

Judgment rendered August 26, 2026.
Application for rehearing may be filed
within the delay allowed by Art. 2166,
La. C.C.P.

No. 57,072-JAC

COURT OF APPEAL
SECOND CIRCUIT
STATE OF LOUISIANA

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STATE OF LOUISIANA
IN THE INTEREST OF
C.Y.
L.Y.

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Appealed from the
Forty-Second Judicial District Court for the
Parish of DeSoto, Louisiana
Trial Court No. 5113

Honorable Amy Burford McCartney, Judge

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T.H., Mother

* * * * *

Before STEPHENS, THOMPSON, and MARCOTTE, JJ.

MARCOTTE, J.

This Rule 5 appeal arises from the 42nd Judicial District Court, Parish of DeSoto, the Honorable Amy Burford McCartney presiding. The father, Samuel Yount, appeals a judgment of disposition by the trial court adjudicating his minor children as children in need of care and adopting a case plan placing the children with their maternal aunt. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

The minor children at issue in this matter, C.Y. (DOB 08/03/2010) and L.Y. (DOB 10/04/2016), are the biological children of Mr. Yount and Tracey Hightower. Mr. Yount and Mrs. Hightower were previously married, and their divorce was finalized in July 2021. Custody of the two minor children is being litigated in the First Judicial District Court, Caddo Parish, Louisiana.

On September 9, 2025, the State of Louisiana through the Department of Children and Family Services (“DCFS”) received a report involving alleged sexual abuse of C.Y. The report stated that C.Y.’s stepfather, Sean Hightower, “waxes the child’s vagina, comments on the color of her vagina, and anus.” The report further alleged that C.Y. masturbates in front of Mr. Hightower, and that Mrs. Hightower was aware of and/or a passive participant in the abuse. The report also included allegations that C.Y. was provided alcohol by the Hightowers. C.Y. underwent an emergency forensic interview at the Gingerbread House but made no disclosures.

During an interview with Rebecca Phillips, an investigator in the DCFS Child Welfare Unit, C.Y. reported that she and her 18-year-old friend sometimes walk around the Hightowers’ house nude and that the two minors

were provided with alcohol on Labor Day, causing both minors to vomit. L.Y. made no disclosures during his interview with Ms. Phillips. Mr. and Mrs. Hightower each made several admissions of inappropriate behavior involving C.Y. that occurred in their home. On September 15, 2025, the DeSoto Parish Sheriff's Office advised that Mrs. Hightower had admitted to witnessing her husband sexually abuse C.Y.

On September 16, 2025, an instant order was entered in this matter and the minor children were placed in the temporary custody of DCFS. The instant order was supported by an affidavit from Ms. Phillips, which outlined the allegations and investigations mentioned above. DCFS placed the children in the care of their maternal aunt, Melissa Kennington.

In the time leading up to removal, Mr. Yount appeared unannounced at the office of DCFS where he revealed the custody battle over the children in the First Judicial District Court, causing him to have heavily restricted, supervised access to C.Y. and L.Y., and his lack of a meaningful relationship with either child. A continued custody hearing was convened on September 17, 2025, where both parents stipulated there was probable cause to believe the children were in need of care at the time of their removal based upon the information contained within the affidavit submitted by DCFS. Mr. Yount wished to testify, which brought to the court's attention the estranged relationship between him and his children as well as the restrictive conditions of sight and sound supervision previously placed on his communications with C.Y. and L.Y. At the conclusion of the hearing, the court found probable cause that the minors were children in need of care at the time of their removal, continued them in the custody of DCFS, and set the matter for a Time to Answer hearing.

The state filed a petition on September 29, 2025, alleging the children should be declared in need of care. Reiterating the allegations contained in the affidavit against both parents, the state asserted that there was cause to believe the children could not be protected from neglect or safety threats if under parental custody. The parents entered denials at the Time to Answer hearing on October 14, 2025. All counsel agreed to an adjudication hearing date of November 12, 2025.

DCFS filed an amended report and a proposed case plan into the record on November 7, 2025. The report contained disclosures from the minor children that they did not feel comfortable around their father. The report also indicated that the children did not wish to continue visits and communications with their father. The case plan had a goal of reunification. The case plan also asserted that placement with the maternal aunt was the least restrictive, safest, and most appropriate setting available consistent with the best interests of the children. Placement with Mr. Yount was explored, but DCFS determined that he was not the best option at that time.

Included in the proposed case plan were reports from psychologists working with the children and the family. The first report was from Dr. Todd Lobrano. Dr. Lobrano prepared the report in conjunction with a court-ordered custody evaluation in the First Judicial District Court custody proceeding on or about January 3, 2023. It contained information regarding the marriage and divorce provided to him by Mr. Yount and Mrs. Hightower. Mrs. Hightower expressed concern that Mr. Yount was mentally abusive to the children, specifically noting concern with Mr. Yount's discipline techniques. Mr. Yount expressed concern that Mrs. Hightower and her family were influencing the children against him. Dr. Lobrano

recommended that Mr. Yount be awarded supervised visitation in accordance with the current schedule, with gradual increases to overnight visitations every other weekend and the removal of supervision upon completion of counseling and parenting courses.

The second report was from Antoinette Nieves, M.A., L.P.C. Ms. Nieves began providing counseling services to L.Y. in April 2025. Caregivers, including Mrs. Hightower and Mrs. Kennington, reported emotional changes in L.Y. surrounding phone calls and visits with Mr. Yount, including increased irritability, anger, emotional dysregulation, and episodes of defecating on himself. On October 28, 2025, Ms. Nieves opined that L.Y. exhibited significant emotional distress related to recent life transitions and recommended a comprehensive psychological evaluation and increased frequency of counseling sessions.

An adjudication hearing was scheduled to be conducted on November 12, 2025, and was continued until January 15, 2026, at the request of defense counsel. On January 12, 2026, Mrs. Hightower appeared for adjudication at a special setting requested by the state. Counsel for the state, Mrs. Hightower, and the children were present. Mr. Yount was not present, but nothing in the record indicates that counsel for Mr. Yount was notified of the special setting. Mrs. Hightower entered a stipulation that the children were in need of care and was advised that her presence was not necessary at the previously scheduled January 15, 2026, adjudication. The January 15, 2026, setting was then continued as the state could not obtain service on Ms. Phillips.

The adjudication hearing for Mr. Yount was conducted on February 10, 2026. The trial court heard the testimony of Ms. Phillips, DCFS

Supervisor Kimberly Carlton, and Mr. Yount. The court also had a discussion in chambers with both children in the presence of all counsel. No party objected to the in-chambers discussion, nor did any party request the discussion with the children be on the record.

Following argument of counsel, the court adjudicated the children in need of care. On February 10, 2026, a petition for third-party intervention and for visitation was filed on behalf of Tina McMillan-Sweat and Wendell Dean Sweat, the children's paternal grandparents. Their petition for intervention was granted on March 5, 2026.

This matter came before the trial court for a disposition hearing on March 5, 2026. A final report from DCFS and a proposed case plan, prepared on or about February 27, 2026, were introduced. The report noted that Mrs. Hightower was arrested on December 4, 2025, and charged with molestation of a juvenile and indecent behavior with juveniles. Mr. Hightower was also arrested on December 4, 2025, and charged with molestation of a juvenile, indecent behavior with juveniles, and sexual battery. The case plan goal remained reunification.

The trial court accepted the state's recommendation that the children remain in DCFS custody and adopted the proposed case plan. A written disposition judgment memorializing the trial court's ruling was signed on March 26, 2026. Specifically, the trial court found that DCFS had made reasonable efforts to prevent removal and reunify the family and that the case plan was in the best interests of the children and was the least restrictive disposition available. DCFS and the parents were ordered to comply with the case plan.

Mr. Yount now appeals.

DISCUSSION

Procedural Due Process

Mr. Yount argues that the child in need of care proceedings in this matter violated his procedural due process rights to the care, custody, and control of his children. He claims that the investigation performed by DCFS was flawed and that DCFS and Mrs. Kennington have been unwilling to facilitate a relationship between him and his children. Mr. Yount also claims that the trial court's actions in this matter have effectively overridden the orders of the First Judicial District Court and constitute a *de facto* termination of his visitation rights.

Mr. Yount contends that the delay in the child in need of care proceedings happened due to the state's inability to effect service of a subpoena on Ms. Phillips, and that this delay violated his rights *vis-à-vis* his children and damaged any potential reunification efforts with them. Mr. Yount also complains that the state was permitted to introduce new and previously unpled allegations of abuse against him during both the adjudication and disposition hearings. He claims that it was not alleged that his children did not feel safe with him until DCFS proposed an amended case plan on November 7, 2025. Mr. Yount asserts that these vague allegations, not even contained in the petition, were insufficient to permit him to prepare a defense. Mr. Yount further complains that the trial court's reasons for judgment clearly indicate that it considered its "talk" with the children in chambers that was not recorded or transcribed for the record.

The state asserts that the child in need of care proceedings in this matter did not violate Mr. Yount's procedural due process rights because he was present and testified at the continued custody hearing. The state further

notes that both parents stipulated to probable cause that the children were in need of care at the hearing.

It is well established within Louisiana that the trial courts in juvenile matters are in a unique position. The trial court hears the evidence presented and evaluates the credibility of the witnesses. As such, the decision of a trial court is entitled to great deference. *Rosell v. ESCO*, 549 So. 2d 840 (La. 1989). The health, safety, and best interest of the child is the paramount concern in all child in need of care proceedings. La. Ch. C. art 601; *State in Int. of Z.P.*, 52,354 (La. App. 2 Cir. 9/26/18), 255 So. 3d 727.

Here, the record reveals that Mr. Yount was provided timely notice of the continued custody hearing as evidenced by his appearance at the hearing. Mr. Yount was also provided a meaningful opportunity to be heard as evidenced by his extensive testimony at that hearing.

Mr. Yount's argument that the delay in the child in need of care proceedings damaged any potential reunification efforts made by him is belied by the actions of his counsel. In fact, the principal reason for delay in the proceedings was caused by Mr. Yount's counsel's requesting a continuance due to his planned vacation to the Bahamas. Moreover, when the state was unable to effectuate service on Ms. Phillips for the continued trial date, Mr. Yount's counsel informed the court that he "certainly" did not have an objection to a further continuance. We also note that this is a father who went over a year without contact or support and sporadically maintained a one-hour visitation schedule twice a month for approximately four years. Claiming that a delay in the proceedings harmed his reunification efforts appears to be unsubstantiated.

Regarding Mr. Yount's argument that the trial court overrode the custody order from the First Judicial District Court, Mr. Yount is simply incorrect on the law and appears to conflate the purpose of a child in need of care proceeding with a custody determination. We agree that the trial court has overridden the orders in the custody litigation but note that this is required by black letter law, specifically La. Ch. C. art. 303(A)(2), which grants courts exercising juvenile jurisdiction "exclusive original jurisdiction" over child in need of care proceedings.

Mr. Yount's assertion that he was blindsided by the abuse allegations rings hollow because the DCFS report submitted three months prior to the adjudication hearing included statements from the children that they do not feel safe or comfortable in Mr. Yount's presence. They also reported experiencing nightmares involving their father harming them or other family members.

From the very onset of this matter, abuse was indeed alleged. C.Y. expressed to the DCFS investigator that she does not have a relationship with her father and that she suffers from anxiety and depression due to the abuse she encountered when she was around him. In a counseling letter submitted by Ms. Nieves dated October 25, 2025 – four months prior to the adjudication hearing – it was recommended that Mr. Yount's visitation plan be reevaluated to prioritize L.Y.'s emotional safety and stability, due to his increased anxiety and behavior regression as a result of scheduled visitations. To later claim surprise at abuse allegations strains credulity. We do not find that these circumstances constitute a violation of Mr. Yount's due process rights. This assignment of error is without merit.

Child in Need of Care Adjudication

Mr. Yount contends that the trial court's adjudication of the minor children as children in need of care was manifestly erroneous because the state failed to prove by a preponderance of the evidence that the minor children were in need of care or that any of the grounds enumerated in La. Ch. C. art. 606(A) were applicable to him as the non-offending parent. He asserts that there was no evidence that the children were victims of abuse perpetrated by him or that the children's welfare would be seriously endangered if left within his custody and control. Mr. Yount also notes that there were no allegations of neglect or failure to provide the necessary food, clothing, shelter, medical care, or supervision by him.

The state argues that the trial court's adjudication of the minor children as in need of care was not manifestly erroneous. The state asserts that the testimony of Ms. Phillips and Ms. Carleton alone was sufficient to independently support the trial court's finding, but in addition to their testimony, Mr. Yount himself gave statements to DCFS that supported the trial court's ruling.

Title VI of the Louisiana Children's Code, i.e., La. Ch. Code arts. 601 to 725.6, sets forth the statutes regarding children in need of care. Louisiana Children's Code article 601 states the purpose of this Title is:

[T]o protect children whose physical or mental health, welfare, and safety is substantially at risk of harm by physical abuse, neglect, or exploitation and who may be further threatened by the conduct of others, by providing for the reporting of suspected cases of abuse, exploitation, or neglect of children; by providing for the investigation of complaints; and by providing, if necessary, for the resolution of child in need of care proceedings in the courts.

La. Ch. C. art. 601 adds that “[t]he health, welfare, safety, and best interest of the child shall be the paramount concern in all proceedings pursuant to this Title.”

La. Ch. C. art. 606(A) provides the grounds by which a child can be adjudicated a child in need of care. The main factor in La. Ch. Code art. 606(A) that is applicable to this case is:

- (1) The child is the victim of abuse perpetrated, aided, or tolerated by the parent or caretaker, by a person who maintains an interpersonal dating or engagement relationship with the parent or caretaker, or by a person living in the same residence with the parent or caretaker as a spouse whether married or not, and his welfare is seriously endangered if he is left within the custody or control of that parent or caretaker.

Adjudication of a child in need of care is warranted when a parent shows a repeated pattern of placing a child at risk. *State ex rel. L.M.*, 46,078 (La. App. 2 Cir. 1/26/11), 57 So. 3d 518; *State in Int. of A.A.*, 52,388 (La. App. 2 Cir. 11/14/18), 261 So. 3d 124, *writ denied*, 18-2060 (La. 1/28/19), 263 So. 3d 429. At the adjudication hearing, the state bears the burden of proving by a preponderance of the evidence that the child is a child in need of care. La. Ch. C. art. 665; *State ex rel. L.B.*, 08-1539 (La. 7/17/08), 986 So. 2d 62. It is not the duty of the state to prove its case beyond a reasonable doubt, by clear and convincing evidence, or to disprove every hypothesis of innocence. *State ex rel. L.M.*, *supra*; *State in Int. of A.A.*, *supra*. It is well settled that an appellate court cannot set aside a trial court’s findings of fact in the absence of manifest error or unless those findings are clearly wrong. *In re A.J.F.*, 00-0948 (La. 6/30/00), 764 So. 2d 47; *State ex rel. L.M.*, *supra*. In a manifest error review, it is important that the appellate court not substitute its own opinion when it is the trial court that is in the

unique position to see and hear the witnesses as they testify. *Id.* Where there is conflicting testimony, reasonable evaluations of credibility and reasonable inferences of fact should not be disturbed upon review, even when the appellate court may feel that its own evaluations and inferences are as reasonable as those of the trial court. *Id.* If the trial court's findings are reasonable in light of the record reviewed in its entirety, the appellate court may not reverse, even though convinced that had it been sitting as the trier of fact, it would have weighed the evidence differently. *State ex rel. L.M., supra; State in Int. of A.A., supra.*

After a thorough review of this record, we do not find the trial court's adjudicating C.Y. and L.Y. as children in need of care rises to a level of manifest error. The record shows the state proved C.Y. and L.Y. as children in need of care by a preponderance of the evidence through the testimony of Ms. Phillips and Ms. Carleton and through statements made by Mr. Yount himself. For instance, Mr. Yount gave information to DCFS, unsolicited, that he "was not a great parent at one time and there was some alleged abuse." According to testimony from Ms. Carleton at the adjudication hearing, Mr. Yount admitted to abuse of both C.Y. and L.Y. while he was in the home of Ms. Hightower. Mr. Yount also testified extensively during his case in chief. Mr. Yount acknowledged that in years prior, supervised visits were necessary because C.Y. was scared of him. Mr. Yount admitted the children had been resistant to visits with him in the years prior to their removal, including when he elected to "pause" visits with his children and relocate to San Antonio, Texas. He conceded both children have, prior to their removal by DCFS, told him they do not want to live with him. Mr. Yount acknowledged the "pause" as well as the limited supervised visits

were his own idea because the visits were not “actually beneficial for them,” leading the trial court to agree that Mr. Yount is estranged from his children. Mr. Yount admitted to a prior criminal conviction in 2018, wherein Ms. Hightower, C.Y., and L.Y. had been the named victims. Mr. Yount conceded that his relationship with C.Y. and L.Y. was “nonexistent.” This led the trial court to conclude there had been no meaningful relationship between the children and Mr. Yount in years. The trial court also had an in-chambers discussion with both children in the presence of all counsel. No party objected to the in-chambers discussion, nor did any party request the discussion with the children be on the record. Regardless, Mr. Yount’s own testimony supports the findings of the trial court. We find the state has carried its burden and that there is no evidence to warrant setting aside the trial court’s finding C.Y. and L.Y. as children in need of care. This assignment of error has no merit.

Placement of the Minor Children

Mr. Yount argues that the trial court’s judgment approving the recommended case plan and placement of the minor children with their maternal aunt was manifestly erroneous because the state failed to meet its burden of proving that the case plan was the least restrictive placement or was in the best interest of the children. He claims that public policy prohibits a child from being placed in the custody of a family member of their abuser. Mr. Yount argues that Mrs. Kennington, as the sister of Mrs. Hightower, one of the children’s abusers, and as a party who denies that Mrs. Hightower was involved in the children’s abuse, is an inappropriate placement for his children and is not the “least restrictive, most family-like, safe” setting available.

The state argues that the trial court's judgment of disposition approving the DCFS case plan and recommended placement of the minor children was in their best interest and was the least restrictive placement. The state notes that the determination of placement was based on whether the children could safely be placed with the father considering all circumstances, not simply his status as a non-offending parent. The state also points out that the children have been placed with their maternal aunt and uncle in DeSoto Parish, their home parish, since their removal.

La. Ch. C. arts. 673 and 675(A) provides that a case plan is required after a child is placed in DCFS custody and shall be designed to achieve placement in the least restrictive, most family-like, and most appropriate setting available, and in close proximity to the parents' homes, consistent with the best interest and the special needs of the child. La. Ch. C. art. 681 provides that when a child has been adjudicated in need of care, "the health, welfare and safety of the child shall be the paramount concern." If the child cannot safely remain in or return to the custody of the parent – even a "non-offending" parent – the court may place the child elsewhere. La. Ch. C. art. 682 similarly states that a child shall not be removed from parental custody unless "continuation in the home would be contrary to the health, welfare and safety of the child." Louisiana courts have applied these principles to deny custody to "non-offending" parents when placement with them would not be in the child's best interest. *See State in Int. of P.P.*, 23-38 (La. App. 3 Cir. 6/21/23), 368 So. 3d 250. In *State in Int. of P.P.*, *supra*, the court emphasized the determination was based on whether the child could safely be placed with the father considering all circumstances, not simply his status as a non-offending parent. In other words, the analysis focuses on the

child's safety in the placement, not the parent's status as "non-offending."

Existing relationships and bonds are critical factors in placement decisions.

State ex rel. T.M., 03-929 (La. App. 3 Cir. 3/24/04), 869 So. 2d 339.

To reverse a trial court's permanency plan determination, an appellate court must find from the record that the trial court's finding is clearly wrong or manifestly erroneous. *State in Interest of C.S.*, 49,955 (La. App. 2 Cir. 3/18/15), 163 So. 3d 193. The factors to be considered by the trial court when determining a child's best interests are located in La. C.C. art. 134(A).

The following nonexclusive factors applicable in this case are:

- (1) The potential for the child to be abused, as defined by La. Ch. C. art. 603, which shall be the primary consideration.
- (2) The love, affection, and other emotional ties between each party and the child;
- (7) The moral fitness of each party, insofar as it affects the welfare of the child;
- (8) The history of substance abuse, violence, or criminal activity of any party;
- (11) The reasonable preference of the child;
- (14) The responsibility for the care and rearing of the child previously exercised by each party.

Here, the record is clear that any positive emotional ties the minor children have toward Mr. Yount are nonexistent. This is likely due to the reported abuse they have suffered at his hands. There was a period of time when Mr. Yount completely abandoned his children, thereby tarnishing any relationship he could have had with them. There are reported instances where he has spanked C.Y. in excess that left bruises on her body. The record also shows that Mr. Yount admittedly slapped C.Y. across the face and left a handprint on her cheek. During another incident when Mr. Yount

and Mrs. Hightower were in yet another domestic dispute, L.Y., who was around four or five years old at the time, hid in a closet and called his maternal aunt for help because he was afraid. It appears from the record that Mr. Yount's children are reluctant to engage with him due to his volatile nature and history of abuse.

The children have been placed with their maternal aunt and uncle in DeSoto Parish since their removal, relatives with whom they have a close relationship and who live in the home parish of the children. Mr. Yount resides in Haughton, Bossier Parish, in a home where neither child has lived or spent a significant amount of time. Additional considerations of placement with Mr. Yount would require the children to enroll in schools they have never attended and live in an unfamiliar town. Mr. Yount testified that the children would do online schooling instead of remaining in DeSoto Parish schools; limited opportunities would then exist for the children to make new friends or engage in school-sponsored activities. According to Mr. Yount, C.Y. has met his teenage stepdaughter, with whom she would be forced to share a bedroom at his home, only once in the three years since he has remarried. Furthermore, testimony was received from DCFS that in their current placement with Ms. Kennington, the children are safeguarded against all forms of abuse, specifically emotional abuse.

Accordingly, we find ample evidence that placement of the minor children in Mr. Yount's home at this time would be contrary to their health, welfare, and safety, and that continuation in their maternal aunt's home is the least restrictive, most family-like, and most appropriate setting available. We do note that the case plan adopted by the trial court affords Mr. Yount a path to reunification with his children; we simply cannot find manifest error

in the trial court's decision that placement with him at this time is not in the children's best interest. This assignment of error is without merit.

CONCLUSION

For the reasons expressed, the trial court's judgments adjudicating the minor children as children in need of care and adopting a case plan placing the children with their maternal aunt are affirmed.

AFFIRMED.