FOURTH DIVISION
June 15, 2017

No. 1-16-2833

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re ROBYN C., a Minor	)	Appeal from the
	)	Circuit Court of
(THE PEOPLE OF THE STATE OF ILLINOIS,	)	Cook County.
	)	
Petitioner-Appellee,	)	
	)	
v.	)	No. 14 JA 792
	)	
PAULETTA B.,	)	Honorable
	)	Demetrios G. Kottaras,
Respondent-Appellant).	)	Judge Presiding.

JUSTICE HOWSE delivered the judgment of the court.
Presiding Justice Ellis and Justice Burke concurred in the judgment.

ORDER

¶ 1 *Held*: The judgment of the circuit court of Cook County finding the minor neglected due to an injurious environment and abused due to a substantial risk of serious harm is affirmed; the petition for adjudication of wardship alleged sufficient facts to state a claim against the child's mother; the minor's siblings could testify as to abuse by the minor's father occurring 12 years earlier despite having reached majority; the judgment is not

against the manifest weight of the evidence; and, although the State's rebuttal argument was improper, respondent-mother was not prejudiced.

¶ 2 Respondent, Pauletta B., is the mother of Robyn C., a minor. Robyn is the youngest of three children born to her parents Pauletta B. and Robert C.; her older sisters are Ciara and Celeste B. Robyn also has three siblings born to her mother: Maurice, Colletta, and Chanta; and three siblings born to her father: Antonio, Robert, Jr., and Celeste. The State alleged that Robyn was neglected and abused because (1) there was a prior indicated report of sexual abuse of Robyn's siblings by their father, (2) Robyn was exposed to domestic violence in the home, (3) Robyn was hospitalized in a psychiatric unit and had a history of running away from home, and (4) Robyn made an outcry that her father, Robert C., physically and sexually abused her.[1] On June 29, 2016, following a trial on the State's petition to adjudicate Robyn a ward of the court, the circuit court of Cook County entered a judgment finding Robyn neglected due to an injurious environment and abused due to a substantial risk of physical injury. The cause proceeded to a dispositional hearing. Following the hearing, the court entered a judgment making Robyn a ward of the court, appointing the Illinois Department of Children and Family Services (DCFS) as her guardian, and setting a permanency goal of return home. For the following reasons, we affirm.

¶ 3 BACKGROUND

¶ 4 On July 24, 2014, the State filed a petition for adjudication of wardship of Robyn naming Pauletta and Robyn's father Robert as respondents. The petition alleged Robyn was neglected due to an injurious environment and abused due to a substantial risk of physical injury. The petition stated a factual basis for the allegations:

> "Putative father has one prior indicated report for sexual molestation. In August of 2002 putative father admitted to fondling this minor's sibling. This minor's

[1] Robert C. is not a party to this appeal.

> siblings state that they were previously sexually abused by this minor's putative father and mother had knowledge of the abuse at the time. In June of 2014 this minor was psychiatrically hospitalized due to auditory hallucinations. This minor has an issue of elopement behaviors. This minor states that she runs away from home because she does not feel safe. On or about July 8, 2014 this minor made an outcry that putative father is sexually and physically abusing her. This minor's whereabouts are currently unknown. There is an issue of domestic violence in the home."

¶ 5 On November 18, 2014, the cause proceeded to a trial. Janice Ware, a DCFS child protection investigator, testified at the trial. Ware's testimony began in November 2014 and resumed in January 2015. The trial continued on February 20, 2015 with the testimony of Carla Velin, a DCFS investigator. Additional witnesses who testified at the trial included, but were not limited to, Walter Henry and Stacy Sims, both DCFS investigators, and Javonna Smith a DCFS child welfare worker.

¶ 6 DCFS investigator Stacy Sims testified regarding her investigation of a May 14, 2014 hotline call concerning Robyn. At the time Robyn was 13-years old. Robyn had been brought to the Lynwood police department. The information reported in the hotline call was that Robyn was being beaten by her parents and by her siblings, and she was not being fed or was only fed a small amount like a piece of bread. The hotline information was that Robyn's parents hit her with a belt but there were no reports of marks or bruises at that time. There was also no outcry of sexual abuse at that time. Sims learned there was an indicated report against Robert for sexual penetration from 2002. Ware testified that in 2002, Robert was the subject of an indicated report

of sexual abuse against Robyn's sister Colletta. The 2002 report also indicated a substantial risk of sexual abuse of Robyn.

¶ 7 Robyn told Sims she was not afraid to go home and that she had not been touched inappropriately by her father. Pauletta arrived at the police station. Sims, Robyn, and Pauletta returned to Robyn's home. Pauletta told Sims that Robyn was promiscuous. Pauletta also told Sims Robert was indicated for sexually abusing Pauletta's older daughter, but Pauletta recanted that statement to Sims. Sims testified Robyn seemed guarded. Sims testified she assumed Robyn would be safe at home because Robyn was willing to go home and stated she was not afraid of anyone. Also, Robyn told Sims her father never touched her. Sims did take into account the prior indicated report.

¶ 8 In June 2014, DCFS received a hotline call regarding Robyn. Ware testified that in the June 2014 hotline call Robyn reported some men sexually assaulted her. Robyn's Integrated Assessment (IA) states that per a child abuse and neglect report completed on June 5, 2014, Robyn reported that on June 4, she was walking down the street when two men got out of a car and put a cloth on her face that put her to sleep. Robyn reported that she woke up in some bushes three hours later with her underwear and pants next to her. As a result of the June 2014 hotline call Robyn was taken to South Suburban Hospital. Robyn was examined at the hospital and no physical evidence of a rape was found.

¶ 9 Velin testified that on June 5, 2014, she went to visit Robyn in the hospital, where Robyn alleged she had been raped by three men. According to Velin's contact note, Robyn also reported at that time that she felt safe at home and that her mother and father loved her and had nothing to do with what happened. Robyn made no statements about being touched inappropriately or assaulted by her father at that time. Robyn told Velin she felt safe returning to

her parents' home. Velin entered a contact note with Pauletta. According to the contact note, Pauletta told Velin that she allowed Robyn to play basketball in a certain area but lost sight of her. Pauletta got into her car and tried to locate Robyn and filed a missing person report. At approximately 10:00 p.m. police returned Robyn home with Robyn stating that she had been raped. Pauletta immediately took Robyn to the hospital. When Velin asked Pauletta if she believed Robyn had been raped, Pauletta stated she did not know what to believe and further noted that Robyn seemed more upset about having her I-Pad and cell phone taken away for disobeying than for having been victimized. Ware testified that Robyn was later released to her parents.

¶ 10 Later in June 2014, Chicago Police Department officers found Robyn. She told police she was prostituting. Ware testified that after police found Robyn, she was taken first to a hospital in Evanston and then to Ingalls Hospital. A June 12, 2014 record from the hospital in Evanston states that Robyn reported vaginal discomfort due to repeated sexual encounters with several men (six the day before, three the day she was admitted) for money. Robyn's exam results from Evanston state that there was no evidence of "lacerations, abrasion, hematoma or other signs of trauma in the perineal/vulvo/vaginal area." That same record stated that Robyn had been a missing person since June 7th. The report states Robyn stated that her father was a heavy drug user and she did not know his location, and that Robyn was "laughing and smiling upon eval."

¶ 11 Robyn's medical records state that Robyn had been discharged from Ingalls on June 16, 2014 after being admitted for running away from home, engaging in prostitution, drug use with racing thoughts, and hallucinatory experiences. Robyn was readmitted to Ingalls on June 27, 2014, after her parents brought her to the hospital when Robyn jumped out of a second-floor

window while trying to run away. Robyn's psychological evaluation states that she jumped out of the window as the result of "auditory hallucinations of a man's voice telling her to leave the house and jump out of the window." The report also states that Robyn "endorses visual hallucinations of shadows." During her examination Robyn appeared "to be smiling to internal stimuli, smiling inappropriately." Robyn was released from Ingalls to her parents. A safety plan was in place and Robyn was placed with a friend while awaiting a Victim Sensitive Interview (VSI). Robyn was returned to Ingalls later that same month. When Robyn was hospitalized in Ingalls in June and July, prior to July 8, 2014, she made no statements referencing Robert assaulting her or touching her inappropriately. In a June 26, 2014 self-assessment Robyn completed at Ingalls, Robyn stated she did not want to be at Ingalls or at home. She stated she did not need to be there because she was not suicidal and was not "in harms way." The self-assessment asks what makes her angry, and Robyn wrote getting her stuff taken away and being bullied at school. The self-assessment asks what makes her sad and Robyn wrote "everything about not getting my way, getting bullied, getting my stuff taken away, and not having *** at least a little freedom."

¶ 12 Robyn was discharged from an inpatient psychiatric program on July 7, 2014. Ware learned that on July 8, 2014, Robyn told another DCFS investigator that she was afraid to go home because Robert raped her. Robyn was put into a partial hospitalization program from July 8, 2014 until July 18, 2014.

¶ 13 Walter Henry, who also testified at the trial, stated that he received a hotline report on July 8, 2014, that Robyn was at Ingalls Hospital and refused to go home. Henry spoke with Robyn in the emergency room. Henry testified that Robyn told him she was in the hospital because of hallucinations and specifically because she was hearing things. Robyn did not want

to return home because she was afraid of her father. Robyn also told Henry that her father had hit her two to three weeks earlier and that she had been raped by her father two to three weeks ago. Henry testified Robyn told him she did not want to tell staff at Ingalls these allegations because she was afraid. Robyn told Henry she was afraid to go home and that she wanted to go to her uncle's home.

¶ 14 On July 9, 2014, Henry completed a Child Endangerment Risk Assessment Protocol (CERAP) for Robyn. In the CERAP Henry stated that Robyn's credibility was questionable. Henry based this on the fact a staff member at Ingalls, Jeffrey Vollmer, told Henry that Robyn told the staff member that she (Robyn) wanted to become a DCFS foster child, and on the fact Vollmer told Henry that Robyn was snickering when Robyn said why she did not wish to go home. Regarding Robyn's statement that she wanted to be a DCFS foster child, Henry testified:

> "From my experiences, I've ran into a number of kids who want to be in DCFS custody and DCFS placement have gone out of their way to make allegations to engage in behavior that they believe may get them removed from their parents' care. I've had experience with minors who have done that in the past. And when I read that statement, that brought that back to mind."

¶ 15 Henry also questioned Robyn's credibility based on the fact Robyn did not tell Ingalls staff she was physically or sexually abused while she was in an inpatient program at Ingalls. Henry testified that he did not have any questions about Robyn's credibility after his conversation with Robyn and that his questions only arose after he spoke with Ingalls staff. He testified that Pauletta seemed angry and frustrated about Robyn's allegations. Henry testified as to his belief it would not be safe for Robyn to return home. He believed that she would be at risk of sexual abuse but did not think she would be at risk of being hit.

¶ 16 Ware testified she spoke to Pauletta and Robyn on July 11, 2014, after Robyn returned to Ingalls. On July 11, 2014, Robyn told Ware that Robert touched her (Robyn). Robyn told Ware she (Robyn) did not want to stay in her home because she did not feel safe, so she ran away. Robyn said she did not feel safe because Robert did things to her. Robyn said Robert hits her, touches her, and she is afraid of him. Robyn denied that Robert "whipped" her. Robyn did not want to talk about the touching with Ware because "things would happen" and Robert would touch her. Ware asked Robyn to explain the touching but Robyn said she did not want to talk about it. Robyn also told Ware that she (Robyn) had never told Pauletta about the touching. Ware testified that Pauletta agreed to the safety plan until the VSI was completed. Under this plan, Robyn was placed with a friend, and Pauletta was not to have unsupervised contact with Robyn. Ware testified Robyn was removed from her home because Robyn did not want to return there and would keep running away if placed back in the home.

¶ 17 On July 13, 2014, another hotline call was made to DCFS. Pauletta was involved in an altercation with the person with whom Robyn was staying after the July 11, 2014 safety plan was put in place. Pauletta removed Robyn in violation of the service plan. As a result, another DCFS investigator, Donna Woods, placed Robyn in another safety plan. Ware spoke to Robyn on July 14, 2014, and Robyn told Ware that Robert was touching her. Robyn also told police and another DCFS investigator that Robert touched her.

¶ 18 Elizabeth Smoczynski testified that she was an outpatient therapist at Ingalls and worked with Robyn in the partial hospitalization program from July 8 through July 18, 2014. Smoczynski testified the purpose of the program is to monitor patients who live at home and provide intensive group therapy. On July 8, 2014 Smoczynski contacted Pauletta and provided contact information, but Pauletta never contacted Smoczynski. Smoczynski was aware of

Robyn's auditory hallucinations. Smoczynski testified that the onset of mental illness in the form of depression and anxiety often occurs in adolescence because at that time, there is a lot of transitioning, and if youth do not have adequate coping mental illness can result. Smoczynski testified Robyn told her she ran away because she did not feel safe at home. Robyn was guarded and would not answer questions about why she did not feel safe. Robyn would not answer questions about her parents during therapy sessions. Robyn completed daily self-assessment forms. Smoczynski testified that on those forms Robyn indicated pain in her vagina and anus. Robyn would not respond to questions about these answers on the self-assessments. Smoczynski testified that Robyn never told her that she was sexually abused by her father. Smoczynski initially testified she could not say with certainty that Robyn suffered trauma, but she later said that Robyn's statements and behavior indicated that Robyn suffered trauma but Smoczynski did not know what the trauma was. Smoczynski also testified that although she did not know what the trauma was, she did have concerns about a history of sexual abuse given Robyn's responses to pain. Robyn stated to Smoczynski that she was afraid to go home. Smoczynski concluded Robyn had significant trauma history and recommended trauma-focused cognitive behavioral therapy. On July 18, 2014, Robyn told Smoczynski she was excited because she (Robyn) was going on a trip with her mother and the person Robyn was staying with. Smoczynski testified she was concerned that Pauletta would have access to Robyn and coach her. Smoczynski also knew that children were not allowed to cross state lines while there was an open investigation. Smoczynski called DCFS. The same day, Robyn was discharged from the partial program because DCFS took custody of her.

¶ 19 Ware spoke to Robyn's therapist, who told Ware that Pauletta and Robyn's caretaker were planning to take Robyn to St. Louis, which would have violated the safety plan. On July

18, 2014, Ware spoke to Robyn. Ware testified Robyn told Ware that she (Robyn) wanted to go with her mother to St. Louis, but she did not want to return home because she did not feel safe in the home. Robyn said she did not feel safe because her father touched her. Ware testified that Robyn told Ware that she (Robyn) and her friend were hanging out with Latin Kings. Ware testified that it was her observation that while at Ingalls Robyn was most concerned about connecting with those friends. Ware decided to take protective custody of Robyn and placed her in Sadie Waterford (a shelter). That same day (July 18, 2014) Ware told Pauletta that she was taking protective custody of Robyn because of Robyn's risky behaviors, because Robyn did not want to return home, and because of the allegation her father touched her. Ware believed Robyn would be at risk of harm if she were returned to her mother and father. Ware had told Robyn that she would not receive a pass to go out until Ware obtained temporary custody. The next day, on July 19, Robyn ran away from the shelter. Robyn was located on July 22, 2014. Ware observed Robyn wearing new clothes. Robyn told Ware she had received the clothes from a friend. Robyn also said that while she was away from the shelter, she was hanging out with her Latin King friends. Ware was uncertain if Robyn was telling the truth. Robyn stated she still did not want to return home. Also in July 2014, Ware asked Robyn why she denied the allegations against her father in May. Robyn said it was because no one would believe her and would think she was "crazy."

¶ 20 In August 2014, DCFS assigned Javonna Smith, a child welfare worker, to Robyn's case. Smith testified that she began to gather information to complete an IA. The purpose of an IA is to gather information on the family to provide services to address issues in the family. In September, an assessor and Smith were both present when Pauletta and Robert were interviewed separately. Robert told Smith about allegations from 2002 that he sexually abused his

stepdaughter Colletta. Robyn was three-years old and living in the home at the time of Colletta's allegation of sexual abuse by Robert. Robert denied that he sexually abused Colletta. DCFS found the report "indicated." Pauletta was aware of the allegations, and Pauletta told Smith that at the time, she did not want to believe Colletta. Pauletta told Smith she felt torn between her husband and her child. Pauletta told Smith that Colletta recanted and that Colletta told Pauletta that the allegations were made up because Colletta was mad at her mother. Smith testified that Pauletta did not say with certainty that Robert did not sexually abuse Colletta, and Pauletta did not put any measures in place to protect her children. Robert was out of the home for a couple of months but Pauletta allowed him to return despite the indicated report.

¶ 21 Smith testified that during the IA Robert stated Pauletta "knew how to set him off." Robert said Pauletta was generally the initiator of physical abuse and he would respond. In 2011, he and Pauletta had an argument during which he pushed her away from their car. Pauletta stated that she had been trying to leave the home but Robert blocked her from getting into the car and then he pushed her. As a result of this incident, police arrested Robert. Robyn and the other children were present for that incident. Pauletta obtained an order of protection against Robert. In June 2014, Pauletta hit Robert and Robert responded. Pauletta also said that she initiated the altercation. This time, Robyn was not present. Robert was arrested again as a result. Robert admitted that Robyn was exposed to domestic violence. Pauletta also said that Robyn was exposed to any other arguments she and Robert had in the house. Smith testified that Pauletta did not put any measures in place to protect the children from domestic violence and neither Pauletta nor Robert ever said that they separated after any incidents of domestic violence. Smith also spoke to Robyn, who told Smith that Robert physically and sexually abused her. Robyn said

to Smith that she did not want to return home to either her mother or her father because of the abuse.

¶ 22 The IA contains a section titled "IA Clinical Screener's Parenting Impressions." That section states that Pauletta "verbalized love and concern for Robyn and seemed to have provided for a variety of Robyn's needs throughout her life. *** Procurement of such services and resources demonstrated good judgment." The IA goes on to state:

> "In addition, [Pauletta] demonstrated some insight regarding the likely influence of Robyn's peers on her behavior. Still, it appeared that [Pauletta] had also lacked parental judgment and insight at times and contributed, perhaps unintentionally or unconsciously, to Robyn's challenged functioning and behavior."

¶ 23 Robyn participated in a VSI on November 25, 2014. The trial court later made the video recording of the VSI a court exhibit. In the VSI, Robyn told the interviewer that between the ages of 10 and 14 she suffered sexual abuse and that she had suffered physical abuse more recently. When describing what type of "sexual touching" happened with her father, Robyn said that it was "like rape." Robyn stated that when she was 13 or 14-years old, and no one else was home, when she asked her father for something to eat he would say no. She said there was also beating "with hands and belts and everything." Only her father knew about the beating. Robyn would not explain what she meant by "rape." The first time the "sexual touching" happened it was "rape." When asked what kind of touching happened Robyn said it was "all the type of rape." Robyn said her mother did not do any of the things she described in the VSI and did not know about them until Robyn told her in the hospital this year. Robyn said that "rape" happened to her before she ran away from home, and Robert attempted to rape her before the last time she ran away from home. Robyn would not provide details of the rape orally but agreed to write

down what happened. Robyn asked the interviewer not to read what she wrote aloud, but she answered questions about what she wrote. Robyn wrote what happened the last time but it happened more than one time. What Robyn wrote was different from other times because of "different positions." Robyn was asked "When his thing was in you, what part of you." Robyn answered "front and back."

¶ 24 Colletta B. also testified at the trial. Colletta testified that Pauletta is her mother and Robert is her stepfather. At the time of her testimony Colletta was 29-years old. Colletta testified Robert started abusing her when she was seven-years old. Robyn had not been born, and Pauletta and Robert lived in the home with children Colletta, Chanta, and Maurice. Colletta testified the abuse began with Robert tickling her. This usually occurred while Pauletta was at work. This progressed to him touching her vagina. When Colletta reached nine-years old, Robert became more aggressive. Robert touched Colletta and Chanta. When Colletta was 13-years old, Robert would enter her room, take down her underwear, and place his penis between her legs and grind on Colletta until he ejaculated. She testified this occurred every night, or frequently, in 2000 and continued to 2002 when Colletta left the house. Colletta and her sister Chanta shared a bed at that time. Colletta saw Robert touch Chanta as well.

¶ 25 Colletta also testified to an incident where Pauletta hit her in the face and threw her out of the house. Robyn was a baby at the time. Colletta saw Pauletta hit Robyn more than once, possibly four times, but Colletta was gone from the house for a number of years. Colletta testified that when she was a child Pauletta would hit her in the face then use makeup to cover it, or hit Colletta with a brush as she (Pauletta) was brushing Colletta's hair. Colletta testified to seeing an act of violence between Pauletta and Robert. Colletta also testified that Pauletta hit her

siblings Ciara, Celeste, and Robyn. She testified she saw Pauletta hit Robyn approximately four times when Robyn was 10 or 11-years old.

¶ 26 In 1999 Robert began inserting his finger into Colletta's vagina and to use sex toys on Colletta. Colletta testified that Robert told her: "I want to break you in so when you're ready to have sex it wouldn't hurt." Robert would drink beer and give Colletta beer to drink and force her to watch pornographic movies. Colletta testified this behavior continued every night until 2002, when she reported the abuse. She testified she finally reported the abuse at the end of July or the beginning of August 2002 because Robert wanted to start inserting his penis into her vagina. Colletta testified her aunt took her to the Lansing police department. Pauletta and Robert arrived later. Colletta testified that while they were all waiting at the police station Pauletta became irate and called Colletta a liar. Police told Pauletta something and Pauletta had a panic attack requiring her to be taken away by ambulance. Police told Colletta she could not return home, so Colletta went to live with her aunt for a year and a half.

¶ 27 Colletta testified that when she was supposed to testify against Robert, she was in a car for an hour with Pauletta. Colletta testified that Pauletta told her Colletta should have come to Pauletta and left everything in the family. Pauletta also accused Colletta of lying. Colletta testified that Pauletta told her that she (Pauletta) needed Colletta to do her a favor. Pauletta asked Colletta to say that Robert did not do this. Pauletta said they would get a divorce. Colletta said Pauletta was begging her. Pauletta then became threatening, and told Colletta that if she did not recant Pauletta would not help Colletta with her pregnancy. Colletta testified she believed Pauletta would leave Robert, so she went to court and said her prior allegations were a lie. Colletta went back to Pauletta and Robert's home in the middle of 2003. Maurice, Chanta, Ciara, Celeste, and Robyn were living there, as was Robert. When Colletta realized Robert was

still in the home, she left their home. Colletta testified that she resumed visiting the home in 2007, at which time Robert thanked her and said he owed Colletta his life. Colletta testified that in August 2014, Robyn told Colletta what she (Robyn) had experienced. Robyn told Colletta she (Robyn) told Pauletta what happened as well. Colletta testified that Robyn said that Pauletta had also told Robyn that she would leave Robert and that they would work this out as a family. Colletta testified she was upset with herself because "it was me that let him get off."

¶ 28 Chanta, another older sister of Robyn, also testified. She was 26-years old and living on her own at the time. She testified that Robert starting molesting her when she was in the seventh grade, before Robyn was born. Robert would fondle her chest and touch her inappropriately. Chanta testified she told Colletta and Pauletta about the abuse when Chanta turned 18-years old. Chanta testified Pauletta did not believe her. When Chanta told Pauletta about the abuse she suffered, Robyn was living in Pauletta's home. Chanta testified she went to see Robyn in the hospital. Robyn did not tell Chanta she (Robyn) was abused. Maurice B., Robyn's oldest brother, also testified. Maurice testified that in 2014 he heard Pauletta "whipping" Robyn. In summer 2014, Maurice heard Robert and Pauletta arguing. He heard a punch, two slaps, and then a crash. Pauletta was stumbling and looked dazed. Maurice testified that Pauletta regularly employed harsh physical discipline on her children. When Robyn was in the hospital in summer 2014 Maurice found letters Robyn wrote about Robert's abuse. Maurice also testified that Robyn was often alone with Robert.

¶ 29 At the conclusion of the evidence the State asked for leave to add an allegation of sexual abuse to conform the pleadings to the proofs. The trial court allowed the motion.

¶ 30 The trial court continued the matter for ruling to June 29, 2016. The trial court's adjudication order states that the VSI was persuasive. The order also states that the court relied

on the comments of the testifying therapist that Robyn reports pain in her vagina and anus, and the therapist's conclusions regarding Robyn's indications of trauma. The court stated, in part, that although Robyn did not testify it had the benefit of the VSI. The court found Robyn neglected due to an injurious environment and abused due to a substantial risk of injury. The court found that the abuse and neglect were inflicted by Pauletta and Robert. The court stated that it would enter no findings as to the sexual abuse because the court had "reservations on entering such a finding without the live testimony of the minor and the opportunity for cross-examination and my being able to judge her demeanor."

¶ 31 The cause proceeded to a dispositional hearing on September 14, 2016. At the dispositional hearing the trial court admitted into evidence a Family Service Plan ("Service Plan") concerning Robyn dated July 9, 2016. The Service Plan states that the family's progress since the last review has been "unsatisfactory." The Service Plan states that Pauletta and Robert have been resistant to engaging in services. Pauletta agreed to complete the domestic violence assessment after the adjudicatory hearing and Pauletta's individual therapy terminated in July 2015. Pauletta's therapist reported that Pauletta had addressed the issues that caused the DCFS case to be opened "as much as she was willing." The Service Plan evaluated the progress toward the permanency goal, which was for Robyn to return home within 12 months. The Service Plan concluded that progress was unsatisfactory, and states that Robyn had indicated that she wants to return home to her mother only. Robyn has no interest in having contact with her father, who still lived in the family home. Pauletta had begun family therapy, but had "not made progress in participating in other services as recommended." An evaluation of Robert's progress dated July 11, 2016, and included in the Service Plan, states that Robert's therapist recommended that Robert participate in sex offender treatment and a domestic violence assessment, but Robert did

not. Robert denied any sexual abuse of Robyn and stated he previously completed domestic violence services and did not need to do so again. Pauletta stated she did not see a need for marriage/couples counseling because she did not plan to stay in a relationship with Robert. The Service Plan concluded that Pauletta and Robyn had begun family therapy but Pauletta had yet to engage in a domestic violence evaluation. Pauletta had participated in individual therapy as much as she was willing and was at an impasse.

¶ 32 Dedra Owens, the DCFS worker assigned to Robyn's case since October 2015, testified at the dispositional hearing. When Owens was assigned Robyn was residing in the Allendale residential treatment facility, and in December 2015 Robyn was transferred to the Allendale group home. Owens testified Robyn was diagnosed with bipolar disorder and posttraumatic stress disorder. She was then currently in need of psychotropic medication. Owens testified Robyn was making progress in therapy. Allendale reported to Owens that Pauletta was consistently participating in family therapy.

¶ 33 Robert had initially refused to participate in domestic violence services, but Owens testified he later said he was willing to participate and was scheduled to begin, although he had not done so when she testified. Owens testified Robert was participating in therapy, but his therapy was suspended pending a sex offender evaluation. Owens testified Robert did participate in the evaluation, which resulted in a recommendation for sex offender treatment. Robert told Owens he did not want to participate in sex offender treatment because he did not do anything to Robyn and therefore did not need that type of service. Owens testified the sex offender evaluation found that Robert was a "medium risk." Pauletta also initially did not want to take a domestic violence assessment because she did not feel she needed those services. However, after the adjudicatory hearing, Pauletta was "open to participating in that service," and had taken the

domestic violence assessment, but domestic violence "is still outstanding." Owens did not know if domestic violence treatment was recommended as a result of Pauletta's assessment. Owens testified that Pauletta was in individual therapy, but prior to the trial court's ruling after the adjudicatory hearing, her therapists terminated Pauletta's services because they felt she should begin family therapy with Robyn to address any issues they need to address. If there were any issues that came up during family therapy, Pauletta should be re-referred to individual therapy. Owens testified that it was her understanding that Pauletta had not made a clear statement acknowledging a failure to protect Robyn.

¶ 34 After the adjudicatory hearing Pauletta was given unsupervised visits with Robyn twice per month. Owens testified that prior to receiving unsupervised visitation, Pauletta's supervised visitation with Robyn was going well. It was Owens' understanding that Robyn enjoys spending time with her mother and continued to enjoy spending time with her mother. Owens had observed an unsupervised visit between Pauletta and Robyn which Owens described as "very appropriate." Owens said Robyn was "very excited about being able to be with her mother and have time with her mother, and continues to look forward to being able to spend additional visits with her mother." Pauletta's visits with Robyn were not consistent, however, and Owens did not have a reason why Pauletta had not been consistent with her visitation. Pauletta testified that there had been no domestic violence between her and Robert in 2016, but she did file for a civil order of protection against him. Pauletta testified she "just thought it needed to be in place" after she filed for divorce, but she admitted to a verbal altercation between her and Robert on June 19.

¶ 35 Owens testified at the dispositional hearing that at this point Robyn "wants to return home to her mother." Pauletta also expressed to Owens that Pauletta wants Robyn to come home. Owens said that for Robyn to be able to return home to her mother, Owens would like to

see Pauletta have her own place where she and Robyn can live together, and for Pauletta and Robyn to continue to engage in family therapy. It was Owens' understanding that at the time Pauletta still resided in the home with Robert. Pauletta was working with someone in the DCFS housing advocacy program to find her own place. Owens testified Pauletta was being cooperative with the person assisting her to find housing, but Pauletta did not want to live in a shelter. Owens also testified that Pauletta stated she had taken steps to seek a divorce from Robert. Robyn was aware Pauletta was still living with Robert. Owens testified that "as far as Robyn is concerned, when it is time for her to go home, it will be her and her mother." Owens testified Robyn is comfortable with her mother and wants to return home to her mother. Robyn does not wish to live with or to see her father. Owens testified that in her conversations with Pauletta she (Pauletta) has been adamant about protecting Robyn. Owens testified it was her belief that it was still in Robyn's best interest to be made a ward of the court.

¶ 36 Emily Longston, a care specialist at Allendale assigned to Robyn's case, testified that between June and September 2016 there had been only one family therapy session. The sessions were scheduled to occur twice per month over the telephone. Pauletta participated in family therapy over the phone because of her work schedule. In June, Allendale was unable to reach Pauletta. However, on "off weeks" Allendale called Pauletta for a clinical consultation. Longston testified Pauletta participated in the clinical consultations consistently, including the time frame when she could not be reached for family therapy. The therapist rescheduled the time for family therapy. When Pauletta was called for therapy the first (and then only) time under the new schedule, she did answer the phone but there appeared to be a family emergency so the session did not happen. Longston testified that between June 2016 and September 2016 Pauletta and Robyn had two unsupervised visits. Longston thought Pauletta and Robyn talked on a

nightly basis. Longston testified that Allendale feels that Pauletta is able to meet Robyn's needs. Longston felt Pauletta understands Robyn's needs. According to Longston, the barrier to Robyn returning home is having a home with just Pauletta to go to.

¶ 37 At the conclusion of the hearing the trial court entered a dispositional order adjudging Robyn a ward of the court. The trial court found that Pauletta "seems to have made some baby steps in many regards but is still adamant on certain other ones." The court stated it would have expected even more visitation. The court found she was clearly unable, and due to Pauletta "dragging her feet, especially over the duration of this matter that has been highly contested and drawn out for an extremely long time, I'm also going to find that she is unwilling." The court stated the permanency goal was return home. The court found that the services in the service plan are appropriate and reasonably calculated to facilitate the achievement of the permanency goal, but the "selected goal cannot be immediately achieved because services are ongoing." Robyn was placed in the guardianship of the DCFS Guardianship Administrator with the right to place her.

¶ 38 This appeal followed.

¶ 39 ANALYSIS

¶ 40 Pauletta seeks reversal of the trial court's order adjudicating Robyn abused and neglected, and reversal of the trial court's order adjudging Robyn a ward of the court. Short of reversal of these orders, Pauletta asks for remand for further proceedings or, alternatively, that this court reverse the finding that Pauletta was unable and unwilling to care for the minor and enter an order of no-fault dependency instead.

> "The step-by-step process used to decide whether a child should be removed from his or her parents and made a ward of the court is set forth in the Juvenile Court

> Act of 1987 [(Juvenile Court Act)] (705 ILCS 405/1-1 *et seq.* (West 2000)). *** Following placement of a child in temporary custody, the circuit court must make a finding of abuse, neglect or dependence before it conducts an adjudication of wardship. [Citations.]" *In re Arthur H.*, 212 Ill. 2d 441, 462 (2004).

¶ 41 The Juvenile Court Act defines an "abused minor" as a minor "whose parent creates a substantial risk of physical injury to such minor by other than accidental means." 705 ILCS 405/2-3(2)(ii) (West 2014). "Section 2-3(1)(b) of the Act [(705 ILCS 405/2-3(1)(b) (West 2000))] defines a 'neglected minor' to include "any minor under 18 years of age whose environment is injurious to his or her welfare." *In re Arthur H.*, 212 Ill. 2d at 462. If the State proves the allegations of abuse or neglect by a preponderance of the evidence, the court "must then proceed to the second adjudicatory stage, in which the court determines whether 'it is consistent with the health, safety and best interests of the minor and the public that [she] be made a ward of the court. [Citation.]" *Id.* at 464.

¶ 42 1. Sufficiency of the Pleadings

¶ 43 Pauletta first argues the petition for adjudication of wardship in this case fails to set forth sufficient facts to state a cause of action for abuse or neglect.

> "Petitions for adjudication of wardship should *** comply with the general rules of civil pleading practice. While it is true that no pleading is bad in substance which contains facts that reasonably inform the opposite party of the claim he is called upon to meet, such rule does not obviate the requirement of stating a cause of action in any case, including a juvenile proceeding. [Citation.]" *In the Interest of Harpman*, 134 Ill. App. 3d 393, 396 (1985).

Pauletta raised this argument for the first time on appeal. "All defects in pleadings, either in form or substance, not objected to in the trial court are waived." 735 ILCS 5/2-612(c) (West 2014). If the complaint states a cause of action, no matter how defectively or imperfectly alleged, and no objection thereto is raised in the trial court, then the defect is cured by judgment and cannot be challenged on appeal. *In re John Paul J.*, 343 Ill. App. 3d 865, 878 (2003). "Only where a pleading wholly and absolutely fails to state any cause of action can an objection be raised for the first time on appeal. [Citation.]" *Id.* Pauletta argues the petition for adjudication of wardship in this case wholly and absolutely fails to state any cause of action. "Issues relating to the sufficiency of pleadings raise questions of law and are reviewed *de novo*." *Mermelstein v. Menora*, 372 Ill. App. 3d 407, 417 (2007).

¶ 44 In *Harpman*, the State filed three petitions for adjudication of wardship alleging the minor children of the respondents (their natural parents) were neglected. *In the Interest of Harpman*, 134 Ill. App. 3d at 394. The petitions each alleged the minor was neglected because the respondent father had been found "unfit" as a father to two other of his female children because he sexually abused both of them; the respondent father and mother denied any sexual abuse occurred to the other children and have not engaged in therapy to provide an environment where such sexual abuse would not occur again; and in not resolving the prior issue of sexual abuse the respondent parents continue to expose the minors named in the petition at issue to a substantial risk of sexual abuse by the respondent father. *Id.* The respondent parents filed a motion to dismiss the petitions for adjudication of wardship prior to the adjudicatory hearing. The motion to dismiss argued the petitions failed to state a cause of action "by omitting any allegations of acts of abuse or neglect under section 2-4(1) of the [Juvenile Court Act.] [Citation.]" *Id.* at 395. The trial court took the motion under advisement at the beginning of the

adjudicatory hearing and denied the motion at the close of the State's case. *Id.* The court found the minors neglected and subsequently made the minors wards of the court. *Id.* The respondent parents appealed arguing, in part, the petition for adjudication of wardship failed to state a cause of action for neglect. *Id.* The Fourth District agreed, finding that issue dispositive. *Id.* at 397.

¶ 45 The *Harpman* found that "[a]n examination of the allegations contained in the petition for adjudication of wardship *** reveals the absence of any alleged acts of abuse or neglect directed towards the respondents' children." *Id.* at 395. The court stated that "the petitioner was required to set forth facts showing that [the] children were neglected. A neglected minor is defined as one:

> 'whose parent or other person responsible for the minor's welfare does not provide the proper or necessary support, education as required by law, or medical or other remedial care recognized under State law as necessary for a minor's well-being, or other care necessary for his or her well-being, including adequate food, clothing and shelter, or who is abandoned by his or her parents or other person responsible for the minor's welfare.' [Citation.]" *Id.* at 396.

The court found that liberally reading the petition before it, "the only act or omission allegedly affecting the subject minors is the failure of [the respondent parents] to acknowledge the previous abuse and obtain therapy to insure that such abuse would not be repeated." *Id.* at 395. The court held that "the petition in the instant case fails to set forth sufficient facts to state a cause of action for neglect. The petition is devoid of facts alleging negligent acts or omissions directed towards the respondents' children." *Id.* at 396. The court relied on its view that the failure of the respondent parents to engage in therapy deemed beneficial by DCFS is not "the

type of failure to provide care for the minors' well-being that was contemplated by the legislature in defining a neglected minor." *Id.* The court also noted that:

> "At one time it could conceivably be argued that the failure to engage in such therapy created an environment injurious to the minors' welfare. The 'injurious environment' language was contained in the previous definition of neglected minor. [Citation.] However, that language was deleted from that definition and now appears in the definition of abused minor. [Citation.] Of course, we need not decide whether the petitions here state a cause of action for abuse since they allege only neglect." *Id.*

The court held that the petitions failed to set forth sufficient facts to state a cause of action for neglect and, therefore, the trial court erred in denying the respondent parents' motion to dismiss.

¶ 46 Pauletta asserts the issue raised here with regard to the sufficiency of the pleading is the same issue that was presented in *Harpman*. In this case, Pauletta argues, the petition does not contain any facts that show how Pauletta's knowledge of the 2002 indicated report of sexual abuse of Robyn's siblings contributed to Robyn being neglected or abused. Pauletta also argues that the allegation Robyn did not feel safe or that there was domestic violence in her home fails to show a nexus showing abuse or neglect by Pauletta. Pauletta argues the allegations do not show how she failed to provide the necessary care, support, and education for Robyn or how she provided an injurious environment. Pauletta further complains that because of the remoteness of the prior indicated report no nexus to Robyn is shown, and there are no allegations showing Pauletta's unwillingness to discharge her parental duties or how she failed to do so under either the abused or neglected statutes.

¶ 47 Pauletta's reliance on *Harpman* is misplaced. In this case, the petition for adjudication of wardship alleged Robyn is neglected due to an injurious environment. The section of the Juvenile Court Act applicable in this case defines a neglected minor as "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). Therefore, unlike in *Harpman*, the allegations contained in the petition for adjudication of wardship in this case contain an alleged act of neglect directed towards Robyn. The *Harpman* court found the petition in that case did not contain an allegation of neglect because the conduct alleged was, in the court's view, not "the type of failure to provide care for the minors' well-being that was contemplated by the legislature in defining a neglected minor." *Harpman*, 134 Ill. App. 3d at 396. The version of the statute in effect stated, in part, that neglect was the failure to provide "other care necessary" for the minor's well-being, including food, clothing, and shelter." *Id.* (quoting Ill.Rev.Stat.1983, ch. 37, par. 702-4(a)). The doctrine of *ejusdem generis* "provides that when a statutory clause specifically describes several classes of persons or things and then includes 'other persons or things,' the word 'other' is interpreted as meaning 'other such like.' [Citation.] [Citation.]" *City of Chicago v. Elm State Property LLC*, 2016 IL App (1st) 152552, ¶ 23. Although the *Harpman* court did not cite the doctrine of *ejusdem generis*, its view of what conduct constituted "the type of failure to provide care for the minors' well-being that was contemplated by the legislature in defining a neglected minor" (*In the Interest of Harpman*, 134 Ill. App. 3d at 396) comports with an application of that doctrine. Here, the petition is not saddled with a similar limitation on the scope of the conduct that can constitute neglect of the minor.

> " 'Injurious environment' by its nature is an amorphous concept. Prior cases, discussing neglect under the former statute when injurious environment was part

> of that concept, generally agreed that neglect could not be defined with particularity, but rather each case should proceed on its own facts." *In re Harpman*, 146 Ill. App. 3d 504, 511-12 (1986), appeal after remand (citing *In re Christenberry*, 69 Ill. App. 3d 565 (1979)).

¶ 48 The *Harpman* court acknowledged the conduct alleged in the petition in that case could arguably create an "injurious environment," but at the time, the "injurious environment" language was not in the definition of neglected minor. *Id.* The basis for the court's decision in *Harpman*, that the petition did not allege negligent acts or omissions directed at the minors, is not present here, where the petition alleges an injurious environment, and the Juvenile Court Act defines a neglected minor as one whose environment is injurious to her welfare. The petition in this case sets forth sufficient facts to bring Robyn under the jurisdiction of the court.

¶ 49 Pauletta also complains the petition was not affirmed or verified by the assistant State's Attorney. The State responds the petition is affirmed, signed, and supported by the affidavit of the DCFS investigator. Section 2-13 of the Act states that the "petition shall be verified but the statements may be made upon information and belief." 705 ILCS 405/2-13(2) (West 2014). "The allegations in a verified pleading are sworn to under oath by the person signing the petition." *In re L.M.*, 205 Ill. App. 3d 497, 502 (1990). In *In re L.M.*, the court found the verification sufficient where the allegations were signed by the assistant State's Attorney, whose signature was properly notarized. *Id.* at 501. The allegations in the petition in this case are made "on oath or affirmation, based on information or belief." However, the signature of the assistant State's Attorney on the petition in this case is not notarized. *Cf. id.* The State filed a motion for temporary custody and an affidavit of DCFS efforts with the petition for adjudication of wardship. The affidavit states the reasons that led the DCFS investigator to place or consider

placing Robyn; however, the reasons stated in the affidavit are not as comprehensive as the facts stated in support of the allegations in the petition. The record contains a certification by the DCFS investigator that "the statements set forth in this instrument are true and correct." The affidavit is verified by the assistant State's Attorney. That certification follows the motion for temporary custody, which alleges the same facts alleged in the petition.

¶ 50 We find the record does not support finding strict technical compliance with the requirements of section 2-13 of the Juvenile Court Act. However, the *L.M.* court also noted that "since the requirement of verification is a procedural formality designed as a deterrent to frivolous allegations, the failure to verify a petition does not divest the trial court of subject matter jurisdiction. [Citations.]" *Id.* at 502. We find the petition sufficient to bring Robyn within the jurisdiction of the court.

¶ 51 Pauletta argues the allegations that Robyn's siblings were sexually abused are unspecific and uncorroborated and fail to allege how Pauletta's knowledge of the prior abuse contributed to Robyn being abused or neglected. Pauletta makes a similar argument with respect to the allegation in the petition that there is domestic violence in the home. These arguments are not persuasive. "No pleading is bad in substance which contains such information as reasonably informs the opposite party of the nature of the claim or defense which he or she is called upon to meet." 735 ILCS 5/2-612(b) (West 2014). The petition alleges that Robyn is neglected or abused or both based on specific facts listed in the petition. We find the allegations sufficient to inform Pauletta of the nature of the claims she was called upon to meet. Pauletta further argues that no evidence shows that she directly harmed Robyn or allowed Robyn to be in an environment that was harmful to her. These and Pauletta's arguments that the petition does not allege specific facts either attributable to her individually or how the facts affected Pauletta's

individual care of Robyn, are also not persuasive. At the adjudicatory stage of proceedings, the only issue before the court is whether the child is abused or neglected. *In re Arthur H.*, 212 Ill. 2d 441, 466-67 (2004). "There is no direction from the legislature that the court shall consider the actions of the parents in making this determination." *Id.* at 466. Thus, Pauletta's argument that the petition for adjudication of wardship must contain specific allegations as to her role in Robyn's abuse or neglect fails. The petition states a cause of action for abuse or neglect of Robyn.

¶ 52 2. Testimony Regarding 2002 Indicated Report

¶ 53 Next, Pauletta argues the trial court erred in allowing Collette to testify regarding her allegations of abuse against their father. Pauletta asserts the "State attempted to establish that Pauletta B.'s knowledge of this earlier case should be the basis for establishing abuse and neglect through an injurious environment and risk of physical injury for Robyn." Pauletta states that at the time of her testimony, Collette was not a minor, therefore the 2002 indicated report "would not be actionable in juvenile court." Pauletta asserts the "same principle should apply with respect to the report being used as corroboration for [Robyn's] allegations." Pauletta acknowledges that under section 2-18 of the Juvenile Court Act, in any hearing, "proof of the abuse, neglect or dependency of one minor shall be admissible evidence on the issue of the abuse, neglect or dependency of any other minor for whom the respondent is responsible." 705 ILCS 405/2-18(3) (West 2014). Nonetheless, Pauletta argues the juvenile court should not be allowed to rely on the 2002 indicated report as evidence of abuse and neglect of another minor, particularly where that evidence is sufficient to establish a *prima facie* case for neglect. Pauletta argues a similar rationale applies to the testimony of sexual abuse at the hands of Robert by Robyn's other sister Chanta.

> "At the adjudicatory hearing, the trial court determines whether a minor is abused, neglected, or dependent. [Citation.] The standard of proof and the rules of evidence in the nature of civil proceedings *** are applicable at an adjudicatory hearing. [Citation.] Generally, [w]hether evidence is admissible is within the discretion of the circuit court, and its ruling will not be reversed absent an abuse of that discretion. [Citation.]" (Internal quotation marks omitted.) *In re J.C.*, 2012 IL App (4th) 110861, ¶ 18.

¶ 54 In support of her argument Pauletta cites *In re Edricka C.*, 276 Ill. App. 3d 18 (1995). In that case, in 1992 the State filed petitions for adjudication of wardship concerning the two youngest children of the respondent-mother. *In re Edricka C.*, 276 Ill. App. 3d at 20. The respondent had beaten an older child in 1987 and had left her other children unsupervised in 1989. *Id.* Following a hearing, the trial court found the children neglected for lack of necessary care, injurious environment, and substantial risk of physical injury. *Id.* at 24. The court based its ruling on a theory of anticipatory neglect. *Id.* "The court specifically mentioned that [the] respondent's oldest daughter had earlier suffered a severe beating and that there had been neglect findings for the other children left unsupervised." *Id.* at 25. On appeal, the respondent argued that the trial court had "applied a sweeping anticipatory neglect theory" and that its judgment was against the manifest weight of the evidence. *Id.* The appellate court agreed that evidence of abuse of a sibling is sufficient to establish a *prima facie* case of neglect based upon an injurious environment. " *Id.* at 27. But, the court found, "this presumption is not permanent; it weakens over time, and it can be overcome." *Id.* at 28. The *Edricka C.* court distinguished *Harpman* on the grounds that in *Edricka C.*, it was uncontradicted that the minors were perfectly healthy, and the respondent in that case had not denied either of the two past incidents. *Id.* The

court held that where it was uncontradicted that the child had always been in perfect health, the respondent completed counseling since the last neglect finding in 1989, a DCFS investigator testified the minor was not at risk, and the respondent had begun parenting classes, the "evidence of past sibling abuse is admissible, but, by itself, insufficient to show that abuse and neglect are imminent." *Id.* at 29-30. Regarding the younger of the two children, the court found that where the two prior incidents had occurred years before the child was born and the child was not ever abused or neglected, the trial court's findings came "too close to a *per se* rule of anticipatory neglect" (*id.* at 31) and reversed.

¶ 55 Pauletta argues that applying the reasoning of *In re Edricka C.* to this case, the presumption of sibling abuse is overcome. Pauletta argues the indicated report is "moot" under the Juvenile Court Act, Robyn had no knowledge of the abuse of her sisters, and Chanta's claims did not result in DCFS involvement and are uncorroborated. Pauletta argues the trial court improperly focused on the prior incidents and was "skewed *** from rendering the appropriate finding of dependency." Pauletta initially argues that admission into evidence of the testimony concerning the prior instances of abuse of Robyn's sisters was an abuse of discretion. We disagree. In *Edricka C.*, the case on which Pauletta relies, the court specifically held the evidence of prior abuse was admissible. *Id.* at 30. *Edricka C.* stands only for the proposition that the court must consider all of the evidence before making a finding of abuse or neglect. *Id.* ("Put another way, the record does not reveal that, by a preponderance of the evidence, Edricka lacks care, is exposed to an injurious environment, and is at substantial risk of physical injury."); *id.* at 31 ("the trial court's findings [concerning the second child] come too close to a *per se* rule of anticipatory neglect"). Pauletta also argues the prior incidents are nonetheless insufficient to establish neglect because Robyn's current conditions do not show neglect. Pauletta cites *In re*

J.C., 396 Ill. App. 3d 1050 (2009), which noted that "[c]ourts have found a lengthy period of time between allegations of neglect or abuse, without evidence of current conditions of the current child's neglect or abuse, to be insufficient to prove anticipatory neglect." *In re J.C.*, 396 Ill. App. 3d at 1058 (citing *In re Edricka C.*, 276 Ill. App. 3d at 28-31).

¶ 56 The *In re J.C.* court held that the trial court's finding that J.C. was neglected was not against the manifest weight of the evidence. *Id.* at 1059. The respondent had lost custody to several children between the finding of neglect of the respondent's fist child until the allegations concerning J.C., and the court found that the trial court "need not wait for another infant, J.C., to be neglected in the same manner before finding him neglected under the theory of anticipatory neglect." *Id.* at 1058. Pauletta attempts to distinguish *J.C.* from this case on the grounds that here, unlike in *J.C.*, no abuse or neglect was reported between the 2002 abuse and Robyn's allegation of abuse, there was no further DCFS involvement, her parental rights were not terminated, and there was no therapist's cautioning against returning Robyn to Pauletta. The *In re J.C.* court noted that a "prior neglect finding is not evidence of *per se* neglect of another child." *Id.* at 1057. More important to the decision in *J.C.* than what transpired with the respondent's other children between the finding of neglect of her first child and the allegations as to J.C. were the respondent's current circumstances. *Id.* at 1058-59 (other required services were still ongoing, the respondent's therapist remained concerned about the respondent's ability to parent, and psychological evaluation urged caution in returning minor to the respondent's care). The court found that in the case before it, "the record contains evidence beyond the recitation of the respondent's status as unfit in prior cases that supports a finding of neglect." *Id.* at 1057.

¶ 57 In this case, the record also contains evidence beyond the 2002 indicated report of sexual abuse and that evidence goes to Robyn's current circumstances. When the trial court found

Robyn abused and neglected, the court did not focus on the prior indicated report. The court stated that the most persuasive evidence was the VSI. The court, in its oral ruling, also relied upon the testimony of Robyn's therapist Smoczynsky and only briefly mentioned Colletta's testimony. The court concluded the "VSI speaks for itself." In the VSI, Robyn made current (*i.e.*, not related to the 2002 indicated report) allegations of physical and sexual abuse. The prior indicated report and Colletta's testimony did not skew the court from an appropriate finding. The trial court did not abuse its discretion in admitting evidence regarding prior abuse of Robyn's siblings.

¶ 58 3. Sufficiency of the Evidence

¶ 59 Next, Pauletta argues the trial court's finding that Robyn was abused and neglected is against the manifest weight of the evidence. She also argues that the finding at the dispositional hearing that she is unwilling to parent Robyn is against the manifest weight of the evidence. A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident.

> "When the manifest weight standard applies, the reviewing court will not substitute its judgment for that of the trial court on such matters as witness credibility, the weight to be given evidence, and the inferences to be drawn from the evidence, even if the reviewing court would have reached a different conclusion if it had been the trier of fact." *In re An. W.*, 2014 IL App (3d) 130526, ¶ 55.

¶ 60 A. Unwilling to Parent

¶ 61 Following the dispositional hearing, the trial court found Pauletta unable to parent Robyn. The court stated "her dragging her feet, especially over the duration of this matter that has been highly contested and drawn out for an extremely long time, I'm also going to find that she is

unwilling." On appeal, Pauletta argues "the record shows that [she] was unable as opposed to unwilling to care for, protect, or discipline Robyn." Pauletta concedes that the finding that she was unable to care for Robyn may result in a similar course of action with Robyn being placed in the care and custody of DCFS and that Robyn's best interests may require services through DCFS; regardless, Pauletta argues, "the finding by the court should be accurate." A trial court's determination that a parent is "unfit or *** unable, for some reason other than financial circumstances alone, to care for, protect, train or discipline the minor or are unwilling to do so" (705 ILCS 405/2-27(1) (West 2014)) "will be reversed if the findings of fact are against the manifest weight of the evidence or the trial court committed an abuse of discretion by selecting an inappropriate dispositional order." *In re Ta. A.*, 384 Ill. App. 3d 303, 307 (2008).

¶ 62 In *In the Interest of Lakita B.*, 297 Ill. App. 3d 985 (1998), the respondent argued that the trial court's finding that she was unfit under section 2-27(1) of the Juvenile Court Act was erroneous. *In the Interest of Lakita B.*, 297 Ill. App. 3d at 991. The respondent conceded that the evidence established that she was unable to effectively care for the minors, resulting in waiver of the issue of whether she was unable to parent the minors. *Id.* at 991-92. The court held that the waiver of the question of whether the respondent was unable meant that the issue of the trial court's "additional finding" that the respondent was unfit was moot. *Id.* at 992-93. The issue of whether the respondent was unfit was moot in the face of a concession that the respondent was unable because "although the Act does not specifically define 'unable,' 'unwilling' or 'unfit,' the terms nonetheless have separate meanings. By wording the terms in the disjunctive, the legislature intended that custody of a minor can be taken away from a natural parent if that parent is adjudged to be *either* unfit *or* unable *or* unwilling." (Emphases in original.) *Id.* at 992. The unchallenged finding that the respondent was unable was "sufficient to

support the trial court's judgment," and, therefore, the "additional" finding of unfitness was moot. *Id.* See also *In re M.B.*, 332 Ill. App. 3d 996, 1004 (2002) ("Similarly, here, respondent challenges the circuit court's finding of unfitness only and does not assert error in the court's determination that she was unable. Because the court's finding of inability, alone, is sufficient to support the court's judgment, the issue of whether the court's finding of unfitness was proper is mooted.").

¶ 63 The same rationale applies to Pauletta's argument. "[C]ustody of a minor can be taken away from a natural parent if that parent is adjudged to be *either* unfit *or* unable *or* unwilling." *In the Interest of Lakita B.*, 297 Ill. App. 3d at 992. Just as a finding that a parent is unable to care for the child renders a finding that same parent is also unfit to care for the child moot, here, the finding that Pauletta is unable to care for Robyn renders the trial court's additional finding that Pauletta is also unwilling to care for Robyn, moot. "[T]he general rule is that Illinois courts will not decide moot questions. [Citation.]" *In re Shelby R.*, 2013 IL 114994, ¶ 15. Pauletta has not argued that any of the recognized exceptions to that rule are present in this case. Accordingly, although other courts have gone on to address whether the additional finding of a basis to remove a child from a parent's custody was against the manifest weight of the evidence, we will not address the issue further.

¶ 64 B. Abuse and Neglect

¶ 65 In support of her argument the trial court's findings of abuse and neglect are against the manifest weight of the evidence, Pauletta points to the court's oral findings when it found Robyn abused and neglected. The trial court stated, in part, as follows:

> "I find the State has, by a preponderance of the evidence, proven NEI [(neglect environment injurious)] and ASRI [(abuse substantial risk injury)]. I enter no findings as

to the sexual abuse. And I will add the following. I have reservations on entering such a finding without the live testimony of the minor and the opportunity for cross-examination and my being able to judge her demeanor but I will enter findings as to NEI and ASRI."

Pauletta asserts the "crux of this entire proceeding centered on the sex abuse allegation," calling the current allegations of sexual abuse "bootstrapped to an earlier allegation of prior sexual abuse." Pauletta argues that just as the sexual abuse claim did not rise to the level of preponderance of the evidence, evidence that Robyn was placed in an environment for sexual abuse to occur must fail as well, and she supports her argument with the court's statement that it had reservations about entering a finding of sexual abuse without Robyn's live testimony.

¶ 66 Specifically, Pauletta argues that the only evidence of sexual abuse was Robyn's statements, and her statements are not sufficient to support a finding of abuse and neglect because her out-of-court statements are not substantiated by physical evidence, were uncorroborated, and were not subject to cross-examination. "We will not reverse a trial court's determination of abuse or neglect unless it is against the manifest weight of the evidence." *In re J.L.*, 2016 IL App (1st) 152479, ¶ 86. Section 2-18(4)(c) of the Juvenile Court Act provides as follows: "Previous statements made by the minor relating to any allegations of abuse or neglect shall be admissible in evidence. However, no such statement, if uncorroborated and not subject to cross-examination shall be sufficient *in itself* to support a finding of abuse or neglect." (Emphasis added.) 705 ILCS 405/2-18 (West 2014). As the State points out, Robyn's statements regarding sexual and physical abuse were not the only evidence to support a finding

of abuse and neglect.[2] The State asserts the trial court had ample evidence in addition to Robyn's statements to find abuse and neglect. We agree.

¶ 67 The State, citing *In re J.L.*, 2016 IL App (1st) 152479, ¶ 105, argues that the sexual abuse of one sibling supports a finding of neglect due to an injurious environment and abuse due to a substantial risk of injury to another sibling. We find that Robyn's siblings' testimony as to sexual and physical abuse support the finding that Robyn was abused and neglected. In *In re J.L.*, petitions for adjudication of wardship were filed concerning three children, all based on the same allegations: that one child, A.L., reported that the respondent-father touched her with his penis on her vagina and buttocks; A.L.'s sister also reported that their father touched the sister on her breasts and vagina; and both stated that their father hits their siblings and pulls their ears and hair. *In re J.L.*, 2016 IL App (1st) 152479, ¶ 11. The respondent argued that the finding that A.L. was sexually abused was against the manifest weight of the evidence because it was based on inadmissible hearsay evidence regarding statements made by, among others, her sister C.L.; there was a lack of corroborating evidence; and the finding of sexual abuse "relied on prior court findings that had no relevance to this case." *Id.* ¶ 86. C.L. did not testify in the proceedings, but the trial court admitted evidence of C.L.'s out-of-court statements as well as her medical records. *Id.* ¶¶ 18-72. The *J.L.* court began with the rule that "under section 2-18(4)(c), a minor's hearsay statement is sufficient in itself to support a finding of abuse or neglect if *** the occurrence of the abuse or neglect is corroborated by other evidence." *Id.* ¶ 88 (quoting *In re An. W.*, 2014 IL App (3d) 130526, ¶ 62). In this context, corroboration "requires there to be independent evidence which would support a logical and reasonable inference that the act of abuse or neglect described in the hearsay statement occurred. In essence, corroborating evidence is evidence that

[2] Nothing in the trial court's order suggests the court's judgment is based on the allegation of inadequate food, and the record would not support a finding of neglect on that basis.

makes it more probable that a minor was abused or neglected." (Internal quotation marks and emphasis omitted.) *Id.* ¶ 89 (quoting *In re A.P.*, 179 Ill. 2d 184, 199 (1997)).

¶ 68 The *J.L.* court first noted that the corroboration cannot come from the minor's own out-of-court statements or actions. *Id.* ¶ 92 (citing *In re Alba*, 185 Ill. App. 3d 286, 290 (1989); *In re Marriage of Flannery*, 328 Ill. App. 3d 602, 614 (2002)). That did not happen in *J.L.*, and, further, "in more recent cases, this court has permitted hearsay statements of multiple children to corroborate one another." *Id.* ¶ 92. This rule applies to statements and medical records of minors who are not parties to the proceeding. *Id.* ¶ 93 (citing *In re D.M.*, 2016 IL App (1st) 152608, ¶ 30; *In re Precious W.*, 333 Ill. App. 3d 893, 900 (2002)). The court concluded that C.L.'s statements and the diagnoses in her medical records (of sexual child abuse by her father) corroborate A.L.'s statements regarding allegations of abuse by her father. *Id.* ¶ 97. This was so despite the fact C.L.'s statements "described her own abuse and A.L.'s statements regarding A.L.'s abuse, but not C.L.'s personal observation or knowledge of A.L.'s abuse." *Id.* ¶ 98. Our supreme court "has described corroboration evidence as evidence that makes it more probable that a minor was abused or neglected." (Internal quotation marks omitted.) *Id.* ¶ 98 (quoting *In re A.P.*, 179 Ill. 2d at 199). The court held C.L.'s statements and diagnoses make it more probable that A.L. was abused because both described similar incidents with their father. "Simply put, we believe that the independent evidence that Mario sexually abused his older daughter, C.L., tended to 'strengthen or confirm' (*id.*) A.L.'s prior statements that she was touched inappropriately by Mario." *Id.*

¶ 69 Pauletta claims Robyn's siblings testified to actions they attributed to Pauletta regarding the environment of the house from 2000-2014, but they were no longer living in her house, and "the testimony did not rise to the level of finding abuse and neglect due to physical abuse even at

a preponderance standard." Given that argument's focus on what was said about Pauletta specifically, we could construe this line of argument as an extension of Pauletta's "nexus" argument, which we have already rejected. Pauletta's argument is also reasonably construed as a claim Robyn's siblings' testimony provided nothing to make it more probable Robyn was abused or neglected. We disagree. Robyn's siblings' testimony tends to "strengthen or confirm" Robyn's statements concerning her physical and sexual abuse. In this case, Robyn's older sisters both testified as to the abuse they suffered at Robert's hands. The siblings' testimony described similar incidents to those described in Robyn's out-of-court statements. Further, as the State argues, Colletta and Chanta's testimony corroborated each other. Robyn's sisters' testimony as to incidents in 2002 provided support for the finding of injurious environment and substantial risk to Robyn—the 2002 allegations against Robert included an allegation that Robyn was at a substantial risk of sexual abuse because a sex offender had access to her. The 2002 report was indicated as to Robyn, who was three years-old and living in the home when Colletta was abused. At the time of the hearing, Robert still had access to Robyn if Robyn returned home. We also note that "a finding of abuse of one sibling establishes a *prima facie* case of neglect based on an injurious environment to another." *In re J.L.*, 2016 IL App (1st) 152479, ¶ 105. Moreover, "the same facts and evidence which support a finding of neglect due to an injurious environment, also support the court's finding of abuse due to a substantial risk of physical injury." *In re Tamesha T.*, 2014 IL App (1st) 132986, ¶ 44. Moreover, Robyn's brother Maurice and sister Colletta testified that Pauletta hit Robyn, as well as the other children. The trial court expressed concern that DCFS recommend domestic violence counseling for Pauletta both as a victim and a perpetrator.

¶ 70 Pauletta also argues that because the trial court considered the allegations of sexual abuse in making the adjudication order but declined to find sexual abuse, the neglect and abuse findings premised on the sexual abuse "should fall as well." Pauletta cites no authority for the proposition that the court's decision to decline to enter a finding on one allegation in the petition precludes it from entering another finding based on the same core operative facts. The trial court's judgment that Robyn was neglected due to an injurious environment and abused due to a substantial risk of injury is not against the manifest weight of the evidence.

¶ 71 4. No Fault Dependency

¶ 72 Next, Pauletta argues the evidence supports a finding of no-fault dependency. In support, Pauletta argues that the evidence suggests that other factors contributed to Robyn C.'s behavior other than abuse and neglect by Pauletta, and that Robyn's "mental illness is the primary need which must be addressed in her life." Pauletta asks this court to vacate the trial court's finding of abuse and neglect and hold that the trial court abused its discretion in not making a finding of no-fault dependency. The Juvenile Court Act defines a dependent minor as one "who is without proper medical or other remedial care recognized under State law or other care necessary for his or her well being through no fault, neglect or lack of concern by his parents, guardian or custodian." 705 ILCS 405/2-4(1)(c) (West 2014). The State responds the evidence shows that Robyn was neglected and at substantial risk, not that Robyn was dependent through no fault of Pauletta.

¶ 73 Where a respondent argues that an adjudication of abuse or neglect should be remanded for a finding that the minor is dependent, the question for the court is whether the trial court's finding of abuse or neglect is against the manifest weight of the evidence. *In re L.H.*, 384 Ill. App. 3d 836, 842 (2008). In *L.H.*, the court found that the evidence did not support the

respondent's argument that the minor was dependent because respondent was responsible for placing the minor in her current position, and the evidence supported classifying the minor as neglected rather than dependent. *Id.* at 843. In that case, the "[r]espondent affirmatively locked L.H. out of her home against the advice of the hospital and DCFS, refused to cooperate with DCFS in developing a care plan for L.H., refused to provide alternate placement for L.H. and refused to consider L.H.'s return to her home." *Id.* at 842-43. In this case, the State notes that Robert was allowed to remain in the home with access to Robyn despite the indicated report of sexual abuse and despite the fact Colletta and Chanta both told Pauletta about the abuse. There was also evidence that Robyn was exposed to domestic violence as a result of Pauletta's relationship with Robert, as well as evidence that Pauletta hit Robyn. We have already held that the findings of abuse and neglect are not against the manifest weight of the evidence. The evidence supports finding that Robyn is not dependent under section 2-4(1)(c) of the Juvenile Court Act. See *id.* at 843.

¶ 74 5. Closing Argument

¶ 75 Finally, Pauletta argues the State violated her due process rights and committed prosecutorial misconduct by arguing in the first person as Robyn in its rebuttal closing argument. The State responds Pauletta failed to object to the allegedly offending argument thereby forfeiting the issue for review. The State acknowledges an objection that was made during the State's argument but argues that because that objection was withdrawn it did not preserve review of the propriety of the argument. Additionally the State argues Pauletta failed to show how the State's argument denied her a fair trial.

¶ 76 The use of a first-person narrative to bolster the credibility of a witness is improper. *People v. Richmond*, 341 Ill. App. 3d 39, 47 (2003). Notwithstanding, the State cites *People v.*

Crum, 183 Ill. App. 3d 473, 487 (1989), wherein this court found that the prosecutor made an improper comment during closing argument but that the error committed did not constitute reversible error, particularly since the case proceeded as a bench trial. *Crum*, 183 Ill. App. 3d at 487. The court held that because it was a bench trial, this court "must assume that the trial court did not consider improper argument and considered only competent evidence in ruling on the merits of the case." *Id.* The *Crum* court also relied on the absence of any indication that the trial court relied on the comments in making its determination of guilt.

¶ 77 In *People v. Mytnik*, 66 Ill. App. 3d 624 (1978), also cited by the State, the defendant argued he was denied a fair trial because "the prosecutor made inflammatory comments which caused the court to improperly consider matters and probabilities not based on the evidence adduced at trial." *Mytnik*, 66 Ill. App. 3d at 626. The *Mytnik* court cited the "well settled" rule that:

> "where the trial court is the trier of the fact, every presumption will be accorded that the court considered only admissible evidence and discarded inadmissible evidence in reaching its conclusion. [Citation.] The presumption that the court cannot be prejudiced by incompetent evidence can only be rebutted by an affirmative showing by the defendant [citation], and there will be no reversal unless it affirmatively appears that the court was improperly influenced by such testimony. *Id.* at 626-27.

The *Mytnik* court found no indication that the trial court was influenced by the prosecutor's remark. *Id.* at 627.

¶ 78 In this case, Pauletta has provided nothing to indicate the trial court relied on the prosecutor's first-person comments in making its determinations in this case. The burden was on

Pauletta to show that the improper argument influenced the court. See *People v. McGee*, 268 Ill. App. 3d 582, 586 (1994). Pauletta has not made an affirmative showing that the court was improperly influenced; she only argues that the prosecutor's comments "appealed directly to the heart strings of the trial judge to hear the minor." If that is true, Pauletta has pointed to nothing to prove that it worked. Pauletta has failed to satisfy her burden to demonstrate that the trial court was improperly influenced or that she was denied a fair trial. See *Richmond*, 341 Ill. App. 3d at 48 ("the verdict will not be disturbed unless the remarks resulted in substantial prejudice to the defendant; that is, absent those remarks the verdict would have been different"). For that reason, Pauletta also failed to demonstrate prejudice in support of her late ineffective assistance of counsel claim. *People v. Coleman*, 183 Ill. 2d 366, 397-98 (1998) ("lack of prejudice renders irrelevant the issue of counsel's performance").

¶ 79 CONCLUSION

¶ 80 For the foregoing reasons, the circuit court of Cook County is affirmed.

¶ 81 Affirmed.