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2016 IL App (3d) 150485-U

Order filed May 27, 2016

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

2016

<i>In re</i> V.P. and A.P.,	)	Appeal from the Circuit Court
	)	of the 13th Judicial Circuit,
Minors	)	Grundy County, Illinois.
	)	
(The People of the State of Illinois,	)	
	)	
Petitioner-Appellee,	)	Appeal Nos. 3-15-0485 and 3-15-0486
	)	Circuit Nos. 14-JA-2, 14-JA-3
v.	)	
	)	
RACHEL P.,	)	Honorable
	)	Robert C. Marsaglia,
Respondent-Appellant).	)	Judge, presiding.
	)	

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JUSTICE CARTER delivered the judgment of the court.  
Presiding Justice O'Brien and Justice Lytton concurred in the judgment.

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**ORDER**

¶ 1 *Held:* The trial court's findings that the minors were neglected and the respondent was dispositionally unfit were not against the manifest weight of the evidence.

¶ 2 This appeal arises from the trial court's dispositional orders finding that respondent, Rachel P., was dispositionally unfit to care for, protect, train, educate, supervise or discipline her minor children, V.P. (age 5) and A.P. (age 3), and placement of the minors with her was contrary

to their health, safety and best interests. On appeal, Rachel argues: (1) the trial court erred by finding the minors were neglected; (2) the trial court erred by allowing the minor's older half-sibling to testify *in camera*; and (3) her counsel was ineffective. We affirm.

¶ 3

### FACTS

¶ 4

V.P. and A.P., the two minors, who are the subject of this appeal, are the children of Rachel and her husband, Derrick P. Derrick is also the father of An.P. (age 14), whose mother is deceased. When An.P. was six years old Derrick was sent to jail, and An.P. lived with family friends, Jenice and Dan G. When An.P. was 10 years old, she was returned to Derrick's care and lived with Derrick and Rachel. Derrick is also the father of P.P. (age 17), whose mother's whereabouts were unknown during these proceedings.

¶ 5

On May 13, 2014, the State filed petitions for adjudication of wardship of V.P. and A.P., alleging they were neglected in that they lived in an injurious environment where Derrick had repeatedly engaged in sexual contact and/or sexual penetration with their older half-sister, An.P. (age 14), in the family home. On April 9, 2014, a safety plan had been implemented for the minors based on suspicions that Derrick had sexual relations with his oldest daughter, P.P. From almost the time of her birth, P.P. had lived with extended family in Texas. When P.P. was 16 years old, she and Derrick connected through social media and, a few weeks later, in August of 2013, P.P. moved in with Derrick and Rachel. In April of 2014, Rachel had discovered a video on P.P.'s cellular phone of Derrick having sex with a female. The female in the video was identified as possibly being P.P. A safety plan was implemented for the children. V.P. and A.P. were sent to stay with Rachel's parents, and An.P. returned to the home of Jenice. P.P. was in a rehabilitation center at that time. On May 8, 2014, about a month later, An.P. complained of stomach pains to Jenice and had a miscarriage. The following day Jenice took An.P. to a

physician, where An.P. revealed that Derrick had been forcing her to have sexual intercourse with him.

¶ 6 On May 13, 2014, the State filed the petitions for adjudication of wardship and a shelter care hearing took place. An investigator for the Department of Children and Family Services (DCFS) testified that a doctor had confirmed that An.P. had a miscarriage. The DCFS investigator also testified that An.P. had reported Derrick had sexual contact with her almost every night for the past two years. An.P. had reported the sexual abuse to her stepmother, Rachel, but Rachel's response was that there was nothing she could do about it. At the hearing, Rachel informed the court that An.P. had an individual education plan (IEP), functioned at a second-grade level, and had been diagnosed with a "lying disorder" or oppositional-defiance disorder. Rachel argued An.P.'s reliability would be questionable at trial.

¶ 7 The trial court entered a temporary custody order, finding probable cause existed for the filing of the adjudication petition and there was an immediate and urgent necessity to remove the minors from Rachel and Derrick's home. Temporary custody of the minors was given to DCFS.

¶ 8 On August 25, 2014, the State amended its petitions for adjudication of wardship. The amended petitions added two counts alleging V.P. and A.P. were neglected because, in July of 2014, Derrick contributed to the delinquency of P.P. by drinking with her and Derrick had violated the no-contact order that was in place as to P.P.

¶ 9 Prior to the adjudication hearing on the petitions, the State filed a motion for an *in camera* examination of An.P., who was 15 years old at that time. The assistant state's attorney argued that in preparing An.P. to testify, she had indicated that she felt very uncomfortable testifying in front of Derrick and Rachel. The State requested An.P. be allowed to testify in chambers, with only the Court, court reporter, and attorneys for the parties present, with An.P.

subject to full cross-examination. The attorneys would be able to consult with Rachel and Derrick outside the room during short breaks, if necessary. Rachel's attorney objected, arguing that Rachel would not be able to adequately assist her counsel and requested that a hearing be held on the issue of whether An.P. would be harmed from testifying in open court. The trial court granted the State's motion, finding it would be unduly stressful for An.P. to have to testify in the presence of Rachel and Derrick. The trial court indicated that the attorneys would be provided a transcript of An.P.'s testimony to review with their clients and would have the right to call An.P. back as witness if there were any additional issues that needed to be addressed.

¶ 10 On May 8, 2015, the adjudication hearing began. P.P. testified that she had turned 18 years old on December 31, 2014, and she was the daughter of Derrick. P.P. met Derrick for the first time when she was 16 years old and moved in with Derrick and Rachel two weeks later, in August of 2013. She lived with them until April of 2014, at which time she began rehabilitation for alcohol and substance abuse. When P.P. completed rehabilitation on July 24, 2014, she moved in with her maternal aunt. The following day Derrick picked up P.P. and they drank beer together for the rest of the day. At some point during the evening, Derrick and P.P. went to the home of a family friend and continued to drink at the friend's home until 2 a.m. They fell asleep on different couches. In the early morning hours of July 26, 2014, P.P. momentarily awoke and saw Rachel getting keys from Derrick. P.P. awoke in the late morning hours when a DCFS caseworker and police were knocking on the front door. P.P. and Derrick did not open the door because Derrick had been ordered to have no contact with P.P. After about 30 minutes, the knocking stopped. Derrick eventually left unnoticed. P.P. was stopped by a police officer.

¶ 11 Over the objection of Derrick and Rachel, the testimony of An.P., who was 15 years old at the time of her testimony, was taken in the jury room, with the trial judge, court reporter and

the parties' attorneys present. An.P. was subject to cross-examination by the parties' attorneys. The trial judge stated that An.P. was not being interviewed by the trial court but was given her actual testimony. The trial court indicated that the purpose of An.P.'s testimony being taken in the jury room instead of in open court was to make An.P. "a little more comfortable." An.P. was asked her name and age, to which she responded appropriately. She testified that she knew the difference between the truth and a lie, and she knew that she could get in trouble if she lied and would not get in trouble if she told the truth. An.P. indicated that she would testify truthfully.

¶ 12 An.P. testified that she lived with her foster parents, Jenice and Dan. An.P. had lived with Jenice while Derrick was in jail and resumed living with Derrick when she 10 years old. Derrick began sexually abusing her during the summer of when she was 10 years old. An.P. testified that the initial incident occurred one day when she was showering and Derrick entered the bathroom to smoke out the window. When he was done smoking, Derrick instructed An.P. to get on the floor. He placed his fingers in her vagina for approximately three minutes. The same type of incident repeated about every two weeks. An.P. did not tell anyone because Derrick threatened to leave her life and stop loving her as a daughter if she told anyone.

¶ 13 An.P. also testified that when she was 12 years old, Derrick began having intercourse with her. The initial incident took place one afternoon when An.P. was changing into her swimsuit in her bedroom. Derrick forced An.P. to the ground when she was naked, pulled his pants down, and placed his penis inside her vagina despite her efforts to kick and punch him. The incident lasted for 10 minutes. Derrick told An.P. not to tell anyone about the incident or he would leave and never come back, and An.P. did not want that to happen. An.P. thought once Derrick stopped sexually abusing her he would see her as a daughter. Derrick continued to sexually penetrating An.P. about once per week until P.P. moved into the home. P.P. moved into

the home when An.P. was 14 years old. P.P. moved out six months later. Derrick resumed sexually penetrating An.P. a week after P.P. moved out of the home. An.P. was not sure how often the abuse would occur but it was more than once per month.

¶ 14 An.P. testified that Derrick sexually abused her either in the bathroom or in her bedroom. Derrick would sexually abuse her by placing his penis insides her vagina when Derrick would fight with Rachel or have a bad day. An.P. was 12 years old when Derrick started having bad days. She was not sure how often Derrick would have a bad day but about once a month. Derrick would sexually abuse An.P. in the middle of the day or at night when Rachel was out shopping. When the sexual abuse first began Rachel was downstairs during some of the instances. As the sexual abuse progressed Derrick would only sexually abuse An.P. when nobody was home or when only V.P. and A.P. were downstairs (in their playroom).

¶ 15 Prior to P.P. moving into the home, An.P. told Rachel about the sexual abuse, but Rachel did not believe her. An.P. told Rachel about the abuse again after P.P. moved into the home, but Rachel still did not believe her and did not do anything. Rachel told An.P. that she was lying and Derrick would never do anything like what she had described.

¶ 16 In May of 2014, An.P. told Jenice about the sexual abuse after something came out of An.P.'s vagina. Jenice had taken An.P. to the doctor for an examination and for the item to be tested. At the doctor's office, Jenice asked An.P. if Derrick had ever done anything to her. An.P. indicated Derrick had been having intercourse with her and the last time he did so was the night before the minors were removed from the family home.

¶ 17 Rachel's attorney questioned An.P. An.P. described the layout of the house as the kitchen, living room, bathroom, her bedroom and her uncle's bedroom on the main floor, with a playroom, the younger kids' bedroom, Rachel and Derrick's bedroom, and a bathroom in the

basement. An.P. testified that when she moved in with Rachel and Derrick they were not yet married. An.P. knew Rachel before moving into the home because Rachel was the teacher of An.P.'s brother who lived at Jenice's house. An.P. testified, "Everyone is telling he's my full-blooded [brother] and everyone knows he's my full-blooded [brother]," but Derrick is denying that was "his kid."

¶ 18 Before An.P. returned to living with Derrick she had been hospitalized at a place An.P. called "[t]he psych ward" because she had hit her brother and was acting out. After An.P. moved in with Derrick and Rachel, she was sent back to the hospital "probably ten times for no reason" because "Rachel would make up lies." An.P. did not report any of the sexual abuse to hospital staff.

¶ 19 In March of 2014, Rachel brought An.P. to see a doctor for birth control. An.P. was given a pregnancy test which came back as negative. An.P. told the nurse at that doctor visit that she was not sexually active. On May 9, 2014, something came out of An.P.'s vagina. An.P. did not know what it was and was "freaking out." She thought it was a worm and "there was a lot of blood and stuff." An.P. went to the doctor the following day with the object to have it tested. An.P.'s foster mother, Jenice, was informed the object was thought to be a baby. While at the doctor's office, An.P. indicated that she had been having sexual intercourse with Derrick. Other than with Derrick, An.P. indicated she had intercourse with only one other person (a neighbor who was also a minor) on one occasion, over a year prior to the miscarriage.

¶ 20 An.P. indicated that when she told Rachel about the initial sexual abuse Rachel did not believe her. When P.P. lived with them, An.P. again told Rachel that Derrick kept touching her and asked what she should do. Rachel indicated that she did not believe An.P. and An.P. should stop bringing it up.

¶ 21 Sergeant Paul Clampitt testified to the incident that occurred after An.P., V.P. and A.P. had been removed from Rachel and Derrick's care. On July 26, 2014, at 11:30 a.m., Clampitt was flagged down by P.P.'s aunt and Rachel. Rachel's aunt had taken custody of P.P. after she was discharged from rehab two days prior. P.P.'s aunt and Rachel asked Clampitt go to a certain address to look for P.P. because P.P. had not been home. He knocked on the door, but there was no answer. Clampitt was in the area for 30 to 60 minutes when he saw P.P. standing in a yard near the subject home. P.P. smelled of alcohol and had a blood-alcohol reading of .073. P.P. indicated she had been drinking with Derrick until 3 a.m. Derrick's vehicle was parked out in front of the subject address.

¶ 22 The parties stipulated to the admission of An.P.'s recorded "victim sensitive interview." During her testimony, An.P. acknowledged that she had stated in the interview that Derrick had been sexually abusing her every night but had testified the abuse occurred every week or every two weeks. She also acknowledged that she had indicated the first incident of sexual abuse involved intercourse but she had testified the first incident consisted solely of digital penetration. The parties also stipulated to the admission of a psychological examination of An.P., which had been conducted on March 26, 2013.

¶ 23 Taylor Johnson testified that she was 20 years old and had lived across the street from Derrick and Rachel. Taylor was 13 years old when she first met Rachel. Taylor was friends with Rachel. She testified that she and An.P. were "like sisters" and An.P. did not disclose any sexual abuse to her.

¶ 24 Rachel testified that she had a master's degree in education. Rachel first met An.P. when An.P. was five or six years old and lived with Jenice. At that time, Rachel was the preschool teacher of An.P.'s brother, who also lived with Jenice. Rachel testified that she was a licensed



teacher and a mandated reporter. As a result of this case pending, Rachel's licensing status was on hold. Rachel indicated that An.P. never told her she was being abused by Derrick.

¶ 25 Rachel indicated a leak in the upstairs bathroom created a hole in the bathroom to the downstairs master bedroom so that any sound made in the bathroom could be heard in any room in the house. Rachel never heard An.P. scream or call for help, and she never heard any noise that sounded like a "sex noise." Rachel denied taking the video to police that was allegedly of P.P. and Derrick having sex. She testified that she saw "the video" and saw "a phone." She "did not recall" if one of the subjects in the video was P.P. Rachel testified that she did not contact police about the video and "did not recall" meeting with police regarding P.P.'s phone. Rachel went to where P.P. was located on July 26, 2014, because P.P.'s aunt had called her. Rachel did not know where Derrick was before police arrived at that house. Rachel indicated that it was not unusual for Derrick to be gone overnight when he stayed at a friend's home. Rachel testified that she almost always brought the kids, including An.P., with her when she went shopping. She acknowledged that there were times that Derrick was home alone with the kids when she was not home.

¶ 26 Jenice testified that she and Rachel had been very good friends for many years. On April 8, 2014, Rachel went to Jenice's home with a cellular phone in the late afternoon. Rachel screamed, "Oh, my God. He's f\*\*\*ing his daughter." Jenice and Rachel watched the video showing P.P. and Derrick having sexual relations. Rachel and Jenice brought the phone to the police and filed a report. Rachel was "very, very upset." Jenice testified that Rachel had viewed the video with her "numerous times."

¶ 27 The trial court acknowledged that allegations of sexual abuse of P.P. had not been pled in this case and evidence of P.P.'s sexual abuse was introduced solely for impeachment purposes.

The trial court commented that Rachel's testimony that she did not recall certain events, such as bringing the phone to police was "an outrageous lie." The trial court found Rachel's testimony to be "inherently incredible." The trial court found that the testimony of An.P. was "clear, concise, and convincing" and found, after "weighing the credibility of the witnesses," the State had met its burden of proof. The trial court adjudicated the minors to be neglected.

¶ 28 On June 18, 2015, a dispositional hearing took place. The trial court took judicial notice of evidence and findings in the adjudication hearing and the dispositional report filed by Childserve and Lutheran Children and Family Services (LCFS). Wendy Barnoski, a LCFS caseworker testified that she authored the dispositional report. Barnoski testified that Rachel had not completed any recommended services, which included recommendations that she complete individual counseling and a psychosexual assessment. Rachel began counseling services but was discontinued for nonattendance in October of 2014. In May of 2015, Rachel resumed counseling services and completed four sessions. Barnoski testified that it was in the minors' best interests that they be made wards of the State and continue to be placed outside of the home. Barnoski indicated that, at this point, Rachel had not been able to consider that sexual abuse took place in her home, which the caseworkers believe continued to put V.P. and A.P. at harm. The permanency plan was that V.P. and A.P. be returned home within 12 months.

¶ 29 The trial court found that it was consistent with the health, welfare and safety of the minors and in their best interests to make them wards of the court. The trial court further found Rachel was unfit to care for, protect, train, educate, supervise or discipline the minors and placement with her was contrary to their health, safety and best interest because the sexual abuse of their sibling occurred in the home and Derrick had caused P.P. to be delinquent. Custody of

the minors was placed with DCFS, with DCFS having the right to place the minors. V.P. and A.P. were placed into the foster care of their maternal grandparents. Rachel appealed.

¶ 30

## ANALYSIS

¶ 31

On appeal, Rachel argues: (1) the trial court erred by finding the minors were neglected and that she was unfit; (2) the trial court erred by allowing An.P. to testify *in camera* over Rachel's continuing objection; and (3) Rachel received ineffective assistance of counsel because her trial court counsel failed to respond, in writing, to the State's motion for An.P. to testify outside of Rachel's presence.

¶ 32

### I. Adjudication of Neglect and Finding of Unfitness

¶ 33

The best interest of the child is the paramount concern when a petition for adjudication of wardship is brought under the Juvenile Court Act of 1987 (Act). 705 ILCS 405/1-1 *et seq.* (West 2014). A parent's right to custody of her child shall not prevail when the court determines it is contrary to the health, safety, and best interest of the child. 705 ILCS 405/1-2(3)(c) (West 2014). The State bears the burden of proving abuse, neglect or dependency by a preponderance of the evidence, meaning that the State must prove the allegations in the petition are more probable than not. *In re N.B.*, 191 Ill. 2d 338, 343 (2000). A trial court's finding of neglect will not be disturbed unless it is against the manifest weight of the evidence. *In re Arthur H.*, 212 Ill. 2d 441, 464 (2004). A finding is against the manifest weight of the evidence where the opposite conclusion is clearly evident. *Id.*

¶ 34

A trial court's finding of abuse, neglect or dependency is a necessary predicate to adjudicating the wardship of a child. 705 ILCS 405/2-18(1) (West 2014) (at the adjudicatory hearing, the court shall first consider the question of whether the minor is abused, neglected or dependent); *N.B.*, 191 Ill. 2d at 343. The Act instructs the circuit court to determine, during the

adjudication hearing, "whether the child is neglected, and not whether the parents are neglectful." *Arthur H.*, 212 Ill. 2d at 467. "Neglect" is generally defined as the failure to exercise the care that circumstances justly demand and includes both a willful and an unintentional disregard of parental duty. *Arthur H.*, 212 Ill. 2d at 463; *In re Zion M.*, 2015 IL App (1st) 151119, ¶ 24.

¶ 35 Under section 2-3(1)(b) of the Act, a neglected minor includes, "any minor under 18 years of age whose environment is injurious to his or her welfare." 705 ILCS 405/2-3(1)(b) (West 2014). Similar to "neglect," the term "injurious environment" does not have a static definition, but has been interpreted to include a parent's breach of duty to ensure a safe and nurturing shelter for their children. *Arthur H.*, 212 Ill. 2d at 463; *Zion M.*, 2015 IL App (1st) 151119, ¶ 24.

¶ 36 After a minor is adjudicated abused, neglected, or dependent, the court shall hold a dispositional hearing to determine whether it is in the best interest of the minor and the public that the minor be made a ward of the court, and, if he is to be made a ward of the court, to determine the proper disposition to best serve the health, safety and interests of the minor and the public. 705 ILCS 405/2-22(1) (West 2014). The purpose of a dispositional hearing is for the trial court to determine what the next actions to take for the best interest of the neglected child. *In re April C.*, 326 Ill. App. 3d 255, 237 (2001). If the trial court finds that the parents of the minors are "unfit or are unable, for some reason other than financial circumstances alone, to care for, protect, train, or discipline the minor or are unwilling to do so, and that the health, safety and best interest of the minor will be jeopardized if the minor remains in custody of his or her parents," then the court may, *inter alia*, commit the minor to DCFS for care and services. 705 ILCS 405/2-27(1) (West 2014). On review, the trial court's section 2-27 fitness determination

will be reversed only if the trial court's findings of fact are against the manifest weight of the evidence. *In re J.C.*, 396 Ill. App. 3d 1050, 1060 (2009).

¶ 37 In this case, Rachel argues the trial court erred in finding that V.P. and A.P. were neglected. An.P. testified that she had been sexually abused by Derrick in the family home for approximately four years. Although Rachel tried to discredit An.P.'s testimony, the trial court found that An.P. was a credible witness. See 705 ILCS 405/2-18(4)(d) (West 2014) (the trial court shall determine how much weight is to be given to a minor's testimony). The trial court also found that Rachel was not credible. We defer to the trial court's findings regarding the credibility of witnesses. See *In re Abel C.*, 2013 IL App. (2d) 130263, ¶ 19 (a reviewing court will defer to a fact finder's assessment of witnesses' credibility due to its ability to observe the demeanor and conduct of witnesses). The evidence showed that V.P. and A.P. were not in a safe and nurturing shelter while Derrick was in the home and while Rachel failed to acknowledge the indications that sexual abuse possibly occurred, or did in fact occur, in the home. Therefore, the trial court's finding that V.P. and A.P. were proven to be neglected due to an injurious environment was not against the manifest weight of the evidence.

¶ 38 Rachel also argues that the trial court erred in finding she was unfit for the minors to be placed with her at the dispositional hearing. The evidence in support of the trial court's findings showed that the sexual abuse of An.P. had been ongoing for approximately four years. An.P. told Rachel about the sexual abuse when she was 10 years old, but Rachel dismissed An.P.'s claims. Years later, An.P. again told Rachel about the sexual abuse, after P.P. had moved into the home. Rachel again did nothing. Rachel did not take An.P. for a medical examination. Rachel did not report An.P.'s allegations, despite being a mandated reporter and being familiar with the process to do so. Although Rachel and Derrick had An.P. hospitalized for mental health

issues multiple times, Rachel did not mention An.P.'s claims of being sexually abused by her father to An.P.'s mental health physicians. Despite having two young children in the home, Rachel refused to address the allegations of sexual abuse. After V.P. and A.P. were removed from the home, Rachel refused to complete the recommended counseling services. Based on this record, the trial court's finding of unfitness was not against the manifest weight of the evidence.

¶ 39

## II. An.P.'s testimony

¶ 40

Next on appeal, Rachel argues there was "no reason" to allow An.P. to testify "in-camera and not in open court," and that her right to due process was violated. Rachel argues that An.P. was not afraid of Derrick. She also argues that she was unable to participate in her own defense because she was not allowed to be present during An.P.'s testimony. Rachel argues that the "allegations raised" during An.P.'s testimony were inconsistent and untrue and she was deprived of her right to "point out" the inconsistencies. Rachel further argues that An.P. did not need to be safeguarded because An.P. was 15 years old and was not so learning impaired as to make the *in camera* interview necessary. The State argues the trial court did not abuse its discretion by allowing An.P. to testify in chambers.

¶ 41

A trial court may allow a minor to testify in chambers with only the court, the court reporter and attorneys for the parties present. 705 ILCS 405/2-18(4)(d) (West 2014). Here, pursuant to section 2-18 of the Act, the trial court was statutorily authorized to allow An.P. to testify outside the presence of Rachel and Derrick because she was minor. Even though An.P. was 15 years old at the time she gave her testimony, she was nonetheless a minor who did not feel comfortable testifying in front of Rachel and Derrick. Thus, the trial court did not abuse its discretion in allowing An.P. to testify outside of Rachel's presence. See *In re R.G.*, 165 Ill. App. 3d 112, 132-33 (1988).

¶ 42 Additionally, Rachel's due process rights were not violated. Parents have a constitutional right to the custody of their children and the deprivation of that right must comply with due process. *In re Ch.W.*, 208 Ill. App. 3d 541, 550 (2011). However, neglect proceedings are civil in nature, and it has been held that respondents do not have a sixth amendment right to confront witnesses. *Id.*; see also 750 ILCS 405/1-5(1) (West 2014) (proceedings under the Act are not adversarial). Here, the manner in which An.P.'s testimony was taken was not fundamentally unfair to Rachel. See *In re Brandon L.*, 348 Ill. App. 3d 315, 319 (2004) (no due process violation in excluding the mother during the child's testimony in a dependency proceeding where mother's counsel was present). The trial court ensured a court reporter was present, gave Rachel's attorney the opportunity to cross-examine An.P., and would have permitted Rachel to review the transcript and recall An.P. for further cross-examination if necessary. Accordingly, we find Rachel's due process rights were not violated by the procedure in which An.P. gave her testimony.

¶ 43 III. Ineffective Assistance of Counsel

¶ 44 Finally, Rachel argues that her counsel was ineffective for failing to file a written motion objecting to An.P. testifying outside of Rachel's presence. Rachel claims that she was prejudiced by her counsel's failure to file a written motion because An.P. made "certain accusations" during her testimony and Rachel was "denied the ability to actively prepare a defense—including by calling additional witnesses—because she did not hear what was stated against her." Rachel also claims that her counsel was ineffective for failing to determine if An.P. was competent to testify, failing to "explore" An.P.'s behavioral problems, and failing to file a motion to reconsider the trial court's dispositional order. The State argues that the actions of Rachel's counsel were reasonable and did not prejudice Rachel.

¶ 45 Under the Act, parents have the right to be represented by counsel, although the proceedings under the Act are not intended to be adversarial in nature. 705 ILCS 405/1-5(1) (West 2014). While the right to counsel in juvenile proceedings under the Act is statutory and not constitutional, Illinois courts apply the same standard set forth in criminal cases to determine the effectiveness of counsel. *Ch.W.*, 408 Ill. App. 3d at 546. To establish ineffective assistance of counsel, a respondent must prove: (1) his counsel's performance failed to meet an objective standard of reasonableness; and (2) counsel's deficient performance prejudiced the respondent. *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984); *People v. Albanese*, 104 Ill. 2d 504, 526 (1984).

¶ 46 In this case, Rachel was not prejudiced by her counsel's performance. See *Albanese*, 104 Ill. 2d at 525 (to show prejudice, a defendant must show that there was a reasonable probability that but for counsel's unreasonable performance, the results of the proceedings would have been different). Rachel claims her counsel was ineffective because her counsel did not file a written motion objecting to An.P.'s testimony outside of her presence. However, Rachel's attorney continued to unsuccessfully object to An.P.'s testimony not being taken in open court, and there is no indication that the trial court would have sustained the objection had it been made in writing.

¶ 47 There was also no indication that An.P. was not competent to testify. See 705 ILCS 405/2-18(4)(d) (West 2014) (there is a rebuttable presumption that a minor is competent to testify in neglect proceedings). An.P. knew her name, age, where she lived and with whom she lived. She also testified that she knew what it meant to tell the truth and would testify truthfully. There was no evidence to rebut the presumption of An.P.'s competency to testify and, thus,



Rachel failed to show she was prejudiced by her counsel's failure to "explore" An.P.'s behavioral problems.

¶ 48 Similarly, Rachel does not indicate how she was prejudiced by her counsel's failure to file a motion to reconsider or what arguments should have been made in the motion to reconsider. Consequently, we do not find that Rachel's counsel was ineffective.

¶ 49 **CONCLUSION**

¶ 50 The judgment of the circuit court of Grundy County is affirmed.

¶ 51 Affirmed.