

THIRD DIVISION  
August 10, 2011

2011 IL App (1st) 110475-U  
No. 1-11-0475

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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<i>In re</i> J.H. and Q.H.,	)	APPEAL FROM THE
Minors,	)	CIRCUIT COURT OF
	)	COOK COUNTY
	)	
(The People of the State of Illinois,	)	Nos. 10 JA 200
Petitioner-Appellee,	)	10 JA 201
	)	
v.	)	
	)	HONORABLE
Melinda H.,	)	RICHARD A. STEVENS,
Respondent-Appellant).	)	JUDGE PRESIDING.

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JUSTICE STEELE delivered the judgment of the court.  
Presiding Justice Quinn and Justice Murphy concurred in the judgment.

**ORDER**

*HELD:* The circuit court of Cook County did not abuse its discretion in adjudicating minors J.H. and Q.H. neglected based on an injurious environment in light of the death of their sibling, S.H., as well as the mother's substance abuse and mental health issues. The judgment of the circuit court is affirmed.

¶ 1 Respondent Melinda H. (Melinda) appeals an order of the circuit court of Cook County finding her children, J.H. and Q.H., neglected due to an injurious environment. For the following reasons, we affirm the order of the circuit court.

¶ 2

## BACKGROUND

¶ 3 The record on appeal discloses the following facts. On March 11, 2010, the State filed identical petitions for adjudications of wardship for J.H. and Q.H.<sup>1</sup> The petitions alleged Melinda had a prior indicated report for substantial risk of physical injury and an environment injurious to health and welfare by neglect. The petitions also stated Melinda had two minors not in her care or custody and another minor in the custody of the State of Indiana's Child Protective Services. The petitions further alleged Melinda had a history of illegal substance use and was noncompliant with recommended intact family services.

¶ 4 Moreover, the State's petitions alleged that on February 23, 2010, J.H., Q.H. and a sibling, S.H., were left unsupervised; S.H. died while the minors were unsupervised. The State alleged the same facts in support of an allegation of abuse by substantial risk of a physical injury from any person residing in the same home as the minors. The State was later granted leave to amend the petition for Q.H. to allege that he was born exposed to drugs and that Melinda had tested positive for illegal substances at the time of his birth. The State ultimately withdrew, without prejudice, the allegation that Q.H. was born exposed to drugs. The Public Guardian was appointed as guardian *ad litem* to represent the interests of the minors.

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<sup>1</sup> Although certain records related to J.H. are missing from the record, the record shows that the Department of Children and Family Services (DCFS) took protective custody of J.H. and Q.H. on March 9, 2010. The circuit court granted temporary custody of Q.H. to DCFS on March 11, 2010; the index to Melinda's brief suggests DCFS was also granted temporary custody of J.H.

¶ 5 On October 26, 2010, the circuit court held an adjudication hearing on the State's petitions. DCFS child protection investigator Patricia Crutch testified that she was assigned to the case based on a hotline call stating that Melinda was a substance abuser who gave birth to twins who were premature and possibly exposed to drugs at birth. According to Crutch, twins Q.H. and S.H. were born on November 8, 2008; J.H. was born on December 12, 1999.

¶ 6 Crutch testified she met with Melinda on November 25, 2008. In their conversation about the allegations, Melinda told Crutch she had smoked a cigarette laced with cocaine, but claimed she did not know the cigarette was laced with the narcotic. Medical records indicate Melinda said she took an unknown amount of cocaine to help deal with the pain of her contractions before giving birth to the twins. Melinda also told Crutch that one of her older daughters, C.H., was in the care of Melinda's sister and that Melinda was making financial arrangements to care for C.H.

¶ 7 Crutch further testified that on December 23, 2008, her supervisor decided Melinda's case should be opened up to intact family services, including mental health, drug and alcohol assessments, and housing assistance. On January 8, 2009, Crutch spoke to Melinda about the opening of intact services. According to Crutch, Melinda reported during this conversation that she was bipolar and had not been honest earlier about her mental health needs. Crutch stated that Melinda did not complete a mental health or drug and alcohol assessment while she was assigned to Crutch.

¶ 8 Crutch subsequently made a nursing referral in the case because Q.H. remained in the hospital with a deteriorating condition, primarily due to a bowel obstruction. Crutch stated that

DCFS questioned whether the hospital was providing appropriate treatment to Q.H. The nursing referral was to provide an additional level of oversight of the care given to Q.H. Crutch testified that she transferred Melinda's case to Brenda Minor on January 15, 2009.

¶ 9 DCFS intact services worker Brenda Minor testified that she was assigned to Melinda's case from January 15, 2009, through November 2009. When she was first assigned to the case, Melinda told Minor she did not have a problem with drugs. However, she told Minor she previously had a prescription for Zoloft. On February 9, 2009, Melinda advised Minor she had not seen a psychiatrist since 2000.

¶ 10 Minor testified Melinda made sure Q.H. and S.H., who needed early intervention services due to their premature births, engaged in in-home speech, physical and other therapies with various agencies assigned to the case. Minor noted Q.H. and S.H. made progress with their special needs. However, according to Minor, when she left the case, Melinda had not completed her drug and alcohol assessment. Minor further stated Melinda was assigned a grief counselor after S.H. died.

¶ 11 DCFS child protection investigator William Crusor testified that on March 2, 2010, he was assigned to Melinda's children based on a report of the "unusual death of a minor." Crusor spoke to both Melinda and Sylvester H. (Sylvester), the father of the twins<sup>2</sup>. According to

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<sup>2</sup> The circuit court took judicial notice of Sylvester's paternity without objection. The record also shows Joe L. is the father of J.H. Both men were represented in the circuit court, but neither father is a party to this appeal.

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Crusor, Melinda stated that on February 23, 2010, she left their home at approximately 5:30 p.m. to purchase milk. Melinda added that she never left the twins at home in the care of J.H. and did not use corporal punishment. However, Melinda stated she did not leave J.H. alone with Q.H. since the death of S.H. Crusor stated his examination of Q.H. revealed no signs of abuse or mistreatment.

¶ 12 Crusor also testified that Melinda said both twins were diagnosed with asthma. Medical records indicate that both twins needed inhaler treatments. Q.H. also needed a nebulizer for his asthma.

¶ 13 According to Crusor, Sylvester stated he resided with Melinda, J.H., and the twins. Sylvester also told Crusor that on February 23, 2010, J.H. came to him and said S.H. was not breathing. Sylvester added J.H. had been in Melinda's room with the twins for approximately 15 minutes before coming to him. Sylvester further stated he telephoned 911 when he saw S.H. was not breathing.

¶ 14 DCFS child protection supervisor Ladrena Bobo testified that on March 3, 2010, she decided to take protective custody of Q.H., while awaiting the results of an autopsy. Her decision was based in part on the death of S.H. Bobo testified the decision was also based in part on a victim sensitive interview (VSI), in which J.H. stated she had been physically abused by Melinda and forced to watch Q.H. The VSI, which was conducted on March 5, 2010, at the La Rabida Joli Burrell Children's Advocacy Center, also indicated that J.H. claimed she was often required to care for the twins, and was watching television when she realized S.H. was not breathing. During the VSI, J.H. reported that Melinda said S.H. got asthma and died in her sleep.

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Bobo further testified the decision was based in part on Melinda telling the police that she thought J.H. had killed S.H. Moreover, Bobo stated the decision was based in part on Melinda's prior DCFS history and noncompliance with intact services.

¶ 15 On cross-examination, Bobo testified that she was not present at the VSI, but received information about the interview from Rae Smith, whom Bobo had assigned to the case. Smith advised Bobo there were old marks on J.H.'s body, but they were not dated or defined. Smith was also the source for Bobo's comments about Melinda's interview with the police.

¶ 16 The State introduced a number of exhibits into evidence and published excerpts of selected exhibits to the trial judge in open court. These exhibits included medical records for Q.H., S.H. and Melinda, as well as the VSI of J.H. One of the medical records for S.H. indicated that Melinda said S.H. was taking a nap with J.H., who awakened on top of S.H. The medical examiner's report on the death of S.H. initially ascribed the death to asphyxia due to overlay and described the manner of death as an accident. The medical examiner's report was later amended, ascribing the death to asphyxia and describing the manner of death as undetermined. The State and the guardian *ad litem* then rested.

¶ 17 Melinda testified on her own behalf that on February 23, 2010, at approximately noon, she watched television in her room with J.H., Q.H. and S.H. After the mail arrived Melinda told Sylvester she was going to the currency exchange and would be right back. Melinda testified that she returned approximately one hour later and gave Sylvester an envelope for the landlord. At some time between 3:45 p.m. and 4:30 p.m., Melinda told Sylvester she was going to a Wal-Mart with a friend to buy milk and diapers. Melinda added that before she left, she saw J.H. sitting on

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a couch.

¶ 18 Melinda also testified that before reaching the store, she received a telephone call from Sylvester, stating he needed her to return because S.H. was not breathing. When Melinda arrived home, she saw an ambulance outside. Melinda jumped out of her friend's car, ran through the snow towards the front door of her residence and saw paramedics carrying S.H. and administering chest compressions.

¶ 19 Melinda further testified that she had a conversation with J.H. two days later. According to Melinda, when she asked J.H. what happened on the day S.H. died, J.H. initially said nothing. J.H. then moved to a corner of the room, asking why Melinda was looking at her. J.H. began to cry. Melinda again asked if J.H. was ready to say what happened. According to Melinda, J.H. replied, "I did this," and then placed her hand over her mouth and nose. Melinda asked J.H. why she did it, to which J.H. replied she did not know and that "something came over her body." Melinda testified that J.H. said S.H. was moving his arms and legs when she put her hand over his mouth and nose.

¶ 20 Moreover, Melinda testified that she did not use J.H. as a babysitter for the twins, but she admitted she disciplined J.H. three times with a belt on her rear end.

¶ 21 Following closing arguments, the trial judge found there was insufficient proof of abuse. However, he found the State met its burden of proving neglect due to an injurious environment, although it was a close case. The trial judge stated that in injurious environment cases, the State was not required to prove harm to a child, but clearly harm was established by the death of S.H. The trial judge found the State's witnesses to be credible and Melinda to be very believable at

times. The trial judge also stated it was unclear what happened to S.H. The trial judge commented that Melinda's questioning of J.H. may have caused J.H. to say what Melinda wanted to hear and was not the sort of confession that would allow him to conclude that J.H. killed S.H.

¶ 22 The trial judge ultimately agreed with the State that while a parent is not constantly required to monitor his or her children, 15-month-old babies with special needs require monitoring by some means. The trial judge added that J.H. stated in the VSI that she felt she was unreasonably being required to watch the twins. The trial judge further stated that Melinda's mental health and substance abuse issues were not directly related to S.H.'s death, but the issues were part of the totality of circumstances to be considered.

¶ 23 The circuit court then entered written adjudication orders finding the minors neglected under section 405/2-3 of the Juvenile Court Act (Act) (705 ILCS 405/2-3 (West 2010)), due to an injurious environment. The written orders note the death of S.H., a prior indicated report against Melinda, and Melinda's failure to comply with recommended intact services as bases for the finding.

¶ 24 On January 18, 2011, the circuit court held a dispositional hearing on events transpiring since the death of S.H. The circuit court then entered written disposition orders adjudging J.H. and Q.H. wards of the court. The orders found Melinda and Sylvester unable, for reasons other than financial circumstances alone, to care for, protect, train, or discipline the minors. The orders also state that appropriate services aimed at family preservation were unsuccessful. The minors were then placed under a DCFS Guardianship Administrator with the right to place the minors.

¶ 25 On February 4, 2011, Melinda filed a timely notice of appeal to this court. On May 18,

2011, this court dismissed the appeal, due to Melinda's failure to file a brief by the date ordered by the court. On May 23, 2011, this court granted Melinda's motion for reconsideration and directed her to file a brief on or before May 31, 2011, which she did. The Public Guardian filed a responsive brief on June 30, 2011. The State's Attorney filed a responsive brief on July 8, 2011.

¶ 26

#### DISCUSSION

¶ 27 The sole issue Melinda raises on appeal is whether the circuit court's finding of neglect due to an injurious environment related to the suspicious death of S.H. was against the manifest weight of the evidence. "[C]ases involving allegations of neglect and adjudication of wardship are *sui generis*, and must be decided on the basis of their unique circumstances." *In re Arthur H.*, 212 Ill. 2d 441, 463 (2004). It is the State's burden to prove allegations of neglect by a preponderance of the evidence. *Arthur H.*, 212 Ill. 2d at 463-64. An adjudication of neglect is to be reviewed based on the totality of the evidence. *In re A.W., Jr.*, 231 Ill. 2d 241, 261 (2008). A trial court's ruling of neglect will not be reversed unless it is against the manifest weight of the evidence. *Arthur H.*, 212 Ill. 2d at 464. A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident. *Id.*

¶ 28 Because these cases are *sui generis*, this court gives great deference to the trial court's determinations at the adjudicatory and dispositional hearings, given that the trial court is in the best position to observe the demeanor of the witnesses and the parties, assess credibility, and weigh the evidence presented. *E.g., In re Sharena H.*, 366 Ill. App. 3d 405, 415 (2006). Indeed, "due to the 'delicacy and difficulty of child custody cases,' it is well settled 'that wide discretion is vested in the trial judge to an even greater degree than any ordinary appeal to which the

familiar manifest weight principle is applied." ' ' *In re Lakita B.*, 297 Ill. App. 3d 985, 994 (1998) (quoting *In re D.L.*, 226 Ill. App. 3d 177, 185 (1992)).

¶ 29 The Act sets forth the procedures and criteria to be used in deciding whether a minor should be removed from his or her parents' custody and made a ward of the court. 705 ILCS 405/1-1 *et seq.* (West 2010); *Arthur H.*, 212 Ill. 2d at 463. Section 2-3(1)(b) of the Act provides that a neglected minor includes "any minor under 18 years of age whose environment is injurious to his or her welfare." 705 ILCS 405/2-3(1)(b) (West 2010). Generally, the neglect of a juvenile is defined as a failure to exercise the care that the circumstances warrant. *Arthur H.*, 212 Ill. 2d at 463. Neglect includes wilful as well as unintentional disregard of duty, and takes its meaning from the context of the surrounding circumstances. *Id.* Although an injurious environment does not have a fixed definition, it includes the breach of a parent's duty to ensure safe and nurturing shelter for the minor. *Id.* There are also various parental actions that create an injurious environment, such as drug or alcohol use, and untreated mental health problems. See *A.W., Jr.*, 231 Ill. 2d at 255.

¶ 30 Melinda primarily relies on *Arthur H.* In that case, our supreme court ruled "that the Act instructs the circuit court during the adjudicatory hearing to determine whether the child is neglected, and not whether the parents are neglectful" and an "analysis of the relative blame of each parent for the child's neglect was improper." *Arthur H.*, 212 Ill. 2d at 467. The Act thus allows for courts to find neglect in cases where only one parent is neglectful or it is difficult to apportion blame among parents or guardians. *Id.*

¶ 31 In this case, a review of the transcript shows that in finding neglect, the trial judge

concluded it was unclear what happened to S.H., but that 15-month-old babies with special needs require monitoring more careful than what occurred in this case. The trial judge did not apportion blame to Melinda, Sylvester or J.H., which is entirely consistent with *Arthur H.* See *Arthur H.*, 212 Ill. 2d at 467. Melinda argues the State failed to prove she and Sylvester knew of the risk to S.H. However, neglect includes an unintentional disregard of duty, in the context of the surrounding circumstances, such as the duty to monitor 15-month-old special needs children in this case. *Id.* at 463. Melinda also objects to the State's partial reliance on her substance abuse and mental health issues. Yet, the trial court, like this court, may consider the totality of the circumstances in determining whether an injurious environment existed. See *A.W., Jr.*, 231 Ill. 2d at 255.

¶ 32 Melinda further objects to the amorphous concept of an injurious environment. The Public Guardian responds that Melinda forfeited the issue by failing to raise the argument in the circuit court. See *Sharena H.*, 366 Ill. App. 3d at 413. However, the argument also would fail on its merits. Melinda notes the Illinois legislature removed the concept of an "injurious environment" from the Abused and Neglected Child Reporting Act's definition of a neglected child (325 ILCS 5/3 (West 2010)). See Pub. Act 81-1077 (eff. July 1, 1980). Melinda quotes legislative history stating the term was being removed out of concern over misunderstandings and possible increases in litigation. Although Melinda failed to provide a complete citation to this legislative history, assuming *arguendo* that her quotation is accurate, the concept of an injurious environment remains part of the Act at issue here. See *Burris v. Department of Children & Family Services*, No. 1-10-1364, slip op. at 16-18 (Ill. App. June 29, 2011).

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Moreover, Melinda made and makes no argument that section 2-3(1)(b) of the Act is unconstitutionally vague. Accordingly, Melinda fails to persuade this court that a finding of neglect cannot be based on an injurious environment in this case.

¶ 33

#### CONCLUSION

¶ 34 In sum, we conclude the trial court did not abuse its discretion in finding J.H. and Q.H. neglected, based on an injurious environment, after considering the totality of the circumstances. Accordingly, for all of the aforementioned reasons, the judgment of the circuit court of Cook County is affirmed.

¶ 35 Affirmed.