

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).

FOURTH DIVISION
October 24, 2013

No. 1-13-1766

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

<i>In re</i> JAKHARI C., SHAKYRAH C., and)	Appeal from the
TROY M. III., Minors,)	Circuit Court of Cook
Respondents-Appellees,)	County, Illinois, Juvenile Justice and
)	Child Protection Department, Child
)	Protection Division.
(The People of the State of Illinois,)	
Petitioner-Appellee,)	No. 12 JA 341-343
)	
v.)	Honorable
)	Erica Reddick,
Ciera C.,)	Judge Presiding.
Respondent-Appellant).)	

JUSTICE FITZGERALD SMITH delivered the judgment of the court.
Justices Lavin and Epstein concurred in the judgment.

ORDER

- ¶ 1 *Held:* The circuit court's adjudication order is affirmed. The court's findings of abuse and neglect are not against the manifest weight of the evidence; uncontroverted testimony at the adjudicatory hearing established that the step-father was "disciplining" the eldest of the three minors, a six-year-old, by using a belt and punching the minor in the face with his fists, which left bruises on the minor's face and neck. The same facts supported a finding of neglect based on injurious environment as to all three minors; the court properly concluded that living in an environment where such "disciplining" was permitted was injurious to the minors' welfare.
- ¶ 2 This cause arises from the State's petition for adjudication of wardship of three minors

Jakhari C. (hereinafter Jakhari), Shakyrah C. (hereinafter Shakyrah), and Troy M. III (hereinafter Troy III). The mother of all three minors is the respondent, Ciera C. (hereinafter the respondent). The circuit court adjudicated Jakhari: (1) physically abused (705 ILCS 405/2-3(2)(I) (West 2010)); (2) abused by being exposed to a substantial risk of physical injury (705 ILCS 405/2-3(2)(ii) (West 2010)); and (3) neglected by being exposed to an injurious environment (705 ILCS 405/2-3(1)(b) (West 2010)). The court named Jakhari's step-father and the respondent's live-in paramour, Troy M. Jr. (Hereinafter Troy Jr.) as the perpetrator. At a subsequent disposition hearing, the circuit court found that both the respondent-mother, and the minor's putative father, Christopher T. (hereinafter Christopher) or Martisse M. (hereinafter Martisse),¹ were unable and unwilling to care for or protect their son and adjudged Jakhari a temporary ward of the State, placing him in the custody/guardianship of the Department of Children and Family Services (DCFS).

¶ 3 With respect to two remaining minors, Shakyrah and Troy III, at the adjudicatory hearing, the circuit court found that they were both neglected by being exposed to an injurious environment (705 ILCS 405/2-3-1(b) (West 2010)). At a subsequent disposition hearing, the circuit court found that Shakyrah's mother, the respondent, and her putative father, Christopher,² were unable and unwilling to care for or protect their daughter and adjudged Shakyrah a

¹The disposition order was amended *nunc pro tunc* to reflect that the minor's putative father was either Christopher or Martisse, rather than just Christopher, as initially entered.

²The disposition order was amended *nunc pro tunc* to reflect that the minor's putative father was Christopher, rather than Martisse, as initially entered.

temporary ward of the State, placing her in DCFS custody. At the disposition hearing, the circuit court similarly adjudged Troy III a ward of the court and placed him in DCFS custody after it found that his mother, the respondent, and his putative father, Troy Jr., were unable and unwilling to care for or protect him.

¶ 4 This appeal, challenging the circuit court's adjudicatory order, is made solely by the minors' mother.³ She contends that the trial court's findings of abuse and neglect as to all three minors were against the manifest weight of the evidence.⁴ For the reasons that follow, we affirm.

¶ 5 I. BACKGROUND

¶ 6 Shakyrah is a girl born on May 21, 2003. Jakhari is a boy born on July 17, 2005. Troy III is a boy born on September 20, 2010. The respondent is the mother of all three children. She lives with Troy Jr., who is the putative father only of the youngest minor, Troy III. On March 28, 2012, the State filed petitions for adjudication of wardship and motions seeking temporary

³We note that the putative fathers for the two older children (Shakyrah and Jakhari) were defaulted and did not take part in the juvenile court proceedings below. Troy Jr., the father of the youngest child, Troy III, did take part in the juvenile proceedings, but has not appealed from the circuit court's orders.

⁴The respondent solely challenges the trial court's adjudication orders regarding the three minors, and does not challenge the trial court's dispositional orders finding her unable and unwilling to care for them. Our review is therefore limited to the adjudication orders. See Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008).

No. 1-13-1766

custody as to all three minors. The petition for six-year-old Jakhari alleged that he was neglected by being exposed to an injurious environment pursuant to section 2-3(1)(b) of Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-1(b) (West 2010)) and that he was abused pursuant to sections 2-3(2)(I) and 2-3(2)(ii) of the Act (705 ILCS 405/2-3(2)(ii) (West 2010)) because a parent or "a paramour of [his] parent" inflicted physical injury on him or created a substantial risk of physical injury to him by other than accidental means. In support, the petition alleged the following factual basis:

"On or about March 14, 2012, this minor was observed to have a bruise on his face, a black eye, a busted lip, a bruise on his leg and red marks on his neck. This minor's sibling stated that this minor's putative father caused his injuries. This minor stated that his sibling's putative father caused his injuries. This minor stated his sibling's putative father also choked him. Mother minimized this minors' injuries and admitted that she gave this minor's sibling's putative father permission to physically discipline her children. On or about February 10, 2012, this minor was observed to have bruising on his forehead, forearm and a scratch to his face. This minor stated his sibling's putative father caused those injuries. This minor states that he is fearful of minor's sibling's putative father. This minor's sibling's putative father is currently incarcerated in Cook County Jail. Mother and this minor's sibling's putative father reside together when he is not incarcerated. Putative father's whereabouts are unknown. Paternity has not been established."

¶ 7 Citing these same factual allegations, the State's petitions for Shakyrh and Troy III

No. 1-13-1766

alleged that Shakyrah and Troy III were neglected by being exposed to an injurious environment pursuant to sections 2-3(1)(b) of Juvenile Court Act (705 ILCS 405/2-1(a), (b) (West 2010)) and that they were abused pursuant to section 2-3(2)(ii) of the Act (705 ILCS 405/2-3(2)(ii) (West 2010)) because) because there was a substantial risk of physical injury to them other than through accidental means.

¶ 8 On April 6, 2012, the circuit court granted the State's petition for temporary custody and placed all three children under the temporary custody of the DCFS Guardianship Administrator.

¶ 9 A. Adjudicatory Hearing

¶ 10 On February 26, 2013, the circuit court conducted an adjudicatory hearing with respect to all three minors. At that hearing the State presented three witnesses: Jeronda Harvey, Colleen Barrin and Amy Wilson.

¶ 11 Jeronda Harvey first testified that she is a DCFS investigator. The respondent's family first came to her attention after a hotline call was placed to DCFS, alleging substantial risk of physical injury, cuts, welts and bruises as to Jakhari. Harvey stated that immediately after the hotline call was placed to DCFS, on February 10, 2012, she visited six-year-old Jakhari at his school. She met Jakhari alone, and immediately observed two bruises on his arm, a mark on his face and a scratch on his neck. When Harvey asked Jakhari what had happened, he stated that "dad had given him a whipping" for not having done his homework correctly. Harvey said that Jakhari identified his "dad" as Troy Jr. and stated that he got "lots of whippings," and sometimes "would get popped on the forehead."

¶ 12 Harvey testified that she also saw Jakhari's siblings that day. She first visited and spoke

No. 1-13-1766

to eight-year-old Shakyrah at school. Harvey did not observe any bruises or marks on Shakyrah. When she asked Shakyrah about the incident with Jakhari, Shakyrah told her "that she was in the back room watching television with her little brother so she didn't see anything."

¶ 13 Harvey next proceeded to the respondent's residence to see Troy III and speak with the parents. Harvey stated that she observed no marks on one-year-old Troy III. She next spoke to the respondent about Jakhari. The respondent told Harvey that "she was at work when [the incident] happened." She also told Harvey that she questioned both Jakhari and Troy Jr. about what had happened and that it was her understanding that Jakhari "was getting a whipping and that [Troy Jr.] accidentally hit him in the neck." As to Jakhari's other injuries, the respondent said that the bruises on his arms were "from jumping around," and that she did not know how he got the marks on his face. Harvey testified that she asked the respondent to have Jakhari examined by a doctor and that the respondent agreed.

¶ 14 Harvey further averred that while at the respondent's home, she next spoke to Troy Jr., who told her that "he had given Jakhari a whipping with a belt because Jakhari was playing around with complet[ing] his homework." Troy Jr. said that he asked Jakhari to finish his homework numerous times, but that Jakhari did not listen. According to Troy Jr., Jakhari got the marks on his face because "the belt slipped and the buckle accidentally hit him." Troy Jr. told Harvey that he used spanking or whippings as a disciplinary measure because this was what his father had used on him. On cross-examination, Harvey acknowledged that Troy Jr. showed her the belt that he had used and that it had a broken buckle.

¶ 15 Harvey next testified that Troy Jr. told her that he has been diagnosed with schizophrenia

No. 1-13-1766

but that he is not on any medication.

¶ 16 Harvey next averred that she told Troy Jr. that after observing Jakhari's injuries she believed that the discipline was excessive and that he should refrain from any physical discipline in the future. Troy Jr. first responded by stating he would have "a hard time with that," because he "was with home with the kids all day." Before Harvey left, however, he agreed that he would refrain from any future corporal punishment.

¶ 17 Harvey testified that while her investigation was pending, on March 14, 2012, a second hotline call was made to DCFS alleging that Jakhari had welts, bruises and cuts on his body. Harvey explained that because she was ill that day another DCFS investigator (now deceased) handled the case in her absence. When Harvey returned to work, DCFS had already placed the children under a safety plan with their maternal grandmother. Harvey testified that at the conclusion of her investigation, the family was "indicated" and Troy Jr. was named as the alleged perpetrator.

¶ 18 On cross-examination, Harvey acknowledged that when she spoke to the respondent on February 10, 2012, the respondent told her that because she was working longer hours, all of the children, and especially Jakhari, had been "acting up at home," and that as a result she decided to reduce her work hours. Harvey also admitted that at that point she told the respondent that if there was going to be any physical discipline in her home, the respondent needed to be the one administering it. Harvey acknowledged that the respondent then told her that she "would not allow any sort of abuse to take place in her home."

¶ 19 On cross-examination, Harvey also acknowledged that after her visit to the respondent's

No. 1-13-1766

house on February 10, 2012, she did not remove the children from the home or put a safety plan in place. She explained, however, that she intended to open the family's case for intact family services, but that before she had a chance to complete her investigation, DCFS received the second hotline call regarding Jakhari.

¶ 20 Colleen Barrin (hereinafter Barrin) next testified that she is a registered school nurse at Kolb School. She averred that on February 10, 2012, Jakhari, who was in first grade, was sent to her office. She immediately noticed that Jakhari had a quarter-sized bruise on his forehead, and a large, two-inch scratch on his face. When Barrin asked Jakhari why he had come to her office, he told her that he needed an ice pack because his head hurt. Barrin gave Jakhari the ice pack and then asked him how he got the bruise on his head. Jakhari first looked down at his arm and held it, stating that "he could not remember." At that point, Barrin noticed a large bruise on Jakhari's arm, which she described as "a haematoma, which is basically a large swollen bruise." Jakhari then told Barrin that his "dad hit him" because "he would not complete his homework." He told her that "the bruise on his head and his arm were from a belt" and that "the scratch on his face and the back of his neck w[ere] from [his] dad's fingernail." Jakhari explained that he sustained the scratches because "he was backed into a corner and [his] dad was hitting him with the belt and trying to pull him out."

¶ 21 Barrin became concerned because this was not the first time she had treated Jakhari for injuries sustained at home. She explained that in October 2011 she treated him for "a bruise on the left side of his eye and temple area." The bruise was "right on the corner" of the eye, and the second injury was "not even maybe an inch away." Barrin stated that Jakhari had then told her

No. 1-13-1766

that he "fell and hit the corner of a table," and that when she followed up with Jakhari's mother, the respondent told her the same. Barrin however was skeptical explaining:

"[The injuries] were in two areas. Normally, if I would see a child fall and hit just a corner of an area you would see just one area with a bruise not two different areas, and there were not scratches. It just didn't seem right. I mean stories matched up so I kind of just put a red flag on there that if I ever saw another mark I would definitely make sure to look into it more. "

¶ 22 Barrin further testified that she again saw Jakhari on March 14, 2012, when he was brought to the nurse's office for a third time. Jakhari now had a bruise next to his left eye, a bruise next to his left temple, a swollen lower lip and a laceration inside the lip. He also had bruising around his neck. Barrin described the bruising as "dark color purplish right a the edge of his eye and then swollen purplish bruise by the temple area." She described the mark by Jakhari's temple as about an inch in size. She said that Jakahri also told her "that dad hit him in the leg," but that she did not have an opportunity to observe those injuries as Jakhari was in pants.

¶ 23 Barrin testified that she then spoke to Jakhari in the presence of the school social worker, Amy Wilson, and the school principal, Jeff Summers. When asked how he sustained the injuries, Jakhari told them that "his dad messed [him] up." Jakhari explained that "he got the bruise and the fat lip from his dad punching him." He explained that the bruising around his neck was from when dad grabbed his collar and threw him on the bed. Barrin also testified that Jakhari told them he was scared of his dad.

¶ 24 On cross-examination, Barrin admitted that as a school nurse she is a DCFS mandatory reporter and is required by law to report any injuries that she suspects to be abuse or neglect. Barrin acknowledged that she did not make a hotline call to DCFS in October 2011. She explained, however, that Jakhari's story "completely matched up" to that of his mother, so the first time she observed any injuries on Jakhari she believed that was "probably what happened," *i.e.*, that he fell and hit his head on the table. She explained:

"Any child that I have where I see a bruise, I ask the child about it, I'll ask the parents about it. If it matches up we're usually okay. But it makes me think if I see something else then maybe I need to go further with this."

¶ 25 Kolb Elementary school social worker Amy Wilson (hereinafter Wilson) next testified that on February 10, 2012, the school nurse, Barrin, brought Jakhari to her office. Wilson immediately noticed that Jakhari had a bruise on his left arm, a bruise on his forehead and scratches on his neck and on his face. In Barrin's presence, Wilson asked Jakhari what had happened. Jakhari told her that "his dad had backed him into a corner, grabbed him around his neck and hit him with a belt." Wilson explained that she always asks children how they feel about an incident, namely whether they are afraid of the person who hurt them, or if they are afraid to go home. She averred that Jakhari told her that "he was afraid of his dad."

¶ 26 Wilson testified that she again saw Jakhari on March 14, 2012, after his teacher noticed marks on his body and brought Jakhari to her office. On this occasion, Wilson observed that Jakhari's bottom lip was swollen, that he had a cut inside his mouth and that he had a bruise on his face or the side of his head close to his eye, as well as a scratch on his neck. In Barrin's

presence, Wilson asked Jakhari what had happened, and Jakhari responded that "his dad messed him up." Jakhari explained that this dad "grabbed him around his collar and punched or hit him with a fist," in the face and on his legs.

¶ 27 Wilson testified that on both occasions she was concerned when she observed Jakhari's injuries and that she worried about whether he would be safe if he went home.

¶ 28 According to Wilson, on March 14, 2012, the school, as a mandated reporter, contacted DCFS. Concerned that DCFS might not arrive before the school day ended, and to ensure that Jakhari would be safe the school also contacted the police. As a result, that afternoon, Wilson attended a meeting with Jakhari's parents, the school nurse, a DCFS investigator, the principal, and Chicago Ridge police officer Dave Mitchell.

¶ 29 Wilson testified that at this meeting, Troy Jr. admitted that he grabbed Jakhari's collar and that he hit Jakhari in the face with his fist. He explained that he was disciplining Jakhari for not bringing back a school behavioral contract,⁵ and that he felt the discipline was appropriate. Wilson acknowledged that Troy Jr. was cooperative at this meeting. She testified, however, that he did not say whether he planned to stop hitting Jakhari. According to Wilson, after the meeting, the police placed Troy Jr. under arrest.

¶ 30 On cross-examination, Wilson admitted that during that meeting, the respondent stated

⁵The record reveals that the "behavioral contract" was used by the school to keep track of a child's behavior at school, by giving or taking away "frogs" depending upon good or bad behavior. The contracts were sent home every Friday, for parental signature, and were to be returned to the school by the child on Monday morning.

No. 1-13-1766

that she was having problems at home with Jakhari because he was "not respecting her or Troy Jr." Wilson averred that she was not aware of any issues at school with Jakhari's behavior.

Wilson further testified on cross-examination, that after Troy Jr. was taken into custody, she and the respondent discussed placing Jakhari into counseling, and the respondent agreed that it would be a good idea.

¶ 31 After the testimony of these three witnesses, the court admitted into evidence two exhibits offered by the State. These included: (1) Jakhari's medical records from Adventist LaGrange Hospital (hereinafter Adventist Hospital); and (2) Jakhari's, Shakyrah's and Troy III's medical records from the University of Chicago Comer Children's Hospital (hereinafter Comer Hospital).

¶ 32 The medical records from Adventist Hospital reveal that on February 10, 2012, Jakhari was admitted to that hospital and diagnosed with "abrasions of the trunk and face." The intake portion of that medical record states as follow:

"[The patient] told 'a lady at school' that his dad 'popped and hit him in the face.' DCFS was called and per mother here for wellness exam. Patient states that 'his father hit him in the L[eft] cheek, forehead, and L[eft] arm."

The medical records from Adventist Hospital further reveal that Jakhari's condition was stable and that he was discharged with instructions on how to treat scrapes and bruises, as well as to make a follow-up visit to his primary care physician.

¶ 33 The medical records from Comer Hospital reveal that Jakhari's maternal grandmother brought Jakhari to the hospital on March 14, 2012. The official diagnosis from Comer Hospital

is that Jakhari has suffered a "non-accidental trauma" (*i.e.*, "assault/intentional injury inflicted by another person," in that he was "struck by/against or crushed"). According to the medical evaluation report from that hospital, the maternal grandmother stated that "Jakhari had at least 6 months of beatings by mother's boyfriend." The maternal grandmother "noted a mark on [the patient's] forehead and when asked about it the patient said 'daddy did it.' " The report states that the grandmother spoke to the respondent, who said that the mark was a result of an accidental fall and that Jakhari "falls all the time." The report states that, according to the grandmother, the boyfriend has "admitted to the beatings and is now in custody." The boyfriend "said that he hit patient because he was showing signs of attention deficit disorder and he was becoming frustrated with his behavior."

¶ 34 The medical evaluation further notes:

"P[atient] says that yesterday his father started hitting him again. P[atient] said 'my daddy did that to me' when pointing to a bruise near his left eye. 'He used his fists to do it.' P[atient] pointed to a scar at the back of his head and said '[H]e hit it hard. He used his hand.' P[atient] pointed to the inside of his lip and said 'he punched it.' P[atient] pointed to his right shin and said 'he hit me real hard on my leg right here.' P[atient] denied objects used to hit him and said 'he always hits me with his fists.' He said his 'dad has hit me before.' P[atient] denied objects used to hit him and said 'he always hits me with his fists.' He said his 'dad has hit me before.' *** P[atient] is not complaining of pain at this time."

¶ 35 After the State's exhibits were admitted and published into the record, the respondent

testified on her own behalf. She stated that Jakhari has been having problems with his behavioral contract at school, and that he "fabricated" one of those contracts before bringing it home from school. The respondent explained that after a parent-teacher conference in February 2012, she became aware of Jakhari's behavioral problems at school. When asked to elaborate, she only stated that Jakhari "was still being disrespectful, fighting with his sister, not listening to me or Troy [Jr.]," and that this "also carried onto school *** where he had the same issues with some of the students."

¶ 36 After hearing all of the testimony and receiving the exhibits, the circuit court found by a preponderance of the evidence that the State had met its burden of proving that Jakhari was: (1) physically abused (705 ILCS 405/2-3(2)(I) (West 2010)); (2) abused based upon a substantial risk of physical injury (705 ILCS 405/2-3(2)(ii) (West 2010)); and (3) neglected based upon an environment injurious to his welfare (705 ILCS 405/2-3(1)(b) (West 2010)). The court named Troy Jr. as the perpetrator. With respect to the remaining two siblings, the circuit court found that the State had met its burden and established that Shakyrah and Troy III were: (1) neglected based upon an environment injurious to their welfare (705 ILCS 405/2-3(1)(b) (West 2010)); and (2) abused based on a substantial risk of physical injury (705 ILCS 405/2-3(2)(ii) (West 2010)).

¶ 37 In explaining its reasoning, the court first noted that at the time of the two relevant incidents, which resulted in bodily injuries to Jakhari, Troy Jr., who admitted to having inflicted those injuries, was an adult, while Jakhari was merely six years old. The court found that both incidents involved physical abuse. With respect to the February 2012 incident, the court found relevant that the DCFS investigator assigned to the case personally observed Jakhari's injuries,

No. 1-13-1766

which included two bruises on the arm and a mark on the face. The court also noted that after the investigator talked to Jakhari, Jakhari named Troy Jr. as the person who inflicted his injuries and explained that Troy Jr. gave him a "whipping" and that he gets "lots of whippings" and gets "popped on the forehead." The court also found relevant that both of the younger children were inside the home at the time of this "whipping," but noted that Shakyrhah was in another room, and "didn't see what happened."

¶ 38 The circuit court further observed that the DCFS investigator spoke to both the respondent and Troy Jr. and asked Troy Jr. not to use corporal punishment on Jakhari. The court noted that the respondent told the DCFS investigator that it was not her practice to allow corporal punishment to be used in her home. According to the circuit court, however, despite the DCFS intervention, a second incident occurred just a month later in March 2012, where Jakhari came to school with additional injuries, including a bruise on the arm and face and head, and scratches and abrasions to his neck. The injuries were observed by both the school nurse and the school social worker. The circuit court noted that Jakhari's statement as to how he sustained those injuries were corroborated by Troy Jr., who acknowledged using discipline involving his fists, and a belt, which he said accidentally struck Jakhari near the eye.

¶ 39 The circuit court observed that the parties did not contest that Jakhari had received the aforementioned injuries, but that they disputed the manner in which those injuries should be defined, with the parents requesting that the injuries be considered merely excessive corporal punishment and the State seeking that they be called physical abuse. The circuit court found that after considering the testimony and the medical records admitted into evidence, the injuries were

No. 1-13-1766

both excessive corporal punishment and physical abuse:

"But the choice of punishment the exacting the use of fist, belt, slap or a punch to the face such that it leaves injury and that injury remains. And in particular the minor shows up at school requesting an ice pack to deal with the pain that the minor is suffering as a result of injuries sustained to his head inflicted by the father, does constitute physical abuse and the court finds as such."

¶ 40 With respect to its finding that Jakhari was abused based upon a substantial risk of physical injury, the circuit court noted that Troy Jr. continued to use corporal punishment, despite DCFS admonishment that he refrain from that type of discipline. The court further observed that the severity of Jakhari's injuries persisted, with Troy Jr. grabbing Jakhari around the neck, and hitting him such that he struck the floor. In addition, the court noted that after the two reported incidents, Jakhari stated that he was afraid of his father and afraid to go home.

¶ 41 With respect to the two younger minors, the circuit court found that because Shakyrah and Troy III lived in an environment "in which excessive corporal punishment was used continuously against a sibling" their environment was injurious. The court specifically stated:

"[T]he use of punching, belts, striking, leaving abrasions and marks is completely inappropriate as a discipline method for a six year old or for any child."

The court found that where this was a permitted form of discipline, all of the minors were residing in an environment injurious to their welfare.

¶ 42 B. Disposition Hearing

¶ 43 On May 6, 2013, the circuit court held a dispositional hearing.⁶ Caseworker Dorothea Steward testified that Shakyrh and Troy III have been placed in foster care with their maternal grandmother. She averred that Jakhari was also initially placed with his maternal grandmother, but that he was removed from her home as a result of aggressive behavior and is currently in a psychiatric hospital. According to Steward, Jakhari has been diagnosed with psychotic disorder, is currently taking medication. Steward acknowledged that Jakhari would not be placed with his siblings upon his release from hospital as a result of his aggressive behavior which poses a risk of harm to them. On cross-examination, Steward acknowledged that Jakhari's therapist believes that a lot of Jakhari's aggression comes from his feeling responsible for the family not being together, since both the respondent and Shakyrh, have told him that "he's breaking up the family."

¶ 44 Steward also testified regarding the services recommended to the respondent and Troy Jr., but stated that neither has been consistent in complying with those services. Troy Jr. is under house arrest, but both parents participate in supervised visits with the children.

¶ 45 The respondent next testified at the dispositional hearing that she would prefer that upon release from the hospital, Jakhari be placed with a relative, rather than with a random stranger. She explained that she believes Jakhari's behavioral problems would get worse if he were not placed with a relative foster family, and offered several potential names of appropriate relatives.

¶ 46 After hearing all of the evidence, the circuit court found that the respondent was unable

⁶Since, as already noted above, the parties do not challenge the dispositional orders, for purposes of brevity, we summarize the evidence adduced therein.

for some reason other than financial circumstances to take care of all three minors, and made the minors wards of the court, placing them under the guardianship of DCFS. In doing so, the court instructed DCFS to take into account the respondent's request that Jakhari be placed in a relative foster family, and ordered DCFS to evaluate the possible relatives offered by the respondent.

¶ 47 The respondent now appeals, contending that the circuit court's adjudicatory findings of abuse and neglect were against the manifest weight of the evidence.

¶ 48 II. ANALYSIS

¶ 49 Whenever a petition for adjudication of wardship is brought under the Juvenile Court Act, the best interests of the child are the paramount consideration. *In re A.P.*, 2012 IL 113875,

¶ 18. Following the filing of a petition for wardship, at the adjudicatory hearing, the State must prove abuse or neglect by a preponderance of the evidence. 705 ILCS 405/1-3(1), 2-21 (West 2010); *In re A.P.*, 2012 IL 113875, ¶ 17; see also *In re Arthur H.*, 212 Ill. 2d 441, 465 (2004) ("The legislature has stated that the purpose of an adjudicatory hearing is 'to determine whether the allegations of a petition *** that a minor under 18 years of age is *** neglected *** are supported by a preponderance of the evidence.' ") (quoting 705 ILCS 405/1-3(1) (West 2000))).

In other words, the State must establish that the allegations of neglect are more probably true than not. *In re A.P.*, 2012 IL 113875, ¶ 17; see also *In re K.G.*, 288 Ill. App. 3d 728, 735 (1997) ("Preponderance of the evidence is that amount of evidence that leads a trier of fact to find that the fact at issue is more probable than not").

¶ 50 "[C]ases involving allegations of neglect and adjudication of wardship are *sui generis*, and must be decided on the basis of their unique circumstances." *In re Arthur H.*, 212 Ill. 2d at

No. 1-13-1766

463; see also *In re Malik B.-N.*, 2012 IL App (1st) 121706, ¶ 35 ("Any case involving an adjudication of neglect, abuse and wardship must be decided on the basis of its own distinct set of facts and circumstances."); see also *In re J.P.*, 294 Ill. App. 3d 991, 1002 (1998) ("cases involving the adjudication of abuse, neglect, and wardship are *sui generis*; that is, each case must be decided on its own distinct set of facts and circumstances [citation] and, given the varying circumstances in these types of cases, courts must have 'broad discretion to reach a just determination.' "). The trial court is afforded broad discretion when determining whether a child has been abused or neglected within the meaning of the Act, and this court will not disturb the trial court's findings unless they are against the manifest weight of the evidence. *In re A.P.*, 2012 IL 113875, ¶ 17; see also *In re D.S.*, 217 Ill. 2d 306, 322 (2005). A trial court's finding is against the manifest weight of the evidence only if "the opposite conclusion is clearly evident." *In re A.P.*, 2012 IL 113875, ¶ 17; see also *In re K.G.*, 288 Ill. App. 3d at 735 ("A trial court's finding is against the manifest weight of the evidence if review of the record clearly demonstrates that the opposite result would be the proper one."). "Because the trial court has the best opportunity to observe the demeanor and conduct of the parties and witnesses, it is in the best position to determine the credibility and weight to be given to the witnesses' testimony." *In re F.S.*, 347 Ill. App. 3d 55, 62-63 (2004). Furthermore, "due to the 'delicacy and difficulty of child custody cases,' it is well settled 'that wide discretion is vested in the trial judge to an even greater degree than any ordinary appeal to which the familiar manifest weight principle is applied.' " *In re Barion S.*, 2012 IL App (1st) 113026 ¶41 (quoting *In re Lakita B.*, 297 Ill. App. 3d 985, 994 (1998) (quoting *In re D.L.*, 226 Ill. App. 3d 177, 185 (1992))).

¶ 51 In the present case, the circuit court found that Jakhari was physically abused pursuant to sections 2-3(2)(I) and 2-3(2)(ii) of the Juvenile Court Act. 705 ILCS 405/2-3(2)(I), (ii) (West 2010). Those sections define abuse in the following manner:

"(2) Those who are abused include any minor under 18 years of age whose parent or immediate family member, or any person responsible for the minor's welfare, or any person who is in the same family or household as the minor, or any individual residing in the same home as the minor, or a paramour of the minor's parent:

(I) inflicts, causes to be inflicted, or allows to be inflicted upon such minor physical injury, by other than accidental means, which causes death, disfigurement, impairment of physical or emotional health, or loss or impairment of any bodily function; [or]

(ii) creates a substantial risk of physical injury to such minor by other than accidental means which would be likely to cause death, disfigurement, impairment of emotional health, or loss or impairment of any bodily function;"

705 ILCS 405/2-3(2)(I), (ii) (West 2010).

In its oral pronouncement explaining the reasoning behind its findings, the court further found that the injuries sustained by Jakhari were a result of excessive corporal punishment. See 705 ILCS 405/2-3(2)(v) (West 2010) (explicitly delineating the "inflict[ion] [of] excessive corporal punishment," as a form of abuse).

¶ 52 On appeal, the respondent does not appear to contest that six-year-old Jakhari came to school with injuries in February and March 2012, and that these injuries necessitated that he visit

the nurse's office because he was in pain. The respondent also appears to concede that those injuries were sustained when her live-in paramour, Troy Jr., beat Jakhari with a belt and with his fists. The respondent, nevertheless, argues that the court's finding that Jakhari was physically abused was against the manifest weight of the evidence because the injuries were minor "bruises and scrapes," and because they were sustained as a result of corporal punishment, which as a step-parent, Troy Jr., had every right to inflict. For the reasons that follow, we disagree.

¶ 53 While the respondent is correct that a parent has the "right" to corporally discipline his or her child, a right derived from our constitutional right to privacy, our courts have repeatedly held that this right, like any other, must be exercised in a "reasonable" manner. *In re Malik B.-N.*, 2012 IL App (1st) 121706, ¶ 38; *In re F.W.*, 261 Ill. App. 3d 894, 898 (1994). The Juvenile Court Act does not define "excessive corporal punishment." *In re Malik B.-N.*, 2012 IL App (1st) 121706 ¶ 38. Instead, each case involving the adjudication of abuse on the basis of corporal punishment must be decided on its own facts. *In re Malik B.-N.*, 2012 IL App (1st) 121706 ¶ 38; see also *In re J.P.*, 294 Ill. App. 3d at 1002.

¶ 54 Our courts have previously held that in evaluating whether corporal punishment is excessive or not, "[t]he degree of physical injury inflicted upon a child is not the exclusive or the determinative factor in evaluating the reasonableness of the parental conduct;" rather, we are also concerned with (2) the likelihood of future, more serious injury; (3) the psychological effects on the child; and (4) the circumstances surrounding the discipline, including the parent's demeanor, *i.e.*, whether the parent was calm or "lashing out" in anger. *In re F.W.*, 261 Ill. App. 3d at 903; see also *In re J.P.*, 294 Ill. App. 3d at 1004 ("We are [also] guided by the Illinois Administrative

Rules, which are relied on by DCFS. *** The Code suggests considering such factors as the child's age, the severity of the injury, the location of the injury, whether an instrument was used, and the pattern and chronicity of similar incidents of harm to the child. Other factors to be considered are the child's medical condition and whether the child suffers from behavioral, mental, or emotional problems, developmental disabilities or physical handicaps. The parent's history of reports of abuse or neglect may also be significant.").

¶ 55 In the present case, the injuries that Troy Jr. inflicted on six-year-old Jakhari, which the respondent attempts to minimize as "bruises and scrapes" include: (1) a quarter-sized bruise on the forehead; (2) a large, two inch scratch to his face; (3) a large, swollen bruise or hematoma to his arm; (4) a dark, purplish bruise by his left eye; (5) a dark, swollen purplish bruise by his temple; (6) a swollen lip, with a laceration inside the mouth; and (7) bruising around the neck from being grabbed by the collar and thrown on a bed. All of the aforementioned injuries were observed and described in court by the school registered nurse and the school social worker. In addition, they were documented in the medical records received by the juvenile court in the State's exhibits. What is more, it is undisputed that Jakhari received such injuries as a result of punishment for: (1) "playing around with completing his homework"; and (2) for failing to return a "behavioral contract" to school. DCFS caseworker Harvey explicitly testified that when she observed the initial set of injuries (including the bruise on the forehead, the scratch to the face and the hematoma on the arm), she believed that the punishment was excessive and informed both Troy Jr. and the respondent, requesting that Troy Jr. refrain from any future use of corporal punishment. Based upon this testimony and having had the opportunity to review Jakhari's

No. 1-13-1766

medical records, the trial court found that Jakhari was physically abused pursuant to section 2-3(2)(i) of the Act (705 ILCS 405/2-3(2)(I) (West 2010)). As the court explained:

"the choice of punishment, the exacting the use of fist, belt, slap or a punch to the face such that it leaves injury and that injury remains. And in particular the minor shows up at school requesting an ice pack to deal with the pain that the minor is suffering as a result of injuries sustained to his head inflicted by the father, does constitute physical abuse and the court finds as such."

After a review of the record, we find nothing manifestly erroneous in this conclusion. See *e.g.*, *In re D.L.W.*, 226 Ill. App.3d 805 (1992) (father of two sons, ages 5 and 10, was found unfit and his parental rights terminated because, the court said, he could not differentiate between corporal punishment and physical abuse, since on several occasions he, *inter alia*, punched the older son in the face with his fist, grabbed him by the throat and kneed him in the groin.); *In the Interest of L.M.*, 189 Ill. App. 3d 392 (mother of two sons, age 7 and 9, was found to have abused them as a result of excessive corporal punishment, where father discovered the younger boy had five 6-to-10-inch "whip marks" on his back, and the child reported that he had been beaten with a stick for playing ball in the house); *In the Interest of Weber*, 181 Ill. App. 3d 702 (1989) (a two-year-old boy was found to have been physically abused by his mother because he repeatedly was found to have bruises on his head, arms, buttocks, and back); *In the Interest of D.M.C.*, 107 Ill. App. 3d 902 (1982) (the court found it to be excessive corporal punishment for the parents of a 9-year-old boy suffering from hyperactivity and learning disabilities to discipline him with a leather belt); *People v. Swanson*, 84 Ill. App. 3d 245 (1980) (the mother's paramour was found guilty of

No. 1-13-1766

battery and reckless conduct because he disciplined her 5-year-old son using a belt, leaving a number of marks on the child's back and chest.); *Cf., In re J.P.*, 294 Ill. App. 3d at 1005-1006 (mother did not impose excessive corporal punishment on daughter by frequently spanking her with wooden spoon, within meaning of statute defining abused minor, where mother never struck daughter in anger, she spanked daughter on buttocks over her clothes, babysitter witnessed several spankings and stated that daughter appeared happy and unaffected after being disciplined, and on only occasion in which daughter sustained very small bruise, mother was so "horrified" that she told her ex-husband and babysitter, neither of whom expressed concern at that time).

¶ 56 What is more, even if we were to accept the respondent's characterization of Jakhari's injuries as minor "scrapes and bruises" under the record before us we would find nothing manifestly erroneous in the circuit court's conclusion that Jakhari was abused pursuant to section 2-3(2)(ii) of the Act as he was exposed to a substantial risk of future physical injuries. See 705 ILCS 405/2-3(2) (ii) (West 2010).

¶ 57 In the respect, we reject the respondent's argument that aside from Jakhari's uncorroborated hearsay statement that he was afraid of further discipline from his stepfather, the State failed to present any expert testimony that Jakhari was at a substantial risk of suffering any "impairment of bodily or emotional function" pursuant to section 2-3(2)(ii) of the Act (705 ILCS 405/2-3(2)(ii) (West 2010)). First, the respondent has forfeited this issue by not requesting expert testimony at the adjudication hearing, or making any argument regarding the necessity of such expert testimony before the trial court. See *In re K.S.*, 317 Ill. App. 3d 830, 833 (2000); see also *In Interest of A.H.*, 235 Ill. App. 3d 12, 16 (1992) ("Principles of waiver apply to

proceedings conducted pursuant to the [Juvenile Court] Act"). In addition, the respondent neither cites to a provision of the statute, or to any case law, requiring expert testimony to establish these factors.

¶ 58 What is more, contrary to the respondent's assertion, the record below unquestionably establishes that the actions of both Troy Jr. and the respondent placed Jakhari at a substantial risk of suffering grave injuries in the near future. In that respect, the record reveals that despite direct instructions from DCFS caseworker Harvey to stop using corporal punishment against Jakhari, Troy Jr. continued to use physical violence against the minor, within a span of one month. The record specifically reveals that when in February 2012, Harvey initially asked Troy Jr. to refrain from any future corporal punishment, Troy Jr. was reluctant, explaining that "he would have a hard time with this" because he was alone with the children all day. Troy Jr. then, however, promised he would refrain. Nevertheless, less than a month later, Troy Jr. admitted that he grabbed Jakhari by his collar and hit his face with his fists merely because Jakhari failed to bring back a "behavioral contract" from school. The record further reveals that the respondent did nothing to stop Troy Jr. In fact, after the first February 2012, visit, Harvey told respondent that if there was to be any corporal punishment in her home, she, rather than Troy Jr., should be the one administering it. At that time, the respondent told Harvey that she would not allow any kind of abuse to take place in her home. However, less than a month later, Jakhari appeared in school with bruises on his head, face, and lip, which were graver than the injuries he had sustained just a month earlier in February 2012. Accordingly, under this record, the circuit court properly recognized that "the severity of Jakhari's injuries persisted," and that as a result of Troy Jr.'s

actions and the respondent's failure to protect him, Jakhari was in fact, at a substantial risk of injuries that would "cause death, disfigurement, impairment of physical or emotional health or loss or impairment of any bodily functions." 705 ILCS 405/2-3(2)(i), (ii) (West 2010)). Contrary to the respondent's assertions, the circuit court was not obliged to wait for those injuries to actually constitute "disfigurement" or "physical or emotional impairment" to be able to find that Jakhari was at a substantial risk of such injuries in the future. See *In re Walter B.*, 227 Ill. Appl. 3d 746, 757 (1992) ("the court need not and should not wait for repetitious behavior deleterious to a child's well-being before taking ameliorative and prophylactic action.")

¶ 59 The same evidence that supports the circuit court's findings of abuse due to excessive corporal punishment and a substantial risk of physical injury as to Jakhari, also supports the circuit court's finding that the State proved, by a preponderance of the evidence, that all three minors, Jakhari, Shakyrh and Troy III, were neglected due to an injurious environment. Pursuant to section 2-3(1)(b) of the Act, a neglected minor includes any child under age 18 whose environment is injurious to his welfare. 705 ILCS 405/2-3(1)(b) (West 2010); *In re Gabriel E.*, 372 Ill. App. 3d 817, 823 (2007). Generally, neglect is defined as the failure to exercise the care that circumstances justly demand and encompasses both wilful and unintentional disregard of parental duty. *In re Gabriel E.*, 372 Ill. App.3d at 822; *In re Arthur H.*, 212 Ill. 2d 441, 463 (2004). "Injurious environment" has been interpreted to include "the breach of a parent's duty to ensure a 'safe and nurturing shelter' for his or her children." (Internal citations omitted.) *In re Arthur H.*, 212 Ill. 2d at 463. However, "because the concepts of 'neglect' and 'injurious environment' have no fixed meaning and take their content from the

particular circumstances of each case, each case involving such allegations must be decided on the basis of its unique facts." *In re Malik B.-N.*, 2012 IL App (1st) 121706, ¶ 52.

¶ 60 In the present case, the circuit court noted that the two younger minors, Shakyrah and Troy III, were present at home during the February 2012 incident when Troy Jr. beat Jakhari with a belt. The court observed that even though Shakyrah and Troy III were never physically harmed themselves, living in a home where their sibling was continually subjected to "punching, belts, striking, leaving abrasions and marks" placed them in an injurious environment as well. The court explained that such violence "is completely inappropriate as a discipline method for a six-year-old or for any child," and concluded that where this was a permitted form of discipline, all of the minors were residing in an environment injurious to their welfare. We find nothing manifestly erroneous in this conclusion. See *In re Malik B.-N.*, 2012 IL App (1st) 121706, ¶ 52.

¶ 61

III. CONCLUSION

¶ 62 For all of the aforementioned reasons, we affirm the judgment of the circuit court.

¶ 63 Affirmed.