

**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).

NO. 4-10-0864

Order Filed 3/23/11

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: G.I., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Champaign County
v.	)	No. 10JA49
GINO IZAGUIRRE,	)	
Respondent-Appellant.	)	Honorable
	)	John R. Kennedy,
	)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.  
Presiding Justice Knecht and Justice Turner concurred in the judgment.

**ORDER**

*Held:* Respondent failed to establish, by a developed argument and by citation of authorities, that due process required a factual basis before a court accepted a parent's stipulation to a petition for the adjudication of neglect (as distinct from a petition to terminate parental rights); and, besides, even assuming that such a factual basis were constitutionally required, the factual basis in this case was sufficient.

Respondent, Gino Izaguirre, is the father of G.I., born on February 22, 2010. Arieal Green, who is not a party to this appeal, is the child's mother. After accepting the parents' admission to a count of the State's petition for the adjudication of neglect, the trial court entered a dispositional order making G.I. a ward of the court. Respondent appeals on the ground that the factual basis for his admission was insufficient and that the court therefore violated his right to due process by accepting his admission.

Respondent has not demonstrated to us, by a reasoned argument and by

citation of authorities, that due process required a factual basis in these circumstances, *i.e.*, a parent's stipulation to a petition for the adjudication of neglect in contrast to his or her stipulation to a petition for the termination of parental rights. And, further, even if due process required a factual basis in these circumstances, the factual basis was sufficient. Therefore, we affirm the trial court's judgment.

## I. BACKGROUND

On July 14, 2010, the State filed a petition to adjudicate G.I. to be neglected and to hold a shelter-care hearing. The two counts of the petition alleged that G.I. was "neglected" in the sense that he was in an environment injurious to his welfare. Specifically, the two counts read as follows:

### "COUNT I

[G.I.] is neglected pursuant to 705 ILCS 405/2-3(1)(b) by reason of being a minor under 18 years of age whose environment is injurious to his welfare when he resides with Arieal Green and/or Gino Izaguirre in that said environment exposes the minor to domestic violence.

### COUNT II

[G.I.] is neglected pursuant to 705 ILCS 405/2-3(1)(b) by reason of being a minor under 18 years of age whose environment is injurious to his welfare when he resides with Arieal Green and/or Gino Izaguirre in that said environment exposes the minor to the risk of physical harm."

Thus, both of these counts allege an injurious environment, and they differ only in that

count I alleges the environment is injurious in that it "exposes the minor to domestic violence" whereas count II alleges the environment is injurious in that it "exposes the minor to the risk of physical harm." Theoretically, G.I. could be exposed to domestic violence toward another family member, and thereby suffer psychological harm (among other detriments), without necessarily being subjected to the risk of physical harm to his own person.

In an adjudicatory hearing on September 14, 2010, both parents stipulated to count I of the petition, the count alleging that G.I. was in an injurious environment in the sense that he was exposed to domestic violence. The docket entry for September 14, 2010, reads in relevant part as follows:

"Cause called for Adjudicatory Hearing. With no objection, Court considers the Shelter Care Report as factual basis. Respondent mother and father Admit and Stipulate to COUNT I of the Petition. Respondent parents are advised of the nature of the allegations and the possible consequences; court finds they understand the same. Court finds Admission & Stipulation is knowingly [*sic*] & voluntary and accepts the same. Courts finds in favor of the Petitioner and against the respondent mother and respondent father. Petitioner dismisses COUNT II and promises not to use the stipulation against the respondent father in any pending criminal proceeding."

So, after admonishing both parents in order to make sure their stipulation to count I was

knowing and voluntary, the court accepted their stipulation and found, as alleged in count I, that G.I. was "neglected" within the meaning of section 2-3(1)(b) of the Juvenile Court Act of 1987 (705 ILCS 405/2-3(1)(b) (West 2008)) in that his environment was injurious to his welfare, specifically, in that he was exposed to domestic violence in his environment.

As the docket entry noted, the "factual basis" for this stipulation or admission was the shelter-care report, which was filed on July 14, 2010. It appears, from the shelter-care report, that respondent and Green, both of whom had been drinking, got into an argument in their residence at 2:47 a.m. on July 13, 2010. Five-month-old G.I. was not present in the room during the argument; he was upstairs. Respondent accused Green of seeing another man, and he threw her across a coffee table. When he threw her across the coffee table, a cocked pistol in his pants pocket accidentally went off, wounding Green in the mouth and the arm.

In the adjudicatory hearing on September 14, 2010, respondent never disputed the sufficiency of the shelter-care report as a factual basis for his admission of count I of the petition for adjudication of neglect (assuming such a factual basis was required). Accordingly, the trial court accepted the factual basis as well as respondent's admission of count I, finding G.I. to be "neglected" by reason of an injurious environment, *i.e.*, an environment that exposed him to domestic violence. See 705 ILCS 405/2-3(1)(b) (West 2008).

Having found G.I. to be neglected, the trial court held a dispositional hearing on October 12, 2010, a hearing in which the court considered what to do about this finding of neglect. After reviewing a "home and background report," the court found Green to be fit, willing, and able to care for G.I. but found respondent to be unfit, unwilling, and unable

to do so. Therefore, after making G.I. a ward of the court, the court removed custody of G.I. from respondent and ordered that custody remain with Green. The court removed guardianship of G.I. from both parents, however, and placed it with the Department of Children and Family Services.

This appeal followed.

## II. ANALYSIS

Respondent argues the trial court erred by accepting his stipulation to count I of the petition for adjudication of neglect, because, in his words, "[d]ue process requires a circuit court to determine whether or not a factual basis exists for a parent's admission of unfitness." In support of that quoted proposition, he cites *In re M.H.*, 196 Ill. 2d 356, 361-62 (2001).

*M.H.*, however, differs significantly from the present case. In *M.H.*, as we learn from the first paragraph of that decision, the circuit court accepted the respondent's admission of one of the counts of a *petition to terminate her parental rights*, and the court accepted this admission without any factual basis. *M.H.*, 196 Ill. 2d at 357. Hence, it is immediately evident that *M.H.* differs from this case in two ways: (1) there was no factual basis at all in *M.H.*, whereas there was a factual basis in this case (respondent merely disputes its adequacy); and (2) the petition in *M.H.* was one for the termination of parental rights, whereas the petition in this case was one for the adjudication of neglect. Respondent does not explain why, despite these differences, *M.H.* applies to the present case. To quote respondent again, "[d]ue process requires a circuit court to determine whether or not a factual basis exists for a parent's admission of unfitness." Respondent did not admit, however, to being an "unfit person" within the meaning of section 1(D) of the Adoption Act

(750 ILCS 50/1(D) (West 2008)). Instead, he admitted that G.I. was neglected within the meaning of section 2-3(1)(b) of the Juvenile Court Act of 1987 (705 ILCS 405/2-3(1)(b) (West 2008)). This admission did not result in the termination of parental rights, unlike the admission in *M.H.* Therefore, the relevance of *M.H.* is unclear.

Granted, the trial court in this case required a factual basis and admonished the parents before accepting their admission of count I of the petition for adjudication of neglect. This procedure might have been a good idea--it certainly did not hurt. Nevertheless, respondent has cited no case holding that this procedure is constitutionally required when the termination of parental rights is not being contemplated. Nor has he so much as mentioned the factors in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), let alone explained why they should lead to such a holding. See *M.H.*, 196 Ill. 2d at 363.

In any event, assuming, for the sake of argument, that a factual basis is constitutionally required before a circuit court may accept a parent's stipulation to a petition for the adjudication of neglect (as distinct from a petition for the termination of parental rights), we find the factual basis in this case to be sufficient. Throwing a family member across a coffee table qualifies as domestic violence, and although the shooting was apparently an unintended consequence of the violence, it was nevertheless a consequence. Violence can have the unintended consequence of injuring not only the person against whom it is directed but also other members of the household. Bullets can penetrate walls and floors. Even if G.I. was in no physical danger, a household in which his mother can be manhandled and, in the process, shot (intentionally or unintentionally) is an environment injurious to his welfare.

### III. CONCLUSION

For the foregoing reasons, we affirm the trial court's judgment.

Affirmed.