

substance abuse (count II). 705 ILCS 405/2-3(1)(b) (West 2016). Donald D. (the putative father of An. R.) and the unknown father of Ab. R. are not parties to this appeal. In September 2018, the trial court found the State proved the minors were subjected to an injurious environment while in respondents' care due to domestic violence. In October 2018, following a dispositional hearing, the court made the minors wards of the court and placed guardianship with the Department of Children and Family Services (DCFS). The court placed custody of An. R. with Donald D. and custody of Ab. R., Au. R., and Pa.L. with DCFS.

¶ 3 Respondent father appealed and his appointed counsel has filed a motion to withdraw as counsel, which we ordered taken with the case. Respondent mother appeals, asserting the trial court's adjudicatory finding was against the manifest weight of the evidence. For the following reasons, we affirm the judgment of the circuit court.

¶ 4 I. BACKGROUND

¶ 5 In July 2018, the State filed a petition for adjudication of neglect, alleging An. R., Ab. R., Au. R., and Pa.L. were subjected to an injurious environment when they resided with respondent father and respondent mother in that the environment exposes the minors to domestic violence (count I) and substance abuse (count II). 705 ILCS 405/2-3(1)(b) (West 2016). Prior to the adjudicatory hearing, respondent mother stipulated to count I, the State dismissed count II as to respondent mother, and Donald D. waived adjudication.

¶ 6 A. Adjudicatory Hearing

¶ 7 In September 2018, the matter proceeded to an adjudicatory hearing. We briefly summarize the evidence necessary for the resolution of this appeal.

¶ 8 1. *Tamra Whitecotton*

¶ 9 Tamra Whitecotton testified she managed the Triangle Trailer Park in Ludlow, Illinois. Respondent mother told Whitecotton she had an order of protection against respondent father. Based on that information, Whitecotton called the police one evening because she saw respondent father and he was not allowed in the trailer park. Whitecotton could not recall when the incident occurred but estimated it occurred in the late fall of 2016 or in early 2017.

¶ 10 *2. Mark McCallister*

¶ 11 Mark McCallister, a Champaign County deputy sheriff, testified that on March 4, 2017, he responded to a call regarding a violation of an order of protection. According to McCallister, dispatchers normally confirm that a valid order of protection had been served. McCallister located an individual, later identified as respondent father, walking in a field near the Triangle Trailer Park in Ludlow. As McCallister pulled up, respondent father “pulled a knife out of one of his pockets and dropped it on the ground, and he also pulled a machete out of the back of his pants and dropped it on the ground.” McCallister detained respondent father in handcuffs and returned to the trailer park. At the trailer park, respondent mother reported that respondent father violated an order of protection by walking in the door of her residence. Respondent mother said she started to walk to the door to leave. According to McCallister, respondent mother said respondent father then grabbed her and said he “wanted to tell her and the girls that he loved them because he was leaving and going out of town the next day.”

¶ 12 *3. Kerolos Gabra*

¶ 13 Kerolos Gabra, a Champaign County deputy sheriff, testified about the March 4, 2017, call regarding a violation of an order of protection. His testimony was largely consistent with McCallister’s testimony. Gabra testified respondent father said respondent mother had allowed him to come see his children. Gabra testified respondent father was aware the order of

protection required him to stay a thousand feet away from respondent mother and the children. Respondent father had a copy of the order of protection on his person that he showed to Gabra.

¶ 14 Gabra further testified that, on April 13, 2017, respondent mother reported respondent father contacted her via Facebook in violation of the order of protection. Respondent mother provided screenshots that showed respondent father sent her a friend request, posted on her wall, and liked some of her pictures.

¶ 15 *4. Casey Donovan*

¶ 16 Casey Donovan, an investigator with the Champaign County Sheriff's Office, testified that, on April 13, 2017, Gabra responded to a call at Triangle Trailer Park, learned respondent father was at Courtesy Hotel in Urbana, Illinois, and requested a deputy attempt to locate respondent father. When Donovan arrived at the Courtesy Hotel, he found respondent father sitting in a hotel room with the door open. Respondent father told Donovan he had just been released from jail and obtained a cellular phone. When respondent father activated his Facebook account, he selected an option to reconfirm friends that had been deleted and respondent mother was one of those friends. Donovan arrested respondent father and found a knife on respondent father's person and another knife in the hotel room. Respondent father denied sending respondent mother any messages.

¶ 17 *5. Jerald Feingold*

¶ 18 Jerald Feingold, an investigator with DCFS, testified he investigated two reports made at the end of April and at the beginning of May 2018. The initial report related to the condition of the house the children lived in, medication misuse, and possible drug use. Respondent mother reported she had not used drugs since an open intact case with DCFS the previous year. Respondent mother denied excessive drinking and denied refilling a medication

prescription. According to Feingold, the trailer had water and power, although the gas was not hooked up so the stove, furnace, and water heater did not work. Feingold testified respondent mother stated she had no contact with respondent father but he lived in the trailer next door. Respondent mother also told Feingold respondent father “would come over to the trailer all of the time to help her fix it up.” According to Feingold, respondent father was to have no contact with respondent mother as part of his parole.

¶ 19 The second report involved possible domestic violence between respondents. Feingold interviewed An. R. in early May 2018 and she stated she had not seen respondent father since he got out of prison. However, the following day An. R. told Feingold respondent father had been at the trailer arguing with respondent mother. An. R. said respondent father paid for the gas to be turned on and threatened to have it turned off. Feingold testified, “[An. R.] talked about arguing with [respondent father]. She talked about pushing.” An. R. also told Feingold about an incident where respondent father threw a lit cigarette at respondent mother. When Feingold asked An. R. why she was not truthful the day before, An. R. said respondent mother told her to lie so respondent father would not get in trouble. An. R. indicated respondent mother and respondent father had recently fought and argued, and respondent father had been drinking the night they fought.

¶ 20 Feingold testified respondent mother completed a drug test on May 11, 2018, and did not take drug tests on May 18 or July 2. On July 2, Feingold talked to respondent mother and she said she could not afford gas to go take the drug test. Feingold testified, “At that point in time, we discussed [respondent mother’s] alcohol use, and she said to me that [‘]I drink all of the time ‘cause I have nothing else to do. Everybody drinks all of the time.[’]” Feingold’s

investigations resulted in an indication for “Allegation 60,” which was a blatant disregard for the health and safety of the children, against respondent father and respondent mother.

¶ 21 *6. Judicial Notice*

¶ 22 The trial court took judicial notice of respondent mother’s stipulation to count I of the petition for adjudication of neglect. The court also took judicial notice of Champaign County case Nos. 17-OP-111, 17-CF-286, and 17-CM-343.

¶ 23 *B. Adjudication of Neglect*

¶ 24 The trial court first addressed count II of the petition and found the State failed to meet its burden to prove the children’s environment was injurious based on substance abuse. As to count I, the court found the State met its burden of proving an injurious environment based on domestic violence. The court noted that part of the evidence included respondent mother’s admission and stipulation to count I, although that alone was not conclusive. The court also pointed to respondent father’s violation of an emergency order of protection in March 2017 when he entered respondent mother’s trailer with a knife and a machete. Based on that conduct, respondent father was charged with criminal trespass to a residence in Champaign County case No. 17-CF-286. In Champaign County case No. 17-CM-343, respondent father was charged with another violation of the order of protection because he contacted respondent mother via Facebook in April 2017. In June 2017, respondent father was sentenced to 18 months’ imprisonment in Champaign County case No. 17-CF-286. The court noted respondent father’s prison sentence accounted for the period of time between the violations of the order of protection and the DCFS investigations in early 2018.

¶ 25 During the course of the investigation, Feingold spoke with An. R. who initially told him there was nothing amiss. However, during the second interview An. R. said respondent

mother told her not to be truthful because she was afraid respondent father would get in trouble and An.R. described “arguing, pushing, [and] throwing a cigarette.” The court concluded its findings as follows:

“[Respondent mother] indicates that [respondent father] lives in the trailer next door, does come over, spend time, is part of the children’s environment and there’s nothing to indicate this pattern of domestic conflict in the relationship which resulted eventually in a prison sentence for [respondent father] had been resolved in any way and [An. R.]’s statement to Mr. Feingold indicates that it hasn’t been resolved and that [respondent mother] is more afraid of it coming to light than dealing with it in a way that can resolve it.”

¶ 26 The trial court concluded the State proved by a preponderance of the evidence that the environment was injurious based on domestic violence. Accordingly, the court found the State established the minors were neglected pursuant to count I. The court then set the matter for a dispositional hearing.

¶ 27 C. Dispositional Hearing

¶ 28 In October 2018, the case proceeded to a dispositional hearing. Prior to the hearing, Children’s Home and Aid filed a dispositional report. The report indicated respondent mother had prior open cases with DCFS with domestic violence services she never engaged in. The report also detailed respondents’ history of domestic violence, which An. R. “may” have witnessed. According to the report, respondent mother moved four times in five years and briefly lived with her father in Wisconsin in 2017. In a prior DCFS case, respondent mother

reported she moved to Wisconsin in June 2017 and moved back to Illinois in October 2017 due to conflict with her father. However, respondent mother reported the child welfare department in Wisconsin was investigating the family, so she “picked up and left.” The report detailed respondent mother’s ongoing history of substance abuse, including a drug test completed in September 2018 where she tested positive for methamphetamine and amphetamine.

¶ 29 The Children’s Home and Aid report indicated Donald D. was previously in a “hostile and toxic” relationship with his first wife. Donald D. reported patterns of intimate partner violence in that relationship but denied issues of domestic violence in his current relationship with Heather D. In August 2018, Donald D., Heather D., and her four children moved into a townhouse in Rantoul, Illinois. The report indicated Donald D. had been cooperative with the agency and had met all requests. According to the report, Donald D. had weekly visitation with An. R. and had not missed any visits. Donald D. was appropriate with An. R. and was very attentive to her needs.

¶ 30 Respondent mother reported Donald D. only recently became involved in An. R.’s life. An. R. stated she had lived with her maternal grandmother for most of her life. However, she did live with respondent mother at times and described domestic violence, substance abuse, and neglect. The report indicated An. R. had regular contact with Donald D. in recent months. According to the report, “[An. R.] stated that [Donald D.] ‘ran away like he didn’t care’ after she was born. She added that he now wants to be involved ‘when [she’s] big,’ as she believes that he did not want to ‘do the diaper stuff.’ [An. R.] spoke of her father and his wife (Heather) in positive terms.” The report concluded Donald D. was consistent with his visits and had shown the ability to parent An. R., and the agency had no concerns about his ability to provide her an appropriate home.

¶ 31 Prior to the hearing, DCFS filed a family service plan. In pertinent part, the plan indicated Donald D. was previously “involved in an unhealthy marriage with his first wife, involving patterns of intimate partner violence and resulting in his arrests for domestic battery.” In 2011 and 2013, Donald D. was convicted of two misdemeanor domestic battery offenses. Donald D.’s current wife reported the relationship was healthier and more positive than previous relationships. According to the plan, Donald D. had “experienced significant functional impairments and poor decision making when faced with emotional distress.” However, in recent years Donald D. reported minimal symptoms of emotional distress and stabilization of his mood. Donald D. “denied intimate partner violence in his current relationship.”

¶ 32 According to an integrated assessment, Donald D. said his contact with An. R. was limited by respondent mother’s relocations and her restriction of his access. Donald D. indicated An. R. routinely spent weekends and holidays with him. The assessment indicated no concern about Donald D.’s ability to parent An. R. and noted there had been no reported domestic violence in over four years. Heather D. reported no domestic violence in her relationship with Donald D. Heather D. further indicated involvement with An. R. for three years but indicated respondent mother only allowed occasional visits.

¶ 33 An addendum to the report indicated Donald D. and Heather D. were willing to ensure all of An. R.’s needs were met and agreed to ensure she attended counseling appointments. The addendum recommended custody and guardianship of An. R. be granted to Donald D. An attached certificate indicated Donald D. completed a partner-abuse intervention program in 2014.

¶ 34 At the dispositional hearing, no additional evidence was introduced and the State recommended the trial court find respondents unfit and unable and Donald D. fit, willing, and

able. Accordingly, the State recommended custody of An. R. be given to Donald D. and guardianship of An. R. be given to DCFS. The guardian *ad litem* agreed with the State's recommendation and noted placing guardianship of An. R. with DCFS would allow the agency to facilitate visitation between An. R. and her siblings. Counsel for respondent mother was generally in agreement with the State's recommendation but expressed concern about granting custody of An. R. to Donald D. because he had never been her primary caregiver.

¶ 35 The trial court found Donald D. was a fit, willing, and able custodian for An. R. In so finding, the court noted one main fact that would support a finding of unfitness was the fact that Donald D. was out of An. R.'s life and failed to maintain contact with her for a substantial period of time. The court recognized Donald D. had difficulty maintaining contact because respondent mother moved frequently, but Donald D. never took steps to establish paternity or court-ordered visitation. The court acknowledged that moving An. R. to Donald D.'s home would be disruptive, but Donald D. recognized the difficulties with the transition. Although Donald D. recently moved, the court noted the residence was a stable, safe, and appropriate environment. With respect to Donald D.'s history of domestic violence, the court found Donald D. had appropriately addressed those issues and was "in a position to provide a safe and nurturing home where [An. R.] can grow and succeed to the best of her abilities." Accordingly, the court found Donald D. should have custody of An. R.

¶ 36 The trial court next considered guardianship of An. R. and determined it was in her best interest to place guardianship with DCFS. Doing so would allow DCFS direct involvement in visitation with respondent mother. The court found DCFS involvement particularly important considering respondent mother and Donald D. did not have an established working relationship.

¶ 37 The trial court found respondent mother unfit and unable to care for, protect, train, or discipline the children and their health, safety, and welfare would be jeopardized in her custody. The court noted respondent mother had serious issues with substance abuse, mental health, and domestic violence. The court further noted respondent mother's pattern of domestic violence in her relationships and lying to authorities about whether those relationships still exist. The court found respondent father unfit and unable to care for, protect, train, or discipline Au. R. or Pa.L. based on his history of domestic violence and substance abuse. Accordingly, the court made the minors wards of the court, placed guardianship with DCFS, and placed custody of An. R. with Donald D.

¶ 38 Respondent father and respondent mother filed timely notices of appeal. We docketed respondent father's appeal as case No. 4-18-0731 and respondent mother's appeal as case No. 4-18-0732. We have consolidated respondents' cases for review.

¶ 39 **II. ANALYSIS**

¶ 40 On appeal, appointed counsel for respondent father filed a motion to withdraw as counsel and respondent mother argues the trial court's determination to place custody of An. R. with Donald D. was against the manifest weight of the evidence. We turn first to the court's finding of neglect.

¶ 41 **A. Adjudication of Neglect**

¶ 42 The Juvenile Court Act provides a two-step process for determining whether a child should be removed from parental custody and made a ward of the court. *In re A.P.*, 2012 IL 113875, ¶ 18, 981 N.E.2d 336. First, the trial court must conduct an adjudicatory hearing to determine whether the child is abused, neglected, or dependant. *Id.* ¶ 19. The State bears the burden to prove the allegations of abuse or neglect by a preponderance of the evidence; that is,

the State must demonstrate the allegations are more probably true than not. *In re Arthur H.*, 212 Ill. 2d 441, 463-64, 819 N.E.2d 734, 747 (2004). We reverse a ruling of abuse or neglect only if it is against the manifest weight of the evidence. *Id.* at 464. “A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident.” *Id.*

¶ 43 In support of the motion to withdraw as counsel, counsel for respondent father identified as the sole potential issue on appeal an argument that the court’s finding Au. R. and Pa.L. neglected was against the manifest weight of the evidence. *In re Austin C.*, 353 Ill. App. 3d 942, 947, 823 N.E.2d 981, 985 (2004).

¶ 44 The record shows the trial court thoroughly considered the testimony and the evidence in support of its adjudicatory finding of neglect. The court noted that, although not dispositive, respondent mother’s stipulation that the children were neglected based on domestic violence was evidence in support of a finding of neglect. The court also pointed to the testimony from two police officers that respondent father violated an order of protection on two occasions, which led to criminal charges and a term of incarceration. The court additionally relied on Feingold’s testimony and the statements An. R. made to Feingold regarding recent instances of domestic violence between respondents, including testimony that respondent father pushed respondent mother during an argument. Additionally, Feingold testified An. R. told him about an incident where respondent father threw a lit cigarette at respondent mother. Counsel contends this evidence is “thin” and does not establish when the arguments occurred. We disagree.

¶ 45 As the trial court noted, respondent father was imprisoned after he violated the order of protection, which explains why DCFS waited to file the petition for adjudication of neglect until he had been released from prison. Additionally, Feingold interviewed An. R. in early May 2018, and she stated she had not seen respondent father since he got out of prison.

The next day, An. R. told Feingold respondent father had recently been at the trailer drinking and arguing with respondent mother and pushing her. At the same time, An. R. told Feingold about an incident where respondent father threw a lit cigarette at respondent mother. During the interview, An. R. said respondent mother told her to lie so respondent father would not get in trouble.

¶ 46 Moreover, as counsel for respondent father notes, this argument is pointless in light of respondent mother's stipulation that the children were neglected. *Id.* The issue at an adjudicatory hearing is whether the children are neglected and not whether the parents are neglectful. *Arthur H.*, 212 Ill. 2d at 467. The focus is on the children and not on determining causation. *Id.* Here, the trial court took judicial notice of respondent mother's stipulation that the children's environment exposed them to domestic violence, the orders of protection, and respondent father's two criminal cases for violating the orders of protection. The court and respondent father agreed this was sufficient to prove the children's environment with respondent mother was injurious and to support a finding of neglect. Accordingly, we conclude any argument that the finding of neglect was against the manifest weight of the evidence would be frivolous.

¶ 47 In sum, we conclude the State proved by a preponderance of the evidence that the children's environment was injurious to their welfare because of domestic violence between respondents. In addition to respondent mother's stipulation, the trial court heard testimony that respondent father violated orders of protection on more than one occasion and there had been recent incidents of domestic violence between respondents. Accordingly, we affirm the judgment of the trial court.

¶ 48 B. Dispositional Determination

¶ 49 After a child is found neglected, the matter proceeds to a dispositional hearing. *A.P.*, 2012 IL 113875, ¶ 21. The trial court must determine, by a preponderance of the evidence, whether it is in keeping with the health, safety, and best interest of the minor to remain with the parent, or if alternative custody and guardianship placement, *i.e.*, with DCFS, is more appropriate. 705 ILCS 405/2-22 (West 2016). The court’s central concern in fashioning a dispositional order is the best interest of the child. *In re M.P.*, 408 Ill. App. 3d 1070, 1073, 945 N.E.2d 1197, 1200 (2011). In making its decision, the court “should consider all reports, whether or not the author testifies, which would assist the court in determining the proper disposition for the minor.” *In re L.M.*, 189 Ill. App. 3d 392, 400, 545 N.E.2d 319, 325 (1989). “A trial court’s determination regarding dispositional unfitness will be reversed ‘only if the findings of fact are against the manifest weight of the evidence or if the trial court committed an abuse of discretion by selecting an inappropriate dispositional order.’ ” *In re K.B.*, 2012 IL App (3d) 110655, ¶ 23, 973 N.E.2d 470 (quoting *In re T.B.*, 215 Ill. App. 3d 1059, 1062, 574 N.E.2d 893, 896 (1991)).

¶ 50 Respondent mother argues the trial court’s finding that it would be in An. R.’s best interest to place custody with Donald D. was against the manifest weight of the evidence. In the motion to withdraw as counsel, counsel for respondent father asserts there are no potential issues to argue on appeal.

¶ 51 Respondent mother first argues the trial court should not have found it in An. R.’s best interest to place custody with Donald D. because (1) he never took legal action to establish paternity or his rights and (2) he had not acted as a parent. The court took into account the fact that Donald D. had not pursued legal action to establish his parental rights. Although troubling, the record shows that Donald D. had consistent visitation with An. R. and had never missed a

visit. The record shows that respondent mother restricted contact between Donald D. and An. R., and her frequent moves made it difficult for Donald D. to establish a regular relationship with the child. Respondent mother asserts Donald D. had not acted as a parent to An. R. and points to An. R.'s description of Donald D. as having "ran away like he didn't care." However, this ignores that the report, in the very next sentence, goes on to state "[An. R.] spoke of her father and his wife (Heather) in positive terms." The report further concluded Donald D. was consistent with his visits and had shown the ability to parent An. R., and the agency had no concerns about his ability to provide her an appropriate home.

¶ 52 Respondent mother asserts the trial court did not consider Donald D.'s recent move to be a sign of instability, but it determined respondent mother's moves showed instability. The court specifically addressed Donald D.'s recent move and contrasted it with respondent mother's moves. Donald D.'s recent move merely relocated a stable household to a larger residence. Respondent mother, on the other hand, moved four times in five years and, on at least one occasion, her move was motivated by an attempt to avoid child welfare services in Wisconsin. Accordingly, the trial court's differing treatment of the moves was not against the manifest weight of the evidence.

¶ 53 Although Donald D. had previous issues with domestic violence, the record shows the court's determination that these issues were in the past was not against the manifest weight of the evidence. Donald D. completed a domestic violence program in 2014, and it is undisputed that there have been no domestic violence issues in his current relationship with Heather D. By all accounts, Donald D. and Heather D. have a healthy, stable relationship. Moreover, the records show there are no concerns as to Donald D.'s ability to appropriately parent An. R. The record further shows Donald D. cooperated with every request and agreed

with every recommendation. The trial court's finding that it was in An. R.'s best interest to place custody with a fit, willing, and able parent prepared to offer her a stable and supportive home environment was not against the manifest weight of the evidence. Accordingly, we affirm the judgment of the trial court.

¶ 54 As noted above, any argument on behalf of respondent father that the trial court's finding of neglect was against the manifest weight of the evidence would be pointless in light of the evidence supporting a finding of neglect. Although counsel did not identify any potential arguments on behalf of respondent father regarding the court's dispositional determination, we conclude any argument would fail because the court's findings were not against the weight of the evidence and the court did not abuse its discretion in selecting its dispositional order.

Accordingly, we grant counsel's motion to withdraw.

¶ 55 III. CONCLUSION

¶ 56 For the foregoing reasons, we affirm the trial court's judgment.

¶ 57 Affirmed.