2019 IL App (2d) 180938
Nos. 2-18-0938 & 2-18-0954 & 2-18-0955 cons.
Order filed May 16, 2019



---

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

---

| | | |
|---|---|---|
| *In re* Liberty N., a Minor | ) | Appeal from the Circuit Court |
| | ) | of DeKalb County. |
| | ) | |
| | ) | No. 18-JA-24 |
| | ) | |
| | ) | Honorable |
| (The People of the State of Illinois, Petitioner-Appellant v. Jeff N., Respondent-Appellee). | ) | Ronald G. Matekaitis, |
| | ) | Judge, Presiding. |

---

| | | |
|---|---|---|
| *In re* Leah G., a Minor | ) | Appeal from the Circuit Court |
| | ) | of DeKalb County. |
| | ) | |
| | ) | No. 18-JA-25 |
| | ) | |
| | ) | Honorable |
| (The People of the State of Illinois, Petitioner-Appellant v. Jeff N., Respondent-Appellee). | ) | Ronald G. Matekaitis, |
| | ) | Judge, Presiding. |

---

| | | |
|---|---|---|
| *In re* Lilly N., a Minor | ) | Appeal from the Circuit Court |
| | ) | of DeKalb County. |
| | ) | |
| | ) | No. 18-JA-26 |
| | ) | |
| | ) | Honorable |
| (The People of the State of Illinois, Petitioner-Appellant v. Jeff N., Respondent-Appellee). | ) | Ronald G. Matekaitis, |
| | ) | Judge, Presiding. |

---

JUSTICE ZENOFF delivered the judgment of the court.

Presiding Justice Birkett and Justice Burke concurred in the judgment.

**ORDER**

¶ 1 *Held*: The appellate court affirmed the judgment order of the trial court where it found that Liberty N. was abused and neglected, and that Lilly N. and Leah G. were neglected.

¶ 2 Following adjudicatory and dispositional hearings in the circuit court of DeKalb County, the court adjudicated Liberty N. as abused (705 ILCS 405/2-3(2)(ii) (West 2016)) and neglected (705 ILCS 405/2-3(1)(b) (West 2016)), and adjudicated Lilly N. and Leah G. as neglected. The court further determined that it was in the best interests of the three minors that they be made wards of the court, and guardianship of the minors was placed with the Department of Children and Family Services (705 ILCS 405/2-27 (West 2016)). Respondent, Jeff N., the father of the three minors who are the subjects of these consolidated appeals, appeals the judgment orders from the adjudicatory hearing. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On March 30, 2018, Kristen N., mother of then 3-month-old Liberty, 1-year-old Leah, and 3-year-old Lilly, took Liberty to the emergency room at Kishwaukee Hospital in DeKalb, complaining of redness and bruising on Liberty's forehead. According to the investigative report[1] and the medical records, which were admitted into evidence at the adjudicatory hearing,

[1] Respondent uses the terms "investigative report," "investigatory report," and "indicated report" interchangeably to refer to the same report, which is the report admitted into evidence as State's Exhibit No. 2. That report includes the initial call to the DCFS hotline, the ultimate finding that the hotline report was indicated as credible, and the investigation that led to the indicated finding. Throughout this disposition, we necessarily use all three terms to accurately reflect the contentions of the parties as well as the record, but all three terms refer to the same

Kristen told medical personnel that the three children were playing together in the same room. When Kristen left the room for a minute, Lilly and Leah began throwing blocks. After she returned to the room and stopped the girls from throwing blocks, she noticed a small red mark on Liberty's head. The examining physician, Dr. Richard Schmidt, noted that Kristen reported that she did not detect the bruising until she gave Liberty a bath at 4:30 p.m. that same day.

¶ 5 Kristen later offered different versions of how Liberty was injured. Monica Miller, a child protection investigator with the Department of Children and Family Services (DCFS), testified at the adjudicatory hearing that Kristen, without prompting and in the presence of respondent, told Miller that Liberty was "in the swing" when her sisters threw the blocks. Respondent immediately chided Kristen: "Tell the truth, you know, don't lie. She wasn't in the swing. She was in the Pack 'n Play." Miller explained that an argument ensued between respondent and Kristen, and that Miller "redirected it," asking to speak to Kristen privately.

¶ 6 Once the two were alone in another room, Kristen told Miller that she gave Liberty a bath at around 4:30 or 5:00 p.m. Kristen stated that she saw no bruising on Liberty at that time. After the bath, she put Liberty in the Pack 'n Play (a portable, soft-sided, sleep and play environment for infants and toddlers that resembles a crib or bassinet), where she fell asleep. Kristen then prepared food for the other children. Kristen told Miller that sometime later, after dark, the paternal grandmother and paternal aunt arrived at the home. Kristen left the apartment to escort them into the building from a locked exterior door. As they all entered the apartment, they could see respondent standing over the Pack 'n Play holding Liberty. Both the grandmother and the aunt immediately noticed bruising on Liberty's head and urged the parents to take her to the emergency room. Miller documented in the investigative report that Kristen told her that Liberty

---

report as described here and admitted into evidence as State's Exhibit No. 2.

had marks before this incident. Kristen also said that there were no blocks in the Pack 'n Play when she, the grandmother, and the aunt entered the apartment and saw respondent holding Liberty. When Miller asked Kristen whether respondent gets frustrated with the baby, Kristen answered that respondent sometimes shakes or kicks the Pack 'n Play to wake Liberty.

¶ 7 Respondent gave still another version of the events leading to Liberty's injuries. Miller testified that respondent told her that he could not be certain because he was not in the room to see it, but that he "believed" that Lilly "dumped some mega blocks into the Pack 'n Play when [Liberty] was in there." Miller asserted that she saw no blocks in the home during that visit. Later that day, after she had taken the children for medical examinations, Miller returned to the home and asked to take photographs of the blocks that allegedly struck Liberty. Kristen and respondent were unable to locate the blocks.

¶ 8 Miller gave an overview of her investigation during her testimony. She said that a telephone call came into the DCFS hotline on the evening of March 30, 2018, reporting Liberty's bruising and her emergency room visit. This was corroborated by the medical records, which indicated that registered nurse (RN), Michael Wynn, telephoned DCFS at 10:04 p.m. DCFS assigned Miller to investigate the case, and she initiated an in-home visit the following morning, March 31, 2018. She arrived at the home at 10:40 a.m. She could hear a baby crying inside, but nobody answered the door after several knocks. She contacted the DeKalb police for assistance. After the police arrived, respondent answered the door, holding Liberty in his arms. Lilly and Leah were also present in the home. Miller interviewed respondent. She described him as "scattered" and said that she had difficulty getting him to focus on the events of the previous day.

¶ 9 Miller testified that she observed "multiple bruises" on Liberty's forehead during the initial home visit. She photographed the bruises, and the photographs were admitted into

evidence at the adjudicatory hearing. Miller described two bruises near the middle of Liberty's forehead, estimating that one was about the size of a "half dollar" coin and the other the size of a dime, and that they were a dullish-purple in color. Miller described two additional bruises located near Liberty's temple on the right side of her head "that were greenish, kind of yellow," and "appeared old." Finally, Miller testified that Liberty "had some yellow bruising in her hairline and then I believe she had some over her ears," and that those bruises also looked like past bruising.

¶ 10 After she completed the interviews with respondent and Kristen, Miller took the children to the emergency room at Kishwaukee Hospital. Dr. Young Kim examined Liberty. His notes indicate that Liberty was brought in for suspected child abuse. With regard to the bruises on Liberty's forehead, Dr. Kim noted that they "look older than 24 hours," and "4 out of 5 contusion[s] to forehead are not looking exactly similar. It could be from two different times." In the investigative report, Miller explained that she was present for the examination, and that Dr. Kim characterized the bruises as "highly suspicious given [Liberty's] age and the fact that the bruises were in different stages of healing, on multiple areas of her head." This assessment was consistent with the evaluation conducted the day before at the same hospital, when Dr. Schmidt concluded that the bruises were of different ages and different discoloration.

¶ 11 Miller testified that she later interviewed the paternal grandmother and the paternal aunt, and that they both stated that respondent attributed Liberty's bruising to her sisters throwing blocks. During that interview, the grandmother asserted that Liberty had a mark on her head two days before this incident. Without explanation, both the grandmother and the aunt told Miller that they did not believe that Liberty was injured with blocks, and that they had concerns about respondent's story.

¶ 12 Miller testified that she did not believe that the parents' explanation was plausible. At 5:30 p.m. on March 31, 2018, she contacted the on-call supervisor at DCFS's Division of Child Protection, who directed Miller to take protective custody of the children. Miller took custody and placed the children with the paternal grandmother.

¶ 13 On April 2, 2018, Liberty underwent a MERIT[2] exam, which concluded that her injuries were consistent with abuse.

¶ 14 On April 3, 2018, the State filed a petition for adjudication of wardship, alleging that Liberty was an abused minor pursuant to section 2-3(2)(ii) of the Juvenile Court Act (Act) (705 ILCS 405/2-3(2)(ii) (West 2016)) and a neglected minor pursuant to section 2-3(1)(b) of the Act (705 ILCS 405/2-3(1)(b) (West 2016)). In its single count of abuse, the State alleged:

> "That in violation of 705 ILCS 405/2-3(2)(ii) the minor is a person under 18 years of age while in the care of her father who created a substantial risk of harm of physical injury which would likely caused [*sic*] impairment of physical or emotional harm in that he made contact with the minor by kicking and/or shaking the play and pack [*sic*] that the minor was sustaining [*sic*] multiple bruising on different places on her forehead in different stages of healing as well as bruising on her left ear and on her scalp on her hairline."

---

[2] MERIT (Medical Evaluation Response Initiative Team) is an evidence-based, child-centered program designed to provide children suspected of being abused or neglected with expert medical evaluations and treatment by physicians with training and experience in these areas. See Pediatrics Department, Rockford Campus, The University of Illinois College of Medicine (last visited April 16, 2019), https://rockford.medicine.uic.edu/departments/academic-departments/pediatrics/merit/.

In the single count of neglect, the State alleged:

> "That in violation of 705 ILCS 405/2-3(1)(b) the minor is a person under 18 years of age whose environment is injurious to her welfare in that the minor sustained injury on different places on her forehead in different stages of healing as well as bruising on her left ear and on her scalp on her hairline while in the care of her parents without a plausible explanation."

¶ 15 Also on April 3, 2018, the State filed petitions for adjudication of wardship as to Lilly and Leah, alleging that they were neglected minors under section 2-3(1)(b) of the Act. The petitions for Lilly and Leah were identical and both alleged:

> "That in violation of 705 ILCS 405/2-3(1)(b) the minor is a person under 18 years of age whose environment is injurious to her welfare in that the minor's sibling sustained injury on different places on her forehead in different stages of healing as well as bruising on her left ear and on her scalp on her hairline while in the care of her parents without a plausible explanation."

¶ 16 The adjudicatory hearing took place over two days on June 29, 2018, and August 10, 2018. As noted, the trial court heard Miller's testimony, and it admitted into evidence several exhibits tendered by the State: without objection, the medical records detailing Liberty's examinations at Kishwaukee Hospital; over respondent's and Kristen's hearsay objections, the DCFS investigative report; and, without objection, the photographs that Miller took of Liberty's injuries.

¶ 17 On September 21, 2018, the trial court delivered its ruling, noting that it considered Miller's testimony and that it specifically considered the non-hearsay portions of the exhibits admitted into evidence. It concluded that the parents' different and evolving explanations for

Liberty's injuries were not supported by the evidence and failed to account for the varying ages of the bruises. It determined that Liberty "suffered multiple injuries to her head at different times by the actions of her caregivers and/or through the parents' failure to prevent others from causing harm to the child." Accordingly, it found that the State had proven by a preponderance of the evidence that Liberty was both abused and neglected. It further found that Lilly and Leah were also neglected.

¶ 18 On October 12, 2018, the matters proceeded to a combined dispositional hearing. The court ruled that the respondent and Kristen were unfit and that it was in the best interests of Liberty, Lilly, and Leah that they be made wards of the court. The court placed guardianship with DCFS, with the initial goal of returning the children home within 12 months. Respondent timely appealed.

¶ 19 II. ANALYSIS

¶ 20 Before addressing respondent's claims, we find it necessary to comment on the conduct of both counsel in this matter. This case involves questions affecting the best interests of several children, and it is therefore designated as "accelerated" pursuant to Illinois Supreme Court Rule 311(a) (eff. July 1, 2018). A key purpose of Rule 311(a) is to ensure that particular matters involving the best interests of children are resolved without unnecessary delay, as is noted in a committee comment: "The goal of paragraph (a) remains to promote stability for *** abused and neglected children *** by mandating a swifter disposition of these appeals." Ill. S. Ct. R. 311, Committee Comments (adopted Feb. 26, 2010). Accordingly, "[e]xcept for good cause shown, the appellate court shall issue its decision within 150 days after the filing of the notice of appeal." Ill. S. Ct. R. 311(a)(5) (eff. July 1, 2018). We cannot properly review a case and render our decision until we are fully briefed on the issues and the arguments of the parties. This makes

the timely filing of the briefs especially imperative, and it is a principal reason that our local rules make it clear that extensions of time are disfavored in accelerated cases. Ill. App. Ct. Second Dist., R. 6(b) (July 1, 2017).

¶ 21 On November 13, 2018, notices of appeal were filed in all three cases. This court received the records for these appeals on December 13, 2018. We set the briefing schedules that same day. On December 17, 2019, we consolidated *In re Lilly N.*, 2-18-0954 and *In re Leah G.*, 2-18-0955 with *In re Liberty N.*, 2-18-0938. We ordered that the cases follow the briefing schedule set forth in *In re Liberty N.*—respondent's opening brief was due on January 2, 2019, the State's response brief was due on January 23, 2019, and respondent's reply brief was due on January 30, 2019. Respondent's attorney requested a four-week extension of time. We granted until January 30, 2019, to file respondent's opening brief. Respondent's attorney missed the deadline. On February 7, 2019, we notified respondent's attorney that we would dismiss the appeal without further notice if respondent's brief was not filed within seven days. Fourteen days later, respondent's attorney had still not sought leave to file the brief *instanter* or motioned for an extension. On February 21, 2019, at 10:31 a.m., we dismissed the appeal. That day, at 2:51 p.m., respondent's attorney filed an unopposed motion to vacate our dismissal. He cited other pressing legal work as the reason for his delay, and he requested until March 1, 2019, to file respondent's brief. We granted that motion. Respondent's attorney ignored the March 1st deadline. Then, on March 4, 2019, respondent's attorney filed a motion for leave to file the brief *instanter*. He again cited other pressing legal work as the reason for his delay. We granted the motion and set March 27, 2019, as the new filing deadline for the State's response brief.

¶ 22 The State failed to file its brief or even request an extension by the deadline. On April 5, 2019, the State filed a motion to file its brief *instanter*, also citing other pressing legal work as

the primary reason that it did not comply with the deadline. It also cited one day of illness six days prior to the deadline and three sick work days on and after the March 27th deadline. We granted the State's motion and set April 12, 2019, as the revised deadline for respondent's reply brief. Respondent's attorney did not file a reply brief.

¶ 23 The rights of parents in the care and custody of their children are among the most fundamental of liberty interests protected by the United States Constitution. See *Santosky v. Kramer*, 455 U.S. 745, 753 (1982). "[A] proceeding for adjudication of wardship represents a significant intrusion into the sanctity of the family which should not be undertaken lightly." *In re Harpman*, 134 Ill. App. 3d 393, 396-97 (1985). Consequently, it is essential that attorneys for the parties treat these matters with the seriousness and concern that they merit. Here, the State seeks to interfere with the fundamental liberty interest of the parents, citing concern for the safety and welfare of the children. Our decision, aided by the arguments of the attorneys, will necessarily affect the trajectory of the lives of three small children and both of their parents.

¶ 24 The violations of supreme court and local rules by respondent's counsel have seriously hindered our ability to timely review this matter within the mandates of Rule 311(a)(5). Ill. S. Ct. R. 311(a)(5) (eff. July 1, 2018). Counsel allowed three deadlines to pass without filing respondent's brief, seeking an extension of time, or communicating with this court in any manner. According to the motions he filed after we dismissed the appeal, he was busy for weeks working on other cases, and he had no room in his busy schedule to file the brief or request an extension of time in this case. Still, he was able to draft a motion to vacate our dismissal, obtain opposing counsel's consent, and file the motion, all within four hours of our order dismissing the appeal. We are not insensitive to the demands on a practicing attorney's time, but we

nonetheless expect timely filings, or alternatively, good-cause motions requesting additional time.

¶ 25 The violations by the state appellate prosecutor were fewer, but no less serious. She too allowed a briefing deadline to pass in this accelerated case without explanation. Rather than requesting an extension in advance, as is required by the rules (Ill. App. Ct. Second Dist., R. 6(b)(3) (July 1, 2017)), she waited until the brief was nine days late to file her motion to file *instanter*. Moreover, her stated grounds for the delay were thin at best. We see no reason why this case should be assigned a lower priority than counsel's other legal work.

¶ 26 These and all attorneys appearing before this court are reminded that supreme court and local rules of procedure are rules and not mere suggestions. See *Niewold v. Fry*, 306 Ill. App. 3d 735, 737 (1999). Given the importance of the rights at stake, we excused counsels' disregard for the rules, choosing not to penalize their clients for the actions of the attorneys. These attorneys should not expect similar leniency for future violations.

¶ 27 The deadline for issuing our decision in this case was April 12, 2019. For the reasons stated, the case was not ready for review until April 12, 2019. Thus, we have good cause to issue this order beyond the deadline.

¶ 28 A. Adjudication Process Under the Juvenile Court Act

¶ 29 Turning to the merits of the appeal, the Juvenile Court Act of 1987 (Act) sets forth the process by which a child may be removed from his or her parents and made a ward of the court. 705 ILCS 405/1-1 *et seq*. (West 2016). When a minor is taken into temporary protective custody, the State files a petition alleging that the minor is neglected, abused, or dependent, and that it is in the best interests of the minor to be adjudged a ward of the court. 705 ILCS 405/2-13 (West 2016). The court must conduct a temporary custody hearing (also known as a shelter care

hearing) within 48 hours, exclusive of weekends and holidays. 705 ILCS 405/2-9(1) (West 2016). At the shelter care hearing, the court determines whether: (1) there is probable cause to believe the child is neglected, abused, or dependent, (2) there is an immediate and urgent necessity to remove the child from the home, and (3) reasonable efforts have been made to prevent the removal and no reasonable efforts could be made to prevent or eliminate the necessity of removal. *In re Arthur H.*, 212 Ill. 2d 441, 462 (2004); 705 ILCS 405/2-10 (West 2016). If the court finds that probable cause exists and orders that the child be placed in temporary custody, the process moves to an adjudicatory hearing, where the court must make a finding of neglect, abuse, or dependence before conducting an adjudication of wardship. *In re Arthur H.*, 212 Ill. 2d at 462-65; 705 ILCS 405/2-21 (West 2016); 705 ILCS 405/1-3(1) (West 2016).

¶ 30 At the adjudicatory hearing, the focus is centered on whether the child is neglected, abused, or dependent, not on whether the parent caused that condition. *In re Arthur H.*, 212 Ill. 2d at 463-67. It is the State's burden to prove by a preponderance of the evidence the allegations relating to the child's condition, which is to say that the allegations are more probably true than not. *In re Arthur H.*, 212 Ill. 2d at 463-64. A finding that the child is neglected, abused, or dependent is jurisdictional, and requires that the proceeding move forward to the second stage of adjudication, a dispositional hearing. 705 ILCS 405/2-21(2) (West 2016). There, with the best interests of the child as its paramount consideration, the court determines whether "it is consistent with the health, safety, and best interests of the minor and the public that he be made a ward of the court" (705 ILCS 405/2-21(2) (West 2016)). *In re Arthur H.*, 212 Ill. 2d at 464.

¶ 31 B. Admissibility of Evidence

¶ 32 Respondent first argues that the DCFS investigative report admitted into evidence at the adjudicatory hearing contained "more information than was necessary" in an "indicated report," and that it should not have been admitted under section 2-18(4)(b) of the Act. The State counters that this was "clearly an indicated report," and thus, properly admitted. Moreover, argues the State, to the extent that the report may have contained information that went beyond the scope of an indicated report, "the admission of such information was harmless."

¶ 33 As a threshold matter, respondent objected to the admission of the indicated report only on the ground that it contained hearsay. During the adjudicatory hearing, he did not object that the report was inadmissible because the information contained therein went beyond the scope of an indicated report, as he now argues. Accordingly, respondent forfeited his right to review of this argument. *In re S.J.*, 407 Ill. App. 3d 63, 66 (2011) (argument forfeited when the respondent failed to object at an evidentiary hearing and raised the issue for the first time on appeal).

¶ 34 In the final sentence of his four-page argument discussing the admissibility of the report under section 2-18(4)(b), respondent inserts an additional argument: "Alternatively, [the investigative report] should not have been admitted because it constitutes hearsay." Respondent provides no further reasoning, no citations to authority, and no citations to the pages of the record relied on for this alternative argument. Consequently, respondent has also forfeited this argument for violation of Illinois Supreme Court Rule 341(h)(7) (eff. May 25, 2018) ("Argument *** shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on."). *Hall v. Naper Gold Hospitality LLC*, 2012 IL App (2d) 111151, ¶ 12 (forfeiture is the consequence of failing to comply with Rule 341(h)(7)).

¶ 35 Forfeitures aside, respondent's arguments would still fail. Although hearsay is generally prohibited at adjudicatory hearings under the Act, (See 705 ILCS 405/2-18(1) (West 2016); see

also Illinois Rule of Evidence 802 (eff. Jan. 1, 2011)), section 2-18(4)(b), provides a statutory exception to the hearsay prohibition. It specifies that indicated reports complying with the Abused and Neglected Child Reporting Act (Reporting Act) (325 ILCS 5/1 *et seq*.) (West 2016)) "shall be admissible in evidence." *In re J.C.*, 2012 IL App (4th) 1110861, ¶ 23. An "indicated report" is "any report of child abuse or neglect made to [DCFS] for which it is determined, after an investigation, that credible evidence of the alleged abuse or neglect exists." 89 Ill. Adm. Code 300.20 (2018). Thus, the term "indicated report" necessarily consists of the initial report of abuse or neglect as well as the finding that the report is supported by credible evidence. *In re J.C.*, 2012 IL App (4th) 1110861, ¶ 23.

¶ 36 Here, respondent argues that the investigative report admitted into evidence contained information that went beyond the scope of the statutory hearsay exception in section 2-18(4)(b), citing *In re J.C.* and *In re G.V* (2018 IL App (3d) 180272) in support. In *In re J.C.*, the court held that it was error to admit "the entire DCFS investigatory file" under the section 2-18(4)(b) hearsay exception when the indicated reports (1) contained more than 200 and 100 pages, respectively, (2) contained more information than was necessary to show evidence of an indicated report, and (3) contained more information than was relevant to the particular allegations. *In re J.C.*, 2012 IL App (4th) 1110861, ¶¶ 23-24. Similarly, the court in *In re G.V.* reversed the trial court's decision to admit an indicated report when it contained "substantial amounts of information that was unverified and lacked any supporting documentation," and the problems were further compounded by foundational issues that arose when the DCFS investigators did not testify. *In re G.V.*, 2018 IL App (3d) 180272, ¶¶ 30-32.

¶ 37 We need not reach this issue here, however, because even if the trial court had erred in admitting this entire report, the error would be harmless. See *In re J.C.*, 2012 IL App (4th)

110861, ¶ 29 (error harmless where ample evidence supported the court's finding). In this case, besides the indicated report as exhibit no. 2, the trial court also had before it the separately admitted medical records, photographs, and Miller's testimony, all of which confirm Liberty's injuries, the parents' evolving explanations, and that the girls were left unattended when the parents should have known that that would create a risk of harm. As we demonstrate in the following sections, the trial court's findings of neglect and abuse were not against the manifest weight of the evidence.

¶ 38 C. Neglect Finding – Liberty

¶ 39 Respondent argues that the trial court erred in finding that Liberty was neglected pursuant to section 2-3(1)(b) of the Act, asserting that "the court's decision was unsupported by the evidence adduced at trial." He notes that Liberty was behaving normally at the hospital, did not require treatment for her injuries, and neither Dr. Schmidt nor Dr. Kim concluded that her injuries were the result of her parents' "willful or unintentional disregard" of their duties. The State answers that respondent's conclusion is dependent on a misapplication of the law because "a physician's opinion that medical treatment was unnecessary is not dispositive of whether or not the minor was neglected."

¶ 40 Generally, neglect is the "failure to exercise the care that circumstances justly demand." (Internal quotation marks omitted.) *In re Arthur H.*, 212 Ill. 2d at 463. It is a fluid concept with a meaning that varies according to the context of the surrounding circumstances; it embraces "willful as well as unintentional disregard of duty." *In re Arthur H.*, 212 Ill. 2d at 463.

¶ 41 Section 2-3(1)(b) of the Act defines a neglected minor as one whose "environment is injurious to his or her welfare ***." 705 ILCS 405/2-3(1)(b) (West 2016). An "injurious environment is an amorphous concept which cannot be defined with particularity," but it is

generally interpreted to include a parent's failure to ensure a "safe and nurturing shelter for his or her children." (Internal quotation marks omitted.) *In re N.B.*, 191 Ill. 2d 338, 346 (2000). Accordingly, cases adjudicating wardship based on allegations of neglect are *sui generis*, and are decided based on the unique circumstances surrounding each case. *In re Arthur H.*, 212 Ill. 2d at 463.

¶ 42 These rules illustrate the deeply fact-driven nature of neglect rulings, and we will not disturb such a ruling unless it is against the manifest weight of the evidence. *In re N.B.*, 191 Ill. 2d at 346. A ruling is against the manifest weight of the evidence only when the facts clearly demonstrate that the opposite conclusion is evident. *In re Arthur H.*, 212 Ill. 2d at 464.

¶ 43 Respondent raises several factors that he argues weigh against a conclusion that Liberty was neglected: the emergency room doctors did not determine that the parents caused Liberty's injuries through a "willful or unintentional disregard" of their duties; Liberty's injuries required no treatment; Liberty was not crying or distressed, but acting appropriately during the hospital visits; and, RN Wynn had no apparent reason to report neglect or abuse to DCFS because his actions "were contrary to finding [*sic*] and indications made by Dr. Schmidt."

¶ 44 We first note that the record supports RN Wynn's decision to report potential abuse to DCFS. Respondent correctly notes that Dr. Schmidt did not indicate in the medical record that he thought Liberty was neglected or abused, but he did not have all of the information that Wynn later possessed. RN Wynn told Miller that his first contact with Liberty, Kristen, the paternal grandmother, and the paternal aunt occurred after Dr. Schmidt completed his examination of Liberty and entered his notes in the medical record. Wynn told Miller that he thought the aunt was "behaving strangely, like she was anxious or something." After the family left, two colleagues asked Wynn why the family was being permitted to leave when there was concern

about possible abuse. RN Wynn stated that this was the first he had heard about potential abuse, and that he thought the aunt had said something about it to his colleagues. Liberty's injuries, the aunt's behavior during Wynn's personal encounter with her, and the report from Wynn's colleagues were enough to produce articulable reasonable suspicion in Wynn's mind that Liberty had been abused or neglected. Section 4 of the Reporting Act requires that any registered nurse who has reasonable cause to believe a child may be abused or neglected is required to report those concerns to DCFS (325 ILCS 5/4 (West 2016)), and failure to do so subjects that person to criminal penalties (325 ILCS 5/4.02 (West 2016)). Thus, RN Wynn's report to DCFS was both reasonable and required under the circumstances.

¶ 45 Next, the record supports a finding that Liberty's environment was injurious to her welfare. Miller's unrebutted testimony was consistent with the information that she had earlier included in the investigative report. The evidence showed that Liberty had bruises of different ages on different parts of her head. As noted, the parents told at least four different and conflicting accounts of the events that led to Liberty's most recent injuries. The common thread that ran through each of those stories was that Liberty was injured when all three children—aged three months, one year, and three years—were left unattended in the same room for an indefinite period of time. The evidence additionally showed that the parents were aware that Lilly, the three-year-old, sometimes played rougher with Liberty than was appropriate; she threw blocks around and she had to be watched closely because she sometimes played close to Liberty's face, "like she's a doll." Respondent conceded that their supervision was deficient when he said to Kristen in Miller's presence: "It's our fault, we should've been watching her."

¶ 46 The unrefuted evidence further showed that respondent's and Kristen's explanations focused only on the most recent injuries, and that they made no attempt to explain the older

bruises. In fact, Kristen told Miller that she saw no marks at all on Liberty when she gave Liberty a bath between 5 and 6 p.m., but the medical records indicate that some of the bruises were present before that time. Moreover, the aunt and grandmother both stated that they had seen bruises on Liberty on previous occasions. This at least raises the possibility that Liberty was left, without parental supervision, in an environment injurious to her welfare on previous occasions.

¶ 47 Given this evidence, it is not surprising that the court apparently gave little weight to the fact that the doctors did not definitively conclude that Liberty was neglected, or that Liberty was acting appropriately at the hospital and did not require treatment. As noted, a finding of neglect based on an environment injurious to the minor's welfare is fact-specific, and we cannot say, given these facts, that the trial court's decision was against the manifest weight of the evidence.

¶ 48 D. Abuse Count – Liberty

¶ 49 Respondent next argues that the trial court erred in finding that Liberty was abused, asserting that her injuries were not severe enough to sustain the charge. Moreover, argues respondent, neither Dr. Schmidt nor Dr. Kim made findings that Liberty's injuries would cause her "death, disfigurement, impairment of physical or emotional health, or loss of impairment of any bodily function." The State answers that respondent's argument can be sustained only if we "disregard well-established case law," though it fails to cite a single case in support of this contention.

¶ 50 In its petition for adjudication of wardship, the State alleged that Liberty was an abused minor for the following reasons:

> "That in violation of 705 ILCS 405/2-3(2)(ii) the minor is a person under 18 years of age while in the care of her father who created a substantial risk of harm of physical

> injury which would likely caused [*sic*] impairment of physical or emotional harm in that he made contact with the minor by kicking and/or shaking the play and pack [*sic*] that the minor was [*sic*] sustaining multiple bruising on different places on her forehead in different stages of healing as well as bruising on her left ear and on her scalp on her hairline."

Section 2-3(2)(ii) defines an abused minor as a person under 18 years of age whose parent:

> "creates a substantial risk of physical injury to such minor by other than accidental means which would be likely to cause death, disfigurement, impairment of emotional health, or loss of impairment of any bodily function[.]" 705 ILCS 405/2-3(2)(ii) (West 2016).

¶ 51 We first reject respondent's argument that the State did not meet its burden because neither of the examining doctors made documented findings that the injuries would cause death, disfigurement, impairment of physical or emotional health, or impairment of bodily functions. Respondent has cited no authority, and our research has uncovered no requirement that physicians must make documented conclusions of specific injuries mirroring the precise wording of section 2-3(2)(ii) of the Act. Notably, respondent fails to address the conclusions of the MERIT examination, which determined that Liberty's injuries were consistent with abuse. As noted, Liberty was three months old at the time of the most recent incident, and she suffered multiple injuries at different times. Miller testified that Liberty was unable to roll over or "be on all fours." She was utterly dependent upon respondent and Kristen to protect her and not create a risk of harm. Considering the varying ages of Liberty's multiple unexplained head injuries, she was at risk for further, more severe injury if left in the same situation. When presented with a situation where a child has already suffered injury and is at risk of further, more serious injury, the court is not required to wait until a child suffers additional injuries before it may act. See *In*

*re A.D.R.*, 186 Ill. App. 3d 386, 393-94 (1989) (where there was a substantial risk of physical abuse, the court did not need to wait until the child was permanently affected to adjudicate her abused). The evidence supported a finding that Liberty had a substantial risk of serious injury, which is sufficient to meet the requirements of section 2-3(2)(ii) of the Act.

¶ 52 Notwithstanding the language in the findings of the examing physicians, respondent still asserts that Liberty's injuries were insufficient to sustain a finding of abuse. He cites *In re Gustavo H.*, 362 Ill. App. 3d 802 (2005), where the appellate court affirmed the dismissal of a petition alleging abuse. Respondent argues that Liberty's injuries were less severe than Gustavo's (the minor child in *In re Gustavo H.*) injuries, and since the court found that Gustavo was not abused, Liberty was also not abused. We disagree.

¶ 53 Gustavo's mother took him to the emergency room after noticing a soft spot on his head. *In re Gustavo H.*, 362 Ill. App. 3d at 806. He presented with a fractured skull as well as healing fractures on his wrist and ribs. *In re Gustavo H.*, 362 Ill. App. 3d at 806. Gustavo's mother testified and offered an accidental explanation for the skull fracture, that he had fallen from a bed and hit his head on a nearby dresser while in the care of his maternal grandmother. *In re Gustavo H.*, 362 Ill. App. 3d at 806. Additionally, there was evidence that Gustavo's wrist and rib injuries went undetected for some time; his mother had taken this generally happy baby to two different doctors in the month immediately preceding the accidental fall from the bed, once for a pediatric checkup and once for a gum infection, and neither physician had detected the wrist or rib injuries. *In re Gustavo H.*, 362 Ill. App. 3d at 806. There was some evidence that Gustavo's older sister played rough with him, creating speculation that she may have contributed to his injuries, but the mother testified that she repeatedly took steps to correct the sister's inappropriate behavior. *In re Gustavo H.*, 362 Ill. App. 3d at 806. Additionally, the examining

emergency room physician told the DCFS caseworker that Gustavo had not been abused and that the injuries were accidental. *In re Gustavo H.*, 362 Ill. App. 3d at 807. The caseworker testified that she found Gustavo's mother and father to be loving and caring parents, and that she "had no concern for the health and safety" of Gustavo and his sister, should they be returned to the care of their parents. *In re Gustavo H.*, 362 Ill. App. 3d at 808.

¶ 54 The trial court found the mother to be a "credible witness," further stating: "Her demeanor was appropriate. She was not evasive and she was not impeached." *In re Gustavo H.*, 362 Ill. App. 3d at 809. It also found that the DCFS caseworker was "credible and professional." *In re Gustavo H.*, 362 Ill. App. 3d at 809. In addition to the testimony of the mother and caseworker, the trial court considered conflicting medical opinions as well as a Chicago police investigation that determined that the skull fracture was accidental. The court dismissed the petition, citing "insufficient evidence of non-accidental injury." *In re Gustavo H.*, 362 Ill. App. 3d at 808.

¶ 55 Our reading of *In re Gustavo H.* does not support respondent's contention that Liberty was not abused because her injuries were less severe than Gustavo's. The trial court in *In re Gustavo H.* was primarily concerned with the manner in which the injuries occurred, not the severity of the injuries. It noted that the State had presented a *prima facie* case for abuse, but that the State's case had been overcome by the respondent's evidence. *In re Gustavo H.*, 362 Ill. App. 3d at 809.

¶ 56 Here, the DCFS investigator's unrebutted testimony indicated that respondent deliberately shook and kicked Liberty's Pack 'n Play to wake her up. Shaking and kicking a 3-month-old's playpen while she is sleeping creates at least some potential risk of injury. The evidence in this case demonstrates that Liberty did, in fact, sustain injuries, which were verified

by Miller's testimony of her own observations, the notes of the physicians in the medical records, and the photographs admitted at the adjudicatory hearing. Respondent's shaking and kicking of the Pack 'n Play, combined with Liberty's injuries, corroborates the State's theory that respondent created a risk of injury to Liberty. Under these circumstances, where the trial court was required to focus on whether Liberty was abused, not whether respondent actually caused the abuse (See *In re Arthur H.*, 212 Ill. 2d at 465), we cannot say that the court's decision was against the manifest weight of the evidence.

¶ 57 E. Neglect Count – Leah and Lilly

¶ 58 Respondent lastly argues that the trial court erred in finding that Leah and Lilly were neglected under a theory of anticipatory neglect. He asserts that the evidence at the hearing focused entirely on Liberty, and that the scant evidence in the record pertaining to Leah and Lilly is positive, with no reports of bruising or injury on either girl. He further contends that neither parent has ever been indicated in a previous report and that there is "a complete absence of evidence to suggest, let alone prove, that either Leah or Lilly are at any risk from their parents." The State answers that Leah and Lilly were neglected because respondent and Kristen failed to adequately supervise and provide them with a "safe and nurturing shelter," which created an injurious environment for all three children.

¶ 59 The State alleged in its petitions that Leah and Lilly were neglected because their environment was injurious to their welfare due to their sibling sustaining unexplained injuries, which is "anticipatory neglect." "Anticipatory neglect" is a theory that flows from an injurious environment, where "the State seeks to protect not only children who are the direct victims of neglect or abuse, but also those who have a probability to be subject to neglect or abuse because they reside, or in the future may reside, with an individual who has been found to have neglected

or abused another child." *In re Arthur H.*, 212 Ill. 2d at 468. Section 2-18(3) of the Act provides that proof of neglect or abuse as to one minor shall be admissible on the issue of neglect or abuse of another minor under the care of the respondent. 705 ILCS 405/2-18(3) (West 2016). Admissibility, however, is not to be construed as conclusive proof of neglect or abuse as to other minors in the same household; each case should be reviewed according to its own facts. *In re Arthur H.*, 212 Ill. 2d at 468-70.

¶ 60 In this case, the environment that was injurious to Liberty was the shared environment of all three minors. The evidence showed that they were all together, without parental supervision, during the time that the parents claim that Liberty sustained her most recent injuries. Thus, all of the facts and reasoning discussed above in addressing neglect as to Liberty applies with equal force and relevance to Leah and Lilly. Liberty sustained the only documented injuries, but all three of the girls were left vulnerable by the inadequate supervision, and, "when faced with evidence of prior neglect by parents, 'the juvenile court should not be forced to refrain from taking action until each particular child suffers an injury.' " *In re Arthur H.*, 212 Ill. 2d at 477 (quoting *In re Brooks*, 63 Ill. App. 3d 328, 339 (1978)). The evidence supports the conclusion that Leah and Lilly were left unattended in an environment injurious to their welfare. Accordingly, the trial court's finding that Leah and Lilly were neglected was not against the manifest weight of the evidence.

¶ 61 III. CONCLUSION

¶ 62 For the reasons stated, we affirm the judgment orders of the circuit court of DeKalb County adjudicating Liberty N. as abused and neglected, and adjudicating Leah G. and Lilly N. as neglected.

¶ 63 No. 2-18-0938, Affirmed.

¶ 64 No. 2-18-0954, Affirmed.

¶ 65 No. 2-18-0955, Affirmed.