2018 IL App (1st) 182227-U
Order filed May 10, 2019

FIRST DISTRICT
FIFTH DIVISION

No. 1-18-2227

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

In re H.M., a Minor,	)	Appeal from the
	)	Circuit Court of
(People of the State of Illinois,	)	Cook County.
	)	
Petitioner-Appellee,	)	
	)	
v.	)	
	)	No. 17 JA 983
Rika P. and Herbert M.,	)	
	)	
Respondents	)	
	)	
Rika P.,	)	Honorable
	)	Richard Stevens,
Respondent-Appellant).	)	Judge, presiding.

PRESIDING JUSTICE ROCHFORD delivered the judgment of the court.
Justice Lampkin concurred in the judgment. Justice Hall dissented.

ORDER

¶ 1 *Held*: We affirmed the trial court's adjudication of the minor child as an abused minor where the court's finding was not against the manifest weight of the evidence.

¶ 2 This is an accelerated appeal under Illinois Supreme Court Rule 311(a) (eff. July 1, 2018). Respondent Rika P. (Rika or mother) appeals from an order of the circuit court of Cook County adjudicating her minor child, H.M., an abused minor. On appeal, Rika contends that the abuse finding was against the manifest weight of the evidence because the finding was based on inadmissible evidence. We affirm[1].

¶ 3 Pursuant to Rule 311(a)(5), this court was required to issue our decision within 150 days after the filing of the notice of appeal, except for good cause shown. During the pendency of this appeal, we granted extensions of time for the filing of the record and the appellant's brief. While the extensions delayed the filing of the decision in this case, the extensions of time were requested for legitimate reasons and not to hinder the timely resolution of this appeal.[2]

¶ 4 BACKGROUND

¶ 5 On September 25, 2017, the State filed a petition for adjudication of wardship, containing the following allegations. H.M. was born on December 13, 2011. On September 21, 2017, H.M. was taken into protective custody. The petition alleged that H.M. was a neglected minor as set forth in the Juvenile Court Act (Act) in that she was a minor under the age of 18 whose environment was injurious to her welfare. *See* 705 ILCS 405/2-3(1)(b) (West 2016). The petition also alleged that H.M. was an abused minor in that there was a substantial risk of injury to her, other than by accidental means, and she was subjected to the infliction of excessive corporal punishment. *Id.* §§2-3(2)(ii), 2-3(2)(v).

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[1] In adherence with the requirements of Illinois Supreme Court Rule 352(a) (eff. July 1, 2018), this appeal has been resolved without oral argument upon the entry of a separate written order stating with specificity why no substantial question is presented.

[2] This matter was recently assigned to Justice Rochford.

¶ 6 In support of these allegations of neglect and abuse, the petition alleged in pertinent part as follows:

> "Mother has two prior indicated reports for failure to thrive, cuts, bruises, welts, oral injuries and substantial risk of physical injury/environment injurious to health/welfare by abuse. Mother has one other minor who was in DCFS[3] custody with findings of neglect having been entered. In July of 2016, this minor was observed with blood around her mouth. Mother admitted to hitting this minor causing the injury. This minor reports that mother hits her with different objects on her 'belly' and legs as a form of punishment. On September 21, 2017, mother made statements about DCFS keeping this minor and she refused to cooperate with being assessed. School personnel have reported concerns about mother's behaviors when she presents at the school."

¶ 7 The State also filed a motion for temporary custody of H.M. In her affidavit in support of the motion, Elnora D. Strong, an investigator with the Department of Child Protection, averred as follows. After a September 21, 2017, hotline report brought this case to the attention of DCFS, Ms. Strong spoke with five-year-old H.M. H.M. told Ms. Strong that Rika hit her below her belly and on her legs so that the State will not take her away from Rika. In 2005, DCFS had indicated Rika for child neglect for her other child based on lack of care and injurious environment; her parental rights to that child were terminated. Rika had mental health concerns dating back to 2005 when she was initially involved with DCFS and she had been uncooperative in providing information confirming that her mental health needs were being met. The circuit court granted the State's motion for temporary custody.

[3] Department of Children and Family Services.

¶ 8 On September 24, 2018, the case proceeded to an adjudicatory hearing. A summary of the pertinent testimony is set forth below. [4]

¶ 9 Enrique Pimentel

¶ 10 Mr. Pimentel is a child protection investigator for DCFS. On July 27, 2016, Mr. Pimentel spoke to H.M. at Christopher House Elementary School (Christopher House). H.M. stated that Rika struck her on the mouth with an open hand, causing the inside of her mouth to bleed, because she had been screaming. He observed a small cut inside H.M.'s mouth. On that same day, Mr. Pimentel spoke with Rika, who told him that she struck H.M. in the mouth with an open hand because H.M. was screaming in a hallway and continued to scream after Rika told her to stop. Rika told Mr. Pimentel that she sometimes threatened H.M. with a belt but did not strike her. She also disciplined H.M. by talking with her and by taking away privileges. Mr. Pimentel did not take protective custody of H.M. on that date because Rika was receiving counseling services for parenting on a weekly basis. There were no other signs of injury on H.M. H.M. told him she felt safe with Rika.

¶ 11 Isabel Tobias

¶ 12 Ms. Tobias is a DCFS investigative supervisor in the child protection division of DCFS and was the supervisor for H.M.'s case. On September 21, 2017, after speaking with Ms. Strong and based on the information she received from her, Ms. Tobias made the decision to take protective custody of H.M. According to the hotline call on that date, H.M. was afraid to go home because Rika had struck her with a broomstick and had hit her "a lot." Several persons at

[4] On August 8, 2018, the trial court entered a default order against Herbert M., the putative father. On September 24, 2018, the trial court found that Herbert M. was unwilling and unable to care for H.M. He is not a party to this appeal.

the grammar school had observed Rika behaving erratically and believed that H.M.'s fear of going home was real. In addition, protective custody was necessary because Rika was not cooperating well with DCFS and did not make sense in her thought process.

¶ 13 Kristin Novy

¶ 14 Ms. Novy is the principal of the Christopher House where H.M. attends school. Prior to September 21, 2017, from discussions with H.M.'s teacher and a social worker and her own observations, Ms. Novy described H.M. as often very upset and angry. H.M. was aggressive with other children telling them she was going to "whoop" them and warning them to stay away from her. In September 2017, there were multiple incidents where H.M. did not want to leave school and hid in different places in the school to avoid going home with Rika. Rika became very upset at H.M.'s behavior and had to physically force H.M. to go home with her.

¶ 15 On September 21, 2017, H.M. told her teacher that she was afraid she was going to be "whooped" and that Rika knew where to hit her so that the State would not take H.M. away from her. A DCFS social worker arrived at the school in response to the hotline report of H.M.'s statements and determined that H.M. needed to be placed in protective custody immediately. The police were summoned as well since Rika had arrived to take H.M. home, and there were safety concerns as to how Rika would react to the situation. Eventually, the social worker was able to transport H.M. from the scene peacefully. H.M. did not appear very surprised or worried and expressed to Ms. Novy that she felt "like this day was coming."

¶ 16 H.M.'s records from Heartland Health Outreach (Heartland) were admitted into evidence. The record entry for H.M.'s March 31, 2017, visit stated that H.M.'s vitals were not taken because of her disruptive behavior. Rika expressed concern about H.M.'s behavior, stating that

H.M. " 'is throwing things at me and using the "N" word constantly.' " Rika blamed H.M.'s behavior on other children who were causing her to do this. The record entry stated further as follows:

> "Very poor exchange between mom and child. Child is abusive physically and verball[y] and provider witnessed mother hit child in back with a closed fist and child threw toy [at] mom's head ***. Very poor control of child in clinic with multiple staff members complaining of disruptions. Will work with staff to develop a supportive plan and establish boundaries for mom and child."

The note stated further that H.M. was assessed as being hyperactive and that it was essential that she follow up with Dr. Evans, a psychiatrist.

¶ 17 Also admitted into evidence were staff notes from Christopher House. Cassandra Carney, H.M.'s teacher, emailed the school's director of early childhood on August 12, 2016, relating that H.M. pointed to a bruise on her knee that day and told Ms. Carney that she had hurt her knee when Rika dragged her down the stairs at the train station. When Ms. Carney asked why Rika had done that, H.M. stated it was because she was not listening.

¶ 18 The State sought a continuance to allow Ms. Strong to appear at the hearing to testify. After hearing the State's offer of proof, the trial court denied the continuance, finding that Ms. Strong's testimony would be cumulative to the testimony already presented by the State. The State rested its case.

¶ 19 At the request of Rika's attorney, the trial court admitted a one-page document from Loretto Hospital, where the DCFS worker had taken H.M. on September 21, 2017. The report stated that H.M. had been examined on September 22, 2017. The examination revealed no

physical injuries, and H.M. did not complain of pain. The court recessed to allow Rika's attorney to confer with her. Following their conference, Rika rested her case.

¶ 20 Following closing arguments, the trial court found that there was no injury rising to the level of physical abuse and therefore, the State had not met its burden of proof as to a substantial risk of physical injury, since the only injury was a small cut to the inside of H.M.'s mouth. The court further found no injurious environment since the prior indicated reports involved a sibling and was too remote in time.

¶ 21 The court found that the State had met it burden of proof as to excessive corporal punishment. The court based its findings on H.M.'s young age, the July 2016 slap to her mouth, the March 2017 punch to her back, and H.M.'s statements to school personnel in September 2017 that she was afraid to go home because Rika was hitting her as a form of punishment and in places that would not be detected by the authorities. The trial court ruled that Rika's conduct rose to the level of excessive corporal punishment.

¶ 22 After the court issued its ruling, Rika asked the court the basis for the finding of excessive corporal punishment. The court stated as follows:

> "The basis is, as I just explained, because you slapped your child – your young child in the face and caused her lip to be cut. Because doctors at Heartland [Health Outreach] saw you hit your child in the back and because your child made statements that you'd been hitting her in the belly and legs, in places where people wouldn't know that she was being hit so that she wouldn't be taken away.
>
> Her statements are corroborated by the other evidence that you've actually hit her in the past. So that's the basis for my findings."

¶ 23 The parties proceeded to the dispositional hearing. At the conclusion of the hearing, the trial court found that for reasons unrelated to financial circumstances alone, Rika was unable to care for or discipline H.M. appropriately. The trial court entered a permanency goal of return home within 12 months.

¶ 24 Rika timely appeals the adjudication portion of the September 24, 2018, order.[5]

¶ 25 ANALYSIS

¶ 26 I. Standard of Review

¶ 27 In consideration for the delicacy and difficulty of child custody cases, a trial court's decision should not be disturbed unless it is manifestly unjust or palpably against the manifest weight of the evidence. *In re J.P.*, 294 Ill. App. 3d 991, 1000 (1998). "Under the manifest weight of the evidence standard, the reviewing court gives deference to the trial court as the finder of fact because it is in the best position to observe the conduct and demeanor of the parties and the witnesses and has a degree of familiarity with the evidence that a reviewing court cannot possibly obtain." (Internal quotation marks omitted.). *In re J.V.*, 2018 IL App (1st) 171766, ¶ 222 (quoting *In re A.W.*, 231 Ill. 2d 92, 102 (2008), quoting *In re D.F.*, 201 Ill. 2d 476, 498-99 (2002)). A reviewing court must not substitute its judgment for that of the trial court regarding the credibility of the witnesses, the weight to be given to the evidence, or the inferences to be drawn. *In re J.V.*, 2018 IL App (1st) 171766, ¶ 222. " 'A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident.' " *Id.* ¶ 221 (quoting *In re Arthur H.*, 212 Ill. 2d 441, 464 (2004)). "It is the State's burden to prove the neglect and abuse

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[5] Rika does not raise any issues concerning the dispositional order.

allegations by a preponderance of the evidence, establishing the allegations of neglect or abuse are more probably true than not." *Id.* ¶ 225.

¶ 28 II. Discussion

¶ 29 Rika contends that the abuse adjudication was against the manifest weight of the evidence. Specifically, Rika argues that in finding abuse, the trial court erroneously relied on: (1) facts stated in an offer of proof; (2) uncorroborated hearsay statements by H.M.; and (3) facts not alleged in the petition for adjudication of wardship. A ruling on whether a judgment is against the manifest weight of the evidence takes into account only properly admitted evidence. *Progressive Printing Corp. v. Jayne Byrne Political Committee*, 235 Ill. App. 3d 292, 303 (1992). We address each alleged error in turn.

¶ 30 A. Evidentiary Errors

¶ 31 1. *Facts Stated in the Offer of Proof*

¶ 32 Rika asserts that the allegation that she struck H.M. on the belly and her legs was contained only in the State's offer of proof in support of its motion for a continuance to allow Ms. Strong to testify. The purpose of an offer of proof is to disclose to opposing counsel and the trial court the substance of the excluded evidence and to enable the reviewing court to determine if excluding the evidence was error. *Lagestee v. Days Inn Management Co.*, 303 Ill. App. 3d 935, 941 (1999). We agree with Rika that the offer of proof itself does not place the proposed evidence contained in the offer into evidence for the trial court to consider.

¶ 33 Nonetheless, we reject Rika's claim of error in this regard. The trial court's reference to H.M.'s statement that Rika hit her in the legs and her belly occurred *after* the court announced its finding that Rika's conduct rose to the level of excessive corporal punishment. *See In re An.W*,

2014 IL App (3d) 130526, ¶ 68 (reviewing court need only evaluate the specific finding the trial court made). Moreover, a trial court may draw reasonable inferences from the evidence. *Motorola Solutions, Inc. v. Zurich Insurance Co.*, 2015 IL App (1st) 131529, ¶118. At the adjudication hearing, Ms. Novy testified that H.M. told her teacher that she was afraid she was going to be "whooped" and that Rika knew where to hit her so that the State would not take H.M. away from her. The trial court could reasonably infer from Ms. Novy's testimony that Rika was hitting H.M. on parts of her body (*e.g.*, her belly and legs) that were completely clothed so that any resulting bruises/injuries would be undetectable by "the State" (DCFS). We reject Rika's claim that the trial court relied on facts contained only in the offer of proof in finding that her conduct constituted excessive corporal punishment. Finally, any error was harmless where (as discussed later in this order), the trial court's finding of abuse was not against the manifest weight of the evidence, even disregarding the allegations that Rika was hitting H.M. on her belly and legs.

¶ 34 2. *Uncorroborated Hearsay Statements*

¶ 35 Ms. Novy testified as to statements made by H.M. stating that she did not wish to go home, that she was worried about being whooped, and that Rika knew where to hit her so that the State would not take her away. Rika maintains that H.M.'s statements were inadmissible hearsay. Rika forfeited review by failing to object during the adjudicatory hearing. *See In re Jeanette L.*, 2017 IL App (1st) 161944, ¶16.

¶ 36 Forfeiture aside, section 2-18(4)(c) of the Act states:

> "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." 705 ILCS 405/2-18(4)(c) (West 2016).

¶ 37 Our supreme court has held:

> "The first sentence [of section 2-18(4)(c)] allows a minor's out-of-court statements relating to allegations of abuse or neglect to be admitted into evidence at a civil adjudicatory hearing to determine whether the minor is abused or neglected. This sentence thus creates a statutory exception in the context of abuse and neglect cases involving minors to the general rule against hearsay." *In re A.P.*, 179 Ill. 2d 184, 195-96 (1997).

¶ 38 The supreme court further held that "[u]nder the plain language of the second sentence, a minor's hearsay statement is sufficient to support a finding of abuse or neglect where the statement *either* is subject to cross-examination *or* is corroborated by other evidence." [Emphasis added.] *Id*. at 196.

¶ 39 H.M.'s statements testified to by Ms. Novy related to the allegations of abuse and neglect and were properly admitted under section 2-18(4)(c). Rika argues that the statements were not corroborated, but that argument goes to the weight to be given H.M.'s statements, not to the admissibility of those statements into evidence. Contrary to Rika's argument, we find that H.M.'s abuse allegations were corroborated by other evidence, specifically, by: Rika's admission that she had struck H.M. in the mouth; Mr. Pimentel's observation of the resulting cut inside H.M.'s mouth; the Heartland provider's observation of Rika hitting H.M. in the back; Ms. Carney's observation of the bruise on H.M.'s knee resulting from her being dragged down the

stairs; and Ms. Novy's observation that H.M. was hiding in school so as to avoid going home with Rika.

¶ 40 We conclude that H.M.'s statements were properly admitted under section 2-18(4)(c) of the Act and corroborated by other evidence and therefore, the trial court properly considered H.M.'s statements when deciding whether she had been abused.

¶ 41 3. *Facts Not Alleged in the Petition for Adjudication of Wardship*

¶ 42 Rika argues that the trial court erred by considering and relying on the evidence that she hit H.M. in the back in March 2017 as support for its abuse finding. Rika contends that as her act of hitting H.M. in the back was not alleged in the petition for adjudication of wardship or any amendment to the petition it cannot form the basis for an abuse finding. Rika forfeited review by failing to make this objection at the adjudication hearing. *In re Jeanette L.*, 2017 IL App (1st) 161944, ¶16.

¶ 43 Forfeiture aside, section 2-13(2) of the Act requires in pertinent part that the petition:

> "shall allege that the minor is abused, neglected, or dependent, with citations to the appropriate provisions of this Act, and set forth (a) facts sufficient to bring the minor under Section 2-3 [neglect or abuse] or 2-4 [dependency] and to inform respondents of the cause of action, including, but not limited to, a plain and concise statement of the factual allegations that form the basis for the filing of the petition[.]" 705 ILCS 405/2-13(2) (West 2016).

¶ 44 In *In re Sharena H.*, 366 Ill. App. 3d 405 (2006), the respondent-mother claimed that the trial court's consideration of evidence of domestic violence denied her due process because the State failed to allege domestic violence in the petition for adjudication. *Id.* at 417. The State's

petition had informed the respondent that it was proceeding on an allegation of neglect based on injurious environment. *Id*. The trial court considered domestic violence as one of the many factors that created the injurious environment. *Id*. We concluded that no error occurred: "the State's petition alleged neglect based on an injurious environment, the State proceeded on a theory of neglect based on an injurious environment, and the court ultimately found neglect based on an injurious environment." *Id.* at 418.

¶ 45 Similarly, in this case, the petition informed Rika that the State was proceeding against her on a charge of neglect based on injurious environment, and on charges of abuse based on substantial risk of injury by other than accidental means and excessive corporal punishment. The report of the hit to H.M.'s back contained in the records from Heartland was evidence in support of the allegations of neglect and abuse and was properly considered by the trial court.

¶ 46 Rika's reliance on *In re J.B.*, 312 Ill. App. 3d 1140 (2000), is misplaced. In that case, the State alleged neglect based on injurious environment, but at the hearing on the petition, the State proceeded on neglect based on failure to supervise. The respondents were never advised that the State was proceeding under a different section of the Act. The reviewing court reversed the finding of neglect because the State failed to put in the petition or amend it to reflect that it was proceeding under a different section than the section alleged in the petition. *Id.* at 1145. See *In re Sharena H.*, 366 Ill. App. 3d at 417-18 (distinguishing *In re J.B.*).

¶ 47 Unlike the State in *In re J.B.*, at the hearing in the present case, the State proceeded on the three theories of neglect and abuse that it alleged in the petition for adjudication. The incident in which Rika hit H.M. on the back with her fist was one of several factors in evidence that the trial court could consider in ruling on the State's theories.

¶ 48 B. Manifest Weight of the Evidence

¶ 49 Next, we consider whether the trial court's adjudication of H.M. as an abused minor based on excessive corporal punishment was against the manifest weight of the evidence.

¶ 50 A parent's right to corporally punish her child is derived from the right to privacy, which is viewed as implicit in the United States Constitution. *In re F.W.*, 261 Ill. App. 3d 894, 898 (1994). However, this right must be exercised in a reasonable manner. *In re J.P.*, 294 Ill. App. 3d at 1002. A parent who utilizes excessive corporal punishment exceeding the boundaries of reasonableness may be subject to criminal prosecution. *In re F.W.*, 261 Ill. App. 3d at 898. Additionally, the child may be found to be an abused minor as the result of the infliction of excessive corporal punishment. *Id*. Each case involving the adjudication of excessive corporal punishment must be decided on its own facts. *In re Malik B.-N*, 2012 IL App (1st) 121706, ¶38.

¶ 51 In determining whether abuse based on excessive corporal punishment has occurred, the factors to be considered include: the severity of the injury and its location, whether an instrument was used, the pattern and chronicity of similar incidents of harm to the child, the child's age and medical condition, developmental or physical disabilities, whether the child suffers from behavioral, mental or emotional problems, and the parent's history of reports of abuse or neglect. *In re J.P.*, 294 Ill. App. 3d at 1004 (citing 89 ILAC § 300 app. B, allegation No. 11/61 (eff. April 21, 2017)). Other factors to be considered include whether: "(1) an injury occurred, (2) the punishment was imposed for no reason, (3) the punishment was excessive in light of the circumstances, and (4) any medical or expert testimony was presented." *In re S.M.*, 309 Ill. App. 3d 702, 706 (2000). Finally, the court may also consider the likelihood of future punishment that might be more injurious; the psychological effects of the discipline on the child; and the

circumstances surrounding the discipline, including the parent's demeanor, *i.e.*, whether the parent was calm or "lashing out" in anger. *In re J.P.*, 294 Ill. App. 3d at 1003 (citing *In re F.W.*, 261 Ill. App. 3d at 903).

¶ 52 We proceed to address the relevant factors pertinent to the evidence presented at the adjudicatory hearing.

¶ 53 As to the minor's age, H.M. was approximately 4 ½ years old at the time Rika struck her in the mouth in July 2016 and dragged her down the stairs of the train station in August 2016. H.M. was five years old when Rika hit her in the back with a closed fist in March 2017. H.M. was not quite six years old when Rika struck her with a broomstick in September 2017.

¶ 54 As to the injuries inflicted, Rika's slap to H.M.'s mouth in July 2016 caused her mouth to bleed. H.M. suffered a bruise to her knee when Rika dragged her down the stairs[6] of the train station in August 2016.

¶ 55 As to the location of the injuries, we note that they were to H.M.'s mouth and knee, but that H.M. also told her teacher in September 2017 that Rika knew where to hit her so that the State would not take H.M. away from her, *i.e.*, that Rika was hitting H.M. on parts of her body that were fully clothed and therefore hidden from view.

¶ 56 As to the reasons for the corporal punishments, Rika struck H.M. in the mouth because she refused to stop screaming. Rika dragged H.M. down the stairs because H.M. was "not

[6] We recognize that Rika's act of dragging H.M. down the stairs was not specifically referenced in the petition for adjudication of wardship and was not relied on by the trial court when adjudicating H.M. an abused minor. Similar to the evidence regarding the hit to H.M.'s back, the evidence regarding Rika's dragging H.M. down the stairs may properly be considered in support of the allegations of abuse contained in the petition. See *In re Sharena H.*, 366 Ill. App. 3d at 418. Although Rika's act of dragging H.M. down the stairs was not relied upon by the trial court as one of the bases for its adjudication decision, we may properly consider it as we may affirm on any basis in the record, regardless of whether the trial court relied on that basis. *In re Brianna B.*, 334 Ill. App. 3d 651, 655 (2002).

listening" to her. Rika punched H.M. in the back because she was being disruptive at the doctor's office. No reasons were given for why Rika struck H.M. with a broomstick.

¶ 57 As to the parent's demeanor and whether she was calm or lashing out in anger, the evidence indicated that Rika's acts of slapping H.M. in the mouth, drawing blood, dragging her down the stairs, bruising her, hitting her in the back with a closed fist, and striking her with a broomstick, did not reflect a calm, measured approach to discipline, but rather indicated that she repeatedly lashed out in anger.

¶ 58 As to whether the punishments were excessive in light of the circumstances, the trier of fact could certainly find that H.M.'s refusal to stop screaming did not merit a strike to the mouth hard enough to cut the inside of the mouth, drawing blood, and that H.M.'s refusal to listen to Rika did not merit being dragged down the stairs in a manner that would cause bruising to her knee. As to Rika's striking H.M. with a broomstick, we note the appellate court's observation in *In re F.W.*, 261 Ill. App. 3d at 903, that "parents using boards, belts, cords, or ropes as weapons to inflict corporal punishment may encounter an unwillingness on the part of DCFS and the courts to regard their conduct as reasonable."

¶ 59 As to the medical evidence presented, the Heartland records from March 2017 related how Rika had been observed striking H.M. in the back with a closed fist. The Loretto Hospital records from September 2017 stated that an examination of H.M. on September 22, 2017, revealed no physical injuries, and H.M. did not complain of pain.

¶ 60 As to the pattern of harm/likelihood of future more injurious punishment, the evidence showed that Rika engaged in a pattern of physical discipline toward H.M. First, she struck H.M. in the mouth, cutting her and drawing blood, in July 2016. One month later, Rika dragged H.M.

down the stairs of the train station, bruising her. Seven months later, in March 2017, Rika hit H.M. in the back with the closed fist. Six months later, in September 2017, Rika used an instrument, the broomstick, when striking H.M. Also in September 2017, H.M. told her teacher of her fears of being "whooped" by Rika, and of how Rika knew where to hit her on her body so that the State would not take her away, and there were multiple incidents where H.M. hid in different places within the school so as to avoid going home with Rika. All this evidence supports a finding that Rika's repeated pattern of physical discipline, which had escalated by September 2017 from discipline imposed by hand to discipline enforced with an instrument, and which was causing H.M. to actively hide from her, was likely to lead to more injurious punishment for H.M. in the future.

¶ 61 Finally, as to the psychological effects of the discipline on the child, and any behavioral, mental or emotional problems, H.M. was showing signs of extreme fear by September 2017 in that she was hiding at school to avoid going home with Rika, because she was afraid of being "whooped" and because Rika knew where/how to hit her to avoid detection by the State. H.M. was also modeling some of Rika's behavior at school, telling other children that she was going to "whoop" them and warning them to stay away from her. As to other behavioral/emotional problems, Heartland's March 31, 2017, record entry for H.M.'s visit indicated that she was "abusive physically and verball[y]" to Rika, was hyperactive, and that it was essential that she follow up with a psychiatrist.

¶ 62 Considering all of the facts presented at the adjudicatory hearing, we find evidence that: Rika's infliction of corporal punishment upon H.M. was a pattern beginning when H.M. was four and continuing through the age of five, when H.M. was taken into protective custody; the

corporal punishment inflicted physical injury on H.M., causing her to bleed on one occasion and bruising her on another; the corporal punishment escalated from discipline imposed by hand, to discipline imposed by an instrument (broomstick), and also involved dragging H.M. down a flight of stairs and was excessive under the circumstances and indicated the likelihood of future more injurious punishment; additional corporal punishment was inflicted in such a manner as to avoid detection by DCFS; Rika's demeanor when disciplining H.M. was one of repeatedly lashing out in anger; and H.M. was suffering adverse psychological consequences. On all this evidence, and given the high degree of deference we give to the trial court when making determinations of abuse and neglect (see *In re J.P.*, 294 Ill. App. 3d at 1000), we cannot say that the trial court's finding of abuse based on the imposition of excessive corporal punishment was palpably against the manifest weight of the evidence.

¶ 63 Rika makes no argument related to the dispositional order, and accordingly has forfeited any issues related thereto. *See* Illinois Supreme Court Rule 341(h)(7) (eff. May 25, 2018).

¶ 64 For all the foregoing reasons, we affirm the circuit court.

¶ 65 Affirmed.

¶ 66 JUSTICE HALL dissenting:

¶ 67 I respectfully dissent from the majority's affirmance of the trial court's adjudication of H.M. as a neglected minor. Underlying the neglect adjudication was the court's finding that H.M. had been subject to excessive corporal punishment. While the evidence established that Rika used corporal punishment to discipline H.M., there is no evidence that the corporal punishment was excessive. 705 ILCS 405/2-3(2)(v) (West 2016).

¶ 68 Did an injury occur? In this case, yes. A small cut and some bleeding resulted from Rika's slap to H.M.'s mouth and a bruise to her knee. However, the fact of an injury does not necessarily by itself determine excessive corporal punishment. Next, was the punishment imposed for no reason? No, on each occasion, H.M. acknowledged that she had disobeyed Rika. Then, was the punishment excessive? Based on the evidence in this case, I would answer no.

¶ 69 "Not every cut, bruise welt, abrasion, or oral injury constitutes an allegation of harm." 89 ILAC § 300 app. B, allegation No. 11/61 (eff. April 21, 2017). After questioning both H.M. and Rika about the July 2016 injury to H.M., DCFS investigator Pimentel declined to take H.M. into protective custody. While the bruise to H.M.'s knee was noted in the Christopher school record, no further action was taken. Both incidents occurred in the summer of 2016. There is no evidence in the record that H.M. sustained any physical injury resulting from corporal punishment. In the March 31, 2017 report from Heartland, there was no mention of any physical injury to H.M.

¶ 70 According, to the September 2017 hotline report, which resulted in DCFS taking protective custody of H.M., H.M. reported that Rika beat her with a broomstick on her legs and on undetectable places. However, the September 2017 report from Loretto Hospital stated that there were no signs of physical injury to H.M., and H.M. consistently denied she was in pain when she was examined.

¶ 71 Was there any medical or expert testimony presented? The majority maintains that H.M.'s hiding in the building after school and her fear of going home in September 2017 was generated by Rika's disciplinary measures. The March 31, 2017 report from Heartland described

H.M. as out of control and in need of psychiatric care. But the State did not present any medical or expert testimony linking H.M.'s out-of-control behavior to Rika's disciplinary measures.

¶ 72 While H.M. may have feared going home in September 2017 because she would be "whooped," the evidence in this case failed to establish that the punishment she feared caused physical injuries and was inflicted for anything other than as a consequence of H.M.'s disobedience. H.M.'s expressed "fear" of Rika contrasts with her response to Rika's striking her in the back at Heartland; H.M. threw a toy at Rika.

¶ 73 "Making a child a ward of the court is a serious thing to do. When that child is being well cared for by fit and able parents, when the child's environment is not injurious, when the child is neither physically nor psychologically neglected or abused, and when there is no substantial risk of physical injury to the child, courts should exercise grave prudence before allowing the State to invade the privacy our law promises to the family." *In re J.P.*, 294 Ill. App. 3d at 1006. In the present case, the trial court found that the State failed to carry its burden of proof as to a substantial risk of physical injury to H.M. and found she was not subject to an injurious environment.

¶ 74 In *In re S.M.*, the reviewing court reversed the trial court's finding of neglect based on excessive corporal punishment. The court concluded that "S.M. should be a ward of the court but not for the reasons suggested by this evidence. She may very well be a juvenile delinquent [citation] or a minor requiring authoritative intervention [citation]. However, on this evidence, she is not a neglected minor." *In re S.M.*, 309 Ill. App. 3d at 706.

¶ 75 Likewise, H.M. may need to be made a ward of the court but not because she was subjected to excessive corporal punishment. It is evident that Rika and H.M. are in need of

assistance to deal with the issues that are undermining their parent-child relationship. Rika's lack of cooperation in submitting to mental health services that would benefit both H.M. and her contributes to their poor relationship. Nonetheless, there is no evidence that Rika's disciplinary measures crossed the line between nonexcessive and excessive corporal punishment.

¶ 76 While the trial court concluded H.M. was subjected to excessive corporal punishment, I find from the evidence that the opposite conclusion is clearly evident. I would reverse the adjudication of neglect based on excessive corporal punishment as against the manifest weight of the evidence.

¶ 77 For all of the foregoing reasons, I respectfully dissent.