

NOTICE  
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2011 IL App (4th) 110475-U

Filed 11/4/11

NO. 4-11-0475

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: C.J., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	McLean County
v.	)	No. 10JA145
CORDARIUS M. JOLLY,	)	
Respondent-Appellant.	)	Honorable
	)	Kevin P. Fitzgerald,
	)	Judge Presiding.

JUSTICE McCULLOUGH delivered the judgment of the court.  
Presiding Justice Knecht and Justice Cook concurred in the judgment.

**ORDER**

¶ 1 *Held:* Only question to be resolved at an adjudicatory hearing is whether a child is abused, and not whether each parent is "guilty" of the abuse; it is only after the trial court has adjudicated a minor abused that the court is to consider the actions of the parents.

¶ 2 On March 9, 2011, the State filed a first supplemental petition for adjudication of wardship, alleging that C.J. (born July 4, 2010), the minor child of respondent, Cordarius M. Jolly, was an abused minor pursuant to section 2-3(2)(I) of the Juvenile Court Act of 1987 (705 ILCS 405/2-3(2)(I) (West 2010)). C.J.'s mother, Vicky Izaguirre, is not a party to this appeal. Following a March 2011 adjudicatory hearing, the trial court adjudicated C.J. an abused minor. Following a May 2011 dispositional hearing, the court adjudicated C.J. a ward of the court and appointed the Department of Children and Family Services (DCFS) as his guardian.

¶ 3 Respondent appeals, arguing "there was insufficient evidence for the Court to

find that the abuse occurred while in the care of the father." We affirm.

¶ 4 On March 9, 2011, the State filed a first supplemental petition for adjudication of wardship, alleging that C.J. was an abused minor pursuant to section 2-3(2)(I) of the Act, stating:

"The minor, who is under the age of eighteen years, is abused in that a parent or immediate family member, or any person responsible for the minor's welfare, or any person who is in the same family or household as the minor, inflicted, or allowed to be inflicted, physical injury to the minor by other than accidental means, which would be likely to cause disfigurement, impairment of emotional health, or loss or impairment of any bodily function, in that 2 month old Corvon [J.] sustained multiple rib fractures, a bruise in the right armpit, a scab with abrasion on the lower back and several scratches on the abdomen. The injuries remain unexplained, however non-abusive means have been ruled out by a medical expert. The injuries occurred while the minor was in the care of a parent or parents or in the care of one to whom they entrusted the minor's care."

¶ 5 At the adjudicatory hearing, respondent admitted the allegation of abuse in the supplemental petition. As a factual basis, the State offered (1) Dr. Channing Smith Petrak's curriculum vitae; (2) the Pediatric Resource Center (PRC) report including Dr. Petrak's report and the attachments she used to author her report; (3) the medical records from BroMenn Hospital; (4) the medical records from St. Joseph's emergency room; (5) the incident report; and

(6) a video of the parents' police interview. Respondent stipulated to the State's factual basis for the allegation of abuse. Based on the shelter-care report and respondent's stipulation, the trial court found sufficient factual basis to prove that the injuries were sustained by other than accidental means and that the minor was in the care of one of his parents, or one to whom the parents had entrusted his care. The court found the minor abused and took under advisement its determination as to what acts or omissions formed the basis of the abuse. The trial court reviewed the six exhibits and following argument, found "it is an act or omission of one of the parents that caused the injuries to occur."

¶ 6 The case then proceeded to a dispositional hearing on May 11, 2011. The trial court found it in C.J.'s best interest to be adjudged a ward of the court. The court also found respondent unfit to care for C.J.

¶ 7 This appeal followed.

¶ 8 Respondent argues "there was insufficient evidence for the Court to find that the abuse occurred while in the care of the father." Respondent does not challenge the trial court's dispositional order finding him unfit to care for C.J. We therefore limit our review to the adjudication order.

¶ 9 The purpose of an adjudicatory hearing is "to determine whether the allegations of a petition \*\*\* that a minor under 18 years of age is abused \*\*\* are supported by a preponderance of the evidence." 705 ILCS 405/1-3(1) (West 2010). The plain language of this provision instructs the trial court to focus solely upon whether the child has been abused. See *In re Arthur H.*, 212 Ill. 2d 441, 465, 819 N.E.2d 734, 748 (2004). The legislature made no mention in this provision that during the adjudicatory stage of the proceedings the court is also to determine who

may be responsible for the child's abuse, and to assess the proportion of blame with respect to such individuals. See *In re R.B.*, 336 Ill. App. 3d 606, 614-15, 784 N.E.2d 400, 407 (2003).

¶ 10 In addition, in defining an abused child in section 2-3 of the Act, the legislature focused exclusively upon the status of the child, and gave no consideration to an evaluation of the acts or omissions of the child's parents, or any other individual responsible for the welfare of the child, in arriving at a determination of abuse. 705 ILCS 405/2-3(2)(I) through (2)(vii) (West 2010).

¶ 11 Finally, in section 2-21 of the Act (705 ILCS 405/2-21(1) (West 2010)), the General Assembly set forth the procedure which the trial court must follow in conducting an adjudicatory hearing under the Act:

"After hearing the evidence the court shall determine whether or not *the minor* is abused \*\*\*. \*\*\* The court's determination of whether *the minor* is abused \*\*\* shall be stated in writing with the factual basis supporting that determination.

If the court finds that the minor is abused \*\*\*, the court shall then determine and put in writing the factual basis supporting that the determination, and specify, *to the extent possible*, the acts or omissions or both of each parent, guardian, or legal custodian that form the basis of the court's findings. That finding shall appear in the order of the court." (Emphases added.)

Thus, pursuant to section 2-21, the trial court is first to determine whether the minor is abused. There is no direction from the legislature that the court shall consider the actions of the parents

in making this determination. It is only after the trial court has adjudicated the child abused that the statute directs the court to consider the actions of the parents. Even then, however, section 2-21 provides that the court need consider such actions only "to the extent possible." See 705 ILCS 405/2-21(1) (West 2010). The plain language of this provision indicates that the legislature recognized that there may occur circumstances when a child is abused, but it may be impossible to determine the relative fault with respect to the child's parents or guardians. However, even if such a determination is not possible, the statute is clear that this does not alter the finding that a child is "abused." See *In re R.B.*, 336 Ill. App. 3d at 615-16, 784 N.E.2d at 407-08 (a determination of causation is irrelevant at the adjudicatory stage).

¶ 12 The State must prove allegations of abuse by a preponderance of the evidence. *In re K.S.*, 365 Ill. App. 3d 566, 570, 850 N.E.2d 335, 339 (2006). A preponderance of the evidence is an amount of evidence that leads a trier of fact to find that the fact at issue is more probable than not. *K.S.*, 365 Ill. App. 3d at 570, 850 N.E.2d at 339. A trial court's determination of abuse will not be reversed on appeal unless its findings of fact are against the manifest weight of the evidence; this is so because the trial court is in the better position to observe witnesses, assess credibility, and weigh evidence. *K.S.*, 365 Ill. App. 3d at 570, 850 N.E.2d at 339.

¶ 13 Here, the petition alleged that C.J. was abused because he sustained unexplained injuries by other than accidental means while in the care of a parent or parents, or in the care of one to whom they entrusted C.J.'s care. Respondent stipulated to this allegation and the State's factual basis for the allegation. Respondent admits "[t]here was evidence presented that C.J. was abused. This evidence is un rebutted by respondent. Thus, the allegation of abuse was proved by

a preponderance of the evidence. Therefore, the finding of abuse is affirmed.

¶ 14 Respondent argues "there was insufficient evidence for the Court to find that the abuse occurred while in the care of the father." Essentially, respondent argues that the evidence presented at the adjudicatory hearing was insufficient to prove him "guilty" of abuse. Respondent misapprehends the purpose of the adjudicatory hearing. Our supreme court has held that the only question to be resolved at an adjudicatory hearing is whether a child is abused, and not whether each parent is "guilty" of the abuse; it is only after the trial court has adjudicated a minor abused that the court is to consider the actions of the parents. See *In re Arthur H.*, 212 Ill. 2d at 466-67, 819 N.E.2d at 748-49.

¶ 15 Respondent is correct that in this case, after a review of the six exhibits and following argument, the trial court found that "it is an act or omission of one of the parents that caused the injuries to occur." Section 2-21(1) of the Act required the court to specify, to the extent possible, respondent's acts or omissions that formed the basis of its finding of abuse. "A trial court's finding under section 2-21(1) of the Act does not adjudicate a parent or guardian 'guilty' but, instead, constitutes simply one of the numerous factors that the court will consider at the later dispositional hearing." See *In re J.W.*, 386 Ill. App. 3d 847, 855, 898 N.E.2d 803, 810 (2008); see also 705 ILCS 405/2-23 (1)(a) (West 2010) ("custody of the minor shall not be restored to any parent, guardian or legal custodian whose acts or omissions or both have been identified, pursuant to subsection (1) of Section 2-21, as forming the basis for the court's finding of abuse or neglect, until such time as a hearing is held on the issue of the best interests of the minor and the fitness of such parent, guardian or legal custodian to care for the minor without endangering the minor's health or safety, and the court enters an order that such parent, guardian

or legal custodian is fit to care for the minor"). The trial court's finding in this case that "it is an act or omission of one of the parents that caused the injuries to occur" was not necessary to its earlier finding that C.J. was abused. This finding merely serves to inform the court when the proceedings reach the dispositional hearing; and then becomes one of several factors for the court to consider. Respondent does not challenge the trial court's dispositional order finding him unfit to care for C.J.

¶ 16 For the reasons stated, we affirm the judgment of the McLean County circuit court.

¶ 17 Affirmed.