent Monica S. and Richard S., Sr.; (3) the minors were placed in the temporary custody of the DCFS guardianship administrator, without prejudice; and (4) Monica S. and Richard S., Sr. were allowed to participate in supervised visits with Anthony S.

¶ 25 On May 1, 2013, the same date that the circuit entered dispositional orders finding that it was in the three older siblings' best interests to return them to the care and custody of their parents, the circuit court also entered orders: (1) finding Richard S., Sr. to be the father of Anthony S.; and (2) continuing Anthony S.'s case to May 9, 2013, for a further temporary custody hearing.

¶ 26 On that date, the circuit court heard testimony from David Ruano, a DCFS child protection investigator. Mr. Ruano testified that Anthony S. was born on February 14, 2013, and was placed in a temporary safety plan with his maternal grandmother on or about February 21, 2013, following his discharge from the hospital. Thereafter, Mr. Ruano engaged in an investigation into this matter that included: (1) a review of Anthony S.'s medical records and an interview with Dr. Westervelt, the primary care physician for all of the minors; (2) conversations with the family's DCFS caseworker and the therapists for Monica S. and Julienna S.; (3) observations of the parents' visits with Anthony S.; and (4) unannounced visits to the parents' home. Mr. Ruano testified that he was aware of the adjudicatory and dispositional findings with

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respect to the other siblings, and the fact that that the dispositional findings as to Ruby S. and Richard S. were being appealed. Finally, Mr. Ruano indicated that he was informed that Julienna S. had been involved in unsupervised visitations with her parents prior to the dispositional hearing without incident, and that Richard S., Sr. had completed parenting classes and was engaged in individual therapy.

¶ 27 Mr. Ruano then testified that his investigation left him with no knowledge of any violations of the safety plan by the parents, no concerns as to the ability of Monica S. and Richard S., Sr. to care for and parent Anthony S., and no concern that Anthony S. would be at risk if he was returned home. Moreover, no additional services were recommended for either parent, other than those with which they were already fully cooperating. The parents were also described as having an "incredible support network." In fact, of the 15 factors that Mr. Ruano considered in completing a safety assessment with respect to Anthony S.'s family, only one indicated a risk: *i.e.*, a reasonable cause to suspect that the caretaker may cause Anthony S. harm. Mr. Ruano indicated that this potential risk factor was based upon the prior injuries to Richard S. and the circuit court's prior adjudicatory finding with respect to those injuries.

¶ 28 Nevertheless, after being informed as to the status of the appeals as to Ruby S. and Richard S. and discussing the matter with his supervisor, Mr. Ruano indicated that he was recommending that Anthony S. be placed in temporary custody. Such custody would be in Anthony S.'s best interests, in light of the prior injuries to Richard, the prior adjudicatory findings, the fact that Anthony S. was an infant just as Richard S. had been when he was injured, and a resultant "anticipated risk." Mr. Ruano did allow that he could only say that "there's probably anticipated risk[,] but not anything we can testify to or any unusual incidents."

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¶ 29 At the temporary custody hearing, the circuit court also entered into evidence: (1) a DCFS "indicated report"² with respect to the injuries to Richard S. alleged in the prior proceedings; (2) the MPEEC report; and (3) the circuit court's own adjudicatory order finding Richard S. abused and neglected. Following the introduction of this evidence, the circuit court entered an amended temporary custody order which again placed Anthony S. in the temporary custody of the DCFS guardianship administrator. The circuit court specifically indicated that this decision was based "solely and completely" upon this court's stay of the prior dispositional orders returning Ruby S. and Richard S. to the care and custody of Monica S. and Richard S., Sr.

¶ 30 This matter thereafter proceeded to an adjudicatory hearing held on June 27, 2013. At that hearing, the parties proceeded by way of stipulation. Thus, the parties stipulated that Anthony S. was born on February 14, 2013, he was the sibling of Julienna S., Ruby S., and Richard S., his parents were Monica S. and Richard S., Sr., and Anthony S.'s parents were responsible for his care and custody at all relevant times. The parties also stipulated to the introduction into evidence of: (1) transcripts of the prior adjudicatory and dispositional hearings and rulings with respect to Anthony S.'s siblings, as well as a transcript of Mr. Ruano's testimony from Anthony S.'s temporary custody hearing; and (2) the adjudicatory and dispositional orders entered with respect to Anthony S.'s siblings. Finally, the parties stipulated that they had no objection to the circuit court taking judicial notice of all of the evidence presented and exhibits entered at the prior adjudicatory and dispositional hearings.

¶ 31 Because the testimony and exhibits entered in the prior proceedings—and the circuit court's prior adjudicatory and dispositional rulings—are both summarized above and fully detailed in our previous decision, we will not recount them again here. Rather, we simply refer

² An "indicated report" is made by DCFS "if an investigation determines that credible evidence of the alleged abuse or neglect exists." 325 ILCS 5/3 (West 2010).

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to the above summary and the relevant portions of that prior decision. *In re Ruby S.*, 2013 IL App (1st) 131372-U, ¶¶ 23-51.

¶ 32 After hearing arguments from the parties, the circuit court continued this matter to July 29, 2013, for an adjudicatory ruling. On that date, the circuit court first noted that it stood by its prior determination that Richard S. had sustained a right humerus fracture as a result of abuse and that the prior abuse or neglect of a sibling was *prima facie* evidence of abuse or neglect. However, the circuit court also noted that this was "something that can be overcome either with time and/or actions." The circuit court then noted that Richard S. sustained his injuries in May 2012, but the petition with respect to Anthony S. was filed in April of 2013. In addition, the circuit court noted: (1) there had been no additional instances of abuse or neglect with respect to any of the minors; (2) Julianna S. had been returned home and was doing well there; and (3) Monica S. and Richard S., Sr. had been fully cooperative with the services provided to them. Finally, the circuit court noted that Mr. Ruano had testified that Anthony S. was not at risk of harm, and Mr. Ruano had only recommended temporary custody due to this court's stay of the prior dispositional orders.

¶ 33 In light of all the evidence, the circuit court concluded the State had not established that Anthony S. was abused or neglected, and the petition for wardship with respect to Anthony S. should be dismissed. In a written order entered the same day, the circuit court reiterated its findings that Anthony S. was not abused or neglected and affirmed the petition was dismissed. The written order further specifically stated that these rulings were based on the circuit court's finding that "the parents have been compliant with services for the minor's siblings' cases *** and no unusual incidents have occurred. This minor has suffered no abuse or neglect."

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¶ 34 Nevertheless, the circuit court granted motions for a stay of the adjudicatory order made by the State and the public guardian. The circuit court indicated that Anthony S. would, therefore, remain in the temporary custody of DCFS, with Monica S. and Richard S. continuing to have supervised visitation with him. Both the public guardian and the State filed appeals from the circuit court's adjudicatory order, and those appeals were consolidated by order of this court.

¶ 35 Thereafter, this court granted the public guardian leave to file a "Report to the Court." Therein, it was reported that following the entry of this court's prior decision affirming the circuit court's dispositional orders with respect to Ruby S. and Richard S. and the return of those minors to their parent's custody, Monica S. filed a motion in the circuit court (joined by Richard S., Sr.) to lift the stay of the adjudicatory order with respect to Anthony S. and to return Anthony S. home. On November 21, 2013, the circuit court declined to lift the stay of its adjudicatory order. However, the circuit did enter an amended temporary custody order returning Anthony S. to the custody of Monica S. and Richard S., Sr., under an order of protection pursuant to sections 2-10 and 25 of the Act. 705 ILCS 405/2-10, 2-25 (West 2010). In its report, the public guardian stated that while he did "not believe that this new matter affects Anthony's pending appeal, he wish[ed] to inform the Court of Anthony's current status."

¶ 36 II. ANALYSIS

¶ 37 On appeal, both the public guardian and the State contend that the circuit court erred in finding that Anthony S. was neither abused nor neglected. We disagree.

¶ 38 A. Legal Framework and Standard of Review

¶ 39 A proceeding for adjudication of wardship " 'represents a significant intrusion into the sanctity of the family which should not be undertaken lightly.' " *In re Arthur H.*, 212 Ill. 2d 441, 463 (2004) (quoting *In re Harpman*, 134 Ill. App. 3d 393, 396–97 (1985)). The Act, therefore,

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provides a "step-by-step process used to decide whether a child should be removed from his or her parents and made a ward of the court." *In re Arthur H.*, 212 Ill. 2d at 462. Thus, after a petition for wardship has been filed and a child has been placed in temporary custody, the circuit court must proceed to make an adjudicatory finding of abuse, neglect, or dependence, before it conducts a hearing as to wardship. *Id.*; 705 ILCS 405/2-21(1), (2) (West 2010). "If the State fails to prove the allegations of abuse, neglect or dependence by a preponderance of the evidence, the court must dismiss the petition." *In re Arthur H.*, 212 Ill. 2d at 464; 705 ILCS 405/2-21(1) (West 2010).

¶ 40 Finally, it is well understood that:

"In a proceeding for the adjudication of abused or neglected minors, the State must prove the allegations in the petition by a preponderance of the evidence. [Citations.] ' "Preponderance of the evidence is that amount of evidence that leads a trier of fact to find that the fact at issue is more probable than not." ' [Citation.] *** ' "The trial court has the best opportunity to observe the demeanor and conduct of the parties and witnesses and, therefore, is in the best position to determine the credibility and weight of the witnesses' testimony." ' [Citation.] Cases adjudicating abuse and neglect are *sui generis* and must be decided on their own facts. [Citation.] We will not disturb the trial court's findings that the children have [or have not] been abused or neglected, unless those findings are against the manifest weight of the evidence, meaning ' "the opposite conclusion is clearly evident or * * * the determination is unreasonable, arbitrary, and not based on the evidence." ' [Citation.]" *In re Juan M.*, 2012 IL App (1st) 113096, ¶ 49.

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Under this standard, therefore, a "reviewing court will not overturn a trial court's findings merely because the reviewing court would have reached a different result." *In re A.P.*, 2013 IL App (3d) 120672, ¶ 17.

¶ 41

B. Preliminary Matters

¶ 42 Before continuing further, we must initially resolve two preliminary issues raised by the parties in their briefs.

¶ 43 First, the parties dispute whether Anthony S.'s best interests are relevant to the determination of whether he was abused or neglected. While the public guardian acknowledges in its reply brief that Anthony S.'s best interests are not relevant to a determination of abuse or neglect, we will briefly address this issue here.

¶ 44 It is certainly true that "[i]n any proceeding initiated pursuant to the Act, including an adjudication of wardship, the paramount consideration is the best interests of the child." *Id.* at ¶ 18. However, it is also true that a circuit court "must employ, pursuant to the Act, a two-step process to decide whether a minor should become a ward of the court." *Id.* As our supreme court has explained:

"Step one is the adjudicatory hearing on the petition for adjudication of wardship. [Citation.] At the adjudicatory hearing, 'the court shall first consider only the question whether the minor is abused, neglected or dependent.' [Citation.] ***

Following the adjudicatory hearing, if a trial court determines that a minor is abused, neglected or dependent, the trial court then moves to step two, which is the dispositional hearing. [Citation.] At the dispositional hearing, the trial court determines whether it is consistent with the health, safety and best interests of the minor and the

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public that the minor be made a ward of the court." *Id.* at ¶ 19, 21; see also 705 ILCS 405/2–18(1), 2-22(2) (West 2010).

¶ 45 Thus, it is well recognized that a "finding of abuse, neglect or dependence is jurisdictional, ' "without [which] the trial court lacks jurisdiction to proceed to an adjudication of wardship." ' " *In re Arthur H.*, 212 Ill. 2d at 464 (quoting *In re M.B.*, 235 Ill. App. 3d 352, 377 (1992)). Therefore, while Anthony S.'s best interests are relevant in determining the ultimate question of wardship, it is not relevant to the preliminary, jurisdictional question of determining whether he was in fact abused or neglected. We will, therefore, not further consider the argument that Anthony S. should be found to be abused or neglected because his best interests would be served by continued court monitoring.

¶ 46 Second, both the public guardian and the State contend that, in determining if Anthony S. was neglected, the circuit court improperly relied upon evidence of the progress Monica S. and Richard S., Sr. may have made in therapy after the petition for wardship as to Anthony S. was filed. Specifically, the public guardian and the State contends that the relevant question for the circuit court was whether Anthony S. was neglected or abused in February of 2013—prior to the filing of the instant petition—and not in May of 2013 when Julienna, Ruby S., and Richard S. were returned home.

¶ 47 As an initial matter, we find that this argument has been forfeited. "A party cannot complain of error which that party induced the court to make or to which that party consented. [Citation.] Illinois courts have applied the invited error doctrine in numerous cases to bar a party from claiming error in the admission of improper evidence where the admission was procured or invited by that party. [Citation.]" *In re Kenneth D.*, 364 Ill. App. 3d 797, 803 (2006). Under the doctrine of invited error, a party " 'may not request to proceed in one manner and then later

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contend on appeal that the course of action was in error.' " (Internal quotation marks omitted.)

LaSalle Bank, N.A. v. C/HCA Development Corp., 384 Ill. App. 3d 806, 820 (2008) (quoting *People v. Harvey*, 211 Ill. 2d 368, 385 (2004)).

¶ 48 Here, the record clearly reflects that all the parties stipulated to the introduction into evidence of transcripts of the prior adjudicatory and dispositional hearings and rulings with respect to Anthony S.'s siblings, as well as a transcript of Mr. Ruano's testimony from Anthony S.'s temporary custody hearing. They further stipulated that they had no objection to the circuit court taking judicial notice of all of the evidence presented and exhibits entered at the prior adjudicatory and dispositional hearings. Having requested to proceed in such a manner in the circuit court, it would be improper to allow the public guardian and the State to argue on appeal that the circuit court's reliance upon this evidence was improper.

¶ 49 Moreover, any forfeiture aside, we conclude that the circuit court committed no error in considering evidence of the parents' activities that occurred after Anthony S. was temporarily removed from his parents' custody in February of 2013 or after the instant petition was filed on April 18, 2013. As our supreme court has recognized:

" 'Under the Act, the rules of evidence in the nature of civil proceedings are applicable to the adjudicatory hearing. [Citation.] Whether evidence is admissible is within the discretion of the circuit court, and its ruling will not be reversed absent an abuse of that discretion. [Citation.] All evidence must be relevant to be admissible. [Citation.] Evidence is relevant if it tends to prove a fact in controversy or render a matter in issue more or less probable.' " *In re A.W., Jr.*, 231 Ill. 2d 241, 256 (2008) (quoting *In re Kenneth D.*, 364 Ill. App. 3d 797, 803 (2006)).

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Furthermore, as this court has recognized, "there is no bright-line post-petition test for admissibility of evidence. Rather, the test for admissibility of post-petition evidence will depend on whether it is relevant to the allegations in the petition." *In re Kenneth D.*, 364 Ill. App. 3d at 805.

¶ 50 The instant petition alleged that Anthony S. was neglected because his environment was injurious to his welfare and that he was abused because he was at a substantial risk of suffering physical injury. As will be discussed more fully below, the State relied upon a theory of "anticipatory neglect," pursuant to which "the State seeks to protect not only children who are the direct victims of neglect or abuse, but also 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. at 463. "To determine whether a finding of anticipatory neglect is appropriate, the trial court should consider the current care and condition of the child in question and not merely the circumstances that existed at the time of the incident involving the child's sibling." [Citation.]" *In re R.S.*, 382 Ill. App. 3d 453, 460-61 (2008). Because the circuit court was tasked with determining whether Anthony S. was subject to a finding of anticipatory neglect, and because that determination required the circuit court to consider Anthony S.'s current care and condition, we find that it was not an abuse of discretion for the circuit court to rely upon evidence of activity that occurred after Anthony S. was temporarily removed from his parents' custody in February of 2013 or after the instant petition was filed on April 18, 2013.

¶ 51

C. Neglect

¶ 52 We next consider the contention that the circuit court erred in finding that Anthony S. was not neglected.

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¶ 53 Section 2-3(1)(b) of the Act provides that 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 2010). Neglect is broadly defined as "the failure to exercise the care that circumstances justly demand and encompasses both willful and unintentional disregard of parental duty." *In re Kenneth D.*, 364 Ill. App. 3d at 801. "Similarly, the term 'injurious environment' has been recognized *** to be an amorphous concept that cannot be defined with particularity." *In re Arthur H.*, 212 Ill. 2d. at 463. Nevertheless, the term has generally been interpreted to include " 'the breach of a parent's duty to ensure a "safe and nurturing shelter" for his or her children.' " *Id.* (quoting *In re N.B.*, 191 Ill. 2d 338, 346 (2000)).

¶ 54 Moreover, our supreme court has recognized the theory of "anticipatory neglect," which flows from the Act's concept of an injurious environment. *In re Arthur H.*, 212 Ill. 2d. at 468. "Under the anticipatory neglect theory, the State seeks to protect not only children who are the direct victims of neglect or abuse, but also 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." *Id.* Although the abuse or neglect of one child does not conclusively show the neglect of another child, the Act recognizes that abuse or neglect of one minor is admissible as evidence of the neglect of another minor under a respondent's care. *Id.*; 705 ILCS 405/2-18 (3) (West 2010). Under this theory, "when faced with evidence of prior [abused or] neglect by parents, 'the juvenile court should not be forced to refrain from taking action until each particular child suffers an injury.' " *In re Arthur H.*, 212 Ill. 2d. at 477 (quoting *In re Brooks*, 63 Ill. App. 3d 328, 339 (1978)).

¶ 55 Nevertheless, as we briefly discussed above and now discuss in full:

"Sibling abuse [or neglect] may be *prima facie* evidence of neglect based upon an injurious environment, *** this presumption weakens over time and can be rebutted by other evidence. [Citation.] 'There is no *per se* rule of anticipatory neglect in Illinois, and each case concerning the adjudication of minors must be reviewed according to its own facts.' 'To determine whether a finding of anticipatory neglect is appropriate, the trial court should consider the current care and condition of the child in question and not merely the circumstances that existed at the time of the incident involving the child's sibling.' [Citation.]" *In re R.S.*, 382 Ill. App. 3d at 460-61.

¶ 56 We certainly acknowledge that the proven prior abuse of Richard S. and the neglect of Anthony S.'s siblings was *prima facie* evidence that Anthony S. was neglected based upon an injurious environment. However, just as the circuit court noted, that presumption "weakens over time and can be rebutted by other evidence." *Id.*

¶ 57 Here, the vast majority of the evidence presented to the circuit court was comprised of the stipulated testimony and evidence submitted at the prior adjudicatory and dispositional proceedings. As noted both above and in our prior decision, that evidence established: (1) the circuit court was unable to name a perpetrator of the physical abuse of Richard S. because a number of different people had cared for Richard S. during the relevant period; (2) following the initiation of the prior proceedings, the parents had been fully compliant with their required services, including parenting classes and therapy; (3) the parents had been observed in appropriate visitation with the siblings, both supervised and unsupervised; (4) there had been no unusual incidents involving the minors since they had been taken into temporary custody; and (5) in the opinion of the caseworker and each of the therapists involved in this matter, there were no safety concerns and that it was in Anthony S.'s siblings' best interests to be returned to the

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custody of their parents. Looking appropriately at the *current* care and condition of Anthony S., and not simply the circumstances that existed at the time of the incident involving Richard S. (*id.*) of this evidence supports the circuit court's conclusion that Anthony S. should not be found neglected under an anticipatory neglect theory.

¶ 58 To be sure, the public guardian and the State raised questions about the sufficiency of the testimony and opinions presented during the prior proceedings, and have raised those same questions again in the context of the instant proceedings with respect to Anthony S. However, no contrary opinions or evidence were ever presented in the prior proceedings, nor were any contrary opinions or evidence presented at the instant adjudicatory hearing. Moreover, all such arguments essentially ask this court to substitute our judgment for that of the circuit court regarding the credibility of the witnesses, the weight to be given to the evidence, and the inferences to be drawn. These are things we are not permitted to do. *In re D.F.*, 201 Ill. 2d 476, 498-99 (2002). Having previously concluded that the circuit court did not err in relying upon this evidence to justify its dispositional orders in the prior proceeding, we come to no different conclusion here with respect to the instant finding that Anthony S. was not neglected.

¶ 59 The only new evidence presented in the instant proceedings was the testimony of Mr. Ruano at the temporary custody hearing. However, Mr. Ruano testified that his investigation revealed no concerns regarding the ability of Monica S. and Richard S., Sr. to care for Anthony S., and no concern that Anthony S. would be at risk if he was returned home. Of the 15 factors that Mr. Ruano considered in completing a safety assessment, only one indicated a possible risk to Anthony S.: *i.e.*, a reasonable cause to suspect that his caretaker may cause Anthony S. harm. However, Mr. Ruano specifically testified that this risk was premised solely upon the prior injuries to Richard S. and the circuit court's prior adjudicatory findings. Thus, while Mr.

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Ruano's conclusion that such a risk existed did properly take into account the circumstances that existed at the time of the incident involving Richard S., it did not appear to have accounted for the current care and condition of Anthony S. See *In re R.S.*, 382 Ill. App. 3d at 460-61. By his own testimony, Mr. Ruano conceded that he had no concerns with respect to the ability of Monica S. and Richard S., Sr. to care for Anthony S. and no indication that Anthony S. would be at risk if he was returned home.

¶ 60 Furthermore, while Mr. Ruano did recommend that Anthony S. be placed in temporary custody, that recommendation can only be described as equivocal in light of Mr. Ruano's admission that "there's *probably* anticipated risk[,] but not anything we can testify to or any unusual incidents." (Emphasis added.) Moreover, we also note that this recommendation came in the context of a temporary custody hearing, at which the circuit court was tasked with determining if there was *probable cause* to believe that the minor was abused or neglected and that temporary custody was a matter of "immediate and urgent necessity." 705 ILCS 405/2-10(2) (West 2010). That is a much different context than our review of the instant adjudicatory proceedings, at which the State had the burden of actually proving abuse or neglect by a preponderance of the evidence. *In re Juan M.*, 2012 IL App (1st) 113096, ¶ 49.

¶ 61 Ultimately, the circuit court heard all of the evidence presented and concluded that Anthony S. was not neglected. While we again acknowledge the questions and arguments raised by the public guardian and the State with respect to both this evidence and this determination, we reiterate that a reviewing court will not overturn a circuit court's finding merely because we would have reached a different result. *In re A.P.*, 2013 IL App (3d) 120672, ¶ 17. Rather, we will disturb the circuit court's finding that a child has or has not been abused or neglected only where the opposite conclusion is clearly evident or that finding is unreasonable, arbitrary, and

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not based on the evidence. *In re Juan M.*, 2012 IL App (1st) 113096, ¶ 49. Based upon our review of the entirety of the record, that is not a situation presented here.

¶ 62 For all the foregoing reasons, we affirm the circuit court's finding that Anthony S. was not neglected.

¶ 63 D. Abuse

¶ 64 Finally, we address the contention that the circuit court erred in finding that Anthony S. was not abused.

¶ 65 Section 2-3(2)(ii) of the Act provides:

"(2) Those who are abused include any minor under 18 years of age whose parent or immediate family member, or any person responsible for the minor's welfare, or any person who is in the same family or household as the minor, or any individual residing in the same home as the minor, or a paramour of the minor's parent:

* * *

(ii) creates a substantial risk of physical injury to such minor by other than accidental means which would be likely to cause death, disfigurement, impairment of emotional health, or loss or impairment of any bodily function ***." 705 ILCS 405/2-3(2)(ii) (West 2010).

¶ 66 Here, both the public guardian and the State essentially assert that the same facts that support a finding that Anthony S. was neglected due to an injurious environment support a finding that he was abused due to a substantial risk that he would be physically injured. See *In re Juan M.*, 2012 IL App (1st) 113096, ¶ 66 (recognizing that the same evidence that supporting a finding of abuse due to a substantial risk of physical injury will support the finding that the State proved, by a preponderance of the evidence, that a minor was also neglected due to an

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injurious environment). In light of our discussion above, we necessarily reject this argument and, therefore, affirm the circuit court's finding that Anthony S. was not abused.

¶ 67

III. CONCLUSION

¶ 68 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 69 Affirmed.