2018 IL App (4th) 170709-U

NO. 4-17-0709

FILED
February 15, 2018
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re S.W., a Minor	)	Appeal from
	)	Circuit Court of
(The People of the State of Illinois,	)	Cass County
Petitioner-Appellee,	)	No. 16JA8
v.	)	
Jennifer Watkins,	)	Honorable
Respondent-Appellant).	)	Bob Hardwick, Jr.,
	)	Judge Presiding.

PRESIDING JUSTICE HARRIS delivered the judgment of the court.
Justice Steigmann concurred in the judgment.
Justice Holder White dissented.

ORDER

¶ 1 *Held*: The trial court's dispositional order is affirmed where the court committed no error in finding respondent's child was neglected, making the child a ward of the court, and placing the child in the custody and guardianship of her paternal relatives.

¶ 2 Respondent, Jennifer Watkins, appeals the trial court's dispositional order adjudicating her child, S.W. (born June 12, 2007), neglected; making S.W. a ward of the court; and placing S.W. in the custody and guardianship of her paternal aunt and uncle. We affirm.

¶ 3 I. BACKGROUND

¶ 4 S.W. is the child of respondent and Steven Watkins. Respondent and Steven were married in August 2006; however, they separated shortly after S.W. was born in June 2007. In May 2008, Steven filed a petition for dissolution of marriage. Issues related to child custody and

visitation were significant sources of conflict between the parents both prior to and during the dissolution proceedings. In November 2008, Steven was shot and killed in respondent's residence while attempting to pick S.W. up for a court-ordered visitation. Ultimately, respondent's grandmother, Shirley Skinner, was convicted of his murder.

¶ 5 In December 2009, Steven's parents, Dale and Penny Watkins, initiated proceedings under the grandparent visitation statute (750 ILCS 5/607(a-5)(1)(A-5) (West 2008)), seeking to establish visitation with S.W. In October 2010, the trial court entered an order finding in favor of Dale and Penny and granting their request for grandparent visitation. The court determined respondent had unreasonably denied Dale and Penny visitation with S.W. and that S.W. was subject to mental and emotional harm as a result of that denial. In February 2011, this court affirmed the trial court's judgment. *Watkins v. Watkins*, No. 4-10-0759 (2011) (unpublished order under Illinois Supreme Court Rule 23).

¶ 6 In October 2010, following the trial court's grandparent visitation order, Dale and Penny had a handful of visits with S.W. However, in November 2010, their court-ordered visitations stopped when respondent left Illinois with S.W. and began residing on a permanent basis in Florida. S.W.'s maternal grandparents also moved to Florida. Ultimately, criminal charges were filed against respondent for interference with Dale and Penny's visitation rights and an Illinois warrant was issued for her arrest. In 2011, respondent was incarcerated in a Florida jail for almost six months due to her refusal to abide by the Illinois court's visitation order. However, she successfully fought extradition to Illinois and remained in Florida with S.W.

¶ 7 In March 2012, a modified grandparent visitation order was entered in Illinois to account for S.W.'s Florida residency and the distance between her and her paternal relatives.

However, no visitation occurred under the modified order. In January 2013, a petition for indirect criminal contempt was filed against respondent in Illinois and another Illinois warrant was issued for her arrest.

¶ 8 In July 2016, respondent moved with S.W. to Massachusetts to live with respondent's fiancé and his family. In September 2016, Massachusetts authorities arrested respondent on the Illinois warrant and S.W. was taken into care by the Massachusetts Department of Children and Families (DCF). In October 2016, a shelter care hearing was conducted in Massachusetts, following which a Massachusetts judge ordered that S.W. would remain in foster care but that the case should be transferred to Illinois.

¶ 9 On October 7, 2016, the State's Attorney for Cass County, Illinois, filed a petition for adjudication of wardship, alleging S.W. was a neglected minor. The State asserted S.W.'s environment was injurious to her health and well-being and it attached various documents from DCF in Massachusetts to its petition. Those documents showed respondent was arrested in Massachusetts on an Illinois warrant "for being a [f]ugitive from [j]ustice." They further showed that, although S.W.'s maternal grandparents obtained a temporary guardianship of S.W. in Florida in March 2011, they allowed S.W. to move to Massachusetts with respondent in July 2016, "knowing [respondent] was a fugitive from justice." Following respondent's arrest, DCF obtained "emergency custody" of S.W. and she was placed in foster care.

¶ 10 On October 12, 2016, the Illinois trial court conducted a shelter care hearing in the matter. (The record reflects that the same judge who presided over the grandparent visitation proceedings, Judge Bob Hardwick, Jr., also presided over the underlying neglect proceedings.) The court determined probable cause was shown to find S.W. was a neglected minor and entered

an order granting temporary custody of S.W. to her paternal aunt and uncle, Ashley and Steve Clement. The Illinois Department of Children and Family Services (DCFS) was ordered to provide "intact family services" to S.W. and her family. On October 21, 2016, the court entered an order permitting respondent to have supervised visitations with S.W. A subsequent order also permitted supervised visitations between S.W. and her maternal grandparents.

¶ 11 A. Adjudicatory Hearing

¶ 12 On December 29, 2016, the trial court conducted an adjudicatory hearing in the matter. Respondent testified S.W. was nine years old. She acknowledged moving with S.W. to Florida following Steven's death and recalled that S.W. "turned two in Florida." Respondent testified they remained in Florida until June 2016, when she and S.W. moved to Massachusetts to be with respondent's fiancé, Frederick Thomas Giampa. According to respondent, she and S.W. lived in a "stand alone apartment" in Giampa's parents' home. When asked whether Giampa was "under charges of fraud" or had been convicted of felony fraud, respondent indicated her awareness of such charges but asserted she was no longer in a relationship with Giampa, he was no longer in her life, and she did not know whether he had ever been convicted.

¶ 13 Respondent testified she did not know there was a warrant for her arrest at the time she moved to Massachusetts but agreed she was "picked up in Massachusetts on a warrant on September 29[, 2016]." She also acknowledged that she did not tell Dale and Penny that she had moved to Massachusetts, stating they were not in contact at that time. Respondent asserted she moved to Florida because her safety and S.W.'s safety was "highly compromised" in Illinois, apparently due to the circumstances surrounding Steven's murder. Respondent described being physically and verbally accosted or harassed while living in Illinois.

¶ 14 Respondent testified that she should have followed the trial court's grandparent visitation order. However, she stated that she "moved before anything was ever ordered, so once [grandparent visitation] was ordered, [she] just went home." She denied that she was hiding in Florida or that she purposely went by a different name so that she would not be found. Respondent further asserted that she "offered multiple times" to let Dale and Penny visit with S.W. in Florida. She testified Dale and Penny always had her telephone number and she talked with Penny "on multiple occasions," inviting her and Dale to come to Florida for visits. Respondent testified she "was never taken up on any of those invites."

¶ 15 Respondent also denied that she made "no efforts to" return S.W. to Illinois to see Dale and Penny. Again, she testified she "had multiple conversations about it" with Penny. Respondent acknowledged, however, that "[n]othing was ever done to bring [S.W.] back" to Illinois. Further, respondent admitted that she knew the trial judge had ruled that a relationship between S.W. and her paternal grandparents was in S.W.'s best interests. Respondent stated she moved back to Illinois in September or October 2016, after S.W. was returned to this state. She maintained she was now willing to allow Penny and Dale visitations with S.W.

¶ 16 Penny testified that, at the time of Steven's death in November 2008, he had court-ordered, unsupervised visitations with S.W. However, he experienced difficulties when attempting to exercise his visitation rights. Penny stated there were times S.W. was not made available for visits with Steven or when Steven "met with lots of confrontation." According to Penny, respondent created a barrier to the visitations by claiming S.W. was sick or that she did not want to go with Steven.

¶ 17 After Steven's murder, respondent maintained physical custody of S.W. and left

Illinois. Penny heard that respondent and S.W. moved to Florida but "never received any documents or any positive information where she moved to." She testified the only communication she ever had with respondent about visits was when she appeared for a scheduled visit with S.W. in 2010 after being awarded grandparent visitation and received a text from respondent that said " 'gone out of state. You can come visit if you want to.' " According to Penny, respondent's text did not specify where she had gone.

¶ 18 Penny denied ever having respondent's telephone number, stating that as far as she knew respondent never had a phone. Instead, Penny communicated with respondent by calling respondent's mother, Debbie Webster. Penny testified that was the only phone number she had. She called Debbie's number on S.W.'s birthday "for the first couple of years that [respondent] was gone" but, thereafter, "the number was unavailable." Penny stated she did not converse with respondent and only asked if she could talk to S.W. for her birthday. She stated she was allowed to talk to S.W. over speakerphone and the calls lasted approximately five minutes. Penny estimated that she talked to S.W. on her birthday two times after respondent left Illinois.

¶ 19 Penny denied ever having regular telephone contact with respondent. She denied that they had any telephone conversations after respondent left Illinois. Penny further denied that respondent called her to arrange or offer a visit in either Illinois or Florida. She stated respondent also never informed her where respondent was staying. Rather, Penny hired a private detective in an attempt to find respondent and S.W. and exercise her visitation. She stated that attempt was unsuccessful. Additionally, Penny stated she learned from a friend that respondent had gone to Massachusetts approximately three to four weeks after respondent had moved.

¶ 20 Penny testified that since S.W. had been returned to Illinois they had spent a lot of

time together. She believed S.W. was intelligent and that she appeared physically healthy.

¶ 21 Ashley Clement testified she was Steven's sister and S.W.'s aunt. She was married to Steve Clement and the couple had three children. Ashley testified S.W. came to live with her in October 2016. She stated S.W. fit in "[g]reat" with her family. S.W. played with her cousins and was helpful. S.W. shared a bedroom with Ashley's five-year-old daughter and slept in a bunk bed. Ashley testified that any report that S.W. had to sleep on the floor was untrue.

¶ 22 Ashley described S.W. as intelligent and stated she did "excellent in school" and excelled in reading and math. She testified S.W. had perfect behavior at school and had made friends that she spent time with outside of school.

¶ 23 Ashley stated S.W. had supervised visits with respondent twice a week. She believed S.W. loved respondent and recalled one occasion when S.W. was teary-eyed after a visit and reported that she sometimes missed her mom. Ashley denied ever speaking negatively about respondent to S.W. Further, she testified she was "[a]bsolutely" willing to remain S.W.'s custodian.

¶ 24 Dr. Judy Osgood, a licensed clinical psychologist, testified on respondent's behalf. She stated she conducted an evaluation of respondent and S.W. and prepared a report regarding her evaluation, which respondent submitted into evidence at the hearing. Dr. Osgood testified her evaluation consisted of interviewing both S.W. and respondent and observing a supervised visitation between them on December 22, 2016. She stated she had also been provided with some court records to review as well as some visitation notes.

¶ 25 Dr. Osgood opined respondent and S.W. had a "primary attachment relationship," noting respondent had been S.W.'s primary caregiver throughout S.W.'s life. She stated S.W.

had "a very secure attachment" to respondent. Dr. Osgood described a "secure attachment" as when a "parent has been empathic, fostered [their child's] development, prioritized their needs, that the child feels emotionally safe with that parent. They can express themselves. They learn to trust that parent. They learn to trust that parent is going to take care of them, that [the parent] is going to provide for all of their needs." Dr. Osgood testified that if a child's primary attachment relationship with a secure attachment is severed or altered, the "child is at extremely high risk for a lot of emotional developmental problems and delays with potential for depression."

¶ 26 Dr. Osgood found S.W. to be a high functioning child, highly educated, intelligent, well socialized, healthy, confident, secure, and very bonded to respondent. Based on these findings, she opined it was "very apparent that [S.W.] ha[d] not been neglected" and that she, instead, "ha[d] been very well taken care of." Dr. Osgood testified her definition of neglect was as follows: "For neglect[,] I include a child's nutritional needs, medical needs, educational needs, a stable home, a good home, appropriate socialization, activities with peers, with sports and secure relationships."

¶ 27 Dr. Osgood further opined it was "really important" for S.W. to have individual counseling and that it be a safe place for S.W. to express her thoughts and feelings. She believed S.W. was "very aware" that she was "in the middle" and "imbedded in these huge conflicts" between her family members. Dr. Osgood testified that her research showed that "when a child is exposed to this level of conflict that if that continues that the likelihood for that child to become psychologically maladjusted is extremely high." Dr. Osgood reiterated that it was "really critical" that S.W. receive individual counseling.

¶ 28 Dr. Osgood further recommended that S.W. be returned to respondent's care. She

noted that S.W. repeatedly told her she wished to return home to respondent and that respondent had been S.W's primary caregiver. Dr. Osgood also believed that S.W. wanted to maintain a relationship with her paternal relatives and liked being a part of that side of her family. She opined that it was critical that S.W.'s development and emotional needs were taken care of and that "she ha[d] the opportunity to have people work this out without *** splitting her in the middle."

¶ 29 On cross-examination, Dr. Osgood testified she had been retained by respondent to perform a bonding assessment. She did not perform psychological evaluations of either respondent or S.W. Dr. Osgood testified a psychological evaluation was "a more comprehensive assessment of a person" and their functioning, while a bonding assessment "focuse[d] on the relationship between like a parent and a child." Further, Dr. Osgood testified she was aware that respondent had not allowed grandparent visitation to occur contrary to a judge's visitation order. When asked what weight she gave that information in her assessment, Dr. Osgood testified as follows:

> "Well, my assessment, again my focus is the bond between [respondent] and [S.W.], and based on my interview with [respondent], she did acknowledge that she had made a mistake, that she was wrong, and that she [was] willing to stay in Illinois and willing to support that relationship and so she acknowledged that she had made mistakes about that. What [respondent] explained to me is that she did make efforts when she was in Florida to work out some agreements with Dale and Penny and that that [*sic*] it was—what she proposed was not approved [by the court]."

Dr. Osgood reiterated that it was her understanding that there was "some communication" re-

garding visits. However, she believed that respondent's change in opinion as to grandparent visitation was a "separate issue" from the bond between respondent and S.W. and how well S.W. had been taken care of. Finally, Dr. Osgood agreed that a primary attachment relationship could exist in an environment that is injurious to a child.

¶ 30 Aside from the testimony presented at the adjudicatory hearing, the court also considered other evidence, including a transcript of the court's in-chambers interview of S.W. conducted on November 28, 2016. During that interview, S.W. expressed a desire to be back with respondent. Other evidence presented by the State included exhibits containing (1) a Massachusetts court order, committing S.W. to DCF based on a petition that alleged she was a child in need of care and protection; (2) a letter from DCFS to the Cass County State's Attorney's office indicating a "High Risk intact case" would be opened upon S.W.'s placement with her paternal aunt and uncle in Illinois; (3) a petition for adjudication of indirect criminal contempt filed on January 3, 2013, by the Cass County State's Attorney, alleging respondent had "willfully, knowingly, and contumaciously violated" court orders; (4) a copy of the trial court's original grandparent visitation order filed on October 6, 2010; and (5) a Florida court order dated November 8, 2011, dismissing a petition for registration of a foreign custody order by respondent and relinquishing jurisdiction to Illinois for further proceedings.

¶ 31 At the conclusion of the evidence and following the parties' arguments, the trial court determined that the State proved S.W. was a neglected minor. It based its finding on respondent's failure to comply with the court's orders regarding grandparent visitation. On December 29, 2016, the court's adjudicatory order was entered. Similar to its oral ruling, the court held S.W. was a neglected minor. It attached the October 2010 grandparent visitation order to its

adjudicatory order and made the following factual findings:

> "[Respondent had] fled to Florida in 2010 and there has been *no* [grandparent] visitation since late 2010. She failed to offer visitation in the last [six] years as ordered and never offered to bring the child to Illinois. She spent [five] months in jail in Florida rather than give visitation. In sum, [respondent] has done everything she could in the last [six] years to prevent visitation and she succeeded. This has all been done to prevent contact with the paternal grandparents which the court finds to be neglect." (Emphasis in original.)

The court set the matter for a dispositional hearing and continued S.W.'s placement with her paternal aunt and uncle.

¶ 32 B. Dispositional Hearing

¶ 33 On August 29, 2017, the trial court conducted the dispositional hearing. The record reflects the court considered dispositional reports prepared by DCFS dated June 22, 2017, and August 23, 2017. Regarding visitation, those reports show respondent initially had supervised visits with S.W. two days a week. However, she was responsible for the costs associated with the supervised visits and failed to stay current on her bill. In June 2017, her visits were reduced to one day per week until she paid her past due balance (totaling in excess of $3,300). Respondent was required to pay for each new visit in advance but never paid any money toward the amount that was past due. As a result, she never resumed her twice weekly visits with S.W. The June 2017 report noted that despite not paying the costs associated with visitations, respondent brought new toys and clothing for S.W. to almost every visit. During visits in April 2017, respondent celebrated Christmas and Easter with S.W. and brought her numerous presents and

"several hundred dollars worth of things."

¶ 34 In the August 2017 report, it was noted that respondent repeatedly made comments to S.W. throughout visits about when S.W. "comes home after the court hearing." Respondent reportedly made promises as to what she would do with S.W. and buy her, and she talked with S.W. about attending a new school near respondent's home, buying school supplies since S.W. "will be home," decorating S.W.'s room at respondent's home, and what S.W. had reported to the judge during a second *in camera* interview. Despite being "repeatedly told by the visitation worker to stop talking about a possible return home," respondent continued. She ignored the requests to stop and "continued this conversation during every visit." S.W. was observed ignoring respondent or attempting to change the subject.

¶ 35 The reports reflect that Debbie, S.W.'s maternal grandmother, was also asked to stop speaking with S.W. about "coming home." During a visit in August 2017, a visitation supervisor intervened when Debbie told S.W. to "be careful" with what she told the judge "because it may hurt what happens between [S.W.] and [her] mom."

¶ 36 The reports showed S.W. and respondent also engaged in weekly 15-minute supervised telephone calls. S.W. reportedly did not like making the calls and repeatedly tried to get out of calling.

¶ 37 The reports describe S.W. as "thriving" in her aunt and uncle's home and doing well in school. She reportedly had many friends and an active social life. S.W. expressed to her caseworker that she wanted to remain in Ashley and Steve's home and was "adamant" that she wanted to talk with the judge about it.

¶ 38 S.W.'s counselor, Susan Haerr, stated that S.W. was making progress in her coun-

seling but that visits with respondent were "a major source of stress" and anxiety. According to Haerr, S.W. reported that respondent promised her "all kinds of things but use[d] her 'lying voice.' " S.W. also stated that respondent "whispered" to her during visitations while visitation supervisors were distracted, "telling [S.W.] what to say to various professionals involved in her case." Haerr noted S.W. was struggling with anger, sadness, and distrust toward respondent and respondent's family "due to the history and ongoing manipulation." She further noted that S.W. was fearful of being removed from her current placement and expressed concern that respondent would " 'take her into hiding.' " According to Haerr, since February 2017, S.W. had "continuously and consistently shared her desire to remain in the home of her aunt and uncle and ha[d] verbalized repeatedly that she does not trust [respondent] nor feel safe in her care."

¶ 39 The June 2017 report stated that, in May 2017, S.W. met with the guardian *ad litem* (GAL) at her own request. The GAL subsequently prepared a report regarding their meeting, which was attached to the dispositional report. The GAL described his meeting with S.W., stating she reported that respondent "told her to tell everyone how terrible things" were at Ashley and Steve's home. In particular, S.W. was told "to tell people that she was forced to sleep on the floor every night and that she did not want to stay there." According to S.W., respondent also told her to cry and throw fits every night before bed. Upon questioning by the GAL, S.W. denied that what respondent told her to say was true and she asserted that she wanted to stay with Ashley and Steve. The GAL found it "disturbing that a young girl *** makes arrangements to see her attorney because of things her mother is telling her to do which are not true."

¶ 40 The reports showed that respondent also engaged in counseling. Although in April 2017, respondent tried to stop counseling based on changes to her work schedule and because

"she really did not need counseling anyway," she later changed her mind after speaking with her attorney. In the August 2017 report, respondent was described as making "[s]ome [p]rogress." Respondent's counselor challenged her to "see the other side of the case" and believed respondent was making a lot of progress in that area. In particular, respondent admitted that "what she did was wrong and how things could be different if she would have made better choices."

¶ 41 In addition to the dispositional reports, the trial court also considered its second in-camera interview of S.W. During that interview, conducted on July 3, 2017, S.W. expressed that she wanted to remain in Ashley and Steve's home. Further evidence considered by the court included several exhibits submitted by the State, which contained (1) S.W.'s counseling records; (2) visitation records prepared during the course of respondent's supervised visits with S.W.; (4) a psychological evaluation of respondent conducted by Dr. Jane Valez on December 27, 2016; (5) a psychological evaluation of S.W. conducted by Dr. Valez on December 7, 2016; and (6) the bonding assessment of respondent and S.W. conducted by Dr. Osgood on December 23, 2016. As part of her case, respondent submitted an exhibit containing a psychological report prepared by Dr. Osgood on August 14, 2017.

¶ 42 Finally, testimony from Ashley, Dr. Osgood, and respondent was also presented at the hearing. Ashley testified S.W. had been living with her and her family for almost a year. She stated S.W. got along "great" with Ashley's three young children and interactions with herself and with Ashley's husband, Steve, were "good." Ashley reported that S.W. was doing well in school and was involved in activities, including softball and cheerleading. She testified S.W. had changed since coming to live in her home, stating S.W. was "more open" with Ashley, talked with Ashley about things, and was more willing to express her feelings.

¶ 43 Ashley described S.W.'s demeanor regarding visitations with respondent. She testified that between September 2016 and March 2017, there were times that, prior to a visit, S.W. would isolate herself from Ashley and did not want to talk. Ashley described S.W. as being irritable when returning from a visit and appearing sad or having moods that were "all over the place." Around March 2017, Ashley noticed a change in S.W.'s attitude. She stated there was "a lot of persuasion to even get [S.W.] to go to visits" and that S.W. asked "all the time to not go to the visits." When S.W. returned from a visit with respondent she was "normal" and "open" about the visit. According to Ashley, S.W. complained that respondent was "whispering a lot during visitation" and had lied to her. Ashley testified as follows:

> "[Respondent whispered] that [S.W.] needs to go back and speak with the judge, that [S.W.] will be home soon, that [respondent] is taking care of everything, that [respondent] ha[d] spoken with the judge and the lawyer and the GAL and that every single one of them has informed [respondent] that [S.W.] will be coming home."

Ashley testified S.W. also reported that Debbie, her maternal grandmother, told her "to watch what she [was] saying to the judge because what she says to the judge effects everything that happens."

¶ 44 Ashley testified that she and her husband were willing to continue S.W.'s placement in their home. Further, she denied that either she or her husband ever attempted to alienate S.W. from respondent or her maternal relatives. Ashley testified she had only spoken with S.W. about being "open and honest" with one another. She explained to S.W. that she would not be upset if S.W. expressed a desire to live with respondent because respondent was her mother and

"that's where she should want to live." Ashley also denied that she or her husband ever told S.W. what to say to the judge.

¶ 45 On cross-examination by respondent's counsel, Ashley acknowledged that S.W. grew up in a different church than the one Ashley attended. She stated S.W.'s religion had dietary restrictions that prohibited her from eating certain types of fish and pork. Ashley admitted that, despite these restrictions, S.W. ate pork while in her care.

¶ 46 Regarding S.W.'s visitations, Ashley testified she would always ask S.W. "how was your visit" just like she would ask someone "how was your day." According to Ashley, S.W. would sometimes say "fine" and other times would say that respondent whispered or lied to her. Finally, Ashley testified she only told S.W. to be open and honest when speaking with the judge in the case.

¶ 47 Again, Dr. Osgood was called to testify on respondent's behalf and the parties stipulated to her qualifications as an expert in psychology. Dr. Osgood acknowledged preparing a report, dated August 17, 2017, at the request of respondent's counsel. She testified she was specifically asked to review a transcript of the trial court's second interview of S.W.

¶ 48 Dr. Osgood opined that S.W.'s change in statements as to who she wanted to live with from December 2016, to July 2017, could "be attributed to the limited contact with [respondent] and the circumstances that she has had to really adjust to and survive in." She noted that, initially, S.W. was very clear that she wanted to return to live with respondent and expressed positive feelings about her life in Florida. Dr. Osgood was concerned that during the July 2017 interview, the trial judge asked questions that were "framed for [S.W.] to answer yes and no" and was not "encouraged to elaborate." She stated children needed open-ended questions and

to have the opportunity to explain their thoughts and feelings.

¶ 49 Dr. Osgood further testified that in situations similar to those presented in this case "alienation" could occur, causing a child to "align themselves with one of the parents or caregivers to basically survive, to reduce the anxiety that they inevitably experience in that situation." She opined that alienation is what happened to S.W. and that it was the reasoning behind S.W.'s change in desire regarding where she wanted to live.

¶ 50 Dr. Osgood further opined that if the dispositional hearing did not go in respondent's favor, the long-term emotional consequences for S.W. "could be very grave." She testified that the loss of a primary attachment figure may be a "devastating loss for [S.W.] that she really may not experience until a little later on when she is old enough to really become more aware of what happened to her." Dr. Osgood testified that research showed such losses could result in abandonment issues, problems with depression, substance-abuse problems, and reactive-attachment disorder.

¶ 51 On cross-examination, Dr. Osgood testified she met S.W. twice, having observed one visit between respondent and S.W. and meeting with S.W. once individually in December 2016. She agreed she had not evaluated S.W. since that time or conducted any clinical interviews. Although she asserted her opinions as to alienation were based on "these dynamics with S.W." and S.W.'s "circumstances," she acknowledged that she had not reviewed any visitation records since December 2016 or S.W.'s counseling records. Dr. Osgood clarified that she based her opinions on the two interviews the trial judge conducted with S.W., Dr. Valez's December 2016 interview with S.W., and her own December 2016 interview of S.W. Dr. Osgood further agreed she had not conducted any recent interviews of S.W. or Ashley and Steve.

¶ 52 Dr. Osgood further agreed that children will make disclosures when they feel safe. She acknowledged that to "get a complete assessment" in this case she would need to talk to S.W. again.

¶ 53 Respondent testified and described her visits with S.W., stating they played games and did crafts, and that she always brought S.W. food. She testified that visits were initially very difficult for S.W. and she would scream and cry when it was time to leave. S.W.'s behavior changed, however, after respondent encouraged her and spoke of all the fun things she could do with her paternal relatives. Respondent denied that she ever "shared [her] feelings" with S.W. during visits but acknowledged that they prayed during visits for "our miracle for [S.W.] to come home soon." Respondent also denied that she had ever lied to S.W. and testified that their most recent visit had been a good one.

¶ 54 Respondent testified that it was difficult for her to have only supervised visits with S.W. because she was S.W.'s mother and it was "a very difficult thing to lose your child." She asked that the trial court return S.W. to her care and asserted she would abide by the visitation orders and any new orders that the judge imposed. Respondent testified that not complying with the grandparent visitation order "was one of the worst decisions of [her] life" as it caused both her and S.W. "a lot of pain." Respondent agreed that S.W. now had a relationship with her paternal relatives and that she loved them. She stated she would encourage that relationship.

¶ 55 On cross-examination, respondent testified that she never said inappropriate things to S.W. during their visits "like, you know, what all is going on or what all I'm going through." She denied instructing S.W. to say that she slept on the floor at Ashley and Steve's house or to cry and throw fits because she wanted to return to respondent. Respondent, however,

did acknowledge that visitation supervisors told her more than once not to tell S.W. that she would be coming home soon.

¶ 56 On examination by the trial court, respondent testified that the majority of her visits with S.W. were good. However, she stated that sometimes S.W. was very distant and did not act like herself.

¶ 57 At the conclusion of the hearing, the trial court stated it was not "convinced that the reasons that we found neglect in the first place have been corrected." It held custody and guardianship of S.W. would remain with Ashley and Steve and ordered continued therapy for both respondent and S.W., continued supervised visitations and telephone calls, and that respondent "attend and participate—as requested by [DCFS] in and successfully complete a parenting class to increase her knowledge of child development." The court also ordered all adults in the case to stop discussing the court case with S.W.

¶ 58 On August 29, 2017, the trial court also entered its written dispositional order, showing the court found it was consistent with the health, safety and best interests of S.W. that she be made a ward of the court. The court's order also reflects a finding that respondent was "unfit or unable, for some reason other than financial circumstances alone, to care for, protect, train or discipline [S.W.] ***, and the health, safety and best interest of [S.W. would] be jeopardized if" she remained in respondent's custody. It provided the following factual basis for that finding:

> "The minor has made 'great progress' with her ordered counseling but the mother has made only 'some progress.' The State's [Attorney], GAL, and DCFS all agree and argue that the minor should not go home. The minor has clearly articulated to

her counselor, DCFS, her GAL[,] and the court that she wants to stay with Steve and Ashley Clement. Per the reports and testimony, mother and maternal grandmother are attempting to get the minor to indicate she wants to return home and she refuses to say so."

¶ 59 The trial court's order further reflects that it ordered S.W. adjudicated a ward of the court and placed her custody and guardianship with Steve and Ashley. Further, it ordered that S.W. would not be returned to respondent "until after [a] hearing the court determines that [respondent] is fit to care for [S.W.], will not endanger [S.W.'s] health or safety and return home is in [S.W.'s] best interest." The court set the matter for a permanency hearing and, similar to its oral ruling, ordered respondent and S.W. "to cooperate with and complete counseling," respondent "to attend, participate in[,] and successfully complete a parenting class," and all adults in the case to stop discussing the court case with S.W.

¶ 60 This appeal followed.

¶ 61 II. ANALYSIS

¶ 62 A. Neglect Adjudication

¶ 63 On appeal, respondent fist argues the trial court erred in finding S.W. was a neglected minor. She contends the State's evidence failed to establish that S.W.'s environment prior to her placement with her paternal aunt and uncle was injurious to her welfare. Further, respondent contends the trial court improperly based its neglect finding on a determination that S.W. "could be better" if respondent had abided by the grandparent visitation order and, in doing so, failed to recognize that the focus of the proceeding should have been on the child rather than an evaluation of her acts or omissions. Stated another way, respondent maintains the court im-

properly "made a determination [as to her] criminal or civil liability, rather than focusing on the status of S.W."

¶ 64 Under the Juvenile Court Act of 1987 (Act) (705 ILCS 405/1-1 *et seq.* (West 2014)) a trial court employs a two-step process in determining whether a minor should become a ward of the court. *In re A.P.*, 2012 IL 113875, ¶ 18, 981 N.E.2d 336. The first step is the adjudicatory hearing, at which time the court considers whether the minor is abused, neglected, or dependent. *Id.* ¶ 19 (citing 705 ILCS 405/2-18(1) (West 2010)). 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).

¶ 65 "[C]ases involving allegations of neglect and adjudication of wardship are *sui generis*, and must be decided on the basis of their unique circumstances." *In re Arthur H.*, 212 Ill. 2d 441, 463, 819 N.E.2d 734, 747 (2004). The supreme court has defined the terms "neglect" and "injurious environment" as follows:

> " 'Generally, "neglect" is defined as the "failure to exercise the care that circumstances justly demand." ' [Citations.] This does not mean, however, that the term neglect is limited to a narrow definition. [Citation.] As this court has long held, neglect encompasses 'wilful as well as unintentional disregard of duty. It is not a term of fixed and measured meaning. It takes its content always from specific circumstances, and its meaning varies as the context of surrounding circumstances changes.' [Citations.] 'Similarly, the term "injurious environment" has been recognized by our courts as an amorphous concept that cannot be defined with particularity.' [Citation.] Generally, however, 'the term "injurious environment" has

been interpreted to include "the breach of a parent's duty to ensure a 'safe and nurturing shelter' for his or her children." ' [Citations.]" *A.P.*, 2012 IL 113875, ¶ 22.

¶ 66 Ultimately, it is the State that has the burden of proving neglect allegations by a preponderance of the evidence. *Id.* ¶ 17. "In other words, the State must establish that the allegations of neglect are more probably true than not." *Id.* "On review, a trial court's finding of neglect will not be reversed unless it is against the manifest weight of the evidence," and "[a] finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident." *Id.*

¶ 67 Here, we agree with the trial court that the circumstances presented by this case fall within the scope of "neglect" and, more specifically, an "injurious environment." Evidence presented at the adjudicatory hearing included the trial court's October 2010 grandparent visitation order, which reflects a finding by the court that, without visitations with the paternal grandparents, S.W. was subject to mental and emotional harm. Respondent testified at the adjudicatory hearing and admitted that the court determined that a relationship between S.W. and her paternal grandparents was in S.W.'s "best interests." Nevertheless, despite these findings, the record reflects respondent was vehemently opposed to any relationship between S.W. and her paternal relatives and refused to abide by the court's orders. Ultimately, respondent's defiance resulted in her Massachusetts arrest, her inability to care for S.W. following that arrest, and S.W.'s placement in the Massachusetts foster care system. We note a Massachusetts court order was admitted into evidence at the adjudicatory hearing and showed S.W. was committed to DCF in Massachusetts based on a petition that alleged she was a minor in need of care and protection.

¶ 68 As respondent points out, the record contains many descriptions of S.W. as an intelligent, healthy, confident, and social child with a secure attachment to respondent, her primary caretaker. However, we reject respondent's assertion that these factors are dispositive and exclude a finding of neglect, particularly where the record otherwise reflects that respondent acted in a manner that was contrary to S.W.'s best interests and which resulted in respondent being subject to arrest and unable to care for her child. Additionally, we note that even Dr. Osgood, respondent's expert witness, opined that it was "really critical" that S.W. receive counseling. She noted that S.W. was a minor who was "imbedded" in family conflict and, as a result, subject to becoming psychologically maladjusted. The trial court's findings reflect, and we agree, that the conflicts referenced by Dr. Osgood were in large part caused and perpetuated by respondent and her refusal to comply with court orders that were intended to protect S.W.'s best interests.

¶ 69 Finally, although we agree with the proposition cited by respondent, that the purpose of the adjudicatory hearing is "to determine whether the child is neglected, and not whether the parents are neglectful" (*Arthur H.*, 212 Ill. 2d at 467), we disagree that this principle was violated below. In this instance, the allegations of neglect stemmed from respondent's actions as S.W.'s *only* parent and her primary caregiver. Respondent's acts and omissions allegedly created an injurious environment for S.W. and, thus, it was not error for the court to consider them. Ultimately, not only does the record support a finding that S.W. was a neglected minor, it also supports a finding that respondent was neglectful.

¶ 70 The dissent disagrees with the trial court's finding of neglect in this case and argues that affirming the court's order could result in neglect proceedings based on a parent's decision to risk arrest by habitually driving with a revoked license, tardiness at custody exchanges, or

the failure to pay a court-ordered parking ticket. However, we find these hypothetical situations bear no resemblance to the extreme circumstances of this case. Here, respondent's refusal to comply with the grandparent visitation order amounted to a willful disregard of her minor child's best interests. The order at issue was deemed necessary to prevent mental and emotional harm to S.W. Nevertheless, respondent actively thwarted that order for six years, making no effort to allow the court-ordered visitation to occur in either Illinois or Florida and depriving S.W. of any meaningful contact with her paternal relatives.

¶ 71 We further note that the dissent addresses multiple perceived shortcomings by the trial court in connection with the grandparent visitation case, the Massachusetts legal proceedings, and the shelter care hearing. However, we find it unnecessary to address such matters in the context of this appeal as they were not raised or challenged by the parties, nor are they germane to the issues that were presented. Ultimately, we find that the evidence that was presented by the parties at the adjudicatory hearing was sufficient to establish by a preponderance of the evidence that S.W. was a neglected minor and uphold the trial court's finding of neglect based on that evidence.

¶ 72 B. Dispositional Order

¶ 73 On review, respondent next challenges the trial court's dispositional order. Initially, she contends that because the court's neglect finding was in error, the court also erred in proceeding to a dispositional hearing. However, as discussed above, we find the manifest weight of the evidence supported the court's finding of neglect and, thus, the court properly proceeded with the dispositional hearing.

¶ 74 Respondent also contends the trial court's dispositional order should be reversed

because it was based exclusively on the best-interest-of-the-child standard and no finding was made that respondent was unfit, unable, or unwilling to care for S.W. We disagree and find that both the court's oral pronouncement of its decision at the dispositional hearing and its subsequent written order consistently reflect a finding that respondent was unfit, as well as a sufficient factual basis for that finding.

¶ 75 The second step in deciding whether to make a minor a ward of the court is the dispositional hearing. *A.P.*, 2012 IL 113875, ¶ 21 (citing 705 ILCS 405/2-21(2) (West 2010)). "At the dispositional hearing, the trial court determines whether it is consistent with the health, safety[,] and best interests of the minor and the public that the minor be made a ward of the court." *Id.* If the minor "is to be made a ward of the court, the court shall determine the proper disposition best serving the health, safety and interests of the minor and the public." 705 ILCS 405/2-22(1) (West 2014). "Prior to committing a minor to the custody of a third party, *** a trial court must first determine whether the parent is unfit, unable, or unwilling to care for the child, *and* whether the best interest of the minor will be jeopardized if the minor remains in the custody of his or her parents." (Emphasis in original). *In re M.M.*, 2016 IL 119932, ¶ 21, 72 N.E.3d 260 (citing 705 ILCS 405/2-27(1) (West 2014)). To that end, the Act specifically provides as follows:

> "If the court determines and puts in writing the factual basis supporting the determination of whether the parents, guardian, or legal custodian of a minor adjudged a ward of the court are unfit or are unable, for some reason other than financial circumstances alone, to care for, protect, train or discipline the minor or are unwilling to do so, and that the health, safety, and best interest of the minor will be jeopardized if the minor remains in the custody of his or her parents,

guardian or custodian, the court may at this hearing and at any later point:

(a) place the minor in the custody of a suitable relative or other person as legal custodian or guardian[.]" 750 ILCS 405/2-27(a) (West 2014).

¶ 76 "[T]he term 'unfit' in the section [of the Act] relating to removing custody and guardianship from a parent following a finding of neglect differs in meaning from the unfitness required to be found for termination of parental rights for purposes of appointing a guardian with consent to adopt." *In re T.B.*, 215 Ill. App. 3d 1059, 1061, 574 N.E.2d 893, 895 (1991). For dispositional purposes, the State must prove parental unfitness by a preponderance of the evidence. *In re A.P.*, 2013 IL App (3d) 120672, ¶ 15, 988 N.E.2d 221. On review, the trial court's dispositional decision "will be reversed only if the findings of fact are against the manifest weight of the evidence or the court committed an abuse of discretion by selecting an inappropriate dispositional order." *In re J.W.*, 386 Ill. App. 3d 847, 856, 898 N.E.2d 803, 811 (2008).

¶ 77 Here, the record reflects S.W. was neglected based on respondent's action in refusing to abide by a court order that was designed to protect S.W. from suffering mental or emotional harm *and* the conditions created by respondent's refusal. Further, at the dispositional hearing, evidence showed that, during supervised visitations with S.W., respondent continuously spoke with S.W. about "coming home" or about the case in general despite repeated warnings not to engage in such behavior. Additionally, S.W. reported to several individuals, including her counselor, Ashley, and the GAL, that respondent whispered to her during visitations and told her what to say to various individuals associated with the case. S.W.'s counselor found that visitations with respondent were a source of stress and anxiety for S.W. and that respondent's manipulating behavior was likely the cause. Ultimately, respondent's actions reflect a continuation of

the type of behavior which formed the basis for the trial court's neglect finding.

¶ 78 In setting forth its ruling orally at the conclusion of the dispositional hearing, the trial court noted that S.W. was doing well with her paternal aunt and uncle and making "great progress" in counseling. Further, it stated as follows with respect to respondent:

> "In regard to [respondent], the quote is some progress [in counseling] from one of the exhibits that's admitted. And I hear all this stuff, I see all these reports in regard to visitation and in regard to [DCFS's] reports about manipulation, attempted manipulation, from [respondent], from her mother. Everybody is lying to me if that is not taking place. I see some progress on [respondent's] part. Can I sit here and say I have a warm fuzzie feeling that I'm going to send this child home even though she doesn't want to go, and that visitation is going to continue with the [paternal relatives], and that she's not going to be in the car and go to Florida, and we would be in the same boat again. I have not heard one thing from anybody that that is not a distinct and real possibility."

Although the court did not use the word "unfit" in its oral ruling, its comments indicate a concern that respondent would continue the behaviors that resulted in the finding of neglect. In fact, the court also explicitly stated that it was not yet convinced that "the reasons that we found neglect in the first place have been corrected." Ultimately, the court's comments demonstrate a conclusion that respondent was unfit and, given the evidence presented regarding her attempts at manipulation, that finding was not against the manifest weight of the evidence.

¶ 79 Moreover, the trial court's written order was consistent with its oral ruling and further supports a finding that it determined respondent was unfit. The court's dispositional order

consisted of a preprinted form on which the court marked its findings with an "X" and made handwritten additions. The manner in which the court filled out the form indicates that it found respondent was "unfit" and its factual basis for that determination included references to respondent's manipulative conduct. The court's finding that respondent was unfit is further reflected in a handwritten addition to the form which stated S.W. would not be returned to respondent "until after [a] hearing the court determines that [respondent] is fit to care for [S.W.], will not endanger [S.W.'s] health or safety and return home is in [S.W.'s] best interest."

¶ 80 In challenging the trial court's dispositional order, respondent also contends the court failed to consider certain evidence, including Dr. Osgood's testimony regarding alienation. However, we find no indication in the record that the court disregarded or failed to consider any of the evidence presented. Rather, the court simply weighed the evidence and relied on that which it found most persuasive. In setting forth its oral ruling, the court made references to Dr. Osgood's testimony, reflecting that such evidence was considered by the court. Further, the court's ultimate conclusion indicates it was not persuaded by Dr. Osgood's opinions and we find no error with that determination. In particular, we note Dr. Osgood did not definitively opine that S.W. was alienated from respondent. Rather, she found S.W.'s change in desires as to where she wanted to live were *consistent* with alienation. Further, on cross-examination, it was demonstrated that Dr. Osgood had not reinterviewed S.W., interviewed S.W.'s paternal relatives, or considered other material that could be pertinent to forming an opinion on alienation, including S.W.'s counseling notes and the visitation records.

¶ 81 Finally, on appeal respondent argues the trial court's dispositional order was "inappropriate" because it did not "adequately admonish [her] as to what requirements she must ful-

fill" to have S.W. returned to her custody. Initially, respondent cites section 2-22(6) of the Act (705 ILCS 405/2-22(6) (West 2014)), suggesting the trial court was required to admonish her to cooperate with DCFS, comply with the terms of the service plans, and correct the conditions which required the child to be in care. However, this particular section of the Act applies when guardianship of a child is awarded to DCFS and is therefore inapplicable to this case, where custody and guardianship of S.W. were placed with her paternal aunt and uncle. *Id.*

¶ 82 Further, we find the record otherwise refutes respondent's contention that she was not advised of what she must do to have S.W. returned to her care. "[O]ne of the purposes of a dispositional hearing and adjudication of wardship is to give the parents fair notice of what they must do to retain their rights to their child in the face of any future termination proceedings." (Internal quotations omitted.) *In re April C.*, 326 Ill. App. 3d 225, 240, 760 N.E.2d 85, 97 (2001). Here, at the conclusion of the dispositional hearing, the trial court stated as follows:

> "[T]he next step in this process is a permanency hearing which we have to have within six months. I am telling you right now the goal is going to be return home. Now, is that going to happen in six months? I can't tell you. *** It's your progress in regard to your counseling, your daughter's wishes, the visitation, everything that comes into my decision."

Moreover, both the court's oral ruling and its written dispositional order show that it specifically ordered respondent to (1) cooperate with counseling; (2) engage in visitations with S.W.; (3) "attend, participate in[,] and successfully complete a parenting class"; and (4) refrain from discussing the court case during visits with S.W. Thus, respondent was given a time frame in which the court would be considering her progress as to the various tasks it ordered. We find this amounts

to the "fair notice" to which respondent was entitled in the underlying dispositional proceedings and the court committed no error.

¶ 83 III. CONCLUSION

¶ 84 For the reasons stated, we affirm the trial court's judgment.

¶ 85 Affirmed.

¶ 86 JUSTICE HOLDER WHITE, dissenting.

¶ 87 Let me be clear and state in the strongest terms that the actions of respondent in failing to abide by the court-ordered grandparent visitation were unacceptable, selfish, and misguided. Despite respondent's ill-conceived actions, the State failed to establish S.W. was neglected as contemplated by the Act.

¶ 88 The majority points out that an "injurious environment" is an amorphous concept that depends on the facts of each case. See *A.P.*, 2012 IL 113875, ¶ 22, 981 N.E.2d 336. The majority thereafter concludes that respondent's actions to obstruct the paternal grandparents' visitation created such an injurious environment. However, at the close of the State's evidence during the adjudicatory hearing, the evidence showed respondent (1) failed to follow the visitation order and (2) was arrested for her failure to comply with the court order. The State presented no evidence to demonstrate how respondent's failure to follow the court order negatively impacted S.W. To the contrary, there seemed to be a consensus that S.W. was happy, well-adjusted, emotionally and mentally sound, and strongly bonded to her mother at the time of the adjudicatory hearing. To the extent respondent placed herself in a position to be arrested, and therefore potentially unable to care for S.W., the record demonstrates respondent prepared for that possibility by signing over guardianship to Robert, S.W.'s maternal grandfather, in April 2011.

¶ 89 The majority's ruling takes us down a slippery slope. If the central concern is that respondent failed to obey the visitation order, then every time a party obstructs visitation in accordance with a court order, the case could be transferred from family court to juvenile court. If the central concern is that respondent failed to follow a court order, then every court order—no matter how small—could result in a parent finding himself or herself in juvenile court for neglect

proceedings. Finally, if the central concern is that respondent neglected S.W. by placing herself at risk of arrest, we are charting new territory for proceedings under the Act. For example, under the majority's logic, a parent who habitually drives to and from work despite having a revoked license—and is therefore placing himself at risk of arrest—subjects any children under his care to the possibility of neglect proceedings, even where the parent has guardianship arrangements in place. The results are absurd. The State could theoretically file juvenile proceedings where a custodial parent is frequently late in exchanging custody with the noncustodial parent, or where a parent fails to pay a court-ordered parking ticket. These are not the types of situations that constitute neglect under the Act.

¶ 90 Because the State failed to provide any evidence of neglect, the trial court should have granted respondent's motion for a directed finding during the adjudicatory hearing. Instead, the court inappropriately relied on its long history with the family, stating "Based upon what I know since I have been involved in this case for six years, based upon the evidence I have heard so far, the [S]tate has made a *prima facie* case."

> "The purpose of this Act is to secure for each minor subject hereto such care and guidance, preferably in his or her own home, as will serve the safety and moral, emotional, mental, and physical welfare of the minor and the best interests of the community; to preserve and strengthen the minor's family ties whenever possible, removing him or her from the custody of his or her parents only when his or her safety or welfare or the protection of the

public cannot be adequately safeguarded without removal." 705 ILCS 405/1-2(1) (West 2016).

¶ 91 As demonstrated by the trial court's reliance on its personal experience with the family prior to the filing of the abuse and neglect case, the purpose of the Act was lost as the court's focus shifted toward punishing respondent under the guise of considering the best interest of S.W.

¶ 92 Although respondent appeals only the trial court's decisions at the adjudicatory and dispositional phases, the court's ongoing, improper involvement in this case requires further scrutiny.

¶ 93 The trial court initially presided over the family case and issued the order granting the paternal grandparents visitation. In that order, the court referred to respondent as "evil" three times without explanation—apparently holding respondent responsible for Steven's murder despite Skinner's conviction—which highlights the court's personal feelings about respondent. After respondent moved to Florida, it appears the court followed the case closely, as it conceded having "nonsubstantive" phone calls with respondent.

¶ 94 When respondent was arrested in Massachusetts, Robert appeared within hours to assert his guardianship of S.W. The Massachusetts Intake Report—later admitted during the shelter-care hearing—indicates Massachusetts accepted that Robert was the guardian. However, according to the intake report, following "discussions between other department officials and the judge who heard the matter in Illinois," Massachusetts declined to give Robert custody of S.W. despite the guardianship order.

¶ 95 During the shelter-care hearing, the trial court accepted Robert's representation

that he was S.W.'s guardian based on a letter provided to the court. However, the court failed to provide Robert with his rights as guardian under section 1-5(1) of the Act. See 705 ILCS 405/1-5(1) (West 2016). Before beginning the hearing, the court stated, "since you are the guardian, [Robert], I know you don't have an attorney here today, rather than have you sit back there, you are technically a party since you are legally the guardian. What I want you to do is just have a seat right here." Robert was not admonished regarding "the right to be present, to be heard, to present evidence material to the proceedings, to cross-examine witnesses, to examine pertinent court files and records and also, although proceedings under this Act are not intended to be adversary in character, the right to be represented by counsel." 705 ILCS 405/1-5(1) (West 2016). He was required to proceed *pro se*. Had Robert been afforded counsel, it is likely certified guardianship papers would have been produced immediately, as he obtained a certified a copy of the Florida guardianship order on his own the following day. Thus, the court would have had the certified paperwork prior to S.W. reaching Illinois and being placed with her paternal aunt and uncle.

¶ 96 Even ignoring the violation of the rights Robert possessed as guardian of S.W., the State failed to establish probable cause to believe that S.W. was neglected. The Massachusetts Intake Report made clear that Robert and his wife arrived in Massachusetts to secure S.W. on the same day as respondent's arrest. Thus, although respondent could not care for S.W., the guardianship she put in place provided a responsible adult to care for S.W. Yet the court completely disregarded Robert as a potential placement, instead placing S.W. with her paternal aunt and uncle without so much as ordering DCFS to complete a home study. The State presented no evidence that S.W. was neglected—just that respondent failed to follow the court order. In its

oral ruling, the court applied the incorrect standard for removing S.W. by finding respondent and Robert made no reasonable efforts to eliminate the need for S.W.'s removal (even though Robert was not subject to the visitation order), when the standard requires the *State* to make reasonable efforts to prevent the removal of the child from the home. See 705 ILCS 405/2-10(2) (West 2016).

¶ 97 Throughout the proceedings, respondent was repeatedly referred to as a "fugitive" who "removed" S.W. from Illinois. Respondent, as S.W.'s sole parent, had every right to move wherever she chose, and no court order hindered this right. Respondent's undisputed testimony was that she left town due to ongoing resentment—and violence—against her following Steven's murder. Moreover, respondent's uncontradicted testimony demonstrates, although she admitted disregarding the trial court's visitation order, she was unaware there was a warrant for her arrest. Thus, referring to respondent as a "fugitive" who "removed" S.W. from Illinois is a mischaracterization of the evidence and those loaded terms demonstrate the bias against her. The court also improperly inserted itself into the proceedings in the role of an advocate on multiple occasions, often arguing with witnesses over testimony with which it disagreed. This continued into the dispositional hearing, where the court vigorously cross-examined and criticized Dr. Osgood. The court became defensive when Dr. Osgood expressed concerns over the structure of the questions it asked S.W. during two *in camera* interviews.

¶ 98 Obviously, this has been an ongoing, difficult matter that has garnered significant attention from the community and the media. Judges are human, and it appears the trial court has become invested in the outcome and can no longer view the case with a neutral eye. When that becomes the case, the court must be self-aware and make the choice to recuse itself from further

proceedings.

¶ 99 This case started out in family court and never should have left. The family court is equipped with options and the authority to avoid the trauma and often irreparable damage that can result when a child is removed from a parent's custody, while also ensuring the grandparents receive their rightful visitation. The family court is also equipped to sanction noncompliance with its orders through contempt proceedings.

¶ 100 For some reason, someone involved in this case made the decision to proceed under the Act. In the process, the trial court lost its ability to remain a neutral arbiter as the case became about punishing respondent, which resulted in devastating consequences for S.W. At every turn, the court failed to take advantage of the opportunity to fashion an order that would return this child to the only family she has ever known—either her guardian or respondent—while also allowing S.W. to establish and maintain a much-deserved relationship with her paternal family. Instead, we are now left with a situation where the court system has caused potentially irreparable damage to respondent's and S.W.'s relationship. By the time this case reached the dispositional phase, S.W. had been separated from her mother for nearly a year. This separation resulted in S.W. resenting respondent and destroying the close bond the two once shared. Thus, the court proceedings have accomplished the opposite of what the Act intended by failing to "serve the safety and moral, emotional, mental, and physical welfare" of S.W. and removing her from respondent when her safety and welfare did not require such removal. 705 ILCS 405/1-2(1) (West 2016).

¶ 101 I would therefore reverse the trial court's orders by concluding the court should have granted respondent's motion for a directed finding at the adjudicatory hearing.