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2017 IL App (3d) 160089-U

Order filed March 14, 2017

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2017

<i>In re</i> P.I.,)	Appeal from the Circuit Court
)	of the 10th Judicial Circuit,
a Minor)	Peoria County, Illinois.
)	
(The People of the State of Illinois,)	
)	
Petitioner-Appellee,)	Appeal No. 3-16-0089
)	Circuit No. 14-JA-282
v.)	
)	
ERIK I. and JESSICA I.,)	Honorable
)	Albert Purham,
Respondents-Appellants).)	Judge, presiding.

JUSTICE CARTER delivered the judgment of the court.
Justice Wright concurred in the judgment.
Justice McDade specially concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court's error in refusing to allow relevant evidence of the minor's medical history was not harmless under the facts of this case.
- ¶ 2 The State filed a petition alleging that P.I., the 20-month-old son of respondents, Jessica I. and Erik I., was neglected in that his environment was injurious to his welfare. The allegations of an injurious environment were based on a theory of anticipatory neglect, with the State

alleging that three-month-old L.B. had incurred abusive injuries while in the care Jessica and Erik, who were in the process of adopting L.B. The trial court adjudicated P.I. neglected and made him a ward of the court. The trial court subsequently entered a dispositional order finding Jessica and Erik fit and awarding them guardianship of P.I. Jessica and Erik appealed the trial court’s adjudication finding of neglect. We reverse and remand for a new adjudication hearing.

¶ 3

FACTS

¶ 4

Jessica and Erik adopted P.I. shortly after his birth. P.I. had been exposed to drugs *in utero*. When P.I. was approximately 18 months old, Jessica and Erik began the process of adopting newborn L.B. L.B. had also been exposed to drugs *in utero*. She was born on July 2, 2014. After a 41-day stay in the Neonatal Intensive Care Unit (NICU), L.B. was discharged into the care of Jessica and Erik, with her adoption pending.

¶ 5

On November 3, 2014, the State of Illinois filed a juvenile petition, which was subsequently amended, alleging that 20-month-old P.I. was neglected in that his environment was injurious to his welfare. In the petition, the State alleged that: (a) between October 1 to 27, 2014, three-month-old L.B. resided in the same home as P.I. and L.B. had been diagnosed with “bruising to the cheek, right ear hematoma, scalp bruising, right arm bruising, an intraparenchymal hemorrhagic contusion in the anterior left frontal lobe with peripheral edema, a non-displaced linear fracture of the right parietal bone, and a left convexity scalp contusion”; (b) Jessica and Erik were L.B.’s custodians and intended to adopt L.B., but they had no plausible explanation for the cause of L.B.’s injuries other than the possibility that 20-month-old P.I. may have bit L.B.’s ear, threw a toy at her, and hit her on the head; (c) L.B.’s biological mother had surrendered her parental rights as to L.B.; (d) L.B.’s biological father had surrendered his parental rights as to L.B.; (e) L.B.’s biological mother had substance abuse problems with drugs;

(f) L.B.'s biological father had substance abuse problems with drugs; (g) L.B.'s biological mother had a criminal history that included the manufacturing and delivery of a controlled substance and possession of a controlled substance; (h) L.B.'s biological father had a criminal history of driving under the influence of drugs, possession of a controlled substance, and the manufacturing and delivery of cannabis; and (i) L.B. was diagnosed with non-organic failure to thrive due to inadequate calories provided by Jessica and Erik.¹

¶ 6 On August 10, 2015, the State entered into evidence 1800 pages of L.B.'s medical records. The medical records included L.B.'s birth records, records of her 41-day stay in the NICU, and her hospital records from October 27 to October 31, 2014. The State also introduced into evidence collagen diagnostic testing of L.B., genetic testing of L.B., records from L.B.'s pediatric primary care physician, and audio recordings of the police interviews of Jessica and Erik.

¶ 7 A. L.B.'s Medical Records

¶ 8 L.B.'s medical records show that she was born almost one-week past her due date, via a Cesarean-section (C-section), on July 2, 2014. L.B.'s biological mother had taken methadone and was suspected of using heroin during her pregnancy with L.B. L.B.'s biological mother received late prenatal care, which complicated her pregnancy. She also tested positive for Group B streptococcus (GBS) (a bacterial infection) but did not receive antibiotics until the day of L.B.'s delivery.

¹ On March 2, 2015, the trial court ordered that Jessica and Erik be stricken as parties from L.B.'s pending abuse case, finding that Jessica and Erik had no legal standing to remain a party in her case because they had no legal relationship to L.B., either as parents, custodians, or otherwise.

¶ 9 At birth, L.B. was diagnosed with Neonatal Abstinence Syndrome (NAS) as a result of her drug withdrawal symptoms (high pitched cry, hyperactive Moro reflex, tremors, hypertonicity, and poor feeding). She also had a family history of the genetic disorder Osteogenesis Imperfecta (brittle bone disease).

¶ 10 On July 3, 2014, the day after her birth, L.B. was transferred to a NICU for the administration of methadone treatments due to the severity of her withdrawal symptoms. A Department of Child and Family Services (DCFS) investigation was opened due to her drug exposure. L.B. did not receive many visits from her biological family during her first month of life. On July 31, 2014, L.B.'s biological parents surrendered their parental rights as to L.B. Jessica and Erik were chosen as L.B.'s potential adoptive parents.

¶ 11 L.B.'s NICU records indicated that L.B.'s biological mother had done illicit drugs, smoked, and drank alcohol during her pregnancy with L.B. L.B. was given methadone treatments and "ad-lib/demand feedings." L.B. did not tolerate initial attempts to wean her from the methadone treatments. At the time of her admission to the NICU, L.B. weighed 2880 grams (6 pounds 5 ounces), which placed her in the 25th percentile on the weight growth chart.

¶ 12 On August 3, 2014, nurses' notes indicated, "a small raised reddened circular area noted on forehead between [L.B.'s] eyes." On August 5, 2014, it was noted that L.B. had a heart murmur that radiated to her sides.

¶ 13 On August 6, 2014, a genetic consultation of L.B. indicated that it would be ideal to get records of "molecular testing" of those individuals in L.B.'s biological family affected by Osteogenesis Imperfecta and to proceed with "targeted mutation analysis testing." It was recommended that L.B. have a follow up with genetics three months after her discharge, "or

earlier if clinically indicated or abnormal lab results.” The genetic consultation report indicated that she was “at risk for altered growth and development” in her “active problems” list.

¶ 14 On August 8, 2014, a skeletal survey of L.B. was taken. The results indicated that there was “no radiographic evidence of Osteogenesis Imperfecta.”

¶ 15 On August 11, 2014, L.B. received her last dose of methadone. On August 13, 2014, she was discharged into Jessica and Erik’s care while the finalization of her adoption was pending. At discharge, L.B. weighed 4650 grams (10 pounds 4 ounces).

¶ 16 On Monday, October 27, 2014, Jessica and Erik brought L.B. to her pediatrician, Dr. Aaron Traeger, because L.B.’s right ear was swollen and she also had a cold. Traeger examined L.B. and sent her the hospital via ambulance.

¶ 17 At 2:10 p.m., L.B. was admitted into the hospital and examined by Dr. Michele Beekman for “right ear swelling, right sided facial rash and URI [upper respiratory infection] symptoms.” Jessica reported that she had noticed the right ear swelling a week prior and was concerned that 20-month-old P.I. may have bitten or hit L.B. on the ear. Over the course of the week, L.B. had also become congested and developed a low-grade fever and a bilateral facial rash with redness and yellow pinpoint bumps on her cheeks. The fever resolved within a day or two, but the right-side cheek redness remained with some scabbing. Jessica also reported that a bruise on L.B.’s right forearm was from a bite from P.I. and that P.I. had thrown a plastic toy at the left side of L.B.’s head, which produced swelling and bruising above L.B.’s left ear. Jessica also reported that L.B. ate well in the NICU but had since slowed down and did not seem as hungry.

¶ 18 Beekman indicated that L.B. was reportedly being fed “6 ounces of standard calorie formula, 5-6 bottles per day.” Beekman noted her concern regarding L.B. dropped in percentiles for weight. She also noted that L.B. was in “no acute distress, well hydrated, smiles and [was]

interactive and happy.” Beekman indicated L.B. had swelling above the left ear with an overlying bruise, which was tender to the touch (referred to as “scalp swelling/hematoma”). She also indicated L.B.’s right ear was “swollen with a purple hue underlying the skin,” which was tender to the touch (referred to as right ear hematoma). She further noted a “2x2 cm” non-blanching red circular area on L.B.’s right cheek with a skin abrasion in the center and a brown bruise on L.B.’s right forearm. L.B. had a regular heart rate with no murmurs. Beekman ordered a CT scan of L.B.’s head. Beekman was concerned about non-accidental trauma as the cause of L.B.’s injuries and “failure to thrive” regarding her drop in percentiles for weight.

¶ 19 A resident doctor, Noman Shahid, also examined L.B. He indicated that the right ear swelling appeared to be consistent with “a hematoma” and noted the right-sided facial rash was a “skin lesion consistent with bruising secondary to trauma.” Jessica told Shahid that she was “90% positive” that P.I. had bit L.B. on the right ear and that, over the course of the week, the swelling on L.B.’s right ear persisted, L.B. came down with a cold and fever, and L.B. developed a bilateral facial rash that evolved into a darker rash that only persisted on the right cheek. Jessica pointed out “left temporal swelling” to Shahid and explained that P.I. had thrown a toy at L.B. Shahid reported that L.B. was “playful,” the left temporal swelling was “not warm to touch,” and the right ear swelling was not warm or tender to the touch. Shahid specifically indicated that he palpated the swollen part of L.B.’s right ear with no reaction from L.B. He noted Mongolian spots on L.B. and the bruise on her right wrist, which Jessica indicated was from a bite from P.I.

¶ 20 On October 27, 2014, intravenous (IV) fluids were administered to L.B. (a dextrose and sodium chloride solution). L.B. was ordered to be given nothing by mouth for periods of time in preparation for certain procedures—a CT scan, an MRI, and ear surgery.

¶ 21 CT scan “findings” indicated a likely hemorrhagic contusion and edema in the left frontal lobe of L.B.’s brain; a linear fracture on the top of the right parietal bone of L.B.’s skull extending over the right convexity; small lucent lines that “may” represent small fractures on the left parietal bone of L.B.’s skull; a thin, very small bone (“linear ossicle”) next to the left-sided coronal suture; soft tissue swelling involving the right ear; and “scalp soft tissue swelling and stranding of the superior right convexity overlying the parietal bone fracture.” The following “impressions” of the CT scan findings were reported: (1) a brain bleed; (2) a fracture in the right parietal bone of L.B.’s skull, possible smaller fractures in the parietal bone of L.B.’s skull, and a possible small fracture near the left side coronal suture; (3) “a left convexity scalp contusion”; (4) “focal hypodensity” on the top of the right ear, which “may represent a soft tissue blister/bulla which may be traumatic (including sequelae from “bug bite”)”; and (5) possible expanded sutures, which “can be seen in connective tissue disorders, metabolic disorders, or any type of bone resorption.”

¶ 22 L.B. was referred to Dr. Channing Petrak for further evaluation because abuse could not be ruled out as a cause of L.B.’s injuries. Petrak noted in her records that L.B. had been reported to have been fed six ounces of formula every three hours and she was sleeping through the night. Petrak described L.B.’s skin as having green bruising with mild swelling above left ear, greenish bruising above right ear, a swollen right ear that was tender to the touch, an area of abrasion and bruising with surrounding redness on her right cheek, red/brown bruises on her right wrist, an area of peeling skin on her hand near her wrist, and Mongolian spots on her sacrum, buttocks, hips and ankles. Petrak indicated “ear hematomas are due to direct trauma” and “[b]ruising anywhere on an infant under 4 months of age is highly suspicious for abuse.” Petrak indicated that “[a] toddler [was] not able to cause the bruising noted on L.B.’s scalp and ear.” Petrak noted

that the CT scan showed a brain bleed in the left side of the frontal lobe and a skull fracture, which she indicated were suspicious for nonaccidental trauma.

¶ 23 On the morning of October 28, 2014, Dr. Lauren Cummings examined L.B. and noted the swelling in the temporal region above L.B.'s left ear and described L.B.'s right cheek as having a "circular, erythematous lesion" with central "scabbing" that was non-blanching. She also noted the brown bruise on L.B.'s right forearm. Dr. William Edwards noted "bruising and swelling right face and ear with significant swelling pinna." An ophthalmologist examined L.B.'s eyes, noting there were no hemorrhages and concluding there was "[n]o retinal evidence of nonaccidental trauma."

¶ 24 A plastic surgeon was consulted and recommended surgical drainage of L.B.'s right ear. Upon examination of L.B., the plastic surgeon noted L.B. was in "no distress" and there was a "rash/abrasion present on right cheek."

¶ 25 A brain MRI was performed on L.B. to assess the abnormalities found on the CT scan. The MRI findings indicated:

"Mild prominence bifrontal extra-axial subarachnoid spaces [which are the spaces between the skull bones]. There is atrophy involving [the front of the brain]. There is susceptibility effect along the pial surface of the brain consistent with superficial siderosis [excess iron in the blood]. There is susceptibility effect *** within the subjacent juxtacortical and mid/periventricular white matter. *** It most likely represents breakdown products of hemorrhage/hemosiderin deposition. *** I think it is less likely that this represents acute hemorrhage. *** [T]he lack of restricted diffusion involving the frontal low foci is consistent with chronicity.

There is susceptibility effect along *** the cerebellar tonsils. *** There is subtle T1 shortening. T2 hypointensity. This could represent early subacute or more chronic breakdown products of hemorrhage.

*** Specifically, no evidence for gliosis/shearing injury.”

¶ 26 The MRI findings also indicated “a subtle asymmetric scalp thickening over the right superior parietal convexity that corresponds to the right parietal bone fracture.”

¶ 27 The MRI impressions were reported as: (1) atrophy in the front of the brain, “slit-like/linear areas of susceptibility effect” more prominent on the left, and susceptibility effect consistent with superficial siderosis that indicated a suspicion of a manifestation of trauma “(associated axonal shearing injury)” or complication from inflammatory/ infectious or prothrombotic etiologies, with the findings “not felt to represent acute injury”; (2) an altered signal within the cerebellar tonsils, which may represent sequelae from a subacute/chronic trauma or prior pressure necrosis due to tonsillar herniation; (3) prominent bifrontal extra-axial/subarachnoid spaces; (4) a fluid-filled cyst on the top of the right ear, which may represent a posttraumatic cyst; and (5) mucosal redundancy/thickening.

¶ 28 A DNA diagnostic test was done on L.B. for Osteogenesis Imperfecta. The results indicated that she did not have the Osteogenesis Imperfecta mutation in the COL1A1 or COL1A2 gene but a “variant” of unknown significance was identified in the COL1A1 gene. The report indicated, “[t]he exact variation has not been previously reported and the biological significance of this alteration at this exact location is unknown.” The report further indicated that the variant was located in a “region where there is little variation.” The report referenced conflicting sources—one source indicating the variant “may be tolerated at this location in COL1A1” and the other source indicating that such an alteration would be “probably damaging.”

¶ 29 Another skeletal survey of L.B. was performed on October 28, 2014, which showed the right parietal skull fracture that had appeared on the CT scan. The skeletal survey also showed a forked left fifth rib developmental variant, with no evidence of acute or subacute rib fractures. The report indicated that, other than the known right parietal skull fracture, there was no other evidence of acute or subacute skeletal injuries. The report also noted a “diastasis of the sutures compared to the prior study, correlating with the known intracranial pathology.”

¶ 30 On the morning of October 29, 2014, Shahid noted that L.B.’s “rash” on her right cheek had improved. That day, L.B. underwent surgery for drainage of the swelling in her right ear.

¶ 31 On the morning of October 31, 2014, Shahid indicated that L.B. had “lost weight,” which he noted may have been attributable to her having been ordered to have nothing by mouth, but he also noted that she had been given IV fluids. L.B. had loss 6.5 ounces from the previous day. That afternoon, L.B. was discharged from the hospital and placed with a new foster family. At discharge, L.B. weighed 11 pounds and 5.7 ounces, indicating an overall weight gain of 7.4 ounces (210 grams) during her hospital stay.

¶ 32 B. Testimony of Dr. Channing Petrak

¶ 33 At the adjudication hearing, Dr. Channing Petrak testified for the State. Petrak testified that she is the medical director of the Pediatric Resource Center in Peoria, Illinois, which is “a community service program” that is “designed to provide medical evaluations and advocacy for children when there’s a concern for child abuse or neglect.” She found abuse or neglect in about 40 % of the cases she reviewed. The State offered Petrak as an expert witness in the field of pediatric medicine and child abuse medicine, with no objections.

¶ 34 Petrak testified that testing was performed on L.B. for certain bleeding disorders, which showed that L.B. did have those bleeding disorders. Genetic testing showed that L.B. did not

have Osteogenesis Imperfecta but she was “heterozygous for a variant that was of clinical unknown significant.” Petrak explained that the hemorrhagic contusions in L.B.’s brain (brain bleed) could be caused from shear injuries to the brain or from the brain hitting the skull, or a combination of both. A hemorrhagic contusion from “shear injuries” occurs where the “brain matter and wet matter” do not move at the same rate and shear against each other. Petrak testified that shear injuries of the brain do not occur in many accidental mechanisms, other than large car crashes or “very large falls” where the brain is moving at a high velocity and then strikes the skull. Petrak testified the only explanation from Jessica and Erik for L.B.’s brain injuries was that P.I. had possibly thrown a toy at L.B.’s head. Petrak opined that a toddler could not throw a toy, hit, or head butt a baby with enough force to cause a shear injury. Petrak testified that shaking a baby or shaking a baby with a soft or blunt impact could cause shearing injuries. Petrak noted that L.B. had bruising on her scalp on the left and right sides above the ear that indicated “some sort of impact,” meaning that L.B.’s head would have hit something with significant force. Petrak did not know if the incident that caused the bruising was the same incident that caused “the shearing injury.” Petrak testified that a history was not provided to explain the brain bleed and, in her opinion, to a reasonable degree of medical certainty, the cause of L.B.’s brain bleed was “abusive head trauma.”

¶ 35 According to Petrak, the CT scan of L.B.’s head showed a “nondisplaced linear fracture line of the right parietal bone” at the top of L.B.’s skull. Petrak testified that the skull fracture could not be aged because skull fractures do not heal like other fractures. Petrak testified there was no overlying swelling over the fracture that indicated the skull fracture was recent. Petrak testified that the skull fracture could have been caused accidentally but there was no fall history reported. She testified that an older child throwing a very heavy toy with significant force could

have possibly caused such a skull fracture, but she opined that 20-month-old P.I. was not big enough to “throw with any significant force.” Petrak indicated that the type of non-accidental trauma that could cause such a skull fracture would be an “impact,” such as “being hit in the head or thrown.” Petrak indicated that a short fall (three or four feet) could have also caused the skull fracture. She explained that it did not take a significant force to cause a parietal skull fracture. Petrak testified that the combination of the skull fracture, brain bleed, and the bruising on L.B. led her to opine, to a reasonable degree of medical certainty, that the skull fracture was inflicted upon L.B. “because there was absolutely no accidental history for it.”

¶ 36 Petrak also testified regarding the “left convexity scalp contusion” found on L.B., which Petrak explained was “swelling or a contusion that could be seen on CT over the left part of the scalp.” Petrak testified, “the medical literature tells us, really you cannot age bruising, based on appearance alone.” Petrak indicated that the bruising on the scalp could have been caused accidentally but there was no history of a fall. She also testified the scalp bruising could have been the result of a medical condition but testing did not indicate that L.B. had any of the bleeding disorders for which she had been tested. Petrak testified the external scalp bruising and the internal brain bleed were not necessarily connected. Petrak opined that a toddler throwing a toy would not cause the left-side scalp bruising. Petrak opined, to a reasonable degree of medical certainty, that L.B.’s scalp contusion was inflicted.

¶ 37 Petrak testified that the MRI showed a loss brain of volume in the frontal areas of L.B.’s brain and “slitlike findings” consistent with a shear injury. Petrak further testified the MRI also showed an altered signal within L.B.’s cerebellar tonsils, which “implied that there had been injury in that area of the brain.” Petrak testified that the injury that caused the loss of brain tissue was a prior injury and was not acute.

¶ 38 Petrak testified that L.B. had a significantly swollen right ear, which Petrak indicated was “unusual in an infant.” She indicated that bruising on the ear is very specific for an “abuse injury” because the ear does not bruise easily. Petrak opined that an impact of a significant force caused the swelling in L.B.’s right ear and that, to a reasonable degree of medical certainty, the ear injury was the result of child abuse. Petrak testified, “[t]here was no history of a bug bite” in respect to L.B.’s ear.

¶ 39 Petrak also opined to a reasonable degree of medical certainty that the mark on L.B.’s cheek was a bruise with an overlying abrasion. Petrak described the abrasion as having “little lines that had scabs” similar to a “rug burn.” Petrak testified that bruising should not happen to a child of L.B.’s age because “[t]hey cannot generate the velocity to injure themselves.” She testified that infants “rarely have bruises.” She opined, to a reasonable degree of medical certainty, that the bruise on L.B.’s cheek was inflicted upon L.B.

¶ 40 Petrak also testified that L.B. had “bilateral scalp bruising,” which was greenish bruising on both sides of L.B.’s scalp. Petrak opined the bruising was inflicted and due to child abuse. She also indicated there was no way to age the bruising.

¶ 41 Petrak testified that L.B.’s right ear swelling had been present for seven to nine days and would have been painful, so that Jessica and Erik’s failure to take L.B. to the doctor for her ear condition constituted medical neglect. Petrak did not know when Jessica and Erik had called Traeger’s office to make an appointment.

¶ 42 Petrak also diagnosed L.B. with failure to thrive, which she indicated was defined in the medical profession as occurring when a child crosses two percentile lines on the growth chart. For DCFS, failure to thrive is defined as a child falling below the 5th percentile. Petrak indicated that some kids are always below the 5th percentile and are healthy, but if a baby is not

growing and is “falling off the growth curve” she questions whether there could be “an organic reason.” Petrak considered the amount of calories that L.B. had been reportedly fed while in the care of Jessica and Erik and considered how much weight L.B. gained when she was subsequently in the hospital when fed roughly the same amount of calories. Petrak testified, “[L.B.] gained weight in the hospital with no difficulty, and the amount of calories that she was apparently provided [in Jessica and Erik’s care] would have been adequate for growth, and yet, her weight just ke[pt] falling to below the 5th percentile.” Petrak opined, to a reasonable degree of medical certainty, that L.B. had no organic reason for “failure to thrive” in Jessica and Erik’s care.

¶ 43 On cross-examination, Petrak testified that cocaine exposure *in utero* can lead to bleeding in the brain but “[t]ypically, not the opiates.” At birth, L.B. tested positive for methadone, opiates (heroin, vicodin, etc.), codeine and morphine. Petrak testified that whether a drug-exposed baby develops slower than other children “depends on the amount of drugs that they had exposure to [and] the length of time of exposure.” She indicated that drug exposed babies do not “necessarily” develop slower but “certainly their development should be watched closely” because slower development was possible. Petrak testified extensive drug use *in utero* could lead to problems with development and “[y]ou’d want to watch the development.”

¶ 44 Additionally on cross-examination, Petrak indicated that L.B.’s genetic testing showed a variance, “which was of unknown clinical significance,” meaning that “nobody knew what that meant clinically” but it was connected with Osteogenesis Imperfecta and some other genetic connective tissue disorders. Petrak indicated that there were no abnormalities found within L.B.’s collagen or procollagen, indicating that L.B. did not have the Osteogenesis Imperfecta

disease. She also testified that “expanded sutures,” as referenced in L.B.’s CT scan report, was an indication of Osteogenesis Imperfecta.

¶ 45 Petrak further testified on cross-examination that she did not know whether the injury in L.B.’s brain (atrophy and brain bleed) and the skull fracture occurred at the same time. Petrak could not age the brain injury. Petrak also indicated that if the fracture had been overlooked on the skeletal survey of August 8, 2014, it should have been healing by the time of the subsequent skeletal survey on October 28, 2014.

¶ 46 When cross-examined about L.B.’s failure to thrive diagnosis, Petrak testified that L.B. was in fact gaining weight in the care of Jessica and Erik but “not appropriately” because L.B. was not maintaining “her percentile.” Petrak acknowledged L.B. had some feeding problems when she was in Jessica and Erik’s care and that they had needed to change her formula because of a feeding intolerance. She also acknowledged that L. B. had been given IV fluids during her five-day hospital stay.

¶ 47 C. Testimony of Dr. Daniel Cousin

¶ 48 Dr. Daniel Cousin was presented as an expert witness in general radiology by Jessica and Erik. Cousin testified that he has read thousands of images for pediatric patients under the age of five. Cousin examined the skeletal survey of L.B. from August 8, 2014, and indicated there was a “subtle finding” of a “linear lucency” in the same region of the skull as the fracture that appeared on the subsequent skeletal survey taken on October 28, 2014. He testified, “[t]he reason I know it’s the same fracture is because it’s in the same location, it’s oriented the same direction, and then it takes a turn, and there’s an obtuse angle.” He indicated that the fracture was very difficult to see on the skeletal survey of August 8, 2014, until the images were blown up. Even then, the fracture was a “subtle finding” but was “definitely there.” Cousin opined, to

a reasonable degree of medical certainty, that L.B.'s skull fracture was present on the skeletal survey of August 8, 2014, but it had been missed by the radiologist.

¶ 49 Cousin also testified that the CT scan report, referred to “expanded sutures,” which was a “differential for connective tissue disease.” Cousin further testified that a hallmark in radiology of non-accidental trauma is finding fractures at various stages of healing, but there were no radiographic findings of any fractures on L.B. other than the skull fracture. There was no radiographic indication of abuse, such as findings of broken ribs, periosteal reactions in long bones, region fractures, spiral fractures, or retinal hemorrhages. Cousin opined that L.B.'s injuries were not indicative of non-accidental trauma, noting that L.B.'s skull fracture was present while L.B. was still in the NICU, prior to her being discharged into Jessica and Erik's care.

¶ 50 D. Testimony of Dr. Aaron Traeger

¶ 51 Dr. Aaron Traeger, L.B. and P.I.'s pediatrician, testified that his medical practice sees a lot of drug exposed babies and he had “quite a bit of experience with it.” On August 15, 2014, Traeger examined L.B. two days after she was released from the NICU, and noted that she was growing and developing normally. L.B. was taking four ounces of formula every three hours, with some regurgitation of the formula. L.B. weighed 10 pounds and 2.56 ounces, which placed her in the 50th percentile for weight.

¶ 52 On August 27, 2014, Traeger examined L.B. for another routine checkup. L.B. weighed 10 pounds and 5.1 ounces, placing her in the 30th percentile for weight growth. At that time, L.B. was eating four ounces of soy formula every four hours. Traeger noted that L.B. was doing well, looked good, and her “weight gain has been just fine.” He was not concerned about L.B.'s

growth and nutrition because he believed L.B. would begin to gain weight at her own pace and pick up her own growth curve.

¶ 53 On October 27, 2014, Traeger saw L.B. for a sick visit regarding her ear. Jessica and Erik reported the top of L.B.'s right ear was initially slightly swollen but had progressively worsened over the course of the week. L.B. also became congested with a runny nose and a slight temperature, and with her cheek becoming red and irritated. Jessica and Erik were not sure whether the irritation on the right cheek "was from tummy time or if brother was too rough with her." They also indicated that P.I. was going through a "biting stage" and had bitten L.B. Jessica did not believe P.I. caused the marks on L.B. but she could not be sure because he was "always in her face." Traeger was concerned about L.B.'s right facial bruise and the condition of her right ear. He was not sure whether minor trauma to L.B. could have caused those injuries in light of L.B.'s family history of Osteogenesis Imperfecta. He thought it was possible for P.I. to cause bruising on L.B. because toddlers can grab, pinch, or fall on someone, which would cause bruising. He thought L.B. getting a rug burn on her cheek from rubbing her face on the ground during tummy time was a possible cause of the friction marks on her cheek. He also noted that L.B.'s ear did not appear bruised and there was "no tenderness to palpation of the mastoid around the ear." L.B. did not seem bothered by him touching her ear. He also noted a well-healed area on L.B.'s right arm that Jessica had reported was caused by P.I. biting L.B. Traeger found no bruising on L.B.'s head.

¶ 54 Traeger felt that the explanation for the condition of L.B.'s ear swelling was insufficient for him to be able to rule out a non-accidental trauma. He arranged for L.B. to go to the hospital in Peoria to determine whether L.B. needed surgical repair of her ear. He sent L.B. to the hospital by ambulance because there was a concern for possible child abuse. The protocol when

an abuse concern arises is to send the child to the hospital via ambulance to eliminate the risk of anybody leaving. Traeger testified that Jessica and Erik were very cooperative during the two-hour wait for the ambulance.

¶ 55 Traeger testified that from August 15 to 27, 2014, L.B. had gained .21 ounces per day, on average, and had dropped to the 30th percentile in weight. At the visit on October 27, 2014, L.B. was in the 3rd percentile for weight. Traeger described L.B. as “happy, and active, feeding normally.” He was still not immediately concerned with L.B.’s weight, especially because he was more concerned with her right ear swelling. Traeger would have followed up with Jessica and Erik regarding L.B.’s weight at her next scheduled well-check visit the following week, but he did not see L.B. or P.I. again. Traeger opined that babies should generally gain .5 to 1.0 ounces per day but each baby grows at his or her own rate. He noted that L.B. was gaining weight and feeding well. Traeger would not consider the fact that L.B. was diagnosed with NAS as a big factor in her weight fluctuation given that she was outside the window of active withdrawal symptoms, “unless there was something else wrong with her neurodevelopmentally that [he was] not aware of yet.” He testified that it was not uncommon with drug exposed babies to think things are going well “and then you start to find out, no, there has been more damage there then [sic] you could have identified initially.” He also testified that when babies are in the hospital they lie there, breathe, and are fed, but after they are discharged there is more going on around them and their preferences may change and their growth may slow.

¶ 56 Erik’s trial counsel attempted to question Traeger regarding P.I.’s similar weight progression, but the trial court sustained the State’s objection. Erik’s attorney gave the following offer of proof:

“I was just going to ask [Traeger] about the weights of P[I.] when he—he’s been—well, first of all, he’s a drug-exposed baby. That his weight would indicate that at—I believe it was September of 2013 he was a 1 percent in weight baby, when he had been higher on some occasions, and then after that. And now I think he’s up to 84 percent, as of August 27, 2014.”

In sustaining the State’s objection, the trial court indicated that P.I.’s weight progression was not relevant or probative “to what’s going on with L.B.” The trial court did not allow evidence regarding P.I.’s weight progression either by way of Traeger’s testimony or by way of P.I.’s medical records.

¶ 57

E. Jessica’s Testimony

¶ 58

Jessica testified that on October 19, 2014, she was in the playroom with the kids and P.I. was spinning around with a hard, plastic toy in his hand, with his arms outstretched. P.I. fell on top of L.B. as he was spinning and accidentally struck L.B. on the left side of her head with the hard toy. Jessica testified that there had been a few biting incidents by P.I. around that same time. That evening, Jessica noticed a small bump on L.B.’s right ear. She thought that P.I. had possibly bitten L.B. because the timing coincided with the timing of P.I.’s biting attempts. The day prior to Jessica noticing the bump on L.B.’s ear, L.B. had suddenly started crying when P.I. was near her. Jessica took photos of L.B.’s ear and texted it to her mother and sister-in-law, who was a nurse. Jessica and Erik were not immediately concerned about L.B.’s ear and were going to keep an eye on it. Both children got colds with congestion and low-grade fevers later that same week. On Wednesday, Erik and Jessica noticed a rash on L.B.’s cheeks. Jessica and Erik continue to monitor L.B.’s ear “pretty closely.” L.B.’s ear vacillated between getting better and

getting worse, but did not seem to bother L.B. Jessica and Erik felt around L.B.'s ear, with no indication of tenderness. L.B. did not cry when they did so.

¶ 59 On Thursday, October 23, 2014, Jessica and Erik called Traeger's office and described L.B.'s condition. An appointment was scheduled for Monday morning, October 27, 2104. Over the weekend, Jessica and Erik took P.I. and L.B. to an orchard, went to a Halloween party at a local park, and had professional family photographs taken outdoors. L.B.'s cheek rash turned into dried skin and became "scratchy." Photographs that Jessica had taken of L.B. were entered into evidence, including photographs of L.B.'s ear during the week of October 19, 2014.

¶ 60 Jessica testified that she had chosen Traeger as the pediatrician for the kids because they were drug-exposed babies and he had experience with drug-exposed babies. Jessica was concerned with the L.B.'s rate of weight gain and had discussed the issue with Traeger. Traeger told Jessica that L.B. was creating her own growth curve. Jessica and Erik followed Traeger's recommendations for L.B.'s feedings.

¶ 61 Jessica testified that when L.B. was discharged from the NICU into Jessica and Erik's care, L.B. was a little behind developmentally in that she did not have the strength to hold her head up at six-weeks old. In order to help L.B. gain strength, several times a day Jessica would lay L.B. on her stomach on a mat or on the carpet to encourage L.B. to lift up her head and strengthen her neck—"tummy time." By the end of October, L.B. could hold her head up and roll over onto her back.

¶ 62 Jessica testified that after Traeger examined L.B. on October 27, 2014, Jessica rode with L.B. in the ambulance to the hospital. L.B. was happy and smiling in the ambulance. At the hospital, Jessica explained to the doctors the progression of L.B.'s ear condition and tried to show them photographs. The doctors, including Petrak, did not look at the photographs. DCFS

made contact with Jessica and Erik later that evening and informed them they had to have an approved family member present if either of them were in the presence of L.B. or P.I.

¶ 63 Jessica testified that she normally worked from 6:00 a.m. until 2:30 p.m. Erik worked from 4:30 p.m. until 9:30 p.m. They did not place the kids in daycare.

¶ 64 F. Erik's Testimony

¶ 65 Erik testified that he and Jessica followed Traeger's instruction on feeding L.B. They fed L.B. every four hours like they had done with P.I. When L.B. was in the NICU, she was being fed on demand so that whenever she became upset she was given a bottle. After L.B.'s well-check visits, Traeger did not indicate that there was any concern regarding L.B.'s weight. Erik and Jessica had changed L.B.'s formula because L.B. had been spitting up the previous formula. As per Traeger's instructions, L.B. was most recently being fed six to eight ounces about every four hours.

¶ 66 Erik testified that P.I. went through a biting phase and had bitten L.B. on the arm. Jessica informed Erik that P.I. may have also bitten L.B. on the ear. L.B.'s ear was red with two little red dots, which Erik thought looked like a bite mark or a bug bite. Erik testified that L.B. favored laying on her right side. Other than a bruise on L.B.'s arm, Erik did not observe any bruises at the time he and Jessica took L.B. to Traeger's office or when she was in the hospital.

¶ 67 G. Grandmother's Testimony

¶ 68 Jessica's mother testified that she would visit with Jessica and the kids almost every Saturday. Jessica's mother would watch the kids occasionally during those visits so that Jessica could nap or shower. She recalled Jessica sending her a text message of L.B.'s ear. She told Jessica that it looked like L.B. had gotten a bug bite and if it got worse she should call the doctor.

Jessica's mother thought it was a bug bite because L.B.'s ear had a little red dot. She testified, "[I]t didn't look like much of anything, so we thought, bug bite." It was not swollen at that time.

¶ 69

H. Trial Court's Findings and Rulings

¶ 70

On December 18, 2015, at the conclusion of the adjudication hearing, the trial court indicated "these cases are never easy" and "you have to find a point to start in your analysis." The trial judge began his findings with the allegation of "non-organic failure to thrive, due to inadequate calories." The trial court found that the evidence showed that when L.B. was discharged from the NICU into Jessica and Erik's care she was "displaying a normal growth pattern," but by the time she was readmitted to the hospital on October 27, 2014, it was thought that L.B. "was a failure to thrive." The trial court indicated that the allegation of non-organic failure to thrive was "overwhelmingly" proven, noting L.B. had gained 210 grams during her five-day hospital stay, which indicated there was no organic reason why L.B. could not thrive.

¶ 71

The trial court further found that the sole caretakers of L.B. were Jessica and Erik, other than the maternal grandmother assisting when Jessica took a shower or nap. The trial court noted that Traeger's primary concern when examining L.B. was her ear and he referred her to the hospital, noting Jessica and Erik had not provided an adequate explanation for the condition of L.B.'s right ear. The trial court indicated that testing revealed an intraparenchymal hemorrhagic contusion in L.B.'s left frontal lobe; a nondisplaced linear fracture line of the right parietal bone; possible small fractures near the medial left parietal bone and side of the coronal suture; and a left convexity scalp contusion and hemtoma.

¶ 72

The trial court noted the timing of the skull fracture was disputed. The trial court found Dr. Cousin's expertise was radiology and Dr. Petrak was an expert in the field of abuse pediatrics and pediatrics. Cousin thought a small fracture was indicated on the skeletal survey from August

8, 2014, which he felt had grown. Petrak opined that any such fracture appearing on the skeletal survey of August 8, 2014, would have healed. The trial court noted that Petrak had opined that the history for the skull fracture provided by Jessica of P.I. spinning around with a toy was not consistent with the skull fracture, leading Petrak to conclude that the fracture was caused by non-accidental means.

¶ 73 The trial court indicated that L.B. had been discharged from the NICU as “stable” and none of the injuries were present, to the best of the hospital’s knowledge, at the time of her discharge. The trial court was “troubled” by Cousin’s testimony that the fracture had grown because Jessica and Erik indicated they had cared for L.B. gingerly because her family history of Osteogenesis Imperfecta. The trial court indicated that it “leaned with Dr. Petrak’s findings, based upon her expertise.” The trial court acknowledged that Petrak was not a radiologist but noted there were other injuries that Cousin could not address as radiologist, such as the right ear hematoma, the right cheek bruise with an abrasion, and bruising on L.B.’s left and right temporal areas. Although Jessica’s counsel argued that the greenish temporal bruising had been noted by Petrak and no other doctor, the trial court found it had been noted by doctors besides Petrak in the hospital records. The trial judge indicated that he had read through the records and “hospital staff did find bruising on the left and right temporal regions” and found that it was proven as reported by the hospital staff.

¶ 74 The trial court acknowledged that the offered explanations for the swollen right ear were a possible bite from P.I. or bug bite and that Petrak had opined nonaccidental trauma had been inflicted upon L.B. The trial court found “no real dispute” about the right arm bruising. The trial court also found there was no dispute that the brain bleed existed and found that it would take significant force to cause the brain bleed, as testified to by Petrak that it was “a shearing

type action.” The trial court found that the brain bleed would not have occurred from a C-section birth. The trial court also found the left convexity scalp contusion was proven by Petrak’s testimony.

¶ 75 The trial court stated, “when I look at the number of bruises and injuries to this child, all of which are not related to the fracture, I find that this child was neglected and that his environment was injurious to his health and welfare.” The trial court found that allegations “A” and “B” of the petition were proven and “there was a proffer for C, D, E, F, G, and H” so that the petition had been “proven in its entirety.”

¶ 76 At the dispositional hearing on January 15, 2016, the assistant state’s attorney requested that P.I. be made a ward of the court, that DCFS be made his guardian, and that Jessica and Erik be found dispositionally unfit. She argued as follows:

“As of today we have no idea what happened to [L.B.]. We have no idea who fractured her skull, who caused her brain to bleed, who bruised her face, who bruised her ear. We have no idea. And we have two caretakers, mother and father. You do the math.”

¶ 77 The trial court indicated that either Jessica or Erik, or both of them, knew how L.B. had been injured and both of them were responsible for L.B.’s failure to thrive. The trial court further indicated there was no question that “this child” was abused but “a wardship will accomplish what I need to accomplish on behalf of [P.I.]” The trial court found it was in P.I.’s best interest to make him a ward of the court, found both Erik and Jessica “fit” (over the objection of the State), ordered Jessica and Erik to complete services, and made Jessica and Erik guardians of P.I.

¶ 78 Jessica and Erik appealed the trial court’s adjudication finding of neglect.

ANALYSIS

¶ 79

¶ 80 On appeal, Jessica and Erik argue: (1) the trial court erred by finding the State had proven P.I. was neglected based upon the State’s theory of anticipatory neglect; and (2) the trial court erred by refusing to admit medical records and testimony related to the health and condition of P.I. at the adjudication hearing.

¶ 81 We first address Jessica and Erik’s contention that the trial court’s finding that P.I. was neglected was against the manifest weight of the evidence to warrant a reversal.

¶ 82 I. Manifest Weight of the Evidence

¶ 83 The State has the burden of proving abuse, neglect or dependency by a preponderance of the evidence, meaning the State must prove that the allegations in the petition are more probable than not. *In re N.B.*, 191 Ill. 2d 338, 343 (2000). If the State fails to prove the allegations of abuse, neglect or dependency by a preponderance of the evidence, the trial court must dismiss the juvenile petition. *Id.* A trial court’s ruling regarding neglect or abuse will not be disturbed on appeal unless it is against the manifest weight of the evidence. *In re Arthur H.*, 212 Ill. 2d 441, 463-64 (2004). A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident. *N.B.*, 191 Ill. 2d at 346-47. The weight to be given to the witnesses’ testimony, the credibility of the witnesses, resolutions of inconsistencies and conflicts in the evidence, and reasonable inferences are the responsibility of the trier of fact. See *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006).

¶ 84 Under an anticipatory neglect theory, the State seeks to protect those children who have a probability of being subjected to neglect or abuse because they reside with an individual who has been found to have neglected or abused another child. *Arthur H.*, 212 Ill. 2d at 468. Proof of neglect, abuse, or dependency of one minor is admissible as proof of the neglect, abuse, or

dependency of any other minor for whom the respondent is responsible. 705 ILCS 405/2-18(3) (West 2014). Neglect based on an injurious environment may be found where a parent has breached his or her duty to ensure safe and nurturing shelter for the child. *N.B.*, 191 Ill. 2d at 346.

¶ 85 Here, the trial court found P.I. to be neglected in that his environment was injurious to his welfare. The trial court based its finding that P.I. was neglected upon its finding that L.B.’s various injuries and her diagnosis of “failure to thrive” were the result of abuse.

¶ 86 A. Failure to Thrive

¶ 87 The trial court first found that the State had proven its allegation of L.B.’s non-organic failure to thrive was the result of inadequate calories provided by Jessica and Erik. Petrak had testified that drug exposed babies do not “necessarily” develop slower but “certainly their development should be watched closely” because slower development was possible. The evidence showed that L.B.’s weight progression was, in fact, being closely monitored by Jessica and Erik and by L.B.’s pediatrician. The evidence also showed that: Jessica and Erik had been following Traeger’s medical advice in regard to L.B.’s feedings; L.B. had been transitioned from an ad-lib/on demand feeding schedule as a drug-exposed baby in the NICU to a structured feeding schedule; L.B. had switched formulas in Jessica and Erik care due to a feeding intolerance; L.B. had transitioned out of the NICU to her new environment of Jessica and Erik’ home, which Traeger testified could cause a baby to become less interested in feedings and cause a slower rate of growth; L.B. was described by doctors as being in no distress, happy, well-hydrated, playful, healthy, and well-nourished; and Jessica, Erik and Traeger would have discussed L.B.’s weight progression at L.B.’s four-month-old well-check visit the following week.

¶ 88 In finding that L.B.’s failure to thrive was due to inadequate calories, the trial court noted that L.B. gained 210 grams during her five-day hospital stay in October 2014. However, during that five-day hospitalization in which she gained 210 grams, L.B. had lost and regained weight, was ordered to be given nothing by mouth for certain periods of time, and received intravenous fluids. Also, Petrak had opined that L.B. would have gained weight more rapidly if she was, in fact, fed six ounces of formula every three hours, as reported. However, the evidence showed that L.B. was initially only fed four ounces of formula every four hours upon first leaving the NICU and progressively increased to feedings of six ounces every four hours over her 10 weeks with Jessica and Erik, during which time she also had feeding issues.

¶ 89 Nonetheless, the trial court found Petrak’s testimony credible and found that L.B.’s failure to thrive was due to Jessica and Erik providing her with inadequate calories based on evidence that L.B. gained weight more rapidly in the NICU and during her five-day hospital stay than she did in Jessica and Erik’s care. It was for the trial court to determine the credibility of the witnesses, weigh the evidence presented, resolve conflicts in the evidence, and draw inferences from the evidence presented. *Sutherland*, 223 Ill. 2d at 242. Because we cannot say that an opposite conclusion is clearly evident, we will not disturb the trial court’s finding that N.B.’s failure to thrive diagnosis was the result of inadequate calories provided by Jessica and Erik.

¶ 90 B. L.B.’s Physical Injuries

¶ 91 There is no dispute that L.B. had a bruise on her right arm and a bruise over her left ear with swelling (referred to as “scalp bruising”). Jessica and Erik had explained that these injuries were caused by P.I. hitting L.B. with a toy just above her left ear and P.I. biting L.B. on her right arm. Petrak opined that the scalp bruising above the left ear could not have been caused by P.I.

¶ 92 The condition of L.B.'s right cheek and the cause of L.B.'s irritation, abrasion, and/or bruise on her right cheek were disputed by the parties. Petrak testified that there was a bruise on L.B.'s right cheek. Some of the physicians who examined L.B. indicated that there was redness to L.B.'s right cheek without noting any bruise. There was a history provided by Erik and Jessica that L.B. had developed a bilateral cheek rash when she was fighting a viral infection. There was also evidence that L.B. favored her right cheek, possibly causing her right cheek to become irritated from her rubbing her right cheek against various surfaces when she was laying in the prone position. Additionally, Traeger testified that P.I. could have any caused bruising to L.B. by biting or pinching her. However, Petrak testified that any bruising on L.B. was indicative of abuse.

¶ 93 Similarly, the parties disputed whether there was swelling, or both swelling and bruising, to L.B.'s right ear, and they disputed the possible cause of the right ear swelling. Jessica and Erik admitted that they did not know why L.B.'s ear had begun to swell. Jessica's best guess was that P.I. had bitten L.B. on the ear because he was going through a biting phase. Jessica provided a history of P.I. being near L.B. and L.B. suddenly crying the day prior to her ear becoming noticeably red. Erik and Jessica's mother both thought that the red mark on L.B.'s ear was indicative of a bug bite. The CT scan report indicated that a possible cause of L.B.'s ear condition could have been sequela from a bug bite. However, Petrak testified there was no history of bug bite and there was no adequate history provided for the ear swelling and opined the ear swelling was the result of abuse.

¶ 94 As for the skull fracture to the right parietal bone, Cousin testified that the skull fracture existed before Jessica and Erik had even taken L.B. home from the NICU. The trial court discounted Cousin's testimony of a preexisting skull fracture, finding Petrak's testimony more

credible. Petrak had testified that a preexisting skull fracture of August 8, 2014, should have been healed by October 27, 2104. However, Petrak also testified that: (1) there is no standard timeline for the healing of a skull fracture; (2) the CT scan report of October 27, 2014, referred to L.B. as having “expanded sutures,” which was an indication of osteogenesis imperfecta; and (3) L.B.’s genetic testing showed a variance in the gene related to osteogenesis imperfecta and other genetic connective tissue disorders, “which was of unknown clinical significance,” meaning that “nobody knew what that [variance] meant clinically.” Petrak opined that an older child throwing a heavy toy could have caused L.B.’s skull fracture, but she did not believe that P.I. was strong enough to do so. Petrak was not questioned as to whether P.I. throwing a toy that accidentally hit L.B.’s head, or whether P.I. falling on top of L.B. with a toy in his hand, could have generated enough force to exacerbate a preexisting skull fracture. She was also not questioned as to whether P.I. could have generated enough force to cause a skull fracture to L.B. taking into consideration the variant identified in L.B.’s genetic testing that had an unknown clinical significance. There was no dispute that L.B. had a variant in her gene related to her bone development and connective tissue and there was no dispute that no one knew how that variant would clinically present itself. Nonetheless, the trial court heard Petrak’s testimony and it was for the trial court to determine the credibility of her testimony that any preexisting skull fracture should have healed by the time of the second skeletal survey.

¶ 95 Petrak also testified there was no overlying acute swelling over the right parietal bone fracture, which she opined was an indication that the fracture had not occurred within the last several days. However, the CT scan “findings” had indicated “scalp soft tissue swelling and stranding of the superior right convexity overlying the parietal bone fracture.” The MRI findings had also indicated “a subtle asymmetric scalp thickening over the right superior parietal

convexity” that corresponds to the right parietal bone fracture.” There was no testimony of whether “scalp thickening” was an indication of an old fracture that was healing, an indication of swelling from a recent injury, an indication of some type of connective tissue disorder, or the result of something else.

¶ 96 Petrak further testified that there was a “left convexity scalp contusion” on L.B.— testimony presumably based on the CT scan “impression” of a left convexity scalp contusion. Our review of the record indicates that it is not clear whether the “left convexity scalp contusion” reported in the CT scan “impressions” was actually referring to the “right convexity” swelling reported in the CT scan “findings.” Nonetheless, Petrak testified to the existence of the left convexity scalp contusion. Thus, it was not against the manifest weight of the evidence for the trial court to find the existence of a left convexity scalp contusion.

¶ 97 Additionally, there was no dispute that a brain bleed existed, although no one could indicate when the brain bleed happened or the cause of the brain bleed. The evidence showed that the brain bleed was not a recent injury. In this case, we do not have a typical scenario in which the parents of a three-month old child should be able to account for the entire nine months of the child *in utero* and the entire three months of the child’s life after her birth. L.B. was only with Jessica and Erik for 10 weeks of that entire year. Yet, Jessica and Erik were expected to explain a brain bleed that was not a recent injury. Since Jessica and Erik could not provide an adequate history for the brain bleed, Petrak concluded that the brain bleed was due to abusive trauma. Thus, Petrak’s testimony provided support for the trial court to consider the brain bleed in looking to the “number of bruises and injuries” to L.B.

¶ 98 The trial court found that L.B. was abused, due in part to the number of her injuries. The trial court also found Petrak’s testimony credible. There was evidence presented, largely by way

of Petrak’s testimony, that the bruises, ear hematoma, brain bleed, left convexity scalp contusion, and skull fracture were the result of abusive trauma inflicted upon L.B. after L.B. had left the NICU. It was for the trial court to determine whether Petrak’s testimony was credible. See *Sutherland*, 223 Ill. 2d at 242. We cannot say that the trial court’s findings were against the manifest weight of the evidence.

¶ 99 II. Exclusion of Medical Records and Testimony Regarding P.I.

¶ 100 Alternatively, the respondents also contend that the trial court erred in refusing to admit medical records and testimony regarding P.I.’s medical history as to his weight progression where the trial court found the evidence not to be relevant. The State concedes the trial court erred in excluding the evidence pertaining to P.I. See *Arthur H.* 212 Ill. 2d at 468 (anticipatory neglect should take into account not only the circumstances surrounding the previously neglected sibling, but also the care and condition of the minor named in the petition). However, the State argues the trial court’s error in excluding the evidence was harmless because there was no reasonable probability that the trial court would have found P.I. not to have been neglected. We disagree with the State, as indicated by our discussion above, that evidence that P.I. was living in an injurious environment was “overwhelming.”

¶ 101 On this record, it is not clear that the trial court would have found that L.B.’s “failure to thrive” was more likely than not from inadequate calories provided by Jessica and Erik had it considered the fact that P.I., who was also exposed to drugs *in utero*, had dropped to below the fifth percentile for weight growth and then subsequently gained weight to be in the 84th percentile, doing so while in Jessica and Erik’s care and while under the pediatric medical care of Traeger. The trial court had begun its finding that L.B. was abused with its initial determination that L.B.’s diagnoses of failure to thrive was the result of Jessica and Erik

providing L.B. with inadequate calories. From there, the court found it was more probable than not that L.B.'s physical injuries were the result of abuse, largely in part due to the number of her injuries. We cannot be sure that if some of L.B.'s injuries were found to be from something other than abuse, including her diagnosis of "failure to thrive," that the trial court would have still found L.B.'s remaining injuries to have been more likely than not the result of abuse, especially in light of the fact that the brain bleed and skull fracture could not be aged.

¶ 102 Therefore, we cannot say that the trial court's error in refusing to admit medical records and testimony pertaining to P.I.'s weight progression was harmless. Consequently, based on the trial court's refusal to admit the medical records and testimony pertaining to P.I.'s weight progression, we vacate the trial court's finding of anticipatory neglect of P.I. and corresponding adjudication order, and remand for further proceedings.

¶ 103 CONCLUSION

¶ 104 The judgment of the circuit court of Peoria County is reversed.

¶ 105 Reversed and remanded.

¶ 106 JUSTICE McDADE, specially concurring.

¶ 107 The majority has found that it was error for the trial court to exclude medical testimony and medical records of P.I. in deciding whether the State had proven the claim that P.I. was at risk for anticipatory neglect by his adoptive parents, Erik and Jessica I. The decision recognizes the possibility that, possessed of all of the relevant evidence, the trial court might have reached a different conclusion as to whether L.B. had actually been abused. It further notes the inconsistency between finding anticipatory neglect of P.I. and still finding his allegedly abusive and neglectful parents fit and leaving him in their custody. Our order also vacates the finding of

anticipatory neglect of P.I. and remands the matter for a new and complete adjudication hearing and a new order. I concur in the entirety of that decision.

¶ 108 I write separately to suggest that, similarly lacking the medical testimony and medical records of P.I., our order is just as misleading and every bit as much of an exercise in futility for us in reaching and deciding the ultimate question as it was for the circuit court. I, therefore, do not join in the extended discussion of the medical history of L.B.