2011 IL App (5th) 110063-U

NO. 5-11-0063

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

In re D.B., a Minor	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Jefferson County.
	)	
Petitioner-Appellee,	)	
	)	
v.	)	No. 10-JA-6
	)	
Christy B.,	)	Honorable
	)	David K. Overstreet,
Respondent-Appellant).	)	Judge, presiding.

PRESIDING JUSTICE CHAPMAN delivered the judgment of the court.
Justices Donovan and Wexstten concurred in the judgment.

O R D E R

¶ 1 *Held*: The trial court's finding that the mother was guilty of neglect was correct. The court's dispositional order determining the fitness of the parents, awarding guardianship to the father, and allowing the father to remove D.B. from the state must be vacated because the court failed to first make D.B. a ward of the court. The trial court's failure to award the mother visitation constitutes an abuse of discretion requiring that the dispositional order be reversed in part. The cause is remanded to the trial court for further hearings consistent with this order.

¶ 2 FACTS

¶ 3 This case began on the evening of February 18, 2010, when the mother's 14-year-old son, C.H., walked the one mile from their home to the Mt. Vernon police department to find out if his mother, Christy B., was in custody. She was not. A police officer, Matthew Gordon, attempted to contact Christy on her cell phone but was unsuccessful. Not knowing where Christy was and/or if she was coming home that evening, Officer Gordon began the

process of locating a relative to pick up C.H. and his two minor siblings, who were at the home. After contacting the children's grandmother, he and Captain Page, accompanied the minor boy home. While there, Christy called the cell phone of her 15-year-old daughter, A.B., to indicate that she was close to home. Captain Page took the phone and spoke with Christy. The officers waited until Christy returned sometime prior to midnight that evening. The officers attempted to ask Christy questions about her whereabouts and the reason she failed to notify the children about where she was, but Christy was uncooperative. Officer Gordon spoke with Christy that evening. He did not believe that she was under the influence of drugs or alcohol, so he left the minor boy, C.H. (14 years old), along with his older sister, A.B. (15 years old), and his younger sister, D.B. (11 years old), in Christy's care. Upon returning to the police station, Officer Gordon called the relative back to tell her that she need not come to Mt. Vernon to pick up the children. Then, Officer Gordon called the Department of Children and Family Services (DCFS) to report the incident in light of the fact that all three children were juveniles and none of them knew of Christy's whereabouts for an extended period of time.

¶ 4 Vanessa Shaw, a DCFS child protective investigator, testified at a September 3, 2010, adjudicatory hearing about the onset of DCFS involvement in this case. The next morning, Vanessa started her investigation of the hotline report of the night before. Vanessa went to the 11-year-old girl's school to interview her. During this interview, D.B. allegedly told Vanessa that her mother had done this several times before (leaving the children unsupervised) and specifically detailed one occasion weeks before when her mother was gone for the entire night, although during that night she kept in contact with the children by phone. D.B. also allegedly reported drug usage in the home involving the crunching up of pills and the use of crack cocaine. She described seeing a scale in her home and seeing her mother and an adult male use marijuana in the home. Vanessa Shaw then tracked down the

older two children, who were home from school and with their mother. She spoke with each child separately after informing Christy about the allegations. The 15-year-old girl, A.B., was described as being evasive about her mother's drug usage but stated that what her younger sister had said was likely true. The 14-year-old boy, C.H., told Vanessa that he believed that his mother was using drugs and that he thought the adult male referred to by his younger sister was probably a drug dealer because he had no job and always had a lot of cash. He also told Vanessa that there were a large number of people coming and going from the home–and specifically from his mother's bedroom. Vanessa Shaw spoke with Christy and described her as rude, argumentative, and uncooperative. Christy allegedly told Vanessa that she had used cocaine one week prior to the interview. Vanessa also testified that she asked Christy about this adult male, Tyrone Shannon, also known as Taco, referred to by all the children. Christy told her that the adult male was, in fact, a drug dealer but that he never sold drugs from her home. She also advised Vanessa that she had paid him $10 to watch her children the night before and that, overall, she had no problems with letting Taco watch her children. Drug services were offered, and Vanessa advised Christy that she wanted to get her involved with services designed to address her parenting skills because the children had been left unsupervised. Christy advised Vanessa that she had no such problems. Vanessa then contacted her supervisor, Diane Woods, to apprise her of Christy's unwillingness to take advantage of the offered services, and Diane made the decision to take the children into protective custody. On cross-examination, Vanessa acknowledged that she had no details about Christy's past cocaine usage and also had no knowledge about the whereabouts of the children during this alleged drug usage.

¶ 5 Officer Robert Brands also testified at this adjudicatory hearing. He is a Mt. Vernon police officer and he accompanied Vanessa Shaw to Christy's home on February 19, 2010. He testified that the 14-year-old boy told him that he thought Taco was dealing drugs from

their home and that he and his siblings frequently left the home to get away from the environment, staying with friends. He confirmed Vanessa's claim that Christy admitted to cocaine usage in the previous week, but he also admitted that he knew no details about this alleged usage. Officer Brands also testified that Christy knew that Taco dealt drugs but denied that he did so from her own home, and she further admitted that she left her children in Taco's care.

¶ 6 On February 23, 2010, the State filed its petition for an adjudication of wardship for all three children. In the petition relative to D.B., the State alleged that the minor child, who was under the age of 18, was neglected by being in an environment injurious to her welfare on the following three bases:

1. That Christy "failed to properly supervise the minor, in that she has left the minor in the home, on more than one occasion, for an extended period of time, when her whereabouts were unknown."
2. That Christy has drug usages issues, including issues with crack cocaine, that interfere with her ability to parent.
3. That Christy left D.B. "with an inappropriate caretaker, in that she has admitted that her paramour, Tyrone Shannon, is involved in the sale of illegal drugs."

The State asked the court to declare that the minors be made wards of the court. On that date, the shelter care hearing was held. The proposed temporary custody arrangement was with the maternal grandmother of the children, who lived in Nashville, Illinois. The court found that there was probable cause to believe that the minors were neglected on all three bases alleged and that it was a matter of immediate and urgent necessity that the minors be placed in shelter care for their protection. The court appointed DCFS as the temporary custodian of the minors with the power to place in accordance with the best interests of the minors.

¶ 7 On March 1, 2010, the court held a temporary custody hearing relative to D.B.'s biological father, James B. James B. traveled to the hearing from his North Carolina home. The court reiterated his rights in the proceeding and appointed an attorney to represent him. In the course of the hearing, James B. agreed to the court's order of February 23, 2010, but asked that some form of telephone contact/visitation be set up in light of the geographic distance between him and his daughter. The court agreed and this was added to the order.

¶ 8 At a hearing on March 22, 2010, representatives on behalf of DCFS outlined the status of the case. Visitation between the children and their biological fathers had begun on an unsupervised basis. The service plan had not yet been created. The DCFS representative advised the court that James B. wanted to have his daughter, D.B., placed with him in North Carolina. The attorney appointed for James B. advised the court that less than one year before, D.B. had lived with her father in North Carolina and that, since her move to Illinois, she had spoken with her father by phone on a daily basis. James B.'s attorney asked the court to close D.B.'s case and allow her to be taken back to North Carolina with him. Christy B. objected to this request. Instead of granting the request, the court entered an order to involve a Court Appointed Special Advocate (CASA) for the children.

¶ 9 On July 2, 2010, the court held a hearing that was supposed to have been an agreement on adjudication. Christy was agreeing to findings of neglect relative to drug usage, with a proposed dispositional order that would grant custody and guardianship back with her. James B. would not agree. Upon James's refusal to agree to the proposal, Christy B. withdrew her agreement regarding an adjudication of neglect.

¶ 10 Adjudicatory Hearing

¶ 11 The adjudicatory hearing in this case was held on September 3, 2010. In addition to the testimony of DCFS worker Vanessa Shaw and Mt. Vernon police officer Robert Brands, the court heard testimony from Officer Matthew Gordon, Christy B., her three minor

children, and her next-door neighbor.

¶ 12 Officer Gordon testified that on the night of February 18, 2010, at about 10 p.m., a minor boy walked into the station. C.H. advised the officers that he was looking for his mother, whom he had not seen since that morning when he left for school. C.H. told the officers that when he got home from school, Tyrone Shannon was at the home. From the police station, an officer attempted to telephone Christy without success. Officer Gordon went to Christy's home with the intent of getting Christy's children and bringing them back to the station until their grandmother arrived. When Officer Gordon arrived with C.H. at Christy's home on February 18, 2010, A.B., another female juvenile, and an adult male were present in the home. The adult male present in the home was not Tyrone Shannon. Officer Gordon did not note who this person was but knows that he denied being there in the capacity of a babysitter. Upon Christy's arrival home, Officer Gordon sought answers about the events of the day. Christy was defensive when asked about why she had not contacted her children or left them a note advising them of her whereabouts that date.

¶ 13 Charity Becker, the next-door neighbor to Christy, was called to testify at the hearing. She has two children–ages 8 and 6. She testified that the residences were a mere three windows apart from each other and that she kept watch on the events in the housing complex where she lived because she had her two small children in her care. Her involvement with Christy's children on February 18, 2010, began at about 6 p.m. when the youngest child arrived home from her after-school care program. D.B., the youngest of Christy's children, came over after she got home, to ask Charity if she knew where her mother was. Charity told her that she did not know her mother's whereabouts, and D.B. just stayed at her home to play with her two children–something that she routinely did. Throughout the evening, Charity attempted to contact Christy by calling and texting her cell phone, but the cell phone appeared to be turned off. At about 9 p.m., when Christy still was not home and had not

made contact with her children–something that Charity described as being out of character for Christy–she called the sheriff's department to see if they were holding Christy. The sheriff's department told Charity that they did have Christy in custody (this information turned out to be incorrect). D.B. was continuously in the care of Charity from 6 p.m., upon her arrival home from school, throughout the evening. Charity testified that she had never seen Christy use illegal drugs. She explained that she knew who Taco was and that she had seen him only one time at Christy's home. She testified that she had never seen Taco in the possession of illegal drugs.

¶ 14 The 14-year-old son, C.H., testified at the adjudicatory hearing that he went to the police station late in the evening of February 18, 2010, looking for his mother. He denied that his mother was involved in a relationship with Taco. He acknowledged that on occasion Taco watched them in the home and that Taco was supposed to be watching them the night at issue but that he left. About speaking with Vanessa Shaw of DCFS, C.H. testified that he informed her that this was the first time that they had been completely left alone and that he denied any knowledge of drug use on the part of his mother. He admitted telling Vanessa that he thought Taco dealt drugs. He testified that he had seen a black digital scale in the kitchen on the table but that there were no drugs on the scale.

¶ 15 The 15-year-old daughter, A.B., testified at the adjudicatory hearing that she had never seen her mother use illegal drugs and that Taco had been around their home "every once in a while," and she stated, "[B]ut he's not [her] mom's boyfriend." She testified that she had never seen Taco with illegal drugs and had never seen him sell illegal drugs.

¶ 16 D.B. testified at the hearing that she was over at the neighbor's residence after school on February 18, 2010, and that after some time, the neighbor got worried because no one knew where her mother was, and so they called the police station and were told that they had her mother in custody. D.B. testified that her mother is usually home when she gets home

from school. Her mother leaves the home from time to time to go to the store. Her older sister, A.B., watches her when her mother is away for short periods of time. She acknowledged speaking with Vanessa Shaw of DCFS the next day at her school about what had happened the night before. D.B. testified that she told Vanessa Shaw that she had never seen her mother use drugs but believed that she was doing "something," because she witnessed her mother "leave and then come back." D.B. testified that Taco was her friend and that he came over to the house once in awhile. She denied that he was ever at the home on February 18, 2010, from the time that she got home from school. She testified that he babysat her a couple of times for approximately 30-minute periods of time.

¶ 17 Christy testified that on the morning of February 18, 2010, after the children were at school for the day, Christy was contacted by a friend of hers, Tony Smith, who asked if Christy wanted to go with him and his fiancée, Tammy, to the mall in Fairview Heights. They drove over and picked Christy up. Christy planned to be home by 6 p.m. when her youngest arrived home from the after-school care program. They did not leave immediately for Fairview Heights but made a few stops around Mt. Vernon before departing. Christy estimated that the actual departure time was sometime after 11 a.m. Christy testified that just before the O'Fallon exit, Tony's vehicle broke down with what was determined to be radiator troubles. Tony walked up the exit ramp to a convenience store, where he called a mechanic friend of his, who told Tony that he would get there to help them as soon as possible. According to Christy's testimony, the "as soon as possible" did not occur until after 8 p.m. Christy testified that her cell phone was not fully charged and that when she tried to call her older two children at around 4 p.m. when they should be home from school, she discovered that the phone was dead. Then, after Tony's mechanic friend arrived bearing six gallon jugs of water, they proceeded to drive very slowly back to Mt. Vernon, stopping periodically to add more water to the radiator. Neither Tony nor his fiancée Tammy had cell phones. The

first stop that the car made at a location where there was a phone was the call Christy made to her daughter, A.B., just minutes before arriving home when they were back in Mt. Vernon.

¶ 18 Christy testified that she very seldom was not with her children but that in those cases, she always had someone watch them, oftentimes her neighbor Charity. On some occasions, A.B., the 15-year-old daughter, would babysit D.B. for brief periods of time. She testified that she was not romantically involved with Taco but that she met him at a store, that he had a son, and that he would come to her home from time to time and the children would play video games together. She testified that she felt comfortable in leaving her children under Taco's supervision if she had to run across the street to the convenience store but that, otherwise, she did not let Taco babysit the children. Regarding Taco's history of selling drugs, Christy testified that Officer Brands asked her if Taco was a drug dealer and if Taco sold drugs in her home, and she denied that he did.

¶ 19 Regarding her own drug usage history, Christy acknowledged a history of prescription drug abuse that started out with legal prescriptions for pain associated with a burn injury in 1999 and culminated in a 2007 self-admission to a hospital for treatment of her addiction issues. Her specific addiction problem was to OxyContin. Since then, she has received alternate narcotic prescriptions when seen at the emergency room for issues related to the original burn injury. Christy disputed the testimony of Vanessa Shaw and Officer Gordon that she admitted to crack cocaine usage sometime during the week before February 19, 2010. She testified that she told them she had used cocaine but that her past usage was when she was 16 years of age.

¶ 20 At the conclusion of the hearing, the court stated on the record that he did not find the testimony of Christy B. to be credible regarding the events surrounding the failed trip to Fairview Heights and the inability to call her children that day to inform them of her whereabouts. The court made a finding based upon what the children told Vanessa Shaw the

day after the incident: "[A]lthough there was [*sic*] no other incidents that went into quite the detail that we had heard about today, that was testified to today, that this was not the first that Christy had left the kids for extended periods of time with her whereabouts unknown." The court commented that he found it quite odd that the first place her neighbor Charity would call in trying to locate Christy was the police department. The court found that the testimony of Vanessa Shaw and Officer Brands to be credible on the basis that Christy had used crack cocaine just one week before the interview. The court found that it did not matter whether or not she had used crack cocaine on the day of the incident but that she had exercised extremely poor judgment. "And the court finds that with her crack cocaine use, it, yeah, that affects her judgment. It affected her judgment on February 18, whether she was on it that day or not." Regarding the adult male, Taco, the court specifically found that one of the children corroborated the testimony of Vanessa Shaw and Officer Brands that Christy had told them about Taco's drug usage and sales. The court felt that all three children were trying to protect their mother in their testimony that date in court.

¶ 21 The court concluded that the State had met its burden by the preponderance of the evidence that the children were neglected on all three bases–failure to supervise, drug usage, and leaving the children with an inappropriate caretaker.

¶ 22 Dispositional Hearing

¶ 23 The dispositional hearing was held on January 14, 2011. At the hearing, the court heard testimony from Christy, both biological fathers, and the caseworkers relative to Christy's compliance with the service plans.

¶ 24 Rachel Kissner, employed by Catholic Social Services as a foster care case manager, became involved in this case in March 2010. Service plans were prepared for all the biological parents of the three children, the spouses of the biological fathers, and for all three children.

¶ 25 The date of the first service plan was March 30, 2010. Pursuant to this service plan, Christy was to complete parenting and domestic violence education classes, undergo separate psychiatric and mental health assessments and obtain any recommended mental health treatment, obtain substance abuse treatment, participate in ongoing drug screening, obtain appropriate housing, and obtain employment. Christy completed the psychiatric and mental health assessments with no recommendations for treatment or care. She completed a parenting class. She obtained employment that began in December 2010. Housing was in place and was deemed adequate. Christy began receiving substance abuse treatment but was discharged from the program due to an absence in excess of 30 days during a time period in which she returned to North Carolina to look for housing. On May 28, 2010, Christy tested positive for cocaine and opiates. On June 11, 2010, Christy tested positive on a drug screen for opiates and benzodiazepine–drugs for which she had no current valid prescription, and on August 2010, she was unable to pay for the drug screen and so did not comply with the agency's drug test request. While she was in the Jefferson County drug abuse treatment program, she was being tested for drugs as a part of the program, but upon being discharged from the program for absences, she was no longer able to get screening through them and so became a private pay screen applicant.

¶ 26 With respect to the issues that brought her into the DCFS system, Rachel testified that the substance abuse issue had not been adequately dealt with and should be before the children were returned to her care. As to James B., D.B.'s father, Rachel testified that he complied with the interstate compact, which was necessary in order to have D.B. placed with him. On the date of the hearing, the interstate compact was only valid for one additional month. Rachel indicated that there was no reason, in her opinion, that D.B. should not be placed with James B., but she still recommended that the three children remain together with their maternal grandmother in light of the requests of all three children that they remain intact

as a unit.

¶ 27 Barbara Lawrence, the court-appointed CASA advocate for Christy B.'s three children, also testified at this hearing. She became involved with the children in May 2010. She testified to the multiple times she interacted with the children since that appointment and about their wishes about placement. The three children all wanted to stay with Christy B. and, most of all, with each other. Despite the fact that Christy failed to complete her drug abuse recommended course of care pursuant to the service plan, Barbara testified that she believed that all three children should be returned to Christy's care. She testified that the children needed stability–that they needed to be home.

¶ 28 Christy B. testified that she was not currently using drugs, that she was employed, that she was engaged to a gainfully employed man, and that she was willing to do anything necessary to complete the service plans. She explained that she had no idea that there was a time frame associated with continued participation in the drug abuse program, and so when she informed Catholic Social Services that she ultimately intended to relocate with the children back to North Carolina and that she was traveling there to locate housing, she erroneously thought that there would not be any problems with her service plan.

¶ 29 James B. testified that he was employed in the automobile sales industry and had been so employed for the last 24 years. As of the date of the hearing, he was the Internet sales manager for a Dodge dealership in North Carolina. He expressed his desire to be awarded custody of D.B.

¶ 30 All three children were interviewed by the judge *in camera*, and all three children expressed their specific preference to return to living with their mother, who was described as "amazing." All three separately told the judge that she spent approximately five hours each and every day with them, which was all that was allowed by DCFS as visitation. C.H. said that he essentially had no relationship with his father. A.B. said that her relationship

with her father improved recently and that while he was nice, she truly wanted to live with her mother. D.B. told the judge that while she loved her father, she preferred living with her mother and her siblings.

¶ 31 In closing, the guardian *ad litem* for the children asked the court to maintain custody and guardianship with DCFS with the recommendation that placement with the maternal grandmother stay in place. This would keep the children together.

¶ 32 Following the hearing, the court noted that while reasonable reunification efforts had been made, "they have **not eliminated** the necessity for removal of the minor from the home." (Emphasis in original.) The court found that the service plan was appropriate and that the permanency goal was appropriate. The court granted the petition finding that Christy B. was unfit. The court concluded that the father of A.B and C.H. was fit and willing but not yet able to be awarded custody and guardianship of the two older children, and so the court maintained custody and guardianship with DCFS and placement with their maternal grandmother. Regarding D.B., the court concluded that her father was fit, willing, and able to be awarded custody and guardianship. Accordingly, the court discharged DCFS's guardianship and awarded the custody of D.B. to her father, James B., effective on that date. The exchange was scheduled for the following day, after which D.B. traveled back to North Carolina with her father. No visitation was allowed.

¶ 33 From that portion of the order related to D.B., Christy appeals.

¶ 34 ISSUES AND ANALYSIS

¶ 35 Christy argues that the trial court's finding of neglect for an injurious environment based upon each of the three bases alleged by the State in its petition for adjudication is contrary to the manifest weight of the evidence. She also argues that the trial court's dispositional order was erroneous. We will address each issue individually.

¶ 36 Finding of Neglect Based Upon Injurious Environment

¶ 37 A minor is considered "neglected" if the minor is in an environment that "is injurious to his or her welfare." 705 ILCS 405/2-3(1)(b) (West 2008). The term "injurious environment" has no set definition, but derives its meaning from the facts of each individual case. *In re K.L.S-P.*, 383 Ill. App. 3d 287, 292, 891 N.E.2d 946, 950 (2008). At the adjudicatory hearing, the only issue is whether the minor is abused, neglected, or dependent. 705 ILCS 405/2-18(1) (West 2008). The State bears the burden of proving that the minor is neglected by the preponderance of the evidence. *In re R.S.*, 382 Ill. App. 3d 453, 459, 888 N.E.2d 542, 548 (2008).

¶ 38 After hearing the evidence presented at an adjudicatory hearing, if the trial court determines that the minor is neglected, "the court shall then determine and put in writing the factual basis supporting that determination, and specify, to the extent possible, the acts or omissions or both *** that form the basis of the court's findings." 705 ILCS 405/2-21(1) (West 2008). "That finding shall appear in the order of the court." *Id.*

¶ 39 On appeal from a trial court's determination that a minor is neglected, the appellate court will not reverse the ruling unless it is contrary to the manifest weight of the evidence. *In re R.S.*, 382 Ill. App. 3d at 459, 888 N.E.2d at 548-49. A finding is considered to be contrary to the manifest weight of the evidence if the opposite conclusion is clearly evident. *Id.* at 459, 888 N.E.2d at 549. Because of the sensitive nature of these cases, a trial court has wide discretion to determine whether or not the minor is neglected.

¶ 40 The Juvenile Court Act of 1987 (Juvenile Court Act) provides an exception to the general hearsay rule for the admission of statements made outside of court by minors if those statements pertain to neglect. *In re R.M.*, 307 Ill. App. 3d 541, 549, 718 N.E.2d 550, 555 (1999). "However, no such statement, if uncorroborated and not subject to cross-examination, shall be sufficient in itself to support a finding of abuse or neglect." 705 ILCS

405/2-18(4)(c) (West 2008). Therefore, the State must have some evidentiary proof in addition to the minor's out-of-court statement–some evidence that makes it more probable that the minor was neglected. *In re R.S.*, 382 Ill. App. 3d at 459-60, 888 N.E.2d at 549; *In re R.M.*, 307 Ill. App. 3d at 549, 718 N.E.2d at 555-56.

¶ 41 A. Failure to Supervise

¶ 42 A neglected minor is statutorily defined to include "any minor under the age of 14 years whose parent *** leaves the minor without supervision for an unreasonable period of time without regard for the mental or physical health, safety, or welfare of that minor." 705 ILCS 405/2-3(1)(d) (West 2008). When a court is presented with the allegation that a minor is neglected for being left unsupervised for an unreasonable period of time, the court must consider the following factors:

> "(1) the age of the minor;
>
> (2) the number of minors left at the location;
>
> (3) special needs of the minor, including whether the minor is physically or mentally handicapped, or otherwise in need of ongoing prescribed medical treatment such as periodic doses of insulin or other medications;
>
> (4) the duration of time in which the minor was left without supervision;
>
> (5) the condition and location of the place where the minor was left without supervision;
>
> (6) the time of day or night when the minor was left without supervision;
>
> (7) the weather conditions, including whether the minor was left in a location with adequate protection from the natural elements such as adequate heat or light;
>
> (8) the location of the parent or guardian at the time the minor was left without supervision, the physical distance the minor was from the parent or guardian at the time the minor was without supervision;

(9) whether the minor's movement was restricted, or the minor was otherwise locked within a room or other structure;

(10) whether the minor was given a phone number of a person or location to call in the event of an emergency and whether the minor was capable of making an emergency call;

(11) whether there was food and other provision left for the minor;

(12) whether any of the conduct is attributable to economic hardship or illness and the parent, guardian or other person having physical custody or control of the child made a good faith effort to provide for the health and safety of the minor;

(13) the age and physical and mental capabilities of the person or persons who provided supervision for the minor;

(14) whether the minor was left under the supervision of another person;

(15) any other factor that would endanger the health and safety of that particular minor." 705 ILCS 405/2-3(1) (West 2008).

¶ 43 In this case, the court's written adjudicatory order states that the minor is neglected by being in an injurious environment due to "inadequate shelter." We agree with the attorneys that shelter was not at issue but was a simple word-choice error and that the court intended to find that Christy B. provided inadequate supervision. No other facts are listed in support of this particular finding of neglect, other than "inadequate supervision." The trial court's oral pronouncement of the order did, however, expound upon this decision. The court indicated its disbelief in Christy's testimony about the timing of the events related to the breakdown of her friend's vehicle and their return trip to Mt. Vernon.

¶ 44 While it is true that Christy B. left Mt. Vernon on February 18, 2010, without a set plan of coverage for her children if she did not arrive home as scheduled, the problem with the conclusion that D.B. was inadequately supervised is that D.B. was never without

supervision. She arrived home from school after 6 p.m. that evening and found her 14-year-old brother and 15-year-old sister in the home. Both of these children were at an age where children can be left without supervision and certainly at an age that would be appropriate to babysit their 11-year-old sister. D.B. immediately went next door to the neighbor's home, where she stayed until police arrived, and then her mother arrived home. There was no testimony or other evidence that D.B. was without adult supervision that evening. The court bolstered its finding that D.B. was neglected for a failure to supervise by stating that February 18, 2010, was not the first time that D.B. had been left for extended periods of time without supervision. However, the only evidence of this fact was the alleged hearsay statement of D.B. to Vanessa Shaw on February 19, 2010. D.B. did not repeat this claim in court. The other two children did not make this claim. Christy did not testify that she had left the children unsupervised before. Christy's neighbor Charity did not provide information to the contrary. In fact, Charity testified that it was out of character for Christy to have not left information about her whereabouts or made contact by phone.

¶ 45 While ordinarily D.B.'s out-of-court statement to Vanessa Shaw would be inadmissible hearsay, the Juvenile Court Act allows the admission of those statements by the minor if they relate to the neglect. 705 ILCS 405/2-18(4)(c) (West 2008). But the out-of-court statements must be corroborated by another source, and in this case, the statements made by D.B. were not corroborated. *Id.*

¶ 46 To the extent that C.H. and A.B. were left unsupervised for approximately six hours on February 18, 2010, we conclude that this fact does not establish Christy B.'s alleged neglect of D.B. C.H. was 14 years old on that date, and his sister, A.B., was 15 years old on that date, and as stated earlier, both children were old enough to remain alone for periods of time. In addition to the fact that the statute defining a "neglected minor" in a failure-to-supervise situation defines the minor as having to be under the age of 14 (705 ILCS 405/2-

3(1)(d) (West 2008)), the Illinois Child Curfew Act, which applies to minors under 17, allows 14- and 15-year-old minors to be outside of the home until 11 p.m. on Sundays through Thursdays. 720 ILCS 555/1(a)(1)(C) (West 2008).

¶ 47 We conclude that the court's finding that Christy B. was guilty of the neglect of D.B. for a failure to supervise is contrary to the manifest weight of the evidence.

¶ 48 B. Mother's Drug Usage

¶ 49 The trial court's finding of neglect was also based upon the mother's drug usage. The written order contained no facts in support, simply stating, "[M]other's drug usage intervenes with ability to parent." Verbally, the court stated that it found the testimony of Vanessa Shaw and Officer Brands to be more credible than that offered by Christy B. We turn to that testimony.

¶ 50 Both Vanessa Shaw and Officer Brands testified that on February 19, 2010, Christy B. admitted cocaine use within one week prior to that interview. Christy B. testified at court that she told Vanessa and Officer Brands that she had used cocaine before–but not within the past week. She admitted to a drug addiction to OxyContin, a narcotic. She admitted to taking Vicodin in the week prior to the interview, but she had a legal prescription for that narcotic.

¶ 51 At the adjudicatory hearing, none of the minors or their neighbor Charity provided the court with information that verified Christy B.'s alleged drug usage. D.B. testified that she never saw her mother use drugs. C.H. testified that he had no knowledge that his mother had a problem with drugs. A.B. testified that she never saw her mother use drugs.

¶ 52 The minor children did, however, tell a different story about their mother's drug usage, when they were initially interviewed on February 19, 2010. D.B. displayed a significant illegal drug knowledge during this interview, advising Vanessa Shaw that she saw her mother crushing pill and using marijuana and crack cocaine. She also reported the presence of a

scale in the home–an item commonly used in the sale of drugs. C.H. told Vanessa that he believed that his mother was using drugs. A.B. did not provide any details of drug usage but admitted to Vanessa that what D.B. had told her was probably true. At the trial, C.H. confirmed the presence of the scale in the home.

¶ 53 The State more than met its burden to prove that D.B. was neglected due to Christy's drug usage. While Christy denied recent cocaine usage, two witnesses testified that she said otherwise. D.B. initially claimed that her mother used crack cocaine. C.H. said that he believed that his mother was using drugs, and A.B. admitted that the drug usage detailed by D.B. was probably true. Additionally, Christy admitted to a narcotics drug addiction and yet continues to seek out and take narcotics prescription drugs. Given this evidence, we are not able to say that the trial court's finding that Christy's drug usage supported a finding of neglect was contrary to the manifest weight of the evidence.

¶ 54 C. Inappropriate Caretaker

¶ 55 The third basis of an injurious environment warranting a finding of neglect involved Christy B.'s friend, Tyrone Shannon, who is known by the nickname Taco. The written adjudicatory order states that he was an "[i]nappropriate caretaker" and further stated, "[M]other's paramour involved in sale of illegal drugs."

¶ 56 First, we note that there was no evidence that Tyrone Shannon was Christy B.'s paramour. In fact, all the testimony about that issue was that they were not so involved. However, proof of the allegation that he was Christy B.'s paramour is not critical. Most importantly, the State was required to prove that Tyrone Shannon was a caretaker of the children and that he was involved in the sale of illegal drugs.

¶ 57 While the record fails to establish that Tyrone Shannon was ever a regular caretaker of the children, the testimony was consistent at the adjudicatory hearing that Tyrone Shannon occasionally watched over the children for very brief periods of time. Christy originally told

Vanessa and Officer Brands that she paid him $10 on February 18, 2010, to watch her children. C.H. advised Vanessa that Taco was there when he got home from school on that date but that he later left.

¶ 58 Vanessa Shaw testified at the adjudicatory hearing that upon questioning, Christy admitted that she knew that Taco was a drug dealer but emphasized that he did not sell drugs out of her home but that he sold drugs from another home across town. Christy B. acknowledges that when Officer Brands suggested to her that Tyrone Shannon sold illegal drugs, she denied knowledge of that but said that if he was doing so, he certainly was not selling drugs from her home. Officer Brands testified that both A.B. and C.H. told him that they believed that Taco was selling drugs.

¶ 59 The State bore the burden to prove that Tyrone Shannon was an inappropriate caregiver due to his involvement with the sale of illegal drugs. We find that the evidence supported this allegation. Consequently, we find that the trial court's order finding that Christy B. was guilty of neglect on this basis was not contrary to the manifest weight of the evidence.

¶ 60 Dispositional Hearing

¶ 61 On January 14, 2011, the trial court held the dispositional hearing and, at its conclusion, ruled that Christy B. was an unfit parent.

¶ 62 In a dispositional hearing, the State bears the burden of proving that a parent is unfit by clear and convincing evidence. *In re A.M.*, 358 Ill. App. 3d 247, 252, 831 N.E.2d 648, 653 (2005). On appeal from a trial court's finding that a parent is "unfit," the reviewing court gives that finding great deference. *In re M.A.*, 325 Ill. App. 3d 387, 390, 757 N.E.2d 613, 617 (2001). We will not overturn a finding of unfitness unless the finding is contrary to the manifest weight of the evidence "and the record clearly demonstrates [that] the opposite result is the only proper one." *In re M.A.*, 325 Ill. App. 3d at 390, 757 N.E.2d at 617; *In re*

G.W., 357 Ill. App. 3d 1058, 1059, 830 N.E.2d 850, 852 (2005). Because the trial judge saw and heard the witnesses, the appellate court will not reweigh the evidence or reassess the witnesses' credibility. *In re M.A.*, 325 Ill. App. 3d at 391, 757 N.E.2d at 617.

¶ 63 In ruling that Christy was unfit, the trial court stated as follows:

> "[T]his case started as a result of–of neglect and substance abuse issues and mother *** has addressed many of these issues and she's been visiting with the children. But I am troubled by the substance abuse issue not being adequately addressed ***."

¶ 64 While we are aware, as was the trial court, that Christy B. had complied with virtually all the aspects of the DCFS service plan, she failed to complete the requirement relative to her drug addiction issues. Christy admitted that she was a narcotics addict for which she sought in-patient care at one point in her life. She complains that she did not know that if she missed meetings or classes with the drug program in which she was enrolled through DCFS she would be expelled from the program. She was expelled from the program because of absenteeism when she traveled to and stayed in North Carolina while looking for housing. The trial court heard evidence that prior to leaving Illinois for North Carolina and while she was still in the drug addiction program Christy failed the only two drug tests that she had been given. Her first failure was on May 28, 2010. Christy tested positive for both cocaine and opiates. On June 11, 2010, Christy tested positive for opiates and benzodiazepines. Christy did not have valid prescriptions for any of the drugs for which she tested positive. In August 2010, upon her return from North Carolina, she was asked to submit to another drug test, which she refused because she did not have the money to pay for the test.

¶ 65 Rachel Kissner testified on behalf of DCFS at the dispositional hearing that Christy had not adequately addressed her drug abuse problems. The CASA advocate also felt that Christy had not adequately addressed her drug abuse problems. The GAL felt that the

children should not yet be returned to Christy because she had not yet remedied the issues that led to the removal of the children from her care.

¶ 66 The trial court must make a subjective determination that the parent's efforts to correct the conditions that were the basis for the removal were reasonable. *In re M.F.*, 304 Ill. App. 3d 236, 238-39, 710 N.E.2d 519, 522 (1999). The reasonableness of the progress made by the parent is objectively connected to the amount of movement made by the parent towards the goal of reunification. *In re V.O.*, 284 Ill. App. 3d 686, 690, 673 N.E.2d 439, 442 (1996).

¶ 67 We agree with the court's assessment that D.B. should not be returned to Christy's care because she had failed to adequately address all the reasons that led to the removal of the children from her care.

¶ 68 Christy asks us to review that aspect of the dispositional order that discharged DCFS as D.B.'s guardian, established her biological father as guardian, and further allowed the biological father to remove D.B. from the state. Christy cites no case law supporting her arguments, and she relies solely upon section 2-23(1) of the Juvenile Court Act (705 ILCS 405/2-23(1) (West 2008)), which mandates that the minor must be made a ward of the court in order for the court to award custody to a parent.

¶ 69 The statutory section cited by Christy governs what types of dispositional orders can be entered "in respect of wards of the court." 705 ILCS 405/2-23(1) (West 2008). A minor determined to be neglected may by dispositional order "be (1) continued in the custody of his or her parents, guardian or legal custodian; (2) placed in accordance with Section 2-27 [(upon a finding that the parents, guardian, or custodian of a minor is unfit, the minor can be placed with a suitable relative or other person, with a probation officer, with an agency for care or placement, or with DCFS)]; (3) restored to the custody of the parent, parents, guardian, or legal custodian, provided the court shall order the parent, parents, guardian, or legal

custodian to cooperate with the Department of Children and Family Services and comply with the terms of an after-care plan or risk the loss of custody of the child and the possible termination of their parental rights; or (4) ordered partially or completely emancipated in accordance with the provisions of the Emancipation of Minors Act." 705 ILCS 405/2-23(1)(a) (West 2008). The express wording of the statute requires that in order to be restored to a parent's custody, first, that minor must be made a ward of the court.

¶ 70 In the dispositional order at issue in this case, the court determined that D.B. was a neglected minor but determined not to make D.B. a ward of the court. The court found Christy B. to be an unfit parent but did not terminate her parental rights. The court found that James B. was not only a fit parent but ready and willing to care for D.B. In making this assessment, the court noted that D.B. had lived with her father throughout her parents' marriage and for one year up until Mother's Day 2009, when Christy B. took D.B. for agreed-to visitation, did not return D.B. to her father, and moved to Illinois. Despite D.B.'s request that she be allowed to remain with her older brother and sister and be returned to her mother's care, the trial court concluded that awarding guardianship to James B. was within D.B.'s best interests.

¶ 71 Based on the testimony of the father, it appears that the parties divorced in North Carolina. The divorce was a default divorce, and therefore the judgment did not address custody, visitation, and child support issues. However, Christy and James informally had an arrangement in place. D.B. lived with James. Despite this fact, James paid a monthly amount of money to Christy as child support. Visitation was scheduled. Until Mother's Day 2009, this arrangement worked. On that date, Christy B. exercised visitation with D.B. but never returned her to James's care. In less than one year from the date that Christy took D.B. to Illinois, this DCFS inquiry had begun. Because the North Carolina divorce judgment did not address custody, both Christy B. and James B. were legal guardians of D.B.

¶ 72 The State reminds us that biological parents have a superior right to custody. *In re Edward T.*, 343 Ill. App. 3d 778, 799, 799 N.E.2d 304, 321 (2003); *In re Terrell L.*, 368 Ill. App. 3d 1041, 1051, 859 N.E.2d 113, 123 (2006). The State urges us to consider and follow the analysis of the case of *In re C.L.*, 384 Ill. App. 3d 689, 894 N.E. 2d 949 (2008), as largely analogous to this case. In *In re C.L.*, both parents lived in Illinois. *Id.*, at 690, 894 N.E.2d at 951. The mother had five children, only two of which were biologically those of Benjamin L. *Id.*, at 690, 894 N.E.2d at 950. The parents were divorced, but matters of custody and visitation remained open in that case. *Id.* at 690, 894 N.E.2d at 951. Following a shelter care hearing, the court placed the children in the temporary custody of their maternal grandmother. *Id.* at 691, 894 N.E.2d at 951. The biological father of these two children petitioned the court to vacate that aspect of the shelter care order and return the children to his care. *Id.* The mother filed an answer to the adjudicatory petition in which she stipulated that the State could prove the allegations of the petition asserting that the children were neglected. *Id.* at 692, 894 N.E.2d at 952. The court adjudged the children to be neglected. *Id.* Although the date is not specified in the opinion, at some point these two children were placed in their father's care. At the dispositional hearing, the court pronounced that the biological father of these two children was fit and that it was closing their cases, and the court made the other three children wards of the court. *Id.* at 693, 894 N.E.2d at 953. Upon closing the case, the county in which the divorce case remained open would thereafter have to determine the issues of custody and visitation. *Id.* at 695, 894 N.E.2d at 955. The mother appealed that portion of the dispositional order that awarded guardianship of the children to their father and did not make them wards of the court. *Id.*

¶ 73 The appellate court analyzed the relevant statutory provisions of the Juvenile Court Act and concluded that after the court determines that a child is neglected and moves to the dispositional hearing, before the court can find that a parent is unfit, the court must determine

that it is in the minor's best interests to make the minor a ward of the court. *Id.* at 693, 894 N.E. 2d at 953 (citing 705 ILCS 405/2-27(1)(a) (West 2006)). "The juvenile court judge is not required to make every child a ward of the court based on the State's petition, but must selectively designate children to become wards of the court who otherwise do not have a parent or parents who will act in the best interests of the children without some degree of court intervention." *In re C.L.*, 384 Ill. App. 3d at 695, 894 N.E.2d at 954.

¶ 74 The appellate court determined that since both parents were legal guardians of these two children, it was not necessary to designate one parent or the other as the guardian. *Id.* at 696, 894 N.E.2d at 955-56. "In fact, without designating the minors to be wards of the court, the judge could not name a guardian." *Id.* at 696, 894 N.E.2d at 956. Dispositional orders are "statutorily predicated upon the court first making the minors wards of the court." *Id.* at 697, 894 N.E.2d at 956 (citing 705 ILCS 405/2-23(1), 2-27(1) (West 2006)). Similarly, the court concluded that the trial court could not make a finding of unfitness regarding the mother unless the minors were first made wards of the court. *In re C.L.*, 384 Ill. App. 3d at 697, 894 N.E. 2d at 956. The court then vacated those portions of the dispositional order finding her to be unfit and finding the father fit, as well as granting guardianship to the father. *Id.* The court affirmed the court's order closing the cases regarding the two children and vacated the portions of the order finding the mother unfit and granting guardianship to the father. *Id.* at 698, 894 N.E.2d at 956.

¶ 75 While in many respects *In re C.L.* is factually analogous to this case, there is, however, a critical distinction that dictates a different outcome in the case before us. Sometime prior to the dispositional hearing in *In re C.L.*, the court altered the shelter care order transferring temporary custody from the grandmother and placing the children in the care of their father. *Id.* at 691, 894 N.E.2d at 951. On appeal, the court found that because the circuit court did not first make the children wards of the court, it exceeded its statutory

authority under section 2-23 of the Juvenile Court Act (705 ILCS 405/2-23 (West 2006)) when it made fitness determinations of both parents and granted guardianship to the father. *In re C.L.*, 384 Ill. App. 3d at 696-97, 894 N.E.2d at 956. However, the appellate court affirmed the trial court's decision to close the juvenile cases. Consequently, the children remained in the physical custody of the father, their natural guardian. The court concluded that custody could be determined in the open divorce court case.

¶ 76 What compels a different outcome in this case is that at the time of the dispositional hearing, the custody of D.B. remained with her grandmother pursuant to a DCFS custody plan. As in *In re C.L.*, the trial court lacked authority to make dispositional decisions which by statute must be predicated upon the court's first having made the minors wards of the court. Like *In re C.L.*, the trial court exceeded its statutory authority when it made fitness determinations of both parents and granted guardianship to the father. Unlike *In re C.L.*, because the grandmother had temporary custody at the time of the dispositional hearing, in an attempt to effectuate its intent to place D.B. in the care of her father, the court made an award of custody to the father. Despite the father being a natural guardian, section 2-23(1)(a) of the Juvenile Court Act (705 ILCS 405/2-23(1)(a) (West 2008)) does not allow for a custody determination unless the minor is first made a ward of the court.

¶ 77 Under the Juvenile Court Act, a judge can only choose among the dispositional alternatives provided in the statute and cannot exceed the statutory authority " 'no matter how desirable or beneficial the attempted innovation might be.' " *In re P.F.*, 265 Ill. App. 3d 1092, 1104, 638 N.E.2d 716, 725 (1994) (quoting *In re Peak*, 59 Ill. App. 3d 548, 551-52, 375 N.E.2d 862, 865 (1978)).

¶ 78 "Dispositional orders that are not authorized by statute are void and must be vacated." *In re C.L.*, 384 Ill. App. 3d at 697, 894 N.E.2d at 956.

¶ 79 Christy B. also contends that the trial court's dispositional order is flawed in that there

was no visitation order entered. Section 2-23(3) of the Juvenile Court Act provides that the "court also shall enter any other orders necessary to fulfill the service plan, including, but not limited to, *** visiting orders." 705 ILCS 405/2-23(3) (West 2008). Unlike subsection (1), the court is not required to make the minor a ward of the court in order to enter an order directing visitation between the minor and the parent. A part of the service plan about which testimony was heard at the dispositional hearing involved DCFS's directive on visitation. Christy B. was to have supervised visitation with her children five hours every day. From the testimony of her children, the court was apprised of the fact that Christy B. availed herself of that five hours of visitation with her children every day. Because the trial court did not enter an order on the matter of visitation, the trial court abused its discretion and we reverse the dispositional order on that subject.

¶ 80 Accordingly, those portions of the court's order of January 14, 2011, declaring Christy B. unfit and James B. fit, designating James B. as guardian, and awarding James B. custody of D.B. are vacated. Because the court's dispositional order did not contain an order relative to visitation between Christy B. and D.B., we reverse that portion of the order. This cause is remanded to the trial court for further proceedings consistent with this judgment. D.B. is to remain in the physical custody of James B. pending the outcome of those proceedings.

¶ 81 CONCLUSION

¶ 82 For the foregoing reasons, the judgment of the circuit court of Jefferson County is hereby affirmed in part, vacated in part, and reversed in part, and the cause is remanded.

¶83 Affirmed in part, vacated in part, and reversed in part; cause remanded.