

No. 1-15-3175

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

MICHAEL D.,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	No. 14 CH 09048
)	
ILLINOIS DEPARTMENT OF CHILDREN AND)	
FAMILY SERVICES; and BOBBIE GREGG,)	
in Her Capacity as Acting Director of the THE)	
ILLINOIS DEPARTMENT OF CHILDREN AND)	
FAMILY SERVICES,)	Honorable
)	Sophia H. Hall,
Defendants-Appellees.)	Judge Presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Presiding Justice Hoffman and Justice Cunningham concurred in the judgment.

ORDER

¶ 1 *Held:* We affirmed the final administrative decision denying plaintiff's request that the indicated finding of abuse entered against him in the state central register be expunged. We found no error in the ALJ's admission of hearsay evidence during the administrative hearing, or in the findings that plaintiff committed abuse by intentionally injuring the minor, impairing her physical health.

¶ 2 Plaintiff, Michael D., was living with his girlfriend, Tracy P., and her four daughters: 14-year-old C.C.; 12-year-old L.C.; 9-year-old K.C.; and 6-year-old I.C., when defendant, the Illinois Department of Children and Family Services (DCFS), received a call to the child abuse hotline stating that plaintiff had intentionally slammed a car door onto L.C.'s knee causing

bruising. Following an investigation, DCFS entered in the state central register an indicated report of abuse against plaintiff for allegation No. 11 of appendix B of DCFS's regulations, entitled: "Cuts, Bruises, Welts, Abrasions and Oral Injuries." 89 Ill. Adm. Code § 300, appendix B (Allegation 11) (2011). Plaintiff contested that finding, seeking to have it expunged. After a hearing, the administrative law judge (ALJ) determined that the preponderance of the evidence supported the findings of DCFS and recommended to the Director of DCFS (Director) that plaintiff's request be denied. The Director concurred, and plaintiff sought administrative review. The circuit court remanded for the ALJ to hear the testimony of L.C., who had not testified in the earlier hearing because her therapist indicated that L.C. was anxious and did not want to testify. Following L.C.'s testimony, the ALJ again recommended that plaintiff's request for expungement be denied, and the Director entered a final administrative decision concurring with the ALJ and denying plaintiff's request for expungement. On administrative review, the circuit court affirmed the final administrative decision. Plaintiff appeals. We affirm.

¶ 3

I. Background Information

¶ 4 The Abused and Neglected Child Reporting Act (Act) requires DCFS to maintain a central register of all cases of suspected child abuse or neglect. 325 ILCS 5/7.7 (West 2012). DCFS operates a 24-hour telephone hotline for persons to report suspected child abuse or neglect. *L.F. v. Department of Children and Family Services*, 2015 IL App (2d) 131037, ¶ 43. DCFS investigates all reports of suspected child abuse or neglect, classifying them as "indicated," "unfounded," or "undetermined." 325 ILCS 5/7.12 (West 2012).

¶ 5 A report is "indicated" when "an investigation determines that credible evidence of the alleged abuse or neglect exists." 325 ILCS 5/3 (West 2012). Credible evidence of child abuse or neglect "means that the available facts, when viewed in light of surrounding circumstances,

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would cause a reasonable person to believe that a child was abused or neglected." 89 Ill. Adm. Code 300.20.

¶ 6 Under the Act, as relevant here, a child is abused when any person responsible for the child's welfare, or any individual residing in the child's home, or a paramour of the child's parent:

"(a) inflicts, causes to be inflicted, or allows to be inflicted upon such child 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." 325 ILCS 5/3 (West 2012).

¶ 7 The administrative code lists specific allegations of harm that must be made before DCFS will accept a report of child abuse. 89 Ill. Adm. Code §300, appendix B (2011). Here, plaintiff was indicated under allegation of harm No. 11, which provides:

"Cuts, Bruises, Welts, Abrasions and Oral Injuries

Bruise

A bruise is an injury that results in bleeding under the skin, in which the skin is discolored but not broken. A bruise is also referred to as a contusion. ***

Factors To Be Considered

-Not every *** bruise *** constitutes an allegation of harm. The following factors should be considered when determining whether an injury that resulted in *** bruises*** constitutes an allegation of abuse or neglect:

-The child's age, mobility and developmental stage. Bruises on children younger than 6 months are suspicious due to the limited mobility often seen in children 0 to 6 months of age.

–The child's medical condition, behavioral, mental, or emotional problems, developmental disability, or physical handicap, particularly as they relate to the child's ability to seek help.

–A single incident or pattern or chronicity of similar events.

–The severity/extent of the ***bruises***.

–The location of the ***bruises***.

–The pattern of the injury.

–Whether the injury was caused by an instrument used on the child.

–Previous history of indicated abuse or neglect, or history of previous injuries."

¶ 8 Plaintiff requested DCFS to expunge the indicated report from the central register. 325 ILCS 5/7.16 (West 2012). When DCFS refused, he exercised his right to an administrative hearing before the ALJ to determine whether the report should be expunged. *Id.* DCFS bore the burden of proving that a preponderance of the evidence supported the indicated finding. *Shilvock-Cinefro v. Department of Children and Family Services*, 2014 IL App (2d) 130042,

¶ 21.

¶ 9 II. The Administrative Hearing

¶ 10 At the administrative hearing, Steven C. testified he has four daughters: C.C.; L.C.; K.C.; and I.C. and, that his ex-wife, Tracy P., is their mother. Plaintiff is Tracy's boyfriend. Evidence was presented that during the divorce and custody proceedings between Tracy and Steven, Steven reported to DCFS that Tracy's boyfriend at the time (who was not plaintiff) had abused I.C., but the report was "unfounded" by DCFS.

¶ 11 Steven testified that on September 4, 2013, his children were visiting with him at his home at around 4 p.m. when L.C. showed him a bruise on her right knee and said that it was

caused by plaintiff intentionally slamming a car door on her leg and knee. When he slammed the car door on her, plaintiff stated: "How does that feel, you little bitch."

¶ 12 L.C. told Steven she had not told Tracy about the incident because she did not think Tracy would believe her.

¶ 13 Steven took L.C. to the police station to file a report. The next day, September 5, Steven received an emergency order of protection on behalf of his four children against plaintiff. A plenary order of protection was entered on October 17, 2013, on behalf of Steven's children against plaintiff for two years, until October 15, 2015. Pursuant to the protection order, plaintiff could not come within 200 feet of the girls.

¶ 14 Steven testified that between September 4, 2013, when the investigation was initiated, and December 9, 2013, when it concluded, L.C. expressed her fear of plaintiff on more than one occasion. K.C. and I.C. have also expressed their fear of plaintiff.

¶ 15 Officer Michael Lorenz testified that L.C. and Steven came to the police station on September 4, 2013. L.C. had a black and blue "golf ball size bruise on the inside of the right knee." L.C. stated that the bruise was the result of plaintiff intentionally slamming a car door on her right leg. When he slammed the car door on her, plaintiff told L.C.: "How does that feel, you little bitch." L.C. appeared frightened when recounting how the injury occurred, and she stated she was afraid of plaintiff.

¶ 16 Lynn Coit, a child protection specialist with DCFS, testified she was assigned to the case on September 4, 2013. Ms. Coit spoke with L.C. at her school on September 5, 2013. Officers Lorenz and Witherow also were present during her interview with L.C.

¶ 17 Ms. Coit observed "substantial" bruising on both sides of L.C.'s right knee. L.C. explained that prior to the injury, she had been at a restaurant with her four sisters, Tracy, and

plaintiff. L.C. argued with her family while at the restaurant, during which she accidentally shut the restaurant door on plaintiff. Plaintiff yelled at L.C. for shutting the door on him, and when they exited the restaurant and got to their car, plaintiff intentionally slammed the car door on her right leg and told her: "How do you like that now, you bitch."

¶ 18 Ms. Coit spoke with K.C. and I.C. together at their school on the same day, September 5. K.C. stated she saw plaintiff slam the car door on L.C.'s right leg and she thought he did so intentionally "by the look on his face." Plaintiff also told K.C. and I.C. to slam their door on L.C.'s leg "to teach her a lesson." They refused to do so.

¶ 19 Similarly to K.C., I.C. stated that she saw plaintiff slam the car door onto L.C.'s right leg and she thought he did so intentionally "by the look" on his face. Prior to slamming the car door on L.C.'s leg, plaintiff told I.C. to slam her car door on L.C.'s leg "to teach her a lesson."

¶ 20 Ms. Coit also spoke with C.C. at her school on the same day. C.C. stated that she saw plaintiff slam the door onto L.C.'s right leg, and that judging from the "mean look on his face," plaintiff did so intentionally. C.C. stated she was afraid of plaintiff and that she did not like him because "he was rude and yelled a lot."

¶ 21 Ms. Coit spoke with Tracy on September 5 in the principal's office at the school, and Tracy stated she was not aware that L.C. had been injured until a couple of days after the car door slammed on her: "when they were at the kitchen table and [L.C.'s] leg was up and she saw the bruising and asked about it." Ms. Coit did not recall Tracy making any statements regarding the cause of the bruising.

¶ 22 Ms. Coit spoke by phone with plaintiff on September 5. Plaintiff told her that the car door hit L.C. by accident and "he doesn't know how it occurred."

¶ 23 Detective Geoffrey Witherow testified he interviewed L.C. on September 5, 2013, along with Ms. Coit. During the interview, L.C. stated that she and her three sisters, along with Tracy and plaintiff, went to a restaurant the previous weekend. On the way out of the restaurant, L.C. was holding the outside door but lost her grip, and the door struck plaintiff. Plaintiff yelled at her.

¶ 24 When they got to their car, L.C. sat in the passenger-side, back seat. She still had her right foot on the ground of the parking lot. Plaintiff intentionally slammed the car door on L.C.'s right leg and knee in retaliation for her having accidentally hit him with the restaurant door. Plaintiff said "something to the effect of 'how does that feel' and then she said he called her a 'little bitch.' " Detective Witherow observed that L.C. had a "golf ball size" bruise on the inside of her right knee and on the outside of her right knee.

¶ 25 L.C. told Detective Witherow she was afraid of plaintiff because he had intentionally slammed the car door on her right knee. She was also afraid of Tracy because when she misbehaves, Tracy "gets in her face and screams at her."

¶ 26 After talking with L.C., Detective Witherow and Ms. Coit drove to C.C.'s school to speak with her. However, Detective Witherow had to leave the room to take a phone call, so he did not hear any statements C.C. made regarding L.C.'s injury.

¶ 27 Later that afternoon, Detective Witherow spoke with Tracy in the principal's office of K.C.'s and I.C.'s school. Tracy stated she first learned of L.C.'s bruise a day or two after the car door slammed on her, when the family was having dinner and L.C. lifted her leg onto a chair and Tracy saw the bruise. Tracy asked how she got the bruise, and L.C. responded that plaintiff "closed the door on my knee." Tracy told plaintiff to apologize to L.C. there at the dinner table, and he did so. Tracy told Detective Witherow that the injury to L.C.'s knee was accidental.

¶ 28 Detective Witherow did a background check on plaintiff and found a report in which he had been accused of domestic battery against Tracy in July 2013.

¶ 29 Plaintiff testified that on September 1, 2013, he went out to lunch with Tracy and her four daughters. At the restaurant, L.C. was pouting about their move to a new house and about the room-sharing arrangement. Plaintiff chastised L.C., telling her she would have to share a room with C.C.

¶ 30 As they left the restaurant, L.C. opened the outside door, walked out, and "let the door slam in [K.C.'s] face while [K.C.] was walking out with the leftovers." Plaintiff admonished L.C., telling her she was rude for slamming the door in K.C.'s face. L.C. pouted and walked to the car, a four-door Chevy Blazer.

¶ 31 Plaintiff and L.C. walked to the passenger side of the car, and L.C. "flung" the back door open. The door hit plaintiff in the hip, causing a bruise. L.C. then "pulled the door closed on her leg as [plaintiff] was reaching for the front door and [plaintiff] had [his] hand on top of the passenger door to try to catch it." Plaintiff apologized to L.C. and said: "now you know how [K.C.] feels." Plaintiff denied calling L.C. a "bitch."

¶ 32 On September 5 or 6, Officer Lorenz came to plaintiff's house and asked to speak with him regarding the "incident" with L.C. Plaintiff refused to speak with the officer in the absence of his attorney. Plaintiff subsequently learned a warrant had been issued for his arrest with regard to the incident with L.C., and he turned himself in. The case was later dismissed without prejudice.

¶ 33 Plaintiff does not believe any of the children are afraid of him, but he no longer resides with them due to the plenary order of protection entered against him.

¶ 34 Plaintiff testified that in December 2013 or January 2014, he pleaded guilty to simple battery for striking Tracy on her nose.

¶ 35 At the hearing, plaintiff played a DVD showing the car door in question swinging shut of its own accord after being swung open forcefully.

¶ 36 Tracy testified that on September 1, 2013, she, plaintiff, and her four children went out to lunch at a restaurant, and as they were leaving, L.C. allowed the restaurant door to close on K.C. Plaintiff verbally reprimanded L.C. When they got to the car, plaintiff and L.C. went to the passenger side while Tracy and the other children went to the driver's side. As L.C. began to get into the back seat, she "yanked the car [door] open" and the door hit plaintiff on the hip and then the door bounced back and hit L.C. on her right leg. Tracy explained that the car door has a broken spring causing it to sometimes bounce back after it has been opened. Tracy heard plaintiff tell L.C.: "now you know how [K.C.] feels." Tracy learned a couple of days later that L.C. had received a bruise on her right knee as a result of the car door hitting her.

¶ 37 Tracy testified she is aware of the statements her children made accusing plaintiff of intentionally slamming the car door on L.C. About a week after the statements were made, Tracy spoke with C.C. who said she made the statement accusing plaintiff of intentionally slamming the door on L.C. because L.C. had made the same statement, and C.C. felt the sisters should "stick together." C.C. told Tracy she does not actually think plaintiff intentionally slammed the door on L.C. and that she is not fearful of plaintiff.

¶ 38 About two or three weeks after the children's statements against plaintiff were made, Tracy spoke with L.C., who said that "this entire thing has gotten so blown out of proportion." L.C. said she made her initial accusations against plaintiff to her dad because she was angry with plaintiff for how he was "setting up the rooms in the house." L.C. told Tracy that she had not

wanted to go to the police station, and that when she was there, she made the statement against plaintiff because she thought that is what her dad wanted her to say.

¶ 39 Tracy also spoke with I.C., who denied making any statements against plaintiff to Ms. Coit.

¶ 40 Each of the children (except for I.C.) wrote letters saying they missed plaintiff and did not believe he intentionally harmed L.C.

¶ 41 Tracy testified that L.C. previously has made false accusations against family members. For example, L.C. once falsely accused her grandfather of locking her in a closet, and she once falsely accused Tracy of slapping her in the face.

¶ 42 Tracy further testified that in July 2013, she and plaintiff had an argument while they were throwing a party for one of her daughters, and plaintiff hit Tracy on the nose with his elbow while trying to get some keys from her. Tracy sought and received an order of protection against plaintiff for three days, from "Friday to as soon as the courthouse opened Monday morning." Tracy had the order of protection vacated on that Monday and she has not sought any other orders of protection against plaintiff.

¶ 43 Melissa Loesch testified she is L.C.'s personal therapist. Ms. Loesch first met L.C. on January 9, 2014, and they have had six sessions together. On February 18, 2014, they had a conversation regarding the September 1, 2013, incident in which the car door slammed on her right knee. L.C. told Ms. Loesch that plaintiff had slammed the car door on her, but that it was an accident.

¶ 44 Ms. Loesch testified that L.C. is "anxious" and did not want to testify at the administrative hearing. Based on L.C.'s age and on Ms. Loesch's testimony regarding her anxiety, the ALJ denied plaintiff's request to call L.C. to testify.

¶ 45 C.C. testified she and her three sisters, along with Tracy and plaintiff, went out for lunch on August 31, 2013¹. She did not remember anything unusual happening as they left the restaurant.

¶ 46 As they approached the car, C.C. entered the driver's side, while L.C. entered the passenger side. C.C. initially testified she did not see the car door hit either plaintiff or L.C., but later she testified she did see the door slam on L.C.'s leg. C.C. did not see how the car door closed, nor did she hear plaintiff call L.C. a "little bitch." She did not hear plaintiff apologize to L.C. in a sarcastic tone of voice. The next day, L.C. told C.C. that plaintiff slammed the car door onto her leg and then apologized to her sarcastically. L.C. showed her the bruise on her right knee.

¶ 47 C.C. remembered being interviewed at school by the police and by Ms. Coit. Ms. Coit asked C.C. if plaintiff scared her, and she said no. C.C. felt like Ms. Coit wanted her to say that plaintiff scared her. C.C. did not remember telling Ms. Coit and the police officer that she saw plaintiff intentionally slam the car door on L.C.'s leg.

¶ 48 C.C. originally believed L.C. when she said that plaintiff intentionally slammed the car door on her leg, but now C.C. believes it was an accident because L.C. has admitted she was mad when she made the accusations against plaintiff. C.C. testified that when L.C. gets mad, she "lies a lot" and will "do something to make the other person look bad."

¶ 49 After hearing all the evidence, the ALJ issued its recommended decision. The ALJ found that DCFS met its burden of proving that plaintiff committed a specific harm against L.C. as described in allegation 11 of Appendix B of DCFS's regulations that resulted in abuse as described in section 3 of the Act. Specifically, the ALJ found that on September 1, 2013, L.C.

¹ All the other witnesses agree that the lunch and ensuing incident with the car door occurred on September 1, 2013, *not* August 31, 2013.

let the restaurant door slam shut on plaintiff and on K.C., and that plaintiff was mad at L.C. for letting the restaurant door slam in his face, and he yelled at her. When they returned to the car, plaintiff inflicted physical injury on L.C. by slamming the car door on her right leg, leaving bruises on both sides of her knee. The ALJ found that plaintiff acted intentionally when slamming the car door on L.C.'s leg, because he called her a "little bitch" immediately after it occurred and he encouraged K.C. and I.C. to slam their door on L.C.'s leg, and because K.C., I.C., and C.C. told Ms. Coit on September 5, 2013, that they also thought plaintiff acted intentionally as he was angry at the time and he had a "mean look" on his face.

¶ 50 The ALJ rejected plaintiff's argument that the incident occurred accidentally and that the Chevy Blazer had a defective hinge. In so finding, the ALJ noted that plaintiff "has a history of anger and violence within this family" and that less than two months earlier he had been charged with domestic battery for striking Tracy in the nose and that he pleaded guilty to battery and was placed on supervision. The ALJ also found that the DVD plaintiff prepared to show how the car door hinge works did not support his argument, as "[t]he door appears to work properly."

¶ 51 Accordingly, the ALJ recommended the denial of plaintiff's request that the "indicated" finding against him in the state central register be expunged.

¶ 52 Plaintiff filed a complaint for administrative review, and the circuit court remanded for the ALJ to hear L.C.'s testimony.

¶ 53 On remand, L.C. testified she remembered going out to lunch with plaintiff, Tracy, and her sisters on September 1, 2013, because they were celebrating moving into a new house. L.C. described her mood during lunch as "fine." She was not upset about anything.

¶ 54 L.C. did not remember walking out of the restaurant, or if she was carrying anything, or who she was walking out with when she exited. She did not remember which side of the car she

entered. She did remember opening the car door, which hit plaintiff and then bounced back and hit her in the knee. She did not cry out when the door hit her. About two or three days later, a golf-ball sized bruise appeared on her knee. She did not know if Tracy saw the door hit her knee; she did not think her sisters saw it happen.

¶ 55 L.C. testified she does not think plaintiff closed the door on her knee on purpose. When asked why not, L.C. testified: "Because accidents happen." L.C. stated she is not afraid of plaintiff.

¶ 56 On September 4, 2013, L.C. went to her dad's, Steve's, house and he asked her how she had bruised her knee. L.C. told him she was not quite sure, but she thought plaintiff might have caused it by closing the car door on her. Steve "freaked out" and took her to the police station. L.C. spoke to the police, but she did not remember what she told them. L.C. also testified she did not remember telling the police and Ms. Coit in September 2013 that plaintiff intentionally slammed the car door on her right leg and knee and called her a bitch.

¶ 57 Following L.C.'s testimony, the ALJ found that her testimony "was unhelpful" as she was a reluctant witness who "was not definitive about anything except [the] fact that the SUV door hit her leg and left her with a bruise." The ALJ "found the statements [L.C.] made at or near the time of the event in question to be more reliable" and again recommended the denial of plaintiff's request that the indicated finding in the state central register be expunged. The Director concurred, and on administrative review the circuit court affirmed.

¶ 58 Plaintiff appeals. Judicial review here is governed by the Administrative Review Law (735 ILCS 5/3-101 *et seq.* (West 2012)). " 'In the case of an administrative review action, we review the findings of the ALJ during the administrative hearing and not the decision of the

circuit court.' " *Shilvock-Cinefro*, 2014 IL App (2d) 130042, ¶ 22 (quoting *Slater v. Department of Children & Family Services*, 2011 IL App (1st) 102914, ¶ 28)).

¶ 59 First, plaintiff contends the ALJ erred in admitting Ms. Coit's investigative file containing contact notes relating, in pertinent part, her conversations with the children. During Ms. Coit's testimony, the ALJ allowed her to refresh her recollection with the contact notes contained in the investigative file. Plaintiff argues that the investigative file, and Ms. Coit's testimony regarding her conversations with the children, were all hearsay and should not have been admitted. We review the ALJ's admission of the investigative file and of Ms. Coit's testimony for an abuse of discretion. *McCleary v. Board of Fire and Police Commission of the City of Woodstock*, 251 Ill. App. 3d 988, 997 (1993).

¶ 60 DCFS procedures are governed by the Illinois Administrative Procedure Act (Procedure Act) (5 ILCS 100/1-1 *et seq.* (West 2012)). See *Julie Q. v. Department of Children and Family Services*, 2011 IL App (2d) 100643, ¶ 47. Under the Procedure Act: "[t]he rules of evidence and privilege as applied in civil cases in the circuit courts of this State shall be followed. Evidence not admissible under those rules of evidence may be admitted, however, (except where precluded by statute) if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs." 5 ILCS 100/10-40(a) (West 2012).

¶ 61 DCFS has promulgated rules granting the ALJ the authority to "conduct a fair, impartial and formal hearing in which the strict rules of evidence do not apply." 89 Ill. Adm. Code § 336.120(b)(1). DCFS's rules also state that the ALJ may "allow into evidence all evidence helpful in determining whether an alleged perpetrator abused or neglected a child, including oral and written reports, which the Administrative Law Judge and the Director may rely upon to the

extent of its probative value, even though not competent under the civil rules of evidence." 89 Ill. Adm. Code § 336.120(b)(9).

¶ 62 The appellate court has held that the "clear meaning of these provisions is that the ALJ is permitted to rely on hearsay in reaching a decision, although such evidence would not be admissible under the rules of evidence." *Montalbano v. Illinois Department of Children and Family Services*, 343 Ill. App. 3d 471, 478-79 (2003). Thus, the admission of Ms. Coit's investigative file, and her testimony regarding the children's statements to her, even though hearsay, was not an abuse of discretion under the administrative rules and under *Montalbano*.

¶ 63 Plaintiff argues that the administrative rules are void, though, because they improperly extend or alter the scope of the Procedure Act by allowing the admission of all hearsay evidence, as opposed to the Procedure Act (5 ILCS 100/10-40(a) (West 2012)), which only allows hearsay evidence "of a type commonly relied upon by reasonably prudent men in the conduct of their affairs." See *Julie. Q.*, 2011 IL App (2d) 100643, ¶ 35 (holding that agency rules cannot extend or alter the scope of the enabling statute, and that rules failing to conform to the enabling statute are void *ab initio*).

¶ 64 Even assuming, without deciding, that the administrative rules improperly extended the scope of the Procedure Act, we would still affirm the ALJ's admission of the hearsay evidence, where the contact notes contained in the investigative file, and Ms. Coit's testimony, related to her interviews with L.C., Tracy, plaintiff, and the other children regarding the incident in question, which is precisely the type of hearsay a reasonably prudent person would rely on in determining whether child abuse occurred. Plaintiff contends that some of the contact notes were not made close in time to the actual conversation discussed in those notes; however, any

delay in making the contact notes goes to the weight to be given to those notes, not to their admission.

¶ 65 Plaintiff argues that *Julie Q.* compels a different result. In *Julie Q.*, the ALJ admitted hearsay evidence of the notes of a former DCFS investigator relating to her interview with the minor child who had accused her mother, a recovering alcoholic, of locking her in a bedroom and drinking. *Julie Q.*, 2011 IL App (2d) 100643, ¶ 17. The appellate court noted that under the Procedure Act, such hearsay was admissible only if of a type commonly relied on by reasonably prudent persons in the conduct of their affairs. *Id.* ¶ 48. The appellate court held that the hearsay admitted by the ALJ did not fit this definition, where the minor's school had identified the minor as having behavioral issues related to untruthfulness and where the DCFS investigator did not testify at the hearing. *Id.*

¶ 66 In the present case, Tracy and C.C. testified that L.C. has, at times, been untruthful in the past. However, Tracy's and C.C.'s testimony was contradicted by Steven, who testified that L.C. was "always very honest and tells the truth. [L.C.] is not somebody who makes something up." There was no evidence that any of the other children who were the subject of Ms. Coit's contact notes and whose interviews she testified to, had a history of untruthfulness. Further, contrary to *Julie Q.*, Ms. Coit testified at the administrative hearing. Accordingly, *Julie Q.* is factually inapposite and does not compel a finding that the ALJ abused its discretion in admitting the hearsay evidence at issue.

¶ 67 Next, plaintiff argues that the Director erred in adopting the ALJ's finding that plaintiff acted intentionally when slamming the car door on plaintiff's right leg and knee. It is the responsibility of the administrative agency to weigh the evidence, determine the credibility of the witnesses, and resolve conflicts in the testimony. *Hurst v. Department of Employment Security*,

393 Ill. App. 3d 323, 329 (2009). We will not reverse the agency's factual finding unless it was against the manifest weight of the evidence, meaning only if the opposite conclusion is clearly evident. *Abrahamson v. Illinois Department of Professional Regulation*, 153 Ill. 2d 76, 88 (1992).

¶ 68 There was conflicting evidence presented to the ALJ regarding whether plaintiff intended to hit L.C. with the car door. Steven testified that L.C. told him on September 4, 2013, that on September 1, 2013, plaintiff had intentionally slammed the car door on her right leg and knee and said: "How does that feel, you little bitch." Steven took L.C. to the police station to file a report. Officer Lorenz testified to seeing a golf-ball sized bruise on the inside and outside of L.C.'s right knee, and that L.C. told him plaintiff had intentionally slammed the car door on her right leg and called her a bitch. Ms. Coit interviewed L.C. on September 5 and saw the "substantial" bruising on both sides of her right knee. L.C. stated to Ms. Coit that plaintiff had gotten mad at her on September 1, 2013, because she accidentally shut a restaurant door on him, and that in retaliation he intentionally slammed the car door on her right leg and said: "How do you like that now, you bitch." Ms. Coit also spoke with K.C., I.C., and C.C. on September 5, 2013, and they all told her that they saw plaintiff slam the car door on L.C.'s right leg and that they thought he did so intentionally given the mean look on his face when doing so. K.C. and I.C. also stated that plaintiff had encouraged them to slam their car door on L.C.'s leg but that they refused to do so. Detective Witherow, who was present with Ms. Coit during some of her interviews with the children, similarly testified to seeing the bruise on the inside and outside of L.C.'s right knee, and to L.C. testifying that plaintiff intentionally slammed the car door on her right leg in retaliation for her having accidentally hit him with the restaurant door.

¶ 69 In contrast, plaintiff testified to the accidental nature of the injury, which was caused when L.C. "flung" open the car door, causing it to strike plaintiff, after which she pulled the door closed on her leg even as plaintiff put his hand on top of the door in an attempt to stop it from striking L.C. Tracy similarly testified that L.C. yanked the car door open, causing it to hit plaintiff and then bounce back and hit L.C. on her right leg. Tracy testified that the car door had a broken spring causing it to sometimes bounce back after it has been opened; plaintiff provided a DVD of the car door swinging shut after being forcefully opened. Tracy further testified that two or three weeks after the children's statements against plaintiff were made, she spoke with L.C., who stated everything had been "blown out of proportion" and that she made her initial accusation against plaintiff because she was mad at him for how he was setting up the rooms in their new house. Subsequent to their statements against plaintiff, all the children except for I.C. wrote letters saying they missed plaintiff and did not believe he intentionally harmed L.C. C.C. testified she no longer thinks plaintiff intentionally slammed the car door on plaintiff because L.C. has admitted she was mad when she made the accusations against plaintiff. Ms. Loesch testified L.C. told her on February 18, 2014, that plaintiff had slammed the car door on her, but that it was an accident. L.C. testified on remand that she does not think plaintiff closed the door on her knee on purpose.

¶ 70 In its initial decision, the ALJ found L.C.'s initial statements to Steven, Officer Lorenz, and Ms. Coit regarding the intentional nature of plaintiff's slamming the car door on her, as well as C.C.'s, K.C.'s and I.C.'s initial statements to Ms. Coit corroborating L.C.'s claim of intentional behavior by plaintiff, to be more credible than their later recantations and more credible than plaintiff's and Tracy's testimony regarding the accidental nature of the injury. In rejecting plaintiff's claim that the incident was an accident, the ALJ also noted plaintiff's "history of anger

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and violence within this family," having pleaded guilty to battery for striking Tracy in the nose two months earlier. The Department adopted the ALJ's factual findings and denied plaintiff's request to expunge the indicated finding in the state central register.

¶ 71 After the cause was remanded, and L.C. testified to the accidental nature of the incident, the ALJ found her testimony to be "unhelpful" given the tentative nature of many of her answers and her inability to recall that she told Ms. Coit and the police officers during her interviews with them that plaintiff intentionally slammed the car door on her. The Department adopted the ALJ's factual findings and again denied plaintiff's request to expunge the indicated finding in the state central register.

¶ 72 As discussed, it was the province of the administrative agency to weigh the evidence, determine the credibility of the witnesses, and resolve conflicts in the testimony. *Hurst*, 393 Ill. App. 3d at 329. The ALJ's credibility determinations, adopted by the Director, caused it to find that plaintiff acted intentionally when slamming the car door on L.C. The findings of the ALJ and the Director were not against the manifest weight of the evidence.

¶ 73 Finally, plaintiff contends the Director erred in adopting the ALJ's finding that his intentionally slamming the car door on L.C. constituted "abuse" under the Act. Our review is for whether the finding of abuse was clearly erroneous. *Shilvock-Cinefro*, 2014 IL App (2d) 130042, ¶ 31. A decision is clearly erroneous "when the reviewing court is left with the definite and firm conviction that a mistake has been committed." *American Federation of State, County and Municipal Employees, Council 31 v. Illinois State Labor Relations Board*, 216 Ill. 2d 569, 577-78 (2005).

¶ 74 "[A]n indicated finding of abuse should be made where there is a specific harm as described in appendix B that results in abuse as described in section 3 of the Act." *Shilvock-*

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Cinefro, 2014 IL App (2d) 130042, ¶ 29. As discussed earlier in this order, the ALJ made a finding, adopted by the Director, that plaintiff committed a specific harm described in allegation No. 11 in Appendix B when he intentionally slammed the car door on L.C.'s right leg and knee, causing substantial bruising to the inside and outside of L.C.'s right knee which remained for several days after the initial impact. See 89 Ill. Adm. Code § 300, appendix B (Allegation No. 11) (2011) (describing intentional, substantial bruising of a child caused by an instrument, here, a car door, as a specific incident of harm that can rise to the level of abuse under section 3 of the Act). The ALJ made another finding, adopted by the Director, that plaintiff's intentional slamming of the car door on L.C., substantially bruising the inside and outside of her right knee "caused pain and impairment of [L.C.'s] physical health," resulting in abuse as described in section 3 of the Act. See 325 ILCS 5/3 (West 2012) (defining abuse as a physical injury inflicted on the child by the paramour of the child's parent, causing impairment of physical or emotional health). The finding of abuse was supported by L.C.'s initial statements to Steven, Officer Lorenz, and Ms. Coit, and by the initial statements of K.C., I.C., and C.C. to Ms. Coit, regarding the intentional nature of plaintiff's slamming the car door on L.C.'s right knee, as well as by the evidence of the resulting significant bruising on the inside and outside of plaintiff's right knee, and was not clearly erroneous.

¶ 75 For the foregoing reasons, we affirm the circuit court.

¶ 76 Affirmed.