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same.

NOS. 5-23-0768, 5-23-0769, 5-23-0770, 5-23-0771 cons.

NOTICE
This order was filed under
Supreme Court Rule 23
and is not precedent
except in the limited
circumstances allowed
under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIFTH DISTRICT

<i>In re</i> ZECHARIAH G., GABRIEL G., ATHENA A., and JOHNATHAN R., Minors	)	Appeal from the
	)	Circuit Court of
	)	Fayette County.
(The People of the State of Illinois,)	
)	
Petitioner-Appellee,)	
)	
v.	)	Nos. 22-JA-40
	)	22-JA-41
	)	22-JA-42
	)	22-JA-43
)	
Theresa C.,	)	Honorable
	)	Martin W. Siemer,
Respondent-Appellant).	)	Judge, presiding.

JUSTICE BARBERIS delivered the judgment of the court.
Justices Cates and Moore concurred in the judgment.

ORDER

¶ 1 *Held:* We affirm the circuit court’s adjudication orders, where respondent’s counsel was not ineffective for failing to move to dismiss the petitions on timeliness grounds and the court’s findings of neglect due to an injurious environment were not against the manifest weight of the evidence.

¶ 2 Respondent, Theresa C., biological mother of Zechariah G. (born May 9, 2016), Gabriel G. (born August 6, 2012), Athena A. (born April 4, 2018), and Johnathan R. (May 22, 2020) (collectively, minors), appeals the Fayette County circuit court’s adjudication orders finding the minors neglected due to an injurious environment under section 2-3(1)(b) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(1)(b) (West 2022)). On appeal, Theresa C.

first argues that trial counsel was ineffective for failing to move to dismiss the State’s petitions for adjudication of wardship when the adjudicatory hearing was not held within 90 days of the service of all parties, as required under section 2-14(b) of the Juvenile Court Act (*id.* § 2-14(b)). Alternatively, Theresa C. argues that the State failed to prove that the children were neglected due to an injurious environment. For the following reasons, we affirm the circuit court’s adjudication orders.

¶ 3

I. Background

¶ 4 On July 11, 2022, the State filed petitions for adjudication of wardship regarding Zechariah G. (Case No. 22-JA-40) and Gabriel G. (Case No. 22-JA-41), alleging that Zechariah G. and Gabriel G. were neglected due to an injurious environment (*id.* § 2-3(1)(b)). In support, the State alleged that St. Clair County police responded to a call that Theresa C. abandoned Zechariah G. and Gabriel G. at the Belleville Masjid Islamic Education Center in Belleville, Illinois. On July 1, 2022, Theresa C. asked an elderly woman, Safaa Alkhatib, from the Belleville Masjid Islamic Education Center to care for Zechariah G. and Gabriel G. for one week while Theresa C. traveled to Colorado. Theresa C. did not leave Alkhatib with any food, money, or extra clothing for the children. Alkhatib noticed that one child “had bugs in his hair,” suspected to be lice. Theresa C. did not return after one week and failed to answer Alkhatib’s phone calls on July 8, 2022. Alkhatib was unable to continue to care for the children due to their high energy levels. The Department of Children and Family Services (DCFS) took protective custody of the children. The State further alleged that two of Zechariah G. and Gabriel G.’s siblings (Athena A. and Johnathan R.) were on a temporary safety plan in Colorado due to Theresa C.’s mental health instability and positive methamphetamine test. The State also alleged that Theresa C.’s paramour, John Richardson, had pending domestic battery charges and Theresa C. “had alluded sex abuse.” The

State listed Zechariah G.'s father as "Unknown." The State listed Michael Wiscarson as Gabriel G.'s father. The State also filed petitions for shelter care regarding Zechariah G. and Gabriel G., which included the same allegations.

¶ 5 On July 12, 2022, the circuit court held a shelter care hearing. Theresa C. appeared at the hearing and was appointed counsel. Following the hearing, the court entered orders placing Zechariah G. and Gabriel G. in the temporary custody of the DCFS guardianship administrator.

¶ 6 On July 26, 2022, the State filed petitions for adjudication of wardship regarding Athena A. (Case No. 22-JA-42) and Johnathan R. (Case No. 22-JA-43), alleging that Athena A. and Johnathan R. were neglected due to an injurious environment (*id.*). In support, the State alleged that DCFS received a report from Colorado Child Protection Service (CPS) regarding Theresa C.'s behavior, drug use, and mental instability. CPS placed Athena A. and Johnathan R. with past friends of Theresa C. on a safety plan. Theresa C. displayed erratic behavior in that she fled Illinois with Athena A. and Johnathan R. on July 4, 2022, and arrived at an old childhood friend's home in Colorado unannounced on July 5, 2022. Theresa C. told her paramour, John Richardson, that she was going to the store, but she never returned home. While in Colorado, Theresa C. took Athena A. to the hospital for a sexual abuse examination, but Theresa C. refused to provide information regarding the alleged sexual abuse and medical providers found no signs of abuse. Theresa C. displayed odd behaviors at the hospital and hospital staff became concerned about Theresa C.'s mental stability. Hospital staff contacted CPS and Theresa C. attempted to sneak out of the hospital with the children. Theresa C. tested positive for methamphetamine and cannabis. Theresa C. fled the hospital on foot after staff placed her on an involuntary psychiatric hold. The State further alleged that Theresa C. and the children had been residing with John Richardson, who had a pending domestic battery charge in Fayette County (Case No. 21-CM-117). The State

additionally alleged that Theresa C.'s 17-year-old son reported that Richardson was abusive and the children were not safe with him. The son also reported that there was little food and no running water in the home. The State listed Dwayne Carmin as Athena A.'s father and John Richardson as Johnathan R.'s father. The State also filed petitions for shelter care regarding Athena A. and Johnathan R., which included the same allegations.

¶ 7 Also, on July 26, 2022, the circuit court held a shelter care hearing. Following the hearing, the court entered orders placing Athena A. and Johnathan R. in the temporary custody of the DCFS guardianship administrator.

¶ 8 On July 27, 2022, the circuit court entered orders requiring John Richardson, Mark Goldsborough, and Michael Wiscarson to submit to DNA testing by DCFS to determine paternity of the children. At a hearing held on August 25, 2022, the court inquired about the status of the paternity tests. Theresa C. stated, "We are not waiting on testing. John Richardson is the legal father of Zechariah, Athena, and Johnathan." The court responded, "We still have to get the testing to confirm that." Theresa C. then stated that testing was unnecessary because John Richardson signed a voluntary acknowledgment of paternity and was the legal father. Theresa C. added that she was "just waiting on the corrected birth certificates." Over Theresa C.'s objection, the court entered an order requiring Richardson to submit to DNA testing to determine the paternity of Zechariah G. and Athena A. The court stated, "[The testing] is going to take a matter of a few weeks, okay, so we are probably not ready to schedule an adjudicatory yet." Counsel for Theresa C. agreed and asked the court to appoint a guardian *ad litem* (GAL) for Theresa C. due to concerns regarding Theresa C.'s mental health. The court granted counsel's request and appointed a GAL for Theresa C.

¶ 9 On September 28, 2022, John Richardson filed *pro se* motions regarding Athena A. and Zechariah G. Richardson alleged that he was the legal father of the children and requested custody.

¶ 10 On October 5, 2022, a family service plan was filed with the circuit court. Pursuant to the plan, Theresa C. was directed to: communicate consistently with her caseworker and apprise her caseworker of all contact information or address changes; complete parenting classes and demonstrate safe and appropriate parenting; complete a mental health and psychiatric assessment and follow any resulting recommendations; complete a substance abuse assessment and follow any resulting recommendations; comply with random drug screens; complete a domestic violence assessment; and sign releases so her caseworker could obtain documentation of services.

¶ 11 At a hearing held on November 3, 2022, the circuit court asked if the parties were ready to schedule the adjudicatory hearing. Counsel for Theresa C. responded in the affirmative, stating “we definitely want to get the adjudicatory scheduled at the earliest possible convenience.” Counsel added that the cause had been pending since mid-July and that they were “well past the statutory time frame to have an adjudicatory hearing.” When the court set the matter for adjudicatory hearing on January 5, 2023, John Richardson stated that he had moved to intervene in the cases involving Zechariah G. and Athena A. because he was their father. Mark Goldsborough objected, stating that he was the father of Zechariah G. and Athena A. Goldsborough added that he was married to Theresa C. when Zechariah G. and Athena A. were born and that he was listed as the father on their birth certificates. Goldsborough believed the DNA test would show that Richardson was not the father of Zechariah G. and Athena A. When the court asked about the previously ordered DNA testing, the caseworker responded that the DNA testing had been rescheduled because Richardson missed the scheduled testing date. The court stated that it would address the paternity issues after reviewing the DNA results.

¶ 12 At a hearing held on November 10, 2022, Mark Goldsborough acknowledged that he was not the biological father of Zechariah G. and Athena A., but he claimed that he cared for them for their entire lives. Following the hearing, the circuit court dismissed Mark Goldsborough as a party to the cases involving Zechariah G. and Athena A.

¶ 13 On December 27, 2022, Caritas Family Solutions filed an adjudicatory report, which detailed Theresa C.'s progress in services. According to the report, Theresa C. tested positive for methamphetamines and amphetamines and refused to cooperate with any further drug screens. She also failed to complete a substance abuse assessment. It was also noted that Theresa C. completed a mental health evaluation but made no further progress. Theresa C. denied that she was the victim of domestic violence and did not complete a domestic violence assessment, despite appearing at a visit with a black eye. Theresa C. cooperated with a parenting capacity evaluation and was awaiting a psychological evaluation. The caseworker noted that she “continue[d] to have severe concerns regarding [Theresa C.'s] mental health and psychiatric needs.”

¶ 14 On January 5, 2023, the parties appeared for the scheduled adjudicatory hearing. At the hearing, the State indicated that it filed a motion to appoint a special prosecutor in the cases involving all four minors. The State also indicated that, if appointed, the special prosecutor intended to request to continue the adjudicatory hearing. The circuit court, after confirming that there were no objections, appointed a special prosecutor and granted a continuance. When the court attempted to schedule the adjudicatory hearing, the GAL for the children noted that Richardson had not completed DNA testing and was not named as a party in the cases involving Zechariah G. and Athena A. Counsel for Theresa C. asserted that Richardson signed voluntary acknowledgments of paternity and, thus, the case should move forward without DNA testing. The court was hesitant to set the matter for adjudicatory hearing until Richardson completed the

previously ordered DNA testing. Accordingly, the court set the matter for a status hearing on February 9, 2023.

¶ 15 At the hearing held on February 9, 2023, the special prosecutor noted that Richardson had not completed the DNA testing. All parties expressed concern that the matter needed to be set for an adjudicatory hearing. The special prosecutor planned to file a rule to show cause regarding Richardson's failure to comply with DNA testing. The circuit court set the matter for an adjudicatory hearing on March 23, 2023.

¶ 16 On February 16, 2023, the special prosecutor filed a verified petition for rule to show cause. The State alleged that John Richardson failed to comply with the DNA testing order entered by the circuit court on August 25, 2022.

¶ 17 At a status hearing on March 9, 2023, the GAL for the children noted that Richardson had not yet completed the DNA testing. The GAL for the children acknowledged that Richardson signed a voluntary acknowledgment of paternity regarding Zechariah G. and Athena A. The court reset the adjudicatory hearing to April 27, 2023.

¶ 18 On March 29, 2023, the special prosecutor filed amended petitions for adjudication of wardship regarding Zechariah G. and Athena A. The amended petitions repeated the allegations of the previously filed petitions. The amended petitions listed John Richardson as the father of Zechariah G. and Athena A.

¶ 19 A docket entry from a hearing held on April 6, 2023, indicated that John Richardson agreed to submit to a DNA test on April 18, 2023, and that the amended petitions for adjudication of wardship had not yet been served on the named parents. It was also noted that the adjudicatory hearing set for April 27, 2023, was vacated without objection.

¶ 20 A docket entry from a hearing held on May 4, 2023, indicated that Richardson recently completed the DNA testing. A docket entry from a hearing held on June 1, 2023, indicated that the GAL for the children was provided with the DNA results and Richardson was shown to be the biological father of Johnathan R. It was also noted that the adjudicatory hearing set for June 29, 2023, was vacated without objection and, “for good cause,” set for July 6, 2023.

¶ 21 On July 6, 2023, the circuit court held an adjudicatory hearing regarding Zechariah G., Athena A., Gabriel G., and Johnathan R. Sergeant Aaron Keeney of the St. Clair County Sheriff’s Department testified that he responded to a child abandonment call on July 9, 2022. Keeney’s testimony was consistent with the allegations in the State’s petitions for adjudication regarding Zechariah G. and Gabriel G. Theresa C. left the children with an elderly woman who spoke little English. Zechariah G. and Gabriel G. identified Theresa C. as their mother. According to Keeney, “someone” made an unsuccessful attempt to contact Theresa C. Keeney believed the “phone was disconnected or something of that sort.” Keeney called DCFS, and DCFS advised that the family had other involvement with service agencies. DCFS placed Zechariah G. and Gabriel G. with a family who offered to care for them. On cross-examination, Keeney testified that Zechariah G. and Gabriel G. appeared healthy and happy with no outward signs of abuse. Zechariah G. and Gabriel G. did not disclose any abuse at that time.

¶ 22 Ashley Hammer, a DCFS investigator, testified that she became involved in the case on July 7, 2022. On that date, Hammer received information from Colorado that Theresa C. was at a hospital with two of her children. Hammer made a report based on the information she received from a hospital social worker. Theresa C. told Colorado authorities that Zechariah G. and Gabriel G. were with their father, Mark Goldsborough, but Goldsborough did not have the children. Hammer learned that Zechariah G. and Gabriel G. were in St. Clair County on July 9, 2022, after

a “related information” report was made to the DCFS hotline. Hammer spoke with Theresa C. and John Richardson on July 11, or July 12, 2022. Richardson claimed that Theresa C. traveled to Colorado for a vacation. Theresa C. claimed that she planned the trip to meet a friend and that she knew the elderly woman with whom she left Zechariah G. and Gabriel G. The information provided by Theresa C. and Richardson was contrary to other information Hammer had about the situation. Theresa C. and Richardson were angry about the situation but cooperative.

¶ 23 Hammer testified that she obtained medical records from Colorado, spoke with investigators from Colorado, and reviewed prior DCFS reports involving the family. Theresa C. had prior indicated reports of neglect, including a May 2022 report for inadequate supervision of Gabriel G. Hammer previously investigated Theresa C. but the children were not taken into protective custody and the family refused intact services. Hammer also spoke with Zechariah G. and Gabriel G. on July 12, 2022. The children did not know that their mother was going on vacation or how long she planned to be gone, but they did know that she was going to Colorado. The children also did not have familiarity with the elderly woman who cared for them.

¶ 24 Hammer testified that she was concerned about Theresa C.’s behavior throughout the investigation. Specifically, Hammer was concerned about Theresa C.’s behavior and statements at the Colorado hospital. Hammer was also concerned that Theresa C. left Zechariah G. and Gabriel G. with someone they did not know. Hammer was additionally concerned about Theresa C.’s drug use and the potential for domestic violence in the home. Hammer had difficulty communicating with Theresa C., who had no clear thought pattern and talked “in circles.” John Richardson frequently interrupted Theresa C. and told her to “shut up.” Hammer attempted to investigate the home where the children lived but Richardson denied her access.

¶ 25 Deanna Stepaniuk, a permanency caseworker from Colorado, testified via Zoom. Stepaniuk met Athena A. and Johnathan R. when she responded to a hotline call from the hospital on July 6 or July 7, 2022. Stepaniuk did not speak with Theresa C. at the hospital because Theresa C. was sedated and strapped to a bed on a mental health hold. Stepaniuk could hear Theresa C. screaming and cussing in her room. Stepaniuk implemented a safety plan because Athena A. and Johnathan R. could not stay at the hospital while Theresa C. was evaluated. Stepaniuk placed Athena A. and Johnathan R. with Theresa C.’s friend’s sister, with whom Theresa C. and the children had been staying.

¶ 26 Stepaniuk testified that she spoke with Richardson via telephone after he was identified as the father of the children. Richardson expressed concern for Theresa C. and the children, claiming he did not know where they were. Richardson advised that Theresa C. said she was going to the store but never returned or contacted Richardson.

¶ 27 Stepaniuk testified that she learned Theresa C. reported possible sexual abuse at the hospital. Stepaniuk was unable to confirm that sexual abuse had occurred. The children “appeared okay,” but hospital staff reported that they were dirty when they arrived. On cross-examination, Stepaniuk testified that she observed no outward signs of abuse of the children.

¶ 28 Deputy Brock Rich of the Fayette County Sheriff’s office testified that he responded to a report of domestic violence involving Theresa C. and John Richardson in October 2021. According to Deputy Rich, Theresa C.’s sister called police after receiving a text from Theresa C. The text indicated that Theresa C. had been involved in an altercation and needed help, but she could not call for help herself. When Deputy Rich arrived at Theresa C.’s address, he spoke with Richardson. Deputy Rich smelled alcohol and believed Richardson had been drinking. Richardson spoke over Theresa C. when she attempted to speak. Theresa C. ultimately advised Deputy Rich that she and

Richardson were involved in a verbal dispute that escalated into him pushing her over a chair, causing her to fall. Deputy Rich observed scrapes on Theresa C.'s back that were consistent with a fall. Theresa C. did not want to press charges and declined to make a statement, stating that it would make things worse. Richardson was taken into custody and charged with an offense. Deputy Rich did not observe any children in the home, but Theresa C. referenced "carrying" an 18-month-old during the verbal altercation.

¶ 29 Heather Covington testified via Zoom. Covington resided in Colorado and knew Theresa C. as a close friend of Covington's sister, Stephanie King. Theresa C. arrived at Covington's home with her two children on July 5, 2022. Covington learned from King that Theresa C. was coming to Colorado with her children approximately 12 hours before Theresa C. arrived. Covington had not seen Theresa C. in 10 years. When Theresa C. arrived, she appeared tired, and "maybe a little out of it. Kind of like foggy and cloudy." Covington believed that King and Theresa C. planned the visit without telling Covington. Theresa C. asked Covington to watch Athena A. while Theresa C. returned home with Johnathan R., who was still nursing, to repair her relationship with her paramour. Covington denied Theresa C.'s request but allowed Theresa C. to stay for a few days. Theresa C. took the children to the hospital the next day. Authorities contacted Covington and asked her to care for the children. Covington agreed to assist in a safety plan. Covington testified that the children seemed like normal children. On cross-examination, Covington denied that the children were unclean or malnourished.

¶ 30 Onaliesa Luebbers, the Caritas case manager for the family, testified that she met Theresa C. on August 10, 2022. Theresa C. appeared agitated and upset about her children coming into care. Luebbers performed a mouth swab drug test on Theresa C., which was positive for methamphetamines. Following Luebbers' testimony, the hearing was recessed to July 13, 2023.

¶ 31 On July 13, 2023, after hearing closing arguments, the circuit court entered adjudication orders, finding that the State proved all four minors were neglected due to an injurious environment. The court set the matter for dispositional hearing.

¶ 32 On August 30, 2023, a family service plan, dated July 15, 2023, was filed with the circuit court. The service plan indicated that Theresa C. failed to make significant progress and was rated unsatisfactory overall. A dispositional report filed on August 31, 2023, similarly indicated that Theresa C. failed to make significant progress.

¶ 33 On September 7, 2023, the circuit court held a dispositional hearing. Following the hearing, the court entered orders adjudging Zechariah G., Athena A., and Johnathan R. wards of the court. The court entered an order of discharge regarding Gabriel G. Theresa C. filed a timely notice of appeal on September 27, 2023.

¶ 34 II. Analysis

¶ 35 On appeal, Theresa C. raises two arguments concerning the circuit court’s adjudicatory orders. First, she argues that this court must vacate the order where the adjudicatory hearing was not held within 90 days of service of all parties to the cases. Second, she argues that the State failed to prove that the minors were in an environment injurious to their welfare. We address these arguments in turn.

¶ 36 A. Timeliness of Adjudicatory Hearing

¶ 37 Theresa C. first argues that the circuit court’s adjudicatory order must be vacated because the adjudicatory hearing did not take place within 90 days of service of all parties, as required by section 2-14(b) of the Juvenile Court Act (705 ILCS 405/2-14(b) (West 2022)). We disagree.

¶ 38 “The Juvenile Court Act provides a two-step process the trial court must utilize to decide whether a minor child should become a ward of the court.” *In re Kh. M.*, 2023 IL App (1st) 230261,

¶ 37 (citing *In re A.P.*, 2012 IL 113875, ¶ 18). “The first step of the process is the adjudicatory hearing, at which the court considers only whether the minor child is abused, neglected, or dependent.” *Id.* (citing *A.P.*, 2012 IL 113875, ¶ 19; 705 ILCS 405/2-18(1) (West 2020)). If the court finds the minor child abused, neglected, or dependent at the adjudicatory hearing, the court will then hold a dispositional hearing to determine “whether it is consistent with the health, safety, and best interests of the minor child and the public for the minor child to be made a ward of the court.” *Id.* (citing *A.P.*, 2012 IL 113875, ¶ 21; 705 ILCS 405/2-22 (West 2020)). “In any proceeding brought under the Juvenile Court Act, including an adjudication of wardship, the paramount consideration is the best interest of the child.” *Id.* (citing *A.P.*, 2012 IL 113875, ¶ 18).

¶ 39 As Theresa C. correctly notes, section 2-14(b) of the Juvenile Court Act provides: “When a petition is filed alleging that the minor is abused, neglected or dependent, an adjudicatory hearing shall be commenced within 90 days of the date of service of process upon the minor, parents, any guardian and any legal custodian ***.” 705 ILCS 405/2-14(b) (West 2022). Section 2-14(c) provides that “[i]f the adjudicatory hearing is not heard within the time limits required by subsection (b) or (c) of this Section, upon motion by any party the petition shall be dismissed without prejudice.” *Id.* § 2-14(c). Section 2-14(d) provides that “[t]he time limits of this Section may be waived only by consent of all parties and approval by the court.” *Id.* § 2-14(d).

¶ 40 In the present case, the State filed the original petitions for adjudication of wardship on July 11, 2022, and July 26, 2022. The record reveals that the adjudicatory hearing was delayed for months in an attempt to discern the true biological paternity of Zechariah G. and Athena A. The record reveals that John Richardson repeatedly refused to comply with the circuit court’s orders requiring him to submit to DNA testing. On March 29, 2023, the State filed amended petitions for adjudication regarding Zechariah G. and Athena A., listing John Richardson as the father of both

Zechariah G. and Athena A. The court then set the matter for an adjudicatory hearing on June 29, 2023. However, the court vacated the June 29, 2023, setting without objection and “for good cause” on June 1, 2023. The court ultimately held the adjudicatory hearing on July 6, 2023. Counsel for Theresa C. did not file a motion to dismiss the amended petitions pursuant to section 2-14(c) at any time during the proceedings.

¶ 41 We note, and Theresa C. concedes, that she forfeited review of this issue on appeal where counsel did not file a motion to dismiss the petitions. She maintains that “[w]hile this would normally waive the issue for appeal, it does not waive the error in this case, as the failure to file the motion to dismiss is the result of the ineffective assistance of counsel.” The State responds that Theresa C. cannot establish that counsel was ineffective for failing to file a motion to dismiss. We agree with the State.

¶ 42 “Although there is no constitutional right to counsel in proceedings pursuant to the Juvenile Court Act, a statutory right has been granted.” *Kh. M.*, 2023 IL App (1st) 230261, ¶ 41 (citing *In re Charles W.*, 2014 IL App (1st) 131281, ¶ 32). “Under the Juvenile Court Act, the parent of a minor who is the subject of proceedings has a statutory right to be represented by counsel, including the appointment of the public defender.” *Id.* (citing 705 ILCS 405/1-5(1) (West 2020)). Courts have noted that the right to effective assistance of counsel in such proceedings “flows from the gravity of the proceeding, which can result in the separation of a parent from a child, and the fact that abuse and neglect proceedings can often be a precursor to proceedings to terminate parental rights.” *In re H.C.*, 2023 IL App (1st) 220881, ¶ 86.

¶ 43 When considering claims of ineffective assistance of counsel under the Juvenile Court Act, Illinois courts apply the two-prong standard in *Strickland v. Washington*, 466 U.S. 668 (1984). *In re Br. M.*, 2021 IL 125969, ¶ 43. Under that standard, a respondent must show (1) substandard

performance by counsel and (2) resulting prejudice. *Id.* “Counsel’s conduct is presumed to be the product of sound trial strategy, and respondent bears the burden of overcoming this presumption.” *Charles W.*, 2014 IL App (1st) 131281, ¶ 32. “We should indulge the strong presumption that [trial] counsel’s conduct falls within a wide range of reasonable professional conduct ***.” *H.C.*, 2023 IL App (1st) 220881, ¶ 87.

¶ 44 Here, Theresa C. is unable to establish either prong of the *Strickland* standard. Counsel’s failure to file a motion to dismiss could be viewed as reasonable trial strategy under the circumstances of this case and, thus, did not constitute substandard or deficient performance. The record demonstrates that the adjudicatory hearing was delayed in an attempt to discern the true biological paternity of Zechariah G. and Athena A. The record demonstrates that Richardson was ordered to submit to DNA testing in August 2022, and that Richardson had failed to submit to testing as of March 2023. On March 29, 2023, the State filed amended petitions regarding Zechariah G. and Athena A. listing Richardson as the father of each child. The petitions previously listed Athena A.’s father as Dwayne Carmin and listed Zechariah G.’s father as “Unknown.” It appears from the record that Richardson ultimately submitted to DNA testing in April 2023. Because it was in the best interests of all parties involved to resolve the questions of paternity, Theresa C. is unable to overcome the presumption that counsel’s conduct was within the wide range of reasonable professional conduct. We also note that, although counsel for Theresa C. did not file a motion to dismiss, counsel urged the circuit court to set the matter for an adjudicatory hearing at the earliest possible time and advocated Theresa C.’s position that DNA testing was unnecessary. Thus, we conclude that Theresa C. has failed to meet her burden of establishing that counsel’s performance was deficient or substandard.

¶ 45 Additionally, counsel’s failure to file a motion to dismiss did not result in prejudice to Theresa C. Any dismissal of the petitions on timeliness grounds under section 2-14 would have been “without prejudice.” 705 ILCS 405/2-14(c) (West 2022). In other words, the State could have immediately filed a new petition for adjudication of wardship.¹ See *In re Tiona W.*, 341 Ill. App. 3d 615, 620 (2003) (“The State may file the new petition against the same parties and base it on the same charges as those stated in the original petition.”). While Theresa C. argues that the allegations would have to reflect the current situation at the time the petition was filed, the State would continue to include the allegations that brought the cases to DCFS and, thus, would present the same evidence at the adjudicatory hearing. Thus, we conclude that Theresa C. has failed to meet her burden of establishing that counsel’s failure to file a motion to dismiss resulted in prejudice.

¶ 46 In sum, Theresa C. has failed to establish that counsel’s performance was deficient and that counsel’s failure to file a motion to dismiss resulted in prejudice. Consequently, her claim of ineffective assistance of counsel fails.

¶ 47 **B. Finding of Neglect**

¶ 48 Theresa C. next argues that the State failed to prove that the minors were neglected due to an injurious environment. We disagree.

¶ 49 “The first step of the process is the adjudicatory hearing, at which the court considers only whether the minor child is abused, neglected, or dependent.” *Kh. M.*, 2023 IL App (1st) 230261, ¶ 37 (citing *A.P.*, 2012 IL 113875, ¶ 19; 705 ILCS 405/2-18(1) (West 2020)). “Generally, ‘neglect’ is defined as the ‘failure to exercise the care that circumstances justly demand.’ ” (Internal

¹Counsel for Theresa C. was likely aware that the State would immediately file new petitions if the original petitions were dismissed, further evidencing that it was reasonable trial strategy not to file a motion to dismiss.

quotation marks omitted.) *In re Arthur H.*, 212 Ill. 2d 441, 463 (2004) (quoting *In re N.B.*, 191 Ill. 2d 338, 346 (2000), quoting *People ex rel. Wallace v. Labrenz*, 411 Ill. 618, 624 (1952)). Neglect includes “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.” (Internal quotation marks omitted.) *Id.* (quoting *N.B.*, 191 Ill. 2d at 346, quoting *Labrenz*, 411 Ill. at 624). “Similarly, the term ‘injurious environment’ has been recognized by our courts as an amorphous concept that cannot be defined with particularity.” *Id.* 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.’ ” *Id.* (quoting *N.B.*, 191 Ill. 2d at 346, quoting *In re M.K.*, 271 Ill. App. 3d 820, 826 (1995)).

¶ 50 “It is the State’s burden to prove allegations of neglect by a preponderance of the evidence.” *A.P.*, 2012 IL 113875, ¶ 17 (citing *N.B.*, 191 Ill. 2d at 343). “In other words, the State must establish that the allegations of neglect are more probably true than not.” *Id.* (citing *N.B.*, 191 Ill. 2d at 343). A reviewing court will not reverse a circuit court’s finding of neglect unless the finding is against the manifest weight of the evidence. *In re D.S.*, 217 Ill. 2d 306, 322 (2005). A finding is against the manifest weight of the evidence when the opposite conclusion is clearly apparent. *Id.*

¶ 51 In the present case, we cannot say that the circuit court’s finding of neglect due to an injurious environment was against the manifest weight of the evidence. The evidence demonstrated that Theresa C. made a prior allegation of domestic violence against Richardson. Deputy Rich testified that he was dispatched to the home of Theresa C. and Richardson on October 21, 2021, after Theresa C.’s sister called police. Deputy Rich observed signs that Richardson was intoxicated and recalled that Richardson continued to interrupt Theresa C. when she spoke. Theresa C. advised Deputy Rich that she and Richardson were involved in a verbal altercation that led to Richardson

pushing her over a chair, causing her to fall. Deputy Rich observed multiple scrapes on Theresa C.'s back. Deputy Rich testified that Theresa C. claimed she was carrying an 18-month-old child during the verbal altercation. Theresa C. advised Deputy Rich that she did not want to press charges because it would only worsen the situation. Hammer testified that shortly after the children were brought into care, she observed Richardson interrupt Theresa C. during conversations and tell her to "shut up." This evidence was sufficient to support the court's determination that the State proved the allegations of domestic violence.

¶ 52 The evidence further demonstrated that Theresa C. left Zechariah G. and Gabriel G. with an elderly woman who was unable to effectively communicate with and care for the children. Sergeant Keeney testified that he responded to a call regarding Zechariah G. and Gabriel G. on July 9, 2022. Zechariah G. and Gabriel G. had been left with an elderly woman who spoke little English. The woman could no longer care for Zechariah G. and Gabriel G. Law enforcement was unable to contact Theresa C. In addition, the evidence demonstrated that Theresa C. took Athena A. and Johnathan R. to Colorado. Stepaniuk testified that Richardson did not know where Theresa C. and the children were when Stepaniuk contacted him from Colorado. Covington testified that she learned Theresa C. was traveling to Colorado only 12 hours before Theresa C. arrived at Covington's home. While in Colorado, Theresa C. asked Covington, who had not seen Theresa C. in 10 years, to care for Athena A. while Theresa C. returned to Illinois with Johnathan R. Theresa C. also went to a hospital in Colorado, where Theresa C. reported that Athena A. was sexually abused. Theresa C. displayed erratic behavior at the hospital and was placed on a mental health hold. Stepaniuk testified that she heard Theresa C. screaming and cussing in a nearby hospital room. Hammer also testified that she was concerned about Theresa C.'s mental state due to her inability to focus and express thoughts during conversations. This evidence was sufficient to

support the circuit court's determination that the State proved the allegations that Theresa C. left, or attempted to leave, the children with persons unknown to them and that Theresa C. suffered from mental health issues.

¶ 53 In sum, this evidence, taken together, was sufficient to support the circuit court's finding that the State proved, by a preponderance of the evidence, that the minors were neglected due to an injurious environment. Thus, we cannot say the court's finding of neglect was against the manifest weight of the evidence.

¶ 54 III. Conclusion

¶ 55 For the reasons stated, we affirm the Fayette County circuit court's adjudication orders.

¶ 56 Affirmed.