

2016 IL App (2d) 160023-U
Nos. 2-16-0023, 2-16-0024, 2-16-0025, 2-16-0071 cons.
Order filed July 21,2016

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

In re GAVIN H., a minor) Appeal from the Circuit Court
) of Ogle County.
)
) No. 15-JA-16
)
(The People of the State of Illinois,) Honorable
Petitioner-Appellee, v. Tiffanie W.,) John B. Roe,
Respondent-Appellant).) Judge, Presiding.

In re KAYN W., a minor) Appeal from the Circuit Court
) of Ogle County.
)
) No. 15-JA-17
)
(The People of the State of Illinois,) Honorable
Petitioner-Appellee, v. Tiffanie W. and) John B. Roe,
Shaun W., Respondents-Appellants).) Judge, Presiding.

In re DAMIAN H., a minor) Appeal from the Circuit Court
) of Ogle County.
)
) No. 15-JA-18
)
(The People of the State of Illinois,) Honorable
Petitioner-Appellee, v. Tiffanie W.,) John B. Roe,
Respondent-Appellant).) Judge, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Justices Hutchinson and Zenoff concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court's adjudicatory order that Gavin was abused and neglected and its adjudicatory orders that Damian and Kayn were neglected were not against the manifest weight of the evidence. Further, respondents did not receive ineffective assistance of counsel at the adjudicatory hearing. Therefore, we affirmed.

¶ 2 In this consolidated appeal, Tiffanie W. and Shaun W. (together, respondents) collectively raise two issues: (1) whether the trial court erred in determining Gavin, H. a minor, was abused and neglected and that Damian H.¹ and Kayn W., Gavin's minor siblings, were neglected; and (2) whether respondents received ineffective assistance of counsel. The circuit court's finding of abuse was that Shaun struck Gavin with his fist around Gavin's eye. Damian and Kayn's adjudications of neglect derived from the finding of abuse against Gavin. For the reasons set forth herein, we affirm the finding of abuse with respect to Gavin and the findings of neglect with respect to all three minor children, and we reject respondents' arguments that they received ineffective assistance of counsel.

¶ 3 I. BACKGROUND

¶ 4 This case arose from a Department of Children and Family Services (DCFS) hotline call on April 14, 2015. On that day, DCFS received a report that Gavin had a black eye and that Shaun, his step-father, had hit him.

¶ 5 The State filed three petitions for adjudication of wardship on April 16, 2015, one for each of the three minor siblings, Gavin, age 4; Kayn, age 14 months; and Damian, age 14. The petition for Gavin alleged two counts of abuse and one count of neglect. Count I alleged that

¹ Some circuit court documents spell the minor's name as Damien, but we note that the initial neglect petition amended his name to Damian on April 16, 2015.

Gavin was an abused minor because Shaun, who was responsible for his welfare, inflicted physical injury upon Gavin in that he struck him in the eye, causing a bruise and impairment of physical or emotional health. Count II alleged that Gavin was an abused minor because Tiffanie, his mother, allowed physical injury to be inflicted upon Gavin by her husband, Shaun, when he struck Gavin's eye. Count III alleged that Gavin was a neglected minor in that his environment was injurious to his welfare, in that Tiffanie and Shaun were previously indicated in 2011 by DCFS for cuts, welts, and bruises to Gavin (then seven months old); that protective custody was taken of Gavin and he was adjudicated an abused minor by the Winnebago County circuit court; that Gavin was out of their custody from October 2011 until June 2013; and that the findings and adjudication, taken together with the recent alleged abuse in counts I and II, placed Gavin at risk of harm.

¶ 6 The petitions for Kayn and Damian each had three counts of neglect, based on the two counts of abuse and one count of neglect alleged in Gavin's petition.

¶ 7 A. Temporary Custody Hearing

¶ 8 A temporary custody hearing in the interest of the three minor children took place on April 16, 2015. Respondents were both represented by counsel at the hearing.

¶ 9 The State called Jane Whitaker, a child protection investigator for DCFS who was assigned to Gavin's case on April 14, 2015. She testified as follows. She went to Gavin's school in Byron, Illinois, in the afternoon on April 14. There, she spoke with Laura Mutchler, the school counselor, who directed her to Gavin's teacher. Whitaker got in touch with Ms. Boyer, Gavin's teacher, later that day. Boyer told Whitaker that Gavin came to school on Monday, April 13, with a mark around his right eye. She had not thought much of the mark because Gavin "was clumsy." On April 14, however, she noticed the mark was black and blue,

and she asked him what happened. Gavin told her that his “daddy,” meaning Shaun, had hit him, and then he made a punching motion toward his face with his fist.

¶ 10 After speaking with Boyer, Whitaker went to Gavin’s home. Tiffanie answered the door, and Whitaker informed her that she was from DCFS. Shaun was not at home, but Tiffanie’s father-in-law was. Tiffanie explained to her what she thought had happened to Gavin’s eye. Either Saturday or Sunday over the past weekend, Gavin came out of his room sporting a red mark near his right eye. She asked him what happened, and he claimed that Damian had hit him. Tiffanie explained to Gavin that Damian could not have hit him because Damian was not at home. Gavin responded, “then Daddy hit me,” meaning Shaun. Tiffanie responded that Daddy could not have hit him because he was sitting on the couch with her.

¶ 11 Whitaker then asked Gavin to show her his room and talked to him alone there. She asked him what had happened to his eye. Gavin told her that “my daddy hit me,” and demonstrated a punching motion with his fist. After speaking with Gavin, Whitaker called her supervisor. She told her supervisor that Gavin had been diagnosed with Duane Syndrome and Von Willebrand disease. She relayed the name and telephone number of Gavin’s physician, Dr. Hoover-Regan. Tiffanie referred to Dr. Hoover-Regan as Gavin’s “bruise doctor.”

¶ 12 At this point, the court interjected, asking, “Could somebody give me just the nickel’s version on what those two conditions you just talked about are, if you know?” Whitaker explained that Duane Syndrome related to eye muscles and that Von Willebrand disease related to blood clotting. The court said that was good enough.

¶ 13 Whitaker attempted to speak with Dr. Hoover-Regan, but she was only able to reach her staff. The doctor’s staff directed her to Dr. Davis, who was a specialist in cases of abuse and

neglect of minors. She called Dr. Davis's office, but he was gone for the day. She scheduled an appointment for Tiffanie to take Gavin to see Dr. Davis the next day.

¶ 14 Tiffanie took Gavin to see Dr. Davis on April 15. Whitaker followed-up with Shannon Krueger from Dr. Davis's office, and Krueger informed her that Dr. Davis conducted a physical exam of Gavin and had interviewed Tiffanie. Krueger quoted Dr. Davis that "this constitutes abuse." After hearing this, Whitaker placed Gavin and Kayn into protective custody. She was "not 100 percent sure" whether Dr. Davis and Krueger were aware of Gavin's prior diagnoses of Duane's Syndrome and Von Willebrand disease. She was aware that Von Willebrand disease could cause easy bruising, but there had to be causation. A child may have a bruise for more than one reason, such as from a fall or a hit, but there had to be an impact. Gavin's teacher had told her that he was a clumsy child.

¶ 15 Whitaker learned on April 14 about a previous DCFS investigation of Tiffanie and Shaun in 2011 for abuse of Gavin. After an adjudicatory hearing, the court had found Gavin abused, and he and his older siblings were placed in protective custody from October 2011 until the summer of 2013. She did not know whether Gavin had received his diagnosis of Von Willebrand disease at the time of the 2011 indication for abuse and neglect.

¶ 16 Shaun testified next. He testified as follows. He did not cause Gavin's bruise. He had noticed a mark around Gavin's eye and asked him what happened. Gavin first responded that Damian had caused it, but when informed that Damian was not at home, he said "daddy did it." The mark turned into a black eye sometime after the weekend. Gavin had previously claimed that others had hurt him, including his brothers and other children hitting him, the cat scratching him, and his aunt hitting him, even though these individuals were on the other side of the room or not even in the house at the time.

¶ 17 Shaun also explained the cause of the events leading to Gavin's placement in protective custody in 2011. The bruises on Gavin's cheeks in 2011 were due to him and Tiffanie attempting to administer Tylenol to Gavin using a syringe, in an effort to ease the pain of teething. Shaun had not had a lot of experience with children before marrying Tiffanie. At the time, Gavin had not been diagnosed with Von Willebrand disease.

¶ 18 Tiffanie testified next as follows. Gavin was diagnosed with Von Willebrand disease in June 2013 by Dr. Hoover-Regan. She explained to Tiffanie that the disease caused Gavin to bruise easier than other children and that certain parts of his body were more susceptible to bruising, such as his head. "She said that he will bruise easier than other people; whereas, you know, you have to hit yourself to get a good bruise. All he'd have to do is just have a nice little bump basically and he could get a bruise from that." His head would bruise easier because there were more blood vessels there than other parts of his body. Von Willebrand disease was a branch of hemophilia disorders. Gavin did not have to take medication unless he had a bloody nose or severe bleed. He wore a helmet when he played outside to protect against head injuries.

¶ 19 She observed a red mark on the side of Gavin's face over the past weekend. She asked Gavin what had happened, and he replied that Damian had hit him. She explained that Damian was not at home, and Gavin responded "oh, well, Daddy did it." Gavin frequently accused people of hitting him, even people who were in a different house or far away. Gavin was also clumsy, due in part to his Duane Syndrome. The syndrome affected the muscles in one of his eyes. In particular, one eye constantly looked straight ahead, while the other moved. This caused Gavin to have issues with depth perception.

¶ 20 Gavin would hit himself when he was frustrated. He threw tantrums and would beat himself on his head. She planned to seek counseling for Gavin once they had finished moving.

¶ 21 She took Gavin to see Dr. Krueger² when requested by Whitaker and DCFS. She also informed Whitaker of Gavin's diagnoses of Duane Syndrome and Von Willebrand disease. She never met Dr. Davis, and Gavin never saw Dr. Davis. To her knowledge, Dr. Davis was not at the office that day because she did not meet him or see him walking around. Dr. Krueger examined Gavin.

¶ 22 She also addressed the 2011 DCFS indication of abuse. She had been trying to orally administer medication to Gavin. She had trouble giving the medication to him, and therefore she had Shaun pinch Gavin's cheeks together to open his lips in order to administer the medicine. Shaun had not pinched Gavin's cheeks hard, but because of his Von Willebrand disease, Gavin developed dime-sized bruises on both cheeks. She did not think Gavin should have bruised that easily.

¶ 23 After the hearing, the court granted temporary custody of Gavin, Kayn, and Damian to DCFS.³ The court stated:

"The bruising disorder is an interesting question. But as I understand the evidence, it's a condition that causes someone to bruise more easily. It still requires some contact in order to create the bruise that is raised.

We clearly have a bruise. And in spite of this condition, there had to have been some contact. At this point, the minor has repeatedly reported that it was contact based upon his daddy, to use his word, and his clenched fist in a punching motion.

² We note that Krueger was a nurse practitioner, not a medical doctor, but Tiffanie referred to her as a doctor in her testimony.

³ At the time, Damian was hospitalized for psychiatric reasons.

I'm not ready to buy into the fact that this young boy is just a great big liar that beats himself up. So I do believe *** there is probable cause that Gavin [] is an abused minor.”

¶ 24 Accordingly, the court ordered that DCFS take custody of the three minor children.

¶ 25 B. Adjudicatory Hearing

¶ 26 The case proceeded to an adjudicatory hearing on September 16 and October 22, 2015. Respondents were represented by different counsel than at the temporary custody hearing.

¶ 27 The State called Kim Boyer, Gavin's school teacher, as its first witness. She testified as follows. She observed that Gavin had a small red mark under his eye on April 13, 2015, but she did not talk to him about the mark at that time. The next day, she noticed that the mark had become redder and that there was slight bruising. She asked Gavin what had happened to cause the mark, and he responded that “[m]y dad hit me.” She then contacted the school counselor and took him to the counselor's office.

¶ 28 The State's second witness was Dr. Laura Mutchler, Gavin's school counselor. She testified as follows. Boyer contacted her on April 14, because she was concerned about Gavin and an injury to his eye. That day, Mutchler spoke with Gavin alone in her office for approximately ten minutes. She asked him what happened to his eye, and he responded that “daddy punched me.” Gavin explained to her that he had been playing with the baby (Kayn), he made the baby cry, and this made his dad angry. Then his dad punched him. He demonstrated the punch by making a motion in which he swung his fist. She described Gavin as having “a black eye.” She did not recall being aware of any medical diagnoses Gavin had at the time she spoke with him.

¶ 29 The State's third witness was Shannon Krueger, a pediatric nurse practitioner. She testified as follows. She was a part of the University of Illinois Chicago College of Medicine's "MERIT" program, which she described as a program to perform medical evaluations on children suspected to be physically or sexually abused. She had been a registered nurse for ten years and a nurse practitioner for seven. On April 15, she spoke with Tiffanie before examining Gavin. She observed a contusion below Gavin's right eye and a yellow-brown contusion on his left forehead. She asked Gavin how he got his "owies" on his face, and he responded that "daddy punched me," because he had woken Kayn and his dad was mad. Gavin said he was laying in bed at the time. In describing what happened, Gavin made a fist and punching motion toward his face. She asked him where his mother was when this occurred, and he replied that she was there yelling "no, don't punch him."

¶ 30 Krueger next spoke with Tiffanie again. Tiffanie explained that Gavin exhibited behavioral issues and threw tantrums. Tiffanie told her that when Gavin would have severe tantrums, he would hit and hurt himself or throw himself onto things. She showed her a video of Gavin throwing a tantrum, which she watched for several minutes. In the video, Gavin did whine and cry and throw himself on a soft padded couch—what Krueger described as a "normal childhood tantrum"—but she did not observe him hit or punch himself. Tiffanie did not say that Gavin's current black eye had been the result of a tantrum.

¶ 31 When asked whether she was aware at the time of her examination of any diagnosis that Gavin had prior to her examination, counsel for Gavin's biological father (not a party on appeal) objected. He objected on hearsay grounds, because the witness's ability to make such a diagnosis was not established. The court overruled the objection, stating it would "give the proper weight to whatever the testimony is." Krueger continued that she was aware of Gavin's

diagnoses with Von Willebrand disease and Duane Syndrome when she examined him, both from his medical records and from what Tiffanie had told her. Krueger was not an expert in Duane Syndrome, but she had heard of it in her past medical education. She knew that Duane Syndrome affected eye muscles, which could cause issues with Gavin's depth perception. She also knew that Von Willebrand disease affected blood clotting. Based on his records, Gavin had a mild form of Von Willebrand disease.

¶ 32 Counsel for Gavin and Damian's biological fathers objected to her testimony about Von Willebrand disease, and the court overruled the objection. Krueger continued that in people with Von Willebrand disease, their blood does not clot as quickly as it should. However, spontaneous bleeding was not a symptom of Von Willebrand disease; a traumatic event was required for a bruise to occur. The disease caused the bleeding that occurred upon the traumatic event to take longer to stop. The disease should not affect the color changes in the healing process of a bruise; once clotting occurred, the injury would heal the same as any other contusion. Her assessment following Gavin's medical examination was that his injuries were consistent with physical abuse. She reached this conclusion in collaboration with Dr. Davis.

¶ 33 The State next called Sarah Hoecherl, a child protection specialist with DCFS. She testified as follows. She was employed by DCFS in October 2011, and she was sent at that time to investigate a report of potential child abuse involving Gavin. At the time, Gavin was seven months old, not yet walking or crawling, and he lived with Tiffanie and two other children in Rockford. Shaun would frequent their home. She visited Gavin at the hospital and observed Gavin's injuries, including a large bruise and swelling on his forehead. She photographed Gavin that day, and the photographs were offered and admitted into evidence. She had concerns after observing Tiffanie with Gavin at the hospital. When going through what happened, "she handled

him very roughly, often kind of re-showing me.” She grabbed his cheek and squeezed them to indicate how the bruises on his cheeks occurred, which caused Gavin to cry and whine. As a result of her investigation, Shaun and Tiffanie were indicated for Gavin’s cuts, welts, and bruises. The indication had a 20-year retention. While Gavin was in the hospital, the physician ran blood work labs on Gavin, and the blood work came back negative.

¶ 34 The State next called Jane Whitaker, who had testified at the shelter hearing. She testified as follows. She was a child protection investigator with DCFS, who was assigned to investigate potential abuse or neglect in this case on April 14, 2015. She arrived at Tiffanie’s house in the afternoon of April 14. Tiffanie, Gavin, Kayn, and Shaun’s father were all at the home when she arrived. She spoke with Tiffanie and informed her that Gavin had reported to a teacher at his school that his “daddy” had punched him. She then spoke with Gavin alone in his room. She asked him what happened to his eye, and he responded that “Daddy hit me, Daddy Shaun,” and he made a fist and mimed punching himself. She took a picture of Gavin that day, and it was admitted into evidence without objection. She had forwarded the photograph to her supervisor. After getting contact information from Tiffanie, Whitaker attempted to contact Dr. Hoover-Regan, Gavin’s specialist for his Von Willebrand disease, but she was unable to reach her.

¶ 35 Whitaker scheduled for Gavin to see Krueger and Dr. Davis at MERIT in Rockford the next day. Tiffanie took Gavin to the appointment. Whitaker spoke with MERIT by telephone later on April 15th. The MERIT healthcare providers determined, based on Gavin’s statements, their interview, and their exam, that his injury constituted child abuse. Thereafter, DCFS decided to take Gavin, Damian, and Kayn into protective custody on April 15.

¶ 36 Next, Tiffanie called her first witness, Kathleen Emerson. Emerson was the current foster mother to Gavin and Kayn. She was also their great-great aunt. She testified as follows. They had been in her care for about six months, since they were placed into protective custody by DCFS in April 2015. Gavin was prone to tantrums where he would cry, scream, and hit himself. On October 1, 2015, she noticed a mark near Gavin's eye. The next day, she noticed the mark was darker, and she took pictures of it, which were admitted into evidence. She had noticed marks a few times before but only photographed this one because "this one was kind of bad." Nobody had hit Gavin to cause the mark, but Gavin had thrown a tantrum on October 1. He threw temper tantrums at least once a week. She did not know what caused his bruising depicted in the October 2 photographs.

¶ 37 Tiffanie testified next as follows. She lived in Byron, Illinois, with her husband, Shaun, who was the biological father of Kayn. On April 12, 2015, a Sunday, she and Shaun were watching television while Gavin and Kayn played in the living room. They told Gavin to clean his room, which he did after throwing a bit of a tantrum. When he came back out of his room, he had a red mark under his eye. When she asked him how he hurt his eye, he said that Damian hit him. She informed him that Damian was not at home, and Gavin replied that "daddy" hit him. On April 14, she observed that the mark under Gavin's eye was darker, like a black eye, but "it was barely visible." At no time on April 12 or 13 did she observe Shaun hitting Gavin. Damian had not been at the home since March 26.

¶ 38 She continued that Gavin had been diagnosed with Duane Syndrome and Von Willebrand disease, although he had not been diagnosed with those conditions prior to the 2011 abuse case. The State objected on hearsay grounds. The circuit court overruled the objection and stated it would give her testimony the proper weight. Gavin had medication for Von Willebrand disease

prescribed by Dr. Hoover-Regan, but he needed to take it only if he had a bleed that would not stop. She believed Gavin's Duane Syndrome made him clumsier, which resulted in his injuries. On April 14, 2015, she recorded a video of Gavin throwing a tantrum, and the recording was introduced into evidence.

¶ 39 Shaun also testified, as follows. Gavin was his step-son. He was the biological father of Kayn, who was 20 months old. He never struck Gavin, not the weekend of April 12 or at any other time. His account of the weekend of April 12 was consistent with Tiffanie's account of events. He and Tiffanie were watching television and asked Gavin to clean his room. When Gavin returned from his room after 10 or 15 minutes, he had a red mark under his right eye. Gavin first claimed that Damian had caused it, but then changed his recount to "daddy" did it. Tiffanie told Gavin that Shaun could not have caused his mark because he was sitting with her in the living room the whole time.

¶ 40 C. Orders of Adjudication

¶ 41 Following the hearing, the circuit court entered adjudicatory orders on November 9, 2015. The circuit court explained its findings as follows. There was testimony regarding the Von Willebrand disease that the court could take reasonable inferences from and whether it had any bearing on the injuries that Gavin sustained. It continued:

“[W]ith the lack of specific medical testimony, the Court doesn't believe there was a link *** between the medical disorder and the injuries. That being that there was testimony that—just bear with me for a moment—that the disorder was a bleeding disorder and not a bruising disorder. That there must have been a traumatic event first in order for there *** to be further injuries that would be apparent. So the court doesn't find that there was a link specifically just from that disorder and the injuries that were sustained in this case.”

¶ 42 The court found that the State’s witness testimony was consistent that Shaun caused Gavin’s injury. The court heard similar testimony from “the teacher, a counselor, a merit nurse, [and] Jane Whitaker from DCFS.” These witnesses’ testimonies showed that Gavin used similar language and similar motions to explain that Shaun hit him.

¶ 43 The court also reviewed the video of Gavin having a “significant tantrum,” and it gave the video “appropriate weight.” It noted that the video was taken after the allegations of abuse and neglect had come forward. Gavin mostly swung himself around toward the couch in the video. There was testimony that these tantrums happened frequently, including from the foster parent, Emerson. However, the court did not believe that the tantrum it observed in Tiffanie’s video was consistent with Gavin being able to injure himself similar to the injuries presented in this case. The court also considered the factual findings from the 2011 DCFS case, reasoning that the findings were consistent with the allegations here concerning Gavin’s risk of harm under count III.

¶ 44 The court found that the State had proved all counts by a preponderance of the evidence for all three minor children’s petitions. It found the State proved that Shaun was responsible for inflicting physical injury on Gavin and that Tiffanie allowed the injury to be inflicted.

¶ 45 A dispositional hearing took place on December 9, 2015. The State submitted three reports into evidence: a December 1, 2015, report by CASA (Court Appointed Special Advocates), a December 4, 2015, report by Lutheran Social Services, and a December 7, 2015, DCFS service plan. All three were admitted into evidence without objection. The circuit court then heard arguments from all parties.

¶ 46 After hearing arguments, the circuit court stated that it had reviewed the three reports submitted that morning. It was adopting the State’s recommendations, including the DCFS

service plan. The circuit court's dispositional orders found that Gavin was abused and neglected, that Tiffanie was unfit to care for him, and that it was consistent with his health, welfare, safety and best interest to make him a ward of the State. The court entered similar orders with respect to Kayn and Damian.

¶ 47 Respondents each filed motions to reconsider the adjudicatory and dispositional orders. The circuit court heard the motions to reconsider, and it denied them on January 5, 2016.

¶ 48 Respondents timely appealed.

¶ 49

II. ANALYSIS

¶ 50 The Juvenile Court Act of 1987 (Act) (705 ILS 405/1-1 *et seq.* (West 2014)) provides a two-step process for an adjudication of wardship. *In re A.P.*, 2012 IL 113875, ¶ 18. A proceeding for an adjudication of wardship is a “ ‘significant intrusion into the sanctity of the family which should not be undertaken lightly.’ ” *Id.* (quoting *In re Arthur H.*, 212 Ill. 2d 441, 463 (2004)). The paramount consideration in an adjudication of wardship is the best interests of the child. *Id.*

¶ 51 Step one on a petition for adjudication of wardship is the adjudicatory hearing, where the court considers only whether the minor is abused, neglected, or dependent. *Id.* ¶ 19; 705 ILCS 405/2-18 (West 2014). The purpose of the adjudicatory hearing is to determine whether the minor was abused or neglected by a preponderance of the evidence, not to assign or apportion blame to individuals for the neglect. *In re Arthur H.*, 212 Ill. 2d at 465. If the trial court determines that the minor was abused or neglected, the court moves to step two, the dispositional hearing. *In re A.P.*, 2012 IL 113875, ¶ 21. There, the trial court determines whether it is consistent with the health, safety, and best interests of the minor and the public that the minor be made a ward of the court. *Id.*

¶ 52 A reviewing court will reverse a finding of neglect or abuse on a petition for adjudication of wardship if it is against the manifest weight of the evidence. *In re A.L.*, 2012 IL App (2d) 110992, ¶ 13. A finding is against the manifest weight of the evidence only if it is clearly apparent from the record that the trial court should have reached the opposite conclusion. *In re An.W.*, 2014 IL App (3d) 130526, ¶ 55. Under the manifest-weight-of-the-evidence standard, the reviewing court defers to the trial court, because it was in the best position to observe the conduct and demeanor of parties and witnesses, and the reviewing court will not substitute its judgment for that of the trial court on matters such as witness credibility, the weight to be given to evidence, and the inferences to be drawn from the evidence. *Id.*

¶ 53 In this consolidated appeal, respondents argue that the State failed to prove that the minor children were neglected or abused by a preponderance of the evidence. Because the focus is on whether the minors were abused or neglected and not to apportion blame or assign responsibility, we address the respondents' arguments of whether the minor children were neglected or abused together. If only one respondent made the argument, we specify the respondent.

¶ 54 Respondents also argue that they each received ineffective assistance of counsel, because both of their respective counsels failed to present expert testimony as to Gavin's medical diagnoses and failed to have the circuit court take judicial notice of testimony and evidence adduced at the temporary custody hearing. Because respondents raise the same ineffective assistance arguments, we again address the arguments together.

¶ 55 A. Findings of Abuse and Neglect

¶ 56 Respondents acknowledge that a finding of abuse against one child establishes a *prima facie* case of neglect for the child's siblings based on an injurious environment. *In re K.O.*, 336 Ill. App. 3d 98, 108-09 (2002). The findings of neglect with respect to Kayn and Damian stem

from the abuse and neglect of Gavin. Therefore, respondents' arguments and our analysis focus only on the evidence related to Gavin's injury.

¶ 57 Respondents first argue that the trial court's finding of abuse was improperly based on uncorroborated, hearsay statements by Gavin, in violation of section 2-18(4)(c) of the Act (705 ILCS 405/2-18(4)(c) (West 2014)). Section 2-18(4)(c) provides that "[p]revious statements made by the minor relating to any allegations of abuse or neglect shall be admissible into evidence. However, no such statements, if uncorroborated and not subject to cross-examination, shall be sufficient in itself to support a finding of abuse or neglect." Respondents recognize that our supreme court has interpreted the subsection to require that the minor's statements be either corroborated or subject to cross-examination. *In re A.P.*, 179 Ill. 2d 184, 196 (1997). Sufficient corroboration under section 2-18(4)(c) is made on a case-by-case basis, but in all cases, it "requires more than just witnesses testifying that the minor related claims of abuse or neglect to them." *Id.* at 198. Corroborating evidence of abuse or neglect requires independent evidence that would support a logical and reasonable inference that the alleged abuse or neglect occurred, that is, evidence that makes it more probable that the minor was abused or neglected. *Id.* at 199.

¶ 58 Respondents continue that the circuit court was persuaded by the testimony of several State witnesses, all of whom testified that Gavin told them "daddy hit me," or something very close to that, accompanied by a fist motion. Respondents contend, however, that this testimony was not corroborated. They argue that the only evidence the State offered were Gavin's hearsay statements that Shaun hit him, which did not constitute corroborating evidence. See *In re Alba*, 185 Ill. App. 3d 286, 290 (1989) (child's out-of-court drawing was itself hearsay, and it could not corroborate her statements about sexual abuse). They continue that a witness repeating what the minor said does not constitute corroboration. See *In re J.H.*, 212 Ill. App. 3d 22, 29 (1991)

(“[T]he fact that two or more witnesses testify to what the minor said is not sufficient corroboration.”). Nor may Gavin’s physical actions—here, his acting out of the punch with his fist—corroborate his hearsay statements. See *In re Marriage of Flannery*, 328 Ill. App. 3d 602, 614 (2002) (physical actions fit within definition of hearsay and could not corroborate hearsay statements). Respondents argue that, like in *Flannery*, Gavin’s fist gesture is hearsay and may not corroborate his statements that Shaun hit him.

¶ 59 Respondents also argue that the medical evidence presented failed to corroborate Gavin’s statements. They argue that Krueger testified that she consulted with Dr. Davis to conclude that Gavin had been abused, but whatever he said to her was hearsay and, importantly, the record does not demonstrate that Dr. Davis met with Gavin or knew about his diagnoses of Duane Syndrome and Von Willebrand disease. The court further accepted Krueger’s testimony that Von Willebrand disease was a bleeding disorder, not a bruising disorder, and, “almost as if by magic,” she became an expert on the disease.

¶ 60 Last, respondents argue that Whitaker’s photographs of Gavin did not corroborate his statements of abuse. Rather, Tiffanie contends that “[t]he photograph does nothing more than to depict Gavin with a little shiner under one eye.” The “slight bruise” was not consistent with being hit in the face by an adult hand. The court saw other similar photographs of Gavin’s bruise, but Tiffanie argues that the photos do not, in and of themselves, prove that Shaun hit him.

¶ 61 Respondents turn from the testimony offered at the adjudicatory hearing to what they argue was not but should have been offered—specifically, contradictory evidence from the temporary custody hearing. They note that the Act permits a trial court to “take judicial notice of prior sworn testimony or evidence admitted in prior proceedings involving the same minor,” if

(1) the parties were represented by counsel at the prior proceedings and (2) judicial notice would not admit hearsay evidence otherwise prohibited. 705 ILCS 405/2-18(6) (West 2014).

¶ 62 At the temporary custody hearing, all parties were represented by counsel, and all witnesses at the temporary custody hearing also testified at the adjudicatory hearing. Nevertheless, respondents argue the testimony at the temporary custody hearing was “markedly different” than the testimony at the adjudicatory hearing. They argue that the differences in testimony and evidence offered between the two hearings, if considered by the court at the adjudicatory hearing, would have weighed against a finding of abuse and neglect.

¶ 63 First, respondents argue there was testimony at the temporary custody hearing that Gavin would lie about somebody hurting him. Tiffanie testified that Gavin frequently alleged that someone hurt him when that person was not at home at that time.⁴ Respondents also point to Whitaker’s testimony from the temporary custody hearing that, when she returned to Gavin’s home to take custody of him and Kayn, Tiffanie told her that Gavin claimed his father hit him in the head. Whitaker asked Gavin how he hurt his head, and he told her “daddy did it.” But, she continued, Shaun was not at home at the time. Respondents argue that this testimony, if considered at the adjudicatory hearing, would have lent credibility to Shaun and Tiffanie’s testimony that Gavin would lie about who or what caused his injuries.

¶ 64 Next, respondents argue that the trial court at the adjudicatory hearing should have considered testimony regarding Gavin’s Von Willebrand disease from the temporary custody hearing. There, Tiffanie had testified that Gavin’s doctor told her, due to Von Willebrand disease, Gavin would bruise easier than others, a “nice little bump” could form a bruise, and that

⁴ We note, and respondents acknowledge in their briefs, that Tiffanie provided this testimony at the adjudicatory hearing as well.

he would have more bruises than a normal child. She also testified that he would wear a helmet when he played outside because if, for example, he were to fall off his bike, a head injury would be “extremely horrible” for him. Likewise, Whitaker testified at the temporary custody hearing that Gavin’s diagnosis of Von Willebrand disease meant that he would bruise easily. The court at the temporary custody hearing found the testimony of Gavin’s diagnosis “interesting.”

¶ 65 Respondents argue that, in contrast, the court heard about Von Willebrand disease from Krueger at the adjudicatory hearing, and it treated her as an expert on the disease. Respondents contend that if the trial court had considered the testimony on the matter from the temporary custody hearing, which it was permitted to do under the Act, the weight of the evidence would have shifted away from a finding of abuse.

¶ 66 The State responds as follows. First, the State disagrees that Gavin’s statements about abuse were uncorroborated. Rather, they were corroborated by a photograph of his bruised eye, admitted into evidence as People’s Exhibit 1; Boyer’s observation of a red mark and bruising under his eye; Mutchler’s observation of his “black eye”; Krueger’s testimony that the injuries she observed upon a medical examination were consistent with abuse; and by the injury’s consistency with the 2011 abuse case against Tiffanie and Shaun. The State argues that the trial court was in the best position to observe the demeanor and conduct of the parties and witnesses, to determine their credibility, and to assign weight to the evidence. It heard testimony from Shaun, Tiffanie, and Emerson, but it found the State’s witnesses more persuasive. The State contends that the evidence heard at the adjudicatory hearing lead to the conclusion that it was more probable than not that Gavin had been abused, and nothing in the record demonstrates that it was clearly evident that the opposite result would have been the proper result.

¶ 67 The State next turns to respondents' argument that the court failed to take notice of contradictory evidence presented at the temporary custody hearing. While the State agrees that section 2-18(6) of the Act (705 ILCS 405/2-18(6) (2014)) allows a court to take judicial notice of prior proceedings, it does not require that a court do so. Here, no party asked the court to take notice of evidence presented at the temporary custody hearing.

¶ 68 We agree with the State. First, we are mindful that our standard of review is a manifest-weight-of-the-evidence standard (*In re A.L.*, 2012 IL App (2d) 110992, ¶ 13), and the trial court was in the best position to weigh the evidence and determine witness credibility (*People ex rel. Madigan v. J.T. Einoder, Inc.*, 2015 IL 117193, ¶ 40). With respect to respondents' corroboration argument, the record demonstrates that Gavin's statements of abuse were corroborated. Observation by a witness of a bruise on a minor serves to corroborate the minor's statement that he was hit. *In re Jaber W.*, 344 Ill. App. 3d 205, 258 (2003) (minor's out-of-court statement that his father hit him with his hand was corroborated by two witnesses observations of bruises and a scratch on the minor's face). Our supreme court recognizes that "a medical examination and other physical evidence can provide corroboration of the occurrence of the abuse." *In re A.P.*, 179 Ill. 2d at 198. Here, the State called four witnesses who testified that they observed a red mark or bruise near Gavin's eye when he said his dad hit him; Gavin's injuries were documented by photographs introduced into evidence at the adjudicatory hearing; and Krueger performed a medical examination of Gavin, which lead to her opinion that his marks were consistent with abuse. Accordingly, we find that Gavin's out-of-court statements that Shaun hit him were sufficiently corroborated under section 2-18(4)(c) of the Act (705 ILCS 405/2-18(4)(c) (West 2014)).

¶ 69 Furthermore, the State is correct that while a court may take judicial notice of prior proceedings under the Act (705 ILCS 405/2-18(6) (west 2014)), the Act does not require that it do so. See *In re J.P.*, 316 Ill. App. 3d 652, 663 (2000) (“Wholesale judicial notice *** is unnecessary and inappropriate, and a trial court should only take judicial notice of those portions of the underlying court files that have been proffered by the State and to which the respondent is given an opportunity to object.”); *In re Interest of J.G.*, 298 Ill. App. 3d 617, 629 (1998) (if the State wanted the court to take judicial notice of a particular unfitness proceeding, the State had to proffer material to the court and defense counsel be allowed to object). Here, respondents never proffered material for the trial court to take notice of at the adjudicatory hearing, and the State never had a chance to object. Simply, no evidence from the temporary custody hearing was properly before the trial court to consider at the adjudicatory hearing.

¶ 70 For these reasons, we hold that the trial court’s findings of abuse and neglect with respect to Gavin were not against the manifest weight of the evidence. Because Kayn and Damian’s findings of neglect were predicated upon Gavin’s, we hold that those findings were also not against the manifest weight of the evidence.

¶ 71 B. Ineffective Assistance of Counsel

¶ 72 Both Tiffanie and Shaun argue that they received ineffective assistance of counsel at the adjudication hearing. Their arguments are substantially similar, based upon the same facts and occurrences, and therefore we analyze respondents’ arguments together. First, respondents argue that counsel was ineffective for failing to present expert medical testimony about Von Willebrand disease and Duane Syndrome. In its ruling, the trial court noted a lack of medical testimony regarding the disease, but it understood Von Willebrand disease was a bleeding disorder, not a bruising disorder. Yet, respondents contend that Von Willebrand disease can

cause easy bruising, referencing the Mayo Clinic’s website, WebMD, and a pamphlet from the National Hemophilia Foundation. Furthermore, Tiffanie argues that her counsel failed to object to Krueger’s testimony about Gavin’s diagnoses, who she contends lead the court to believe there was no connection between Gavin’s bruises and Von Willebrand disease. Respondents argue that the outcome of the adjudicatory hearing would have been different if counsel had introduced a medical expert and objected to Krueger’s testimony.

¶ 73 Second, respondents argue that counsel was ineffective for failing to ask the trial court to take judicial notice of prior testimony at the temporary custody hearing. Respondents argue that counsel should have presented the prior testimony of Whitaker, where she observed Gavin lie about his father hitting him. Further, they argue that Tiffanie’s testimony about Von Willebrand disease—including that Gavin was subject to “easy bruising,” and that he had to wear a helmet when he played outside—would have affected the outcome of the adjudicatory hearing.

¶ 74 Finally, Tiffanie argues that this case shares an important similarity with *In re Yohan K.*, 2013 IL App (1st) 123472, and *People v. Jacobazzi*, 398 Ill. App. 3d 890 (2009), because in all three cases the children involved had preexisting medical conditions that could mimic signs of abuse. In *Yohan*, the appellate court reversed the circuit court’s finding of abuse, because the State’s “constellation” of injuries theory was no substitute for evidence proving causation as to each separate injury. *In re Yohan K.*, 2013 IL App (1st) 123472, ¶ 113. In *Jacobazzi*, the appellate court remanded for an evidentiary hearing with instructions to consider whether certain medical records, concerning various preexisting conditions that predisposed the victim to bleeding—even spontaneous bleeding—were properly disregarded by counsel as the basis for a defense and whether their omission reasonably affected the outcome. *Jacobazzi*, 398 Ill. App. 3d at 929.

¶ 75 The State responds that respondents cannot prevail on their claims of ineffective assistance of counsel. The State objects to respondents' citation to sources outside the record, including WebMD and other websites. The State continues that respondents cannot overcome the presumption that counsels' decision not to introduce medical testimony was sound trial strategy. It argues that Whitaker testified that she contacted Dr. Hoover-Regan's office (whom Tiffanie referred to as Gavin's "bruise doctor"), but the office was uncooperative and suggested she contact a medical expert from DCFS instead. Further, there was testimony that after the 2011 abuse case, Gavin's blood was tested and came back negative for any blood disorders. The State maintains that not calling a medical expert to testify to Von Willebrand disease was sound trial strategy.

¶ 76 Moreover, the State argues that the trial court specifically found no link between Von Willebrand disease and Gavin's injuries, albeit the court noted the lack of medical testimony. The State maintains that, in light of the rest of the testimony presented at the adjudicatory hearing, there is no reasonable probability that respondents' medical testimony would have affected the outcome of the adjudicatory hearing.

¶ 77 Next, the State addresses Tiffanie's contention that counsel was ineffective for failing to object to Krueger's testimony about Gavin's medical diagnoses. It notes that the trial court stated that it would give her testimony the "proper weight," and Tiffanie cannot show that an objection would have affected the result of the proceedings.

¶ 78 The State turns to respondents' final claim, that counsel was ineffective for failing to ask the court to take judicial notice of testimony from the temporary custody hearing, in particular Tiffanie's and Whitaker's testimonies. Respondents argue that Whitaker provided testimony that she observed Gavin accuse Shaun of hitting him when he clearly could not have. The State

disagrees with respondents that Whitaker testified that she personally observed Gavin falsely accuse Shaun of hurting him. Rather, the testimony that respondents cite demonstrated only that Tiffanie told Whitaker about Gavin falsely accusing Shaun of hitting him, not that Whitaker personally observed Gavin lying. Nevertheless, failing to introduce this testimony did not affect the reasonable probability of the outcome of the proceedings, because Tiffanie provided testimony at the adjudicatory proceeding that Gavin habitually lied about being hit.

¶ 79 The State further argues that counsel was not ineffective in failing to ask the court to take judicial notice of Tiffanie's testimony at the temporary custody hearing that Gavin bruised easily. The State argues that the trial court at the adjudicatory hearing heard testimony that Gavin was clumsy, prone to tantrums, and heard about his diagnoses of Duane Syndrome and Von Willebrand disease. Moreover, it argues that the trial court heard both Shaun and Tiffanie's denials that Shaun ever hit Gavin. This testimony, the State argues, was more powerful than prior testimony that Gavin bruised easily.

¶ 80 Section 1-5(1) of the Act (705 ILCS 405/1-5(1) (West 2014)) provides that minors and their parents have the right to be represented by counsel in a juvenile proceeding. *In re S.G.*, 347 Ill. App. 3d 476, 478 (2004). Although there is no constitutional right to counsel in proceedings under the Act, Illinois courts apply the standard set forth in *Strickland v. Washington*, 466 U.S. 668 (1984), to resolve a claim of ineffective assistance of counsel. *Id.* at 479. To establish a claim of ineffective assistance of counsel under *Strickland*, one must satisfy a two-prong test: (1) counsel failed to meet an objective standard of competence, and (2) counsel's deficient performance resulted in prejudice. *In re Ch. W.*, 399 Ill. App. 3d 825, 828 (2010). To establish that counsel's performance was deficient under *Strickland*, a court uses an objective standard of prevailing professional norms, and a defendant must overcome the presumption that actions or

inactions were the product of sound trial strategy. *People v. Evans*, 186 Ill. 2d 83, 93 (1999). Prejudice is established if one proves there is a reasonable probability that, but for counsel's deficient performance, the result of the proceedings would have been different. *Id.*

¶ 81 Courts recognize a preference for ineffective-assistance-of-counsel claims to be brought on collateral review instead of direct appeal. *In re Ch. W.*, 399 Ill. App. at 829. Reviewing such claims on direct appeal can present difficulties, including that the trial court record has not been developed precisely for litigating ineffectiveness and that the record does not likely reflect counsel's reasoning behind trial decisions and strategy. *Id.* Here, however, these potential problems do not prevent review of the ineffective assistance claims on direct appeal, because respondents' claims are narrow and specific enough to review from the record as is.

¶ 82 We agree with the State that respondents' counsel were not ineffective. Respondents' first claim of ineffective assistance is that counsel failed to proffer medical testimony concerning Von Willebrand disease, in particular Gavin's predisposition to bruise easily. Tiffanie also contends that counsel should have objected to Krueger's testimony regarding the disease. Tiffanie's argument clearly fails because counsel for Gavin and Damian's biological fathers (not parties on appeal) did object to Krueger's testimony on the matter, and the court overruled the objection, allowing her to testify to her knowledge of Von Willebrand disease. As to testimony regarding Gavin's propensity to bruise, Krueger testified at the adjudicatory hearing that the disease meant that Gavin's blood did not clot as quickly as it should, but that he would not spontaneously bleed. She testified that some traumatic event was needed for a bruise to occur. Importantly, respondents do not contend that counsel failed to provide testimony that Gavin would spontaneously bleed, only that he would bruise more easily because of the disease.

¶ 83 The court already heard testimony that Gavin bruised easier than other children by way of Krueger's testimony. However, it understood that Von Willebrand disease was a "bleeding disorder and not a bruising disorder. That there must be a traumatic event first in order for *** further injuries that would be apparent." This was not new information that would have altered the court's analysis. Respondents do not argue that Gavin's marks would have appeared without any trauma. Tiffanie and Shaun both denied that Shaun hit Gavin, and the court considered and rejected Tiffanie's theory that Gavin may have injured himself while throwing a tantrum. Instead, the trial court was persuaded by multiple State witnesses who testified that Gavin told them that Shaun hit him and observed his injury. Based on this evidence, the trial court believed the State proved that Shaun hit Gavin by a preponderance of the evidence.

¶ 84 Accordingly, counsel was not deficient for failing to present medical testimony regarding Von Willebrand disease, because the relevant testimony about the disease was already before the court. The court already knew that Gavin bruised easier than other children because his blood did not clot as well as it should. Nor were respondents prejudiced, because cumulative evidence that Gavin bruised easily would not have a reasonable probability of affecting the outcome of the adjudicatory hearing. See *People v. Pulliam*, 206 Ill. 2d 218, 239-43 (2002) (cumulative evidence did not give rise to reasonable probability that outcome would have been different). Medical testimony that Gavin bruised easily went toward the severity of the trauma necessary to inflict Gavin's injuries, not whether a trauma occurred. No party denied that a trauma must have occurred.

¶ 85 Nor were counsel ineffective for failing to introduce prior testimony from the temporary custody hearing. Respondents claim that counsel should have introduced Tiffanie's testimony about Von Willebrand disease and Whitaker's testimony where, respondents argue, she observed

Gavin lie about Shaun hitting him. Counsel were not ineffective for failing to present Tiffanie's prior testimony at the adjudicatory hearing for the same reasons that counsel were not ineffective for failing to introduce medical testimony regarding Von Willebrand disease. That is, failure to present cumulative testimony that Gavin bruised easily—this time, from a non-medical professional—was not deficient strategy and did not affect the probability of the outcome of the hearing.

¶ 86 With respect to Whitaker's testimony, respondents cite to the specific following exchange:

“Q. Did you witness the - - Gavin stating that his father had hit him and later find out that the father was at work?

A. When I came back about 6:30 to take custody, *that was the first thing that Tiffanie told me.*

Q. Did you witness that?

A. I'm glad you're here. He just hit his forehead and said, Daddy did it. And I asked him. I said, you know, How did you hurt your forehead? Daddy did it. I said, Where's daddy? I mean, Daddy was not there.” (Emphasis added.)

We agree with the State that this exchange does not lead to the conclusion that Whitaker personally observed Gavin lying. Rather, the most logical reading of the testimony is that Tiffanie told Whitaker that Gavin had just lied about Shaun hitting him and that Whitaker relayed what Tiffanie said to her. Nevertheless, failure to introduce this testimony at the adjudicatory hearing would not have affected the probability of a different outcome. The trial court heard testimony that Gavin lied about his injuries from Tiffanie, Shaun, and Emerson. It also heard testimony from multiple witnesses other than Whitaker that Gavin's injuries were

consistent with abuse. The trial court was in the best position to assess witness credibility and weigh the evidence, and we cannot say that this exchange—ambiguous at best—would have changed the court’s assessment of multiple State witnesses who testified consistently to abuse.

¶ 87 Furthermore, *Yohan* and *Jacobazzi* do not advance Tiffanie’s arguments. In *Jacobazzi*, we remanded for an evidentiary hearing on whether failure to present a defense theory that the victim’s injuries were the result of preexisting bleeding conditions, as opposed to the aggravation of a prior injury, constituted ineffective assistance of counsel. *Jacobazzi*, 398 Ill. App. 3d at 928-29. There, the defendant’s counsel had ignored certain medical records that contained diagnoses of sickle cell trait, anemia, fevers, and inferred hemophilia and external hydrocephalus, which taken together provided the basis for an alternative defense theory. *Id.* Here, the court heard testimony that Gavin had Von Willebrand disease. Moreover, respondents do not advance a new theory of Gavin’s injury. They only argue that further testimony about Von Willebrand disease would lend credibility to their existing arguments and discredit the State’s.

¶ 88 Likewise, *Yohan* is inapposite. The *Yohan* court held that the circuit court’s finding of abuse was against the manifest weight of the evidence. *In re Yohan K.*, 2013 IL App (1st) 123472, ¶¶ 112-13. There, the State relied on a “constellation” theory of multiple injuries to prove abuse, but the State failed to prove causation as to each separate injury. *Id.* ¶ 113. The problem in *Yohan* was that the State failed to meet its burden of proof. *Id.* ¶ 146. Here, in contrast, State witnesses presented corroborated testimony of the causation of Gavin’s abuse. Respondents do not argue that the State failed to meet its burden of proof but rather that additional testimony would have shifted the weight of the evidence in their favor.

¶ 89 For these reasons, we reject respondents' argument that they received the ineffective assistance of counsel.

¶ 90 As a final matter, we note that this appeal was accelerated under Supreme Court Rule 311(a) (eff. Mar. 8, 2016). Except for good cause shown, the appellate court must issue its decision within 150 days of the filing of the notice of appeal. Ill. S. Ct. R. 311(a)(5) (eff. Mar. 8, 2016). Here, the notice of appeal was filed on January 12, 2016. We granted motions for extensions of time to file briefs for both parties, and the final briefs were not filed with court until June 24, 2016. Under these circumstances, we believe good cause existed for this decision to be issued after the time mandated by Supreme Court 311(a).

¶ 91

III. CONCLUSION

¶ 92 The circuit court's adjudicatory orders were not against the manifest weight of the evidence. Gavin's statements of abuse were corroborated by his physical marks, and the court was not required to take judicial notice of testimony from the prior temporary custody hearing. Further, respondents did not receive ineffective assistance of counsel. The circuit court heard and considered testimony about Von Willebrand disease at the adjudicatory hearing, further medical evidence would not have obviated the need for a trauma, and prior testimony from the temporary custody hearing would have been largely cumulative. Therefore, the judgment of the circuit court of Ogle County is affirmed.

¶ 93 Affirmed.