

2016 IL App (2d) 160122-U
No. 2-16-0122
Order filed August 1, 2016

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

<i>In re</i> S.A., S.A., S.H., and S.H., Minors)	Appeal from the Circuit Court
)	of Winnebago County.
)	
)	Nos. 14-JA-237
)	14-JA-238
)	14-JA-239
)	14-JA-240
)	
(The People of the State of Illinois,)	Honorable
Petitioner-Appellee v. Curtis A.,)	Francis Martinez,
Respondent-Appellant).)	Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Justices McLaren and Birkett concurred in the judgment.

ORDER

¶ 1 *Held:* Appellate counsel’s motion to withdraw is granted. There are no issues of arguable merit concerning the trial court’s findings that respondent’s two stepchildren and his two biological children were neglected. Affirmed and motion granted.

¶ 2 Respondent, Curtis A., appeals from the trial court’s order adjudicating his two (older) stepchildren, Shakeya H. and Shakiya H., and his two (younger) biological children, Serenity A. and Samaya A., as neglected and awarding legal custody and guardianship to the Department of Children and Family Services (DCFS).

¶ 3 Pursuant to *Anders v. California*, 386 U.S. 738 (1967), respondent's appellate attorney moves to withdraw as counsel. See, e.g., *In re S.M.*, 314 Ill. App. 3d 682, 685 (2000) (*Anders* applies to findings of parental unfitness). Counsel states that he has read the record and has found no issues of arguable merit. Further, counsel supports his motion with a memorandum of law providing a statement of facts, potential issues, and argument as to why those issues lack arguable merit. Counsel served respondent with a copy of the motion and memorandum, and we advised respondent that he had 30 days to respond. That time is past, and he has not responded.

¶ 4 For the reasons set forth in counsel's memorandum of law, we agree that it would be frivolous to argue that the trial court's findings that the minor children were neglected based upon an injurious environment was against the manifest weight of the evidence or that its findings that it was in the minors' best interests to make them wards of the court and place them in the guardianship of DCFS was against the manifest weight of the evidence or an abuse of discretion. We further agree that it would be frivolous to argue that respondent's due process rights were violated by allowing Shakiya and Shakeya to testify concerning previously-undisclosed allegations of physical abuse. The trial court also did not abuse its discretion in allowing the testimony, denying respondent's request for a continuance, and allowing the State to amend its petition before judgment was entered.

¶ 5 I. BACKGROUND

¶ 6 Respondent resides in Rockton and is married to Denelle A.¹ Denelle has four children: Shakeya H. (born April 2, 1999), Shakiya H. (born April 2, 1999), Serenity A. (born November

¹ In *In re S.A.*, 2016 IL App (2d) 160123-U, Denelle's appeal, this court affirmed the trial court's findings of neglect as to Serenity and Samaya. The factual background here is taken from, and substantially the same as, that portion of our earlier decision.

10, 2005), and Samaya A. (born August 22, 2008). During the period at issue, Denelle worked full-time outside the home. Respondent, the two older children's stepfather and the two younger children's biological father, was the primary caregiver in the home.

¶ 7 On July 3, 2014, the State filed four neglect petitions in this case. In case No. 14-JA-237, it alleged that Samaya was a neglected minor because her environment was injurious to her welfare, in that the minor's two older siblings had disclosed: (1) inappropriate conduct by respondent toward the two older siblings; and (2) that they were struck by respondent and Denelle with belts and extension cords on multiple occasions. 705 ILCS 405/2-3(1)(b) (West 2014). In case Nos. 14-JA-238, 14-JA-239, and 14-JA-240, the State raised similar allegations as to Serenity, Shakeya, and Shakiya.

¶ 8 A DCFS report related that, on June 29, 2014, the agency received information concerning sexual abuse and exploitation by respondent of Denelle's two older daughters, age 15. A safety plan was put in place, respondent was told to leave the home, and the children went to stay with their paternal grandmother, who lived next door. Detective Kiza Butler of the Rockton police department interviewed Shakeya and Shakiya on June 28, and 29, 2014. Shakiya reported that, one month earlier, Shakiya told a friend that respondent was looking at her "butt" and stated that he liked her "butt." Six weeks earlier, respondent asked her if she had had sex and if she masturbated. Respondent told Shakiya that he dreamed about her. He asked if he could smell her, and she said okay. Respondent pulled back Shakiya's pajama pants and underwear and put his face down in the opening of her clothing. Denelle explained that she and respondent talk very openly about sex. In the winter of 2012, Shakiya told Shakeya that respondent walked in on her while she showered and told her that he liked her body. Shakeya

told Denelle, who did nothing. The younger siblings, Serenity (age 8) and Samaya (age 5), were subsequently interviewed and made no disclosures of abuse.

¶ 9 The DCFS report further related that Shakeya had been living with her maternal grandmother, Daune H., for three months. Her siblings reported to DCFS that Shakeya wanted to leave the home. She reported to investigators that she wanted to leave due to being subjected to years of her stepfather's inappropriate behavior and comments. The siblings reported that Shakeya is not allowed to come home, which Denelle denied. The older siblings told the investigator that they disclosed respondent's behavior to Denelle on three occasions and that she stated that she would take care of it, which she did not do because it continued. Respondent denied the allegations to the agency, stating that the maternal grandmother was responsible for the situation and that her family had been trying to come between him and Denelle. Denelle denied that her daughters informed her of anything that would cause them to be removed from the home and stated that her mother was not an appropriate placement because there were people in her home who used drugs. When asked why she allowed Shakeya to live there, Denelle replied that it was her daughter's choice.

¶ 10 On July 3, 2014, a shelter care hearing was held, the parties appeared with counsel, and they were arraigned on the petitions. The parents waived their right to a hearing and acknowledged that there was probable cause and an immediate and urgent necessity for the removal of the children from their care. The trial court entered a temporary custody order, appointing DCFS as temporary legal guardian of children. On July 1, 2014, the children were placed with Daune.

¶ 11 A. Adjudicatory Hearing

¶ 12 1. Detective Kiza Butler

¶ 13 The adjudicatory hearing commenced on January 29, 2015, and took place over several dates to September 15, 2015. Detective Butler testified that, on July 28, 2014, she received a follow-up report about abuse at 12336 Old River Road in Rockton. Daune, Danesha (an aunt), and Shakeya came to the police department. Shakeya initially described to Butler a three-way phone conversation between herself, Shakiya, and a friend. (Shakeya had been on the phone with a friend, and Shakiya called in.) During the conversation, they spoke about abuse incidents involving Shakiya. Butler contacted DCFS to request an investigator.

¶ 14 That same day, Butler and investigator Pamela Langhoff went to Denelle's home and met with Denelle, respondent, the two younger siblings, and Shakiya. Denelle and respondent told Butler that there had been some issues between them and Shakiya and Shakeya. They gave Butler permission to speak to Shakiya at the police station. There, Shakiya related that, six weeks earlier, she had been in the upstairs office of the family home with respondent. They sat in chairs across from each other and were having a father-daughter talk, during which respondent asked if she had sex yet and if she was masturbating. He then explained a dream in which he could not see her and could only smell her. Respondent then asked if he could smell Shakiya. When Butler asked Shakiya what she meant by smelling her, she explained that he was referring to her vagina. She allowed him to do so. Respondent pulled open Shakiya's pajama pants and her underwear, lowered his head down, and smelled the inside of her pants and underwear.

¶ 15 Addressing another incident, Shakiya told Butler that her bedroom is in the basement of the family home and there is also a bathroom in the basement. While she was showering, respondent was in the basement and saw her in the bathroom and made comments about her having a nice body. The comments made her feel scared, and she thought that respondent had a crush on her.

¶ 16 Shakiya provided a written statement to Butler, which was admitted into evidence. Butler returned Shakiya to the residence. (Respondent had left pursuant to a safety plan.) There, Butler spoke to Denelle, who stated that she was aware of the father-daughter talk and explained that they were very open about sex and that was the way they spoke in their home. She wanted any information about sex to come from the parents, not others.

¶ 17 A few days later, Butler spoke with Shakeya at the police department. She was alone. Shakeya related an incident that occurred when she was much younger (about five years earlier) and the family lived at the Apple Orchard apartment complex in Rockford. Shakiya was playing in her room, and Shakeya was in the living room with respondent, sitting on his lap. Respondent rubbed his hand underneath Shakeya's shirt, across her chest area, and told her it was okay. This made Shakeya uncomfortable. She wriggled away or slid off respondent's back, went to the bedroom, and told Shakiya what had happened. Shakeya later told Denelle about the incident. Denelle was initially upset and spoke to respondent about it. They fought and they later told her it was just a misunderstanding.

¶ 18 Shakeya also related an incident that occurred in March or April 2014, right before she moved out of the family residence. She was upstairs in respondent's office with respondent. The office door does not have a lock on it. Respondent was discussing sex with Shakeya and asked to see her "pussy." Shakeya said no. One of the younger siblings tried to enter the room, and respondent held it closed until the younger sibling went downstairs. They continued their conversation, and Shakeya again told him no—she would not show him her body—and she eventually left the office. Shakeya provided a written statement that was admitted into evidence.

¶ 19 On cross-examination, Butler agreed that, on June 28, 2014, Shakiya was upset with the family because of an incident that evening where she was unable to accompany the family for

dinner because she did not have any money to pay for herself. (The children earned money for doing chores in the house, and Shakiya had not done her chores.) She stayed home and had the three-way conversation related above. (The three-way conversation occurred because the older girls were not allowed to speak to each other. Respondent was very controlling, according to Butler, and did not want the girls speaking to each other.) Shakiya stated that she could not take it anymore. Butler arrived at the residence in the early morning hours and spoke to Denelle. Denelle told Butler that, three months earlier, Shakeya started living with Daune because Shakeya had allowed a boy into the home around her younger sisters while the parents were out. Shakeya had also been posting on Facebook inappropriate comments and photos. Denelle allowed Butler to take Shakeya to the police department; Denelle was compliant and did not resist. Denelle was upset when she narrated the family dynamics to Butler.

¶ 20 Shakeya told Butler that she moved out of the house because respondent told her to leave. Respondent also told Denelle that, if she did not want Shakeya to leave, Denelle could leave with her.

¶ 21 Denelle told Butler that she had concerns about Daune's home. Daune is a former drug user and allows drug users in her house. She is also more lenient about house rules than Denelle and respondent. Also, Danesha, who lives with Daune, uses alcohol.

¶ 22 The younger siblings did not make allegations concerning inappropriate conduct by respondent. Butler tried to speak to Denelle and respondent on subsequent occasions, but they did not want to meet with her.

¶ 23 2. Shakiya H.

¶ 24 Shakiya, age 16, testified in chambers and outside her parents' presence. She is a sophomore in high school, and, although she did not do well during the first two quarters of her sophomore year, she passed all of her classes during the third quarter. She lives with Daune.

¶ 25 Her sister Shakeya had moved out earlier to live with Daune. Respondent had told her to get out because of something to do with Facebook. Shakiya was not allowed to have any contact with Shakeya afterwards because respondent stated that she was a bad influence on Shakiya.

¶ 26 Shakiya further testified that, on the day in question, respondent asked her to join the family for dinner, but he wanted her to pay for her own meal. She refused, and the family left. Shakiya called her friend, Sammy C., and told her that she was sick and tired of staying home. While she was on the phone with Sammy, Shakeya called Sammy as well, and Sammy connected everyone in the three-way conversation. When she heard her sister's voice, Shakiya started crying because she had not heard her voice in two months. Daune got on the phone and told her "all that stuff that went on that day."

¶ 27 Shakiya explained that this is the third time she is either living with her grandmother and/or that DCFS was contacted. The first time was when she was three or four years old and the family (Denelle and the twins) lived in Rockford. She and Shakeya were outside playing alone, and the neighbors called DCFS. The incident resulted in Shakiya living with Daune for about one year. Addressing a second incident, Shakiya explained that, when she was eight or nine, respondent beat her with an extension cord. It caused bruising and left a scar on her right hip. Her daycare contacted DCFS.

¶ 28 The third incident occurred in the early morning hours of June 29, 2014. (The three-way call occurred on the evening of June 28, 2014.) Denelle woke up Shakiya and told her that the police and DCFS were present because Daune had called the police. Denelle "told me that I

better get my story straight before I went upstairs.” Shakiya went to the police station with Butler. There, she told Butler about the beating and the father-daughter talk. The father-daughter talk occurred around sunset in respondent’s office in the back of the single-story house. Serenity and Samaya were in the living room in the front of the house; Denelle was not home. Respondent had called up Shakiya from her basement room and stated that he wanted to talk. They started talking about boys. Respondent asked Shakiya if she was having sex, and she replied in the negative. He asked her if she was ready, to which she replied no. He also asked if she had any crushes. Respondent told Shakiya that he had a dream about her, but it was a scent and asked her if she had a scent, to which Shakiya replied that she did not know. Respondent asked if he could smell her. He pulled down her pants and underwear and sniffed. Also during this conversation, after respondent asked her if she was having sex, he kissed an area to the right side of her hip bone “[b]y my vagina.” Shakiya thought it was weird, and she felt uncomfortable. She left the office and went to her room. She did not tell Denelle about the incident.

¶ 29 Shakiya testified that the first inappropriate incident with respondent occurred when she was seven years old. The family (Denelle, respondent, Shakeya, and Serenity) lived in Rockford. It occurred during the evening, and Denelle was not home. While Shakiya was on the couch watching television, respondent sat down next to her and put his hand down her pants, but not inside her underwear, for about five seconds. She did not know what he was doing, thought it was weird, and left. A few days later, Shakiya told Shakeya about the incident after Shakeya related an inappropriate incident to her. When asked what incident Shakeya related that prompted Shakiya’s disclosure, Shakiya could not recall. Shakeya told Shakiya that she would inform Denelle about the hands-in-the-pants incident the following day. Denelle reportedly

stated that she would take care of it, and she cried. When asked what Denelle did to take care of it, Shakiya testified that she did not know. “All I heard was yelling and screaming” by Denelle and respondent.

¶ 30 Shakiya related another inappropriate incident concerning respondent. She testified that she was 13 or 14 years old. Shakiya and respondent were in the office, and respondent asked her if he could feel her “butt” and he offered her \$5. She replied no, and respondent offered \$10. Shakiya again said no and left the room. She told her friend Jasmine about the incident. Shakiya later learned from Denelle that Denelle learned about the incident after Jasmine told Shakiya about it, who, in turn, related the incident to an aunt, who related it to the grandparents. Denelle told Shakiya that she would handle it. Denelle told respondent’s mother, P.A., about it. Neither Denelle nor P.A. did anything.

¶ 31 Addressing another incident, Shakiya testified that it occurred when she was in middle school. One evening, after Denelle had left for work, Shakiya took a shower. Respondent entered the room, “used the bathroom,” and then opened the shower door and looked up and down at her while she was in the shower. He thought Shakiya did not see him because she had a washcloth over her face; however, Shakiya was able to see through the cloth. After he looked at her, respondent closed the shower door and left.

¶ 32 For one year after the hands-in-the-pants incident, respondent was “distant” and did not speak to the twins as much as he used to. After that year, however, respondent told Denelle to beat the girls with extension cords, leather belts, and tree switches when they acted badly. Shakiya was seven or eight years old at this time. Both Denelle and respondent hit Shakiya about three times per month. The girls could choose either 100 lashes with a belt or 50 with an extension cord. The beatings left bruises, and Shakiya has a scar on her right hip area.

¶ 33 Shakiya testified to several instances of physical abuse. First, she recounted an episode where she was supposed to be reading a book, but fell asleep. Respondent had Shakeya check on her and then he came into the room with an extension cord and started beating Shakiya. She ran away from him, but respondent grabbed her by the ankles and continued beating her. Addressing another incident, Shakiya testified that respondent beat her after he accused her and Shakeya of using Serenity's hat to wipe their "butts." Another incident involved the family dog. Shakiya did not take out the dog, and he "pooped" on the floor. She was struck with a belt (presumably by respondent).

¶ 34 According to Shakiya, all of her sisters were physically abused. Denelle hit Shakeya for 10 minutes with an extension cord one day before Shakeya went to live with Daune. Respondent struck Samaya one month before the children were removed from the home. She had thrown a basketball at the television, and it fell over. Respondent struck Samaya with a leather belt for a couple of minutes; her legs and "butt" were purple afterwards. Shakiya also related an incident involving Serenity. While the family lived in Rockford and Serenity was age four or five, respondent struck Serenity after she poured out some of respondent's hair product while playing in the bathroom. He beat her with a hanger and then a belt. Denelle was in the kitchen during the beating, but Shakiya did not know what she was doing. Denelle switched off with respondent in beating the younger children, but Denelle beat them more often, although respondent, too, beat them "a lot." Three or four "times" per beating instead of 50 or 100, but it depended. When Samaya broke the television, "she got it bad, but it was with a belt. She didn't get the cord."

¶ 35 Respondent's counsel objected to the testimony concerning the physical abuse, arguing that it had not been disclosed prior to trial and violated respondent's due process rights. The

State responded that its petitions could be amended prior to decision to conform to the proofs and that respondent would have an opportunity to present a defense because the State had not yet rested its case. (Shakiya had first informed the State about the physical abuse on April 7, 2014, and she testified on direct on April 10, 2015.) The State noted that it did not prepare any written memorandum or report of the testimony. It argued that, for this reason, it did not disclose the testimony. The State also noted that respondent's counsel had the opportunity to speak with Shakiya before trial, but chose not to do so.

¶ 36 The trial court overruled respondent's objections, noting that, if the girls failed to previously disclose certain information, it would go to their credibility. Respondent's counsel requested a continuance after Shakiya's direct examination so that he would have additional time to discuss the allegations with respondent and prepare his cross-examination. The trial court denied the request.

¶ 37 Shakiya underwent cross-examination on April 10, April 22, and May 7, 2015. Shakiya testified on cross-examination that, when she was unable to go to dinner with the family, she became upset and cried. During the three-way conversation, Shakiya told Shakeya that she was "sick and tired of it," referring to the "beatings" and "punishments." She was also mad that she could only go to dinner if she paid for herself. Her cousin Quinton, who had also been invited to the dinner, stayed with her.

¶ 38 Shakiya further testified that respondent is very controlling of Denelle. Denelle is not strict, but she told the older girls that they could not date. When respondent is not around, Shakiya goes along with Denelle. Denelle is a different person around respondent; she is mad. Respondent tells Denelle to "beat us and she does it. She listens to him."

¶ 39 Shakiya further testified that she did not feel safe in the family home because respondent made her feel uncomfortable and because Denelle cannot protect her. Serenity and Samaya told Shakiya that they did not feel safe in the family home due to the beatings; they feel safe at Daune's house.

¶ 40 3. Daune H.

¶ 41 Daune testified that she is the minors' maternal grandmother and their current foster parent (since July 2014). The entire family previously lived with Daune in 2012 for two to three months due to financial difficulties. Daune worked and did not observe the parents striking the children. When the twins were five or six years old, they were brought to live with Daune for about one year because DCFS had become involved.

¶ 42 Daune has observed marks on Shakiya's right hip that are still present. She described them as dark lines. Shakiya, who was then about nine years old, reported that respondent had struck her with an extension cord. Daune did not have contact with the girls for a while after this incident.

¶ 43 Addressing respondent, Daune testified that he is controlling and demanding. Denelle does what he asks her to do. Respondent uses Denelle to do most of the disciplining of "Shakeya, Shakiya, all of 'em." She knows this through the girls. During the summer of 2012, Daune observed Denelle strike Shakiya in the chest and then on her arms. She struck her about six or seven times during that incident. Denelle hit Shakiya for eating in the living room instead of the dining room. Before Shakeya moved in with Daune, the older girls told Daune that they were beaten with extension cords and made to stay in the basement for hours. On the day Shakeya came to live with Daune, she told Daune that Denelle had beaten her because she had a

Facebook page. She was not allowed to have a Facebook page. Daune conceded that Shakeya had posted suggestive photos of herself.

¶ 44 4. Claude Webster

¶ 45 Claude Webster has lived with Daune for 20 years. He confirmed the incident of Denelle hitting Shakiya, but added that he observed respondent nodding toward Shakiya while looking at Denelle; Denelle quickly responded by hitting Shakiya four or five times, once with her fist in the chest and then several times with an open hand to the upper body. Webster has not observed any other incidents of physical abuse. Webster has been sober for 19 months.

¶ 46 5. Michelle Bunch

¶ 47 Michelle Bunch, a DCFS investigator, testified that a Rockton detective contacted her concerning allegations of sexual exploitation. Bunch was present for the victim sensitive interviews of Serenity and Samaya. These minors did not raise allegations of abuse of any kind. After the minors were taken into protective custody, they were medically examined. No marks or bruises were found.

¶ 48 Bunch testified that she spoke with Shakiya, who related the events described in her statement to police. Shakiya stated that she had informed Denelle of the father-daughter-talk incident, but Denelle told her that it was a misunderstanding; Denelle did not take any action.

¶ 49 Bunch also spoke to Shakeya, who would not verbalize anything. She nodded her head and cried. “She couldn’t catch her breath.”

¶ 50 After the minors were taken into protective custody, Bunch called Denelle to explain what had occurred. Denelle told Bunch that it was a misunderstanding. “So again, it was as if she was familiar with the situation that I was talking about because I didn’t have to clarify.”

Denelle did not tell Bunch if she did anything to address the minors' concerns about respondent's behavior.

¶ 51 The medical examination did not document any marks or bruises on Shakiya's or Shakeya's bodies. While in the waiting room, Bunch heard one of the older girls tell Samaya to sit down, and Serenity stated " 'Or you get a whopping with the belt.' " Bunch attempted to follow up on this comment, but the girls changed the subject.

¶ 52 According to Bunch, DCFS computer records reflected that neither parent had previous involvement with DCFS.

¶ 53 6. Shakeya H.

¶ 54 Shakeya, age 16, testified in chambers and outside her parents' presence. She has lived with Daune for about one year. Respondent and Denelle kicked her out of the family home because Shakeya was communicating with Daune on Facebook. Shakeya had not had contact with Daune for two years. She was not allowed to do so because Denelle believed that Daune needed to change. Respondent and Denelle found about about Shakeya's Facebook page and confronted Shakeya about it. Respondent told Shakeya that he was tired of her and that she had to leave. Denelle did not want her daughter to leave, and respondent stated " 'Well, you can go with her.' " The next day, when she came home from school, Shakeya learned that respondent and Denelle had been arguing. The following morning, Shakeya was blamed for causing the arguments, and Denelle beat her for 15 minutes with an extension cord. Denelle took Shakeya to Daune. Shakeya did speak to Shakiya while Shakeya lived with Daune, except for the three-way conversation, which occurred two months after Shakeya left the family residence. During that conversation, Shakiya told Shakeya that she also wanted to leave the family home because respondent had touched her "butt," she was beaten for one week, and they went to dinner without

her. At some point, Daune got on the phone and spoke to Shakiya, who was crying. Afterwards, Daune, Shakeya, and her aunt went to Rockton to get Shakiya. Daune also contacted the police.

¶ 55 Shakeya related an incident that occurred when she was seven years old. She was watching television, and respondent told her to sit on his lap. Shakeya did so, and respondent put his hand up her shirt and started rubbing her chest area for one or two minutes. After Denelle returned home from work, Shakeya told her about the incident, and Denelle cried. Then, Denelle went upstairs to speak to respondent, and Shakeya overheard her say “ ‘You touched my baby.’ ” Respondent responded that it was a misunderstanding. Later, Denelle came to Shakeya’s room and told her that it was a misunderstanding. Afterwards, respondent’s behavior changed and he stayed away from Shakeya.

¶ 56 However, about one year later, twice per week, respondent started beating Shakeya with an extension cord, including for forgetting to take out the trash, leaving a dish in the sink, or leaving on a light or the television. However, Denelle beat her more often than respondent did. Shakeya further testified that both of her parents also beat Serenity, Samaya, and Shakeya. Serenity and Samaya started being beaten with belts and extension cords when they were four years old. When asked who hit the younger siblings more often, Shakeya replied, “[respondent] mostly hit them.”

¶ 57 Next, Shakeya testified about another incident of inappropriate behavior by respondent. She stated that she was 13 years old, and respondent called her into his office. He asked Shakeya if she was ready to have sex. She replied in the negative, and Denelle asked if he could see her “pussy.” Shakeya responded in the negative. Respondent replied, “ ‘See, that’s how I know you’re not ready to have sex.’ ” Shakeya left the room. She told Shakiya about the incident, but could not recall if she told Denelle about it.

¶ 58 When Shakeya was 12 years old, the family had financial issues and went to live with Daune. During this stay, Denelle hit Shakiya in the face on one occasion for eating in the living room. Serenity was also hit (presumably by Denelle, as this incident is related immediately after the Shakiya incident) about five or six times because she had problems using the bathroom.

¶ 59 Shakeya further testified that she was kicked out of the family house for contacting her grandmother and aunt via Facebook. She did post photographs of herself in a cropped top on Facebook, but, at the time she was kicked out, her parents did not mention the photos. In addition to the contact with her relatives, they mentioned that Shakeya was being kicked out because she had boy in the home when Denelle and respondent were not there. They found out about it two weeks later because Serenity wrote about it in her diary, and respondent read it. Denelle beat Shakeya with a cord after this while respondent watched.

¶ 60 Describing her parents' relationship, Shakeya stated that respondent controls Denelle and makes decisions for her. He is also violent with her (*i.e.*, throwing her against a wall and choking her).

¶ 61 The beatings left marks on her legs, buttocks, and hands, but Shakeya hid them. The State rested its case.

¶ 62 7. Quentin Harris

¶ 63 Respondent called Quentin Harris, age 15 and Shakiya's cousin. Harris was present during the dinner incident. He was also invited to dinner, but decided to stay with Shakiya. Harris saw Shakiya make the phone call to her friend, and he heard some of the conversation. Harris overheard the friend yell, "I'm gonna call the cops on that dude. I'm gonna call the cops on that guy." Shakiya started crying.

¶ 64 8. Antonio Horton

¶ 65 Antonio Horton, a family friend, testified that he socializes with respondent and Denelle on a regular basis and has known the twins most of their lives. Shakiya and Shakeya helped take care of Horton's daughter, who was born in 2012. Horton testified that he never observed physical marks on the girls at any time, nor did he observe inappropriate discipline in the home. The twins never related to him any concerns they had about being physically disciplined or any other inappropriate contact with respondent or Denelle.

¶ 66 9. Respondent

¶ 67 Respondent testified that he works as a roofer and runs a shirt business out of the family home. He denied any inappropriate conduct between himself and any minor. Addressing the father-daughter talk, respondent stated that he had a conversation with Shakiya, but denied inappropriate conduct. He denied smelling any portion of Shakiya or kissing her anywhere on her body during this conversation.

¶ 68 Addressing the shower incident, respondent explained that it was an accident and that Shakiya had never before taken a shower in that bathroom. He did not expect anyone to be in that room when he walked in. Respondent acknowledged that he saw Shakiya and then walked out. He apologized to her. Respondent's office was in the basement at the time.

¶ 69 Respondent denied rubbing Shakeya's chest while she was sitting on his lap. He also denied ever observing Denelle slap Shakiya. Respondent also denied ever hitting any of the children between 50 and 100 times with an extension cord or a belt.

¶ 70 Respondent admitted to corporal punishment, including Serenity (twice), Samaya (once), and Shakiya (once). He never struck Shakeya. Addressing Denelle, respondent testified that he never observed her strike any of the children. He conceded that, when he found out a boy had been in the house the night before, the following morning, he smelled the older girls' stomach

areas, but not down their pants, to ascertain if they smelled like sex. Addressing Denelle, respondent denied pushing her during fights, but conceded that he would grab/hug her during these incidents to calm her down.²

¶ 71

10. Denelle

¶ 72 Denelle testified that she has been married to respondent for nine years, and the twins call him “dad.” Prior to Shakeya moving in with Daune, Shakeya was acting out a lot, including doing inappropriate things on social media. Denelle and respondent spoke to Shakeya about this and took away her phone for a period; however, the behavior continued. About six months before she moved out, the situation escalated with Shakeya posting inappropriate pictures and having conversations with boys. She also had a boy over to the house. Denelle and respondent spoke to her about it and let her know what the rules were and the consequences of not following them. Denelle denied that Shakeya was told to leave. Rather, it was her decision. As to the dinner incident, Shakeya got mad not because she could not go out to eat with the family but because Denelle and respondent scolded her about having spent her money on junk food.

¶ 73 Addressing the shower incident, respondent told Denelle about it and then Denelle asked Shakiya about it. Shakiya told Denelle that it was an accident and that respondent did not know

² Respondent completed a sex offender evaluation on April 7, 2015, with Jeffrey Sundberg, a licensed clinical social worker. Sundberg noted that respondent was quite controlling in his marriage, had a strong need for attention, consistently portrayed himself in a favorable light, and saw little need for changes in his behavior. He presented a low risk to recidivate, but there were areas of concern, including respondent’s questionable regard for personal boundaries. Sundberg recommended an offense-specific polygraph examination, a protective parenting assessment, supervised visitation, and individual and couples counseling.

that Shakiya was in the room. She was not upset about it. At that time, respondent's office was in the basement. As to the chest-rubbing incident, Denelle testified that she was a stay-at-home mom at the time and was with her children all the time. It was not possible that the incident could have occurred. Addressing the living room eating incident at Daune's house, Denelle stated that she struck Shakiya once in the shoulder with an open hand.

¶ 74 Denelle denied ever striking her children with a belt or extension cord 50 to 100 times. However, when they were younger, Denelle spanked them, including with a belt, "according to their age" (*i.e.*, as many "licks" as their age in years, including Serenity and Samaya). The girls never had marks or bruises. After age 10 or 11, however, there was no corporal punishment. Denelle would have the girls do about 20 pushups when they were 10 or 11 years old; later, she took away privileges. Denelle denied any prior DCFS involvement.

¶ 75 Respondent disciplined Shakiya one time with corporal punishment. She was eight or nine years old, and he whipped her with a belt because she was allowing boys to touch her at school during recess, acting out in school, talking during class, and other things. Respondent disciplines Serenity and Samaya with spankings.

¶ 76 11. Trial Court's Findings

¶ 77 On August 1, 2015, over respondent's objection, the State amended Shakeya's and Shakiya's neglect petitions to include language that "the minor(s) disclosed that (they were) struck by (their) mother and step father with belts and extension cords on multiple occasions." The State also amended Serenity's and Samaya's petitions to include that "the minor's siblings disclosed that they were struck by the mother and father with belts and extension cords on multiple occasions."

¶ 78 On September 15, 2015, the trial court found that the State had met its burden of proof on each petition, which alleged that the children were neglected based on injurious environment. The court found the twins' testimony credible and further found that the conditions that defined the household environment were pervasive and continuous and, thus, all four children were at risk. The court also noted that the evidence concerning corporal punishment reflected that it was excessive and inappropriate. It set the matter for disposition.

¶ 79

B. Dispositional Hearing

¶ 80 The dispositional hearing commenced on October 28, 2015. The State did not present any testimony, but requested that the court take judicial notice of the testimony and evidence from the adjudication hearing and prior court reports, including respondent's sex offender evaluation.

¶ 81 Holly Babcock, the case manager from Children's Home and Aid, wrote in a report for the dispositional hearing that respondent and Denelle had filed a grievance with DCFS, alleging that the caseworker and her supervisor had failed to carry out their responsibility of working toward family reunification. As of October 2015, respondent had failed to engage in any services. Babcock also noted in her report Sundberg's comment (echoing his comments in respondent's April 7, 2015, sex offender evaluation) that respondent does not feel that there is anything he needs to change or explore.

¶ 82 Respondent called Babcock. She testified that respondent had not engaged in individual counseling, but was referred to Jeff Sundberg for counseling. Sundberg could not meet with respondent until a psychological evaluation and parental capacity assessment were completed. Neither one of those evaluations had been completed as of the hearing date.³

³ A July 24, 2015, service plan rated respondent as making unsatisfactory progress with

¶ 83 Respondent also called his brother, Corey Anderson, who testified that respondent had a close relationship with Shakeya and Shakiya. The girls never told Corey that there was something amiss in their relationship with respondent.

¶ 84 Megan Johnson, who dated Corey, testified that she had known respondent for about three years. He always parented appropriately, and Johnson never observed any behavior that caused her to be concerned.

¶ 85 Mark Boos, respondent's neighbor, testified that he has known respondent for [h]alf his life" and that he never observed any interactions between the girls and respondent that gave him concern about how they were treated in the home. Merri Boos, Mark's wife, testified consistent with her husband's testimony.

¶ 86 Respondent also called William Johnson, Maxine Cain, Toni Ruff, Tommie Ruff, Jimmy Ruff, and Dorothy Ruff. They testified that they knew respondent for some time, had observed him interact with the children, and never witnessed anything that caused them to be concerned for the girls' welfare.

¶ 87 Respondent also called Henry Curtis A., Sr., respondent's father, who testified that he never observed respondent or Denelle use corporal punishment to discipline the children. Rather, they used deprivation of privileges. Henry Curtis never observed any interaction that caused him to be concerned. He had a good relationship with the children, but they had grown more distant since the case came into care.

¶ 88 Respondent did not testify.

individual therapy. Although he had cooperated with a mental health assessment, respondent did not engage in individual counseling because he avoided questions and attempted to redirect, which prevented the therapist from forming any therapy goals.

¶ 89 On January 12, 2016, the trial court found that respondent was unfit, unwilling, and unable to care for, protect, and discipline the children and that it would be in their best interests for custody to be awarded to DCFS. The court noted that, after an extended adjudicatory hearing, it found that respondent engaged in conduct that essentially constituted excessive corporal punishment and, as to Shakiya, sexual exploitation of a child; thus, the environment was injurious and created a risk of harm to the children. The court determined that respondent had not cured the conditions that created the injurious environment. He had not accepted responsibility for the conduct and, without this, treatment could not be effective. The court specifically noted Babcock's testimony that respondent presented to her as guarded, spoke of nothing therapeutically beneficial, and deflected questions about his conduct. The trial court acknowledged the lengthy testimony from respondent's witnesses that, from the outside, painted a portrait of a content family; however, the court found credible the minors' testimony that told "a different story." The court set the goal for the two younger siblings as return home and set it as independence for the twins.

¶ 90

II. ANALYSIS

¶ 91 Counsel argues that respondent's appeal presents no issues of arguable merit. However, he has identified several potential issues for appeal: (1) whether respondent's due process rights were violated when (a) the State failed to disclose, prior to trial, new allegations of abuse; (b) the trial court allowed Shakiya and Shakeya to testify regarding previously-undisclosed allegations of abuse; and (c) the trial court denied respondent's motion to continue the hearing after Shakiya's direct testimony; (2) whether the trial court abused its discretion in allowing Shakiya and Shakeya to testify about previously-undisclosed physical abuse; (3) whether the trial court abused its discretion in denying respondent's request for a continuance following Shakiya's

direct examination; (4) whether the trial court abused its discretion in allowing the State to amend the neglect petitions to include allegations of physical abuse; and (5) whether the trial court's findings of neglect and its dispositional orders were against the manifest weight of the evidence or an abuse of discretion. For the following reasons, we agree with counsel that no potential issue possesses arguable merit.

¶ 92 The Juvenile Court Act of 1987 (Act) (705 ILCS 405/1-1 *et seq.* (West 2014)) provides a two-step process the circuit court must utilize to decide whether a minor should become a ward of the court. *In re A.P.*, 2012 IL 113875, ¶ 18. First, the trial court must conduct a hearing on the State's petition for adjudication of wardship to determine whether the minor is abused, neglected, or dependent. See 705 ILCS 405/2-18(1) (West 2014); *A.P.*, 2012 IL 113875, ¶¶ 18-19. At this stage of the proceedings, the court determines "whether the child is neglected, and not whether the parents are neglectful." *In re Arthur H.*, 212 Ill. 2d 441, 467 (2004). The second step is the dispositional hearing, where the court determines whether it is consistent with the minor's and the public's health, safety, and best interests to make the minor a ward of the court. *A.P.*, 2012 IL 113875, ¶ 21; 705 ILCS 405/1-3(6), 2-22 (West 2014).

¶ 93 The State must prove its allegations of neglect or abuse by a preponderance of the evidence. *In re N.B.*, 191 Ill. 2d 338, 343 (2000). "The trial court has the best opportunity to observe the demeanor and conduct of the parties and witnesses and, therefore, it is in the best position to determine the credibility and weight of the witnesses' testimony." *In re E.S.*, 324 Ill. App. 3d 661, 667 (2001). The trial court is afforded broad discretion in determining whether a child has been abused or neglected, and this court will not disturb the trial court's findings unless they are against the manifest weight of the evidence. *A.P.*, 2012 IL 113875, ¶ 17. A trial court's

finding is against the manifest weight of the evidence only if “the opposite conclusion is clearly evident.” *Id.*

¶ 94 The Act states, in part, that a minor “whose environment is injurious to his or her welfare” is neglected. 705 ILCS 405/2-3(1)(b) (West 2014). “Because the concepts of ‘neglect’ and ‘injurious environment’ have no fixed meaning and take their content from the particular circumstances of each case, each case involving such allegations must be decided on the basis of its unique facts.” *In re Malik B.-N.*, 2012 IL App (1st) 121706, ¶ 52. “In general, however, the term ‘injurious environment’ has been interpreted to include ‘the breach of a parent’s duty to ensure a “safe and nurturing shelter” for his or her children.’ [Citations.]” *Arthur H.*, 212 Ill. 2d at 463. Further, a parent has the right to corporally punish his or her child, but it must be exercised in a reasonable manner. *In re Interest of J.P.*, 294 Ill. App. 3d 991, 1002 (1998).

¶ 95

A. Due Process

¶ 96 The first potential issue counsel presents is whether the trial court violated respondent’s due process rights, where: (1) the State failed to disclose, prior to trial, new allegations of abuse; (2) the trial court allowed Shakiya and Shakeya to testify concerning previously-undisclosed allegations of abuse (*i.e.*, that respondent had beaten them and their siblings with belts and cords, even though testimony concerning corporal punishment had not previously been disclosed to respondent); and (3) the trial court denied respondent’s motion to continue the hearing to prepare for cross-examination after Shakiya’s direct testimony. Counsel ultimately concludes that respondent’s due process rights were not violated, and argues that, even if there was error, it was harmless.

¶ 97 Counsel asserts that, although the State should have disclosed the girls’ statements before trial and the trial court should have granted a continuance after Shakiya’s testimony so that

respondent could prepare his cross-examination, the methods the trial court employed did not violate respondent's due process rights because the cross-examination covered two additional court dates. Therefore, counsel reasons, this allowed respondent ample time to prepare a defense. Also, the State's interest in safeguarding the best interests of the children weighed heavily in favor of allowing them to testify to all acts of abuse or neglect by their parents. We agree.

¶ 98 A parent is entitled to due process protections in responding to a neglect petition. *In re A.L.*, 2012 IL App (2d) 110992, ¶ 14. In determining what due process requires, we are to consider three factors: (1) the private interest affected; (2) the risk of erroneous deprivation of the interest and the probable value of additional procedural safeguards; and (3) the government's interest, including financial and administrative burdens in providing procedural safeguards. *Id.*

¶ 99 Here, respondent's private interest, the first factor, was in the care and custody of his children and stepchildren. This interest is fundamental and will not be terminated lightly. *In re M.H.*, 196 Ill. 2d 356, 365 (2001).

¶ 100 As to the second factor, which is the focus here, counsel notes that the State risked an erroneous deprivation of respondent's due process rights by failing to disclose the statement prior to hearing and that the trial court invited some risk of erroneous deprivation of due process by allowing the State to present the testimony and denying respondent's request for a continuance. However, counsel argues that the trial court's procedure did not ultimately violate respondent's right to due process. We agree.

¶ 101 Counsel contends that respondent has a meritorious argument that he was deprived of notice of the allegations against him. Initially, the petitions did not allege corporate punishment, only sexual misconduct. On April 7, 2015, Shakeya and Shakiya disclosed to the assistant

State's Attorney that respondent had beaten them and their sisters with belts and cords for several years. The State did not contact respondent's counsel prior to hearing to inform him of the allegations, nor did the State seek to amend the petitions prior to the hearing date. Respondent's counsel did not learn of the allegations until April 10, 2015, when they were elicited in Shakiya's direct testimony.

¶ 102 Notwithstanding the lack of notice, counsel argues, and we agree, that the risk to respondent's due process rights was relatively low because Shakiya's cross-examination spanned two additional court dates—April 22, and May 7, 2015. Counsel had almost two weeks to prepare for Shakiya's second trial date and an additional two weeks to prepare for the third trial date. During that time, counsel asserts, respondent would have had ample time to meet with counsel, discuss the new allegations, and prepare an effective defense.

¶ 103 We agree with counsel that an alternative procedure, such as allowing Shakiya to testify on direct and then granting respondent a continuance to prepare his defense and cross-examination would have given respondent a better opportunity to discuss the allegations with his attorney and to prepare a more effective cross-examination, but only to a marginal extent. Accordingly, the procedure the trial court employed presented a relatively low risk of depriving respondent of due process and an alternative method would not have guaranteed a better safeguard to any great extent.

¶ 104 The third factor—the government's interest—weighs against respondent. We agree with counsel that the best interests of the children weigh in favor of allowing their corporal punishment testimony and that they should not have been called upon to answer for the State's omission at the expense of being placed in an injurious environment. In all, the factors weigh against respondent.

¶ 105 In summary, we agree with counsel that an argument based on a due process violation would be frivolous.

¶ 106 Next, counsel argues that, even if respondent's due process rights were violated in allowing the corporal punishment testimony and denying his request for a continuance, the error was harmless because the other evidence of abuse and neglect—respondent's inappropriate sexual conduct—was sufficient to support the trial court's finding of an injurious environment. See *In re Sharena H.*, 366 Ill. App. 3d 405, 418 (2006) (the respondent's substance abuse supported the trial court's finding of an injurious environment; thus, any error in considering evidence of domestic violence and fact that the State did not amend its petition to include domestic violence allegations, was harmless); see also *In re J.C.*, 2012 IL App (4th) 110861, ¶¶ 29-33 (even without consideration of erroneously admitted exhibits, the evidence was sufficient to support the trial court's neglect finding; thus, error in admitting the evidence was harmless).

¶ 107 We agree with counsel that there is no arguable merit in the argument that the trial court violated respondent's due process rights in allowing the corporal punishment testimony, because the error was harmless. There was ample evidence of respondent's sexual conduct to support the court's neglect findings based on injurious environment as to all the children. As to Shakiya and Shakeya, the evidence supported the trial court's determination that they credibly testified to the sexually-inappropriate conduct by respondent. This included the father-daughter talk, the breast-fondling incident, and the shower incident. This evidence was also sufficient to support the court's findings as to Serenity and Samaya. See *In re A.W.*, 231 Ill. 2d 92, 103 (2008) (history of sexual abuse of minors supported the trial court's finding of neglect due to injurious environment as to minor in case at issue).

¶ 108 B. Allowing Testimony of Previously-Undisclosed Abuse

¶ 109 Next, counsel asserts that the trial court did not abuse its discretion in allowing Shakiya and Shakeya to testify about previously-undisclosed corporal punishment. We agree. Under the Act, the rules of evidence in the nature of civil proceedings are applicable to the adjudicatory hearing. 705 ILCS 405/2-18(1) (West 2014). Whether evidence is admissible is within the discretion of the trial court, and its ruling will not be reversed absent an abuse of that discretion. *In re Kenneth J.*, 352 Ill. App. 3d 967, 980 (2004). We agree with counsel that it would be frivolous to argue that Shakiya's and Shakeya's best interests would have been better served by denying them the right to inform the court that respondent routinely beat them and their younger sisters with belts and cords.

¶ 110 C. Denial of Request for Continuance

¶ 111 Next, counsel asserts that the trial court did not abuse its discretion in denying respondent's request for a continuance following Shakiya's direct examination. He argues that respondent was not prejudiced by the denial because he was allowed two additional court dates to prepare his cross-examination of Shakiya and his defense to the new allegations of abuse. We agree that this argument is meritless.

¶ 112 A "serious delay in the adjudication of abuse, neglect, or dependency cases can cause grave harm to the minor * * *." 705 ILCS 405/2-14 (West 2014). There is no absolute right to a continuance. *In re D.P.*, 327 Ill. App. 3d 153, 158 (2001). It is within the trial court's discretion whether to grant or deny a continuance motion, and the court's decision will not be disturbed absent manifest abuse or palpable injustice. *In re K.S.*, 203 Ill. App. 3d 586, 596 (1990). The denial of a request for continuance is not a ground for reversal, unless the complaining party has been prejudiced by such denial. *In re M.R.*, 305 Ill. App. 3d 1083, 1086 (1999).

¶ 113 Section 2-1007 of the Code of Civil Procedure (735 ILCS 5/2-1007 (West 2014)) governs the rules of continuances and provides, “[o]n good cause shown, in the discretion of the court and on just terms, additional time may be granted for the doing of any act or the taking of any step or proceeding prior to judgment.” Continuances not exceeding 30 days may be granted in juvenile cases “upon written motion of a party filed no later than 10 days prior to hearing, or upon the court’s own motion and only for good cause shown.” 705 ILCS 405/2-14(c) (West 2014). The term, “good cause,” as applied in the Act is strictly construed and must be in accordance with Illinois Supreme Court Rules 231(a) through (f) (eff. Jan. 1, 1970). 705 ILCS 405/2-14(c) (West 2014). The court may continue the hearing “only if the continuance is consistent with the health, safety and best interests of the minor.” *Id.*

¶ 114 We agree with counsel that there is no merit to a challenge to the trial court’s denial of a continuance. The ruling clearly did not constitute an abuse of the court’s discretion, where there were two additional court dates, with two weeks (for a total of four weeks) in between for respondent to prepare his defense and cross-examination. The likelihood of any prejudice was minimal.

¶ 115 D. Allowing State to Amend Neglect Petitions

¶ 116 Counsel next asserts that the trial court did not abuse its discretion in allowing the State to amend the neglect petitions to include the allegations of physical abuse because the amendment was timely and respondent did not sustain prejudice or surprise by virtue thereof. We agree.

¶ 117 The Act provides that “courts shall liberally allow the petitioner to amend the petition to set forth a cause of action or to add, amend, or supplement factual allegations that form the basis for a cause of action up until 14 days before the adjudicatory hearing.” 705 ILCS 405/2-13(5)

(West 2014). The petitioner may amend the petition after that date, but prior to the adjudicatory hearing, if the court grants leave to amend upon a showing of good cause. *Id.* “The court may allow amendment of the petition to conform with the evidence at any time prior to ruling.” *Id.* Further, “[i]n all cases in which the court has granted leave to amend based on new evidence or new allegations, the court shall permit the respondent an adequate opportunity to prepare a defense to the amended petition.” *Id.*

¶ 118 The trial court has broad discretion in ruling on motions to amend pleadings prior to entry of final judgment, and, as a result, a reviewing court will not find that denial of a motion to amend is prejudicial error, unless there has been a manifest abuse of such discretion. *In re Tyrese J.*, 376 Ill. App. 3d 689, 702 (2007). In determining whether the trial court has abused its discretion, a reviewing court must assess four factors: “ ‘(1) whether the proposed amendment would cure the defective pleading; (2) whether other parties would sustain prejudice or surprise by virtue of the proposed amendment; (3) whether the proposed amendment is timely; and (4) whether previous opportunities to amend the pleading could be identified.’ ” *Id.* (quoting *Loyola Academy v. S&S Roof Maintenance, Inc.*, 146 Ill. 2d 263, 273 (1992)).

¶ 119 We agree with counsel that an appeal of this issue would fail. The State timely moved to amend the pleadings before the trial court entered judgment. As counsel notes, although the State could have moved to amend in April 2015 when it first learned of the corporal punishment allegations, respondent was on notice of the allegations as of April 10, 2015, had the opportunity, as discussed above, to prepare a defense, and did not suffer any prejudice or surprise by virtue of the proposed amendment to each petition.

¶ 120 E. Neglect Findings and Dispositional Orders

¶ 121 Counsel's final argument is that the trial court's findings of neglect and its dispositional orders were not against the manifest weight of the evidence or an abuse of discretion. We agree.

¶ 122 The Act provides a two-step process the circuit court must utilize to decide whether a minor should become a ward of the court. *In re A.P.*, 2012 IL 113875, ¶ 18. First, the trial court must conduct a hearing on the State's petition for adjudication of wardship to determine whether the minor is abused, neglected, or dependent. See 705 ILCS 405/2-18(1) (West 2014); *A.P.*, 2012 IL 113875, ¶¶ 18-19. At this stage of the proceedings, the court determines "whether the child is neglected, and not whether the parents are neglectful." *Arthur H.*, 212 Ill. 2d at 467. The second step is the dispositional hearing, where the court determines whether it is consistent with the minor's and the public's health, safety, and best interests to make the minor a ward of the court. *A.P.*, 2012 IL 113875, ¶ 21; 705 ILCS 405/1-3(6), 2-22 (West 2014).

¶ 123 The State must prove its allegations of neglect or abuse by a preponderance of the evidence. *In re N.B.*, 191 Ill. 2d 338, 343 (2000). "The trial court has the best opportunity to observe the demeanor and conduct of the parties and witnesses and, therefore, it is in the best position to determine the credibility and weight of the witnesses' testimony." *E.S.*, 324 Ill. App. 3d at 667. The trial court is afforded broad discretion in determining whether a child has been abused or neglected, and this court will not disturb the trial court's findings unless they are against the manifest weight of the evidence. *A.P.*, 2012 IL 113875, ¶ 17. A trial court's finding is against the manifest weight of the evidence only if "the opposite conclusion is clearly evident." *Id.*

¶ 124 The Act states, in part, that a minor "whose environment is injurious to his or her welfare" is neglected. 705 ILCS 405/2-3(1)(b) (West 2014). "Because the concepts of 'neglect' and 'injurious environment' have no fixed meaning and take their content from the particular

circumstances of each case, each case involving such allegations must be decided on the basis of its unique facts.” *In re Malik B.-N.*, 2012 IL App (1st) 121706, ¶ 52. “In general, however, the term ‘injurious environment’ has been interpreted to include ‘the breach of a parent’s duty to ensure a “safe and nurturing shelter” for his or her children.’ [Citations.]” *Arthur H.*, 212 Ill. 2d at 463. Further, a parent has the right to corporally punish his or her child, but it must be exercised in a reasonable manner. *J.P.*, 294 Ill. App. 3d at 1002.

¶ 125 Here, the State’s petitions as to Shakeya and Shakiya alleged that they were neglected due to injurious environment in that: (1) respondent had engaged in inappropriate conduct toward them (breast fondling of Shakeya, comments about Shakiya’s “butt,” father-daughter talk with Shakiya, and shower incident (Shakiya)); and (2) they were struck by respondent with belts and extension cords on multiple occasions. The State’s petitions as to Serenity and Samaya alleged that the younger siblings were neglected due to injurious environment, in that Shakeya and Shakiya had disclosed: (1) inappropriate conduct by respondent toward the two older siblings; and (2) that the older siblings were struck by respondent with belts and extension cords on multiple occasions. Thus, as to the corporal punishment allegations, the State’s relied on the theory of anticipatory neglect. The doctrine of anticipatory neglect recognizes that a parent’s treatment of one child is probative of how that parent may treat his or her other children. *In re T.S-P.*, 362 Ill. App. 3d 243, 248-49 (2005). “Under the anticipatory neglect theory, the State seeks to protect not only children who are direct victims of neglect or abuse, but also those who have a probability to be subject to neglect or abuse because they reside, or in the future may reside, with an individual who has been found to have neglected or abused another child.” *Arthur H.*, 212 Ill. 2d at 468. The doctrine of anticipatory neglect is codified in section 2-18(3) of the Act, which states in relevant part that “proof of the abuse, neglect or dependency of one

minor shall be admissible evidence on the issues of the abuse, neglect or dependency of any other minor for whom the respondent is responsible.” 705 ILCS 405/2-18(3) (West 2014). However, the mere admissibility of evidence does not constitute conclusive proof of neglect of another minor. *Arthur H.*, 212 Ill. 2d at 468. Further, such neglect should be measured not only by the circumstances surrounding the sibling, but also by the care and condition of the child in question. [Citation.]” *In re Edward T.*, 343 Ill. App. 3d 778, 797 (2003). Cases involving the adjudication of abuse, neglect, and wardship must be decided on their own distinct facts and circumstances. *Id.* at 468-69.

¶ 126 We conclude that the trial court did not err in finding the children neglected as to the sexual abuse allegations. The court found Shakiya and Shakeya credible, a finding to which we defer and that we cannot conclude was unreasonable. Although some of the incidents that involved Shakiya and Shakeya occurred before Serenity and Samaya were born, other incidents occurred afterwards and when the younger siblings were present in the home. Specifically, Shakiya testified that the younger siblings were in the living room during the father-daughter talk. Similarly, Shakeya related to Butler that, in early 2014, one of the younger siblings tried to enter the office while respondent discussed sex with her and asked to see her “pussy.” Thus, there was sufficient evidence from which the trial court could reasonably find, under an anticipatory-neglect theory, that the younger siblings were neglected due to an injurious environment, specifically, the sexual abuse of the older siblings while all of the children resided in the home. *A.W.*, 231 Ill. 2d at 103 (history of sexual abuse of minors supported the trial court’s neglect finding).

¶ 127 Furthermore, we conclude that the trial court did not err in finding the children neglected on the basis of the corporal punishment allegations. The evidence reasonably showed that both

respondent and Denelle disciplined all of their children in such a manner and used it repeatedly and excessively, at a minimum with respect to Shakiya and Shakeya. Shakiya testified that, when she was seven or eight years old, respondent told Denelle to beat the girls with extension cords, leather belts, and tree switches when they acted badly. She stated that both parents hit her about three times per month and that the girls could choose either 100 lashes with a belt or 50 with an extension cord. (This testimony was corroborated by Shakeya.) The beatings left bruises, and she has a scar on her right hip. Shakiya also recounted an episode where she was supposed to be reading a book, but fell asleep. Respondent had Shakeya check on her and then he came into the room with an extension cord and started beating Shakiya. She ran away from him, but respondent grabbed her by the ankles and continued beating her. Addressing another incident, Shakiya testified that respondent beat her after he accused her and Shakeya of using Serenity's hat to wipe their "butts." Another incident involved the family dog. Shakiya did not take out the dog, and he pooped on the floor. She was struck with a belt.

¶ 128 The younger siblings were also physically abused. Shakeya testified that Serenity and Samaya started being beaten with belts and extension cords when they were four years old. Shakiya testified that Denelle beat the younger children more often than respondent beat them; however, Shakeya testified that respondent "mostly hit them." Shakiya testified that Serenity and Samaya were hit three or four "times" per beating instead of 50 or 100, but it depended. According to Shakiya, respondent also beat the younger siblings on a "lot" of occasions.

¶ 129 Bunch, the DCFS investigator, testified about an incident during the girls' medical examinations. While in the waiting room, Bunch heard one of the older girls tell Samaya to sit down. Serenity stated, " 'Or you get a whopping with the belt.' " Serenity and Samaya told Shakiya that they did not feel safe in the family home due to the beatings. Although this

testimony conflicted with Denelle's testimony that she spanked the girls, including, Serenity and Samaya, with a belt, "according to their age," up until only age 10, the trial court found the girls' testimony credible and we cannot conclude that its resolution was erroneous.

¶ 130 As to Samaya, Shakiya testified that, about one month before all of the children were removed from the home, respondent struck Samaya after she threw a basketball at the television. Samaya, "got it bad, but it was with a belt. She didn't get the cord." Her legs and "butt" were purple afterwards.

¶ 131 As to Serenity, Shakiya related an incident that occurred when Serenity was four or five years old. During this incident, respondent struck Serenity after she poured out C.A.'s hair product. According to Shakiya, respondent beat Serenity with a hanger and a belt. Denelle was in the kitchen during the beating, but Shakiya did not know what she was doing. Additionally, Shakeya testified that Denelle hit Serenity about five or six times because she had problems using the bathroom.

¶ 132 Under the anticipatory-neglect doctrine, this evidence, in our view, reflects that the environment was injurious for Serenity and Samaya. It reasonably showed that the physical abuse of the older siblings created an injurious environment for the younger siblings. The evidence also showed that the younger siblings were arguably not yet subjected to the more excessive physical abuse sustained by Shakeya and Shakiya. See, e.g., *In the Interest of L.M.*, 189 Ill. App. 3d at 398-99 (beating with a belt and stick and causing "whip marks" are not reasonable forms of corporal punishment). However, the trial court need not have waited until the younger siblings experienced more excessive abuse. See *In re Adam B.*, 2016 IL App (1st) 152037, ¶ 48 ("Under this theory, when faced with evidence of prior neglect by parents, the trial court should not be forced to refrain from acting until another child is injured").

¶ 133 In summary, we agree with counsel that the trial court's findings of neglect due to an injurious environment as to all the children was not against the manifest weight of the evidence and an appeal of this issue would be frivolous.

¶ 134 Turning to the dispositional order, we also agree with counsel that the trial court's finding that respondent is unfit, unwilling, or unable to parent the girls was not against the manifest weight of the evidence and that its decision to remove them and place guardianship and custody with DCFS was not an abuse of discretion. At the dispositional hearing, the court determines whether it is consistent with the minors' and the public's health, safety, and best interests to make the minors ward of the court. *A.P.*, 2012 IL 113875, ¶ 21; 705 ILCS 405/1-3(6), 2-22 (West 2014). Where the minors are made wards of the court, the court may place them under DCFS guardianship if it finds that the parents are unfit, unwilling, or unable to care for, protect, train, or discipline the minors and that the health, safety, and best interests of the children will be jeopardized if they remain in the parent's custody. 705 ILCS 405/2-27(1) (West 2014). We reverse such a finding only if it is against the manifest weight of the evidence or if it constitutes an abuse of the court's discretion. *In re Davon H.*, 2015 IL App (1st) 150926, ¶ 58.

¶ 135 Here, a July 24, 2015, service plan rated respondent as making unsatisfactory progress with individual therapy because he avoided questions and attempted to redirect, which prevented the therapist from forming any therapy goals. An October 28, 2015, report by Babcock noted Sundberg's comment (echoing his comments in respondent's April 7, 2015, sex offender evaluation) that respondent does not feel that there is anything he needs to change or explore. In light of this evidence, we agree that the trial court's findings that respondent had not cured the conditions that created the injurious environment or accepted responsibility for his conduct were reasonable and supported its further findings that respondent was unfit, unwilling, or unable to

parent his children and that guardianship be placed with DCFS. An appeal of the neglect findings and dispositional orders would be frivolous.

¶ 136 In summary, after examining the record, appellate counsel's motion to withdraw, and his memorandum of law, we agree with counsel that the appeal presents no issues of arguable merit.

¶ 137

III. CONCLUSION

¶ 138 For the reasons stated, appellate counsel's motion to withdraw is granted and the judgment of the circuit court of Winnebago County is affirmed.

¶ 139 Affirmed.