

No. 1-13-0723

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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In the Interest of JILLABELLE H.,	)	Appeal from the
	)	Circuit Court of
Minor-Respondent-Appellee,	)	Cook County.
	)	
(The People of the State of Illinois,	)	
	)	No. 11 JA 431
Petitioner-Appellee,	)	
	)	
v.	)	
	)	Honorable
Amber H.,	)	Erica Reddick and
	)	Joan Kubalanza,
Mother-Respondent-Appellant).	)	Judges Presiding.

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JUSTICE CUNNINGHAM delivered the judgment of the court.  
Presiding Justice Hoffman and Justice Delort concurred in the judgment.

**ORDER**

¶ 1 *Held:* The judgment of the trial court is affirmed because its finding of neglect was not against the manifest weight of the evidence and the respondent forfeited consideration of all other issues.

¶ 2 This appeal arises from a November 29, 2012 order entered by the circuit court of Cook County, which determined that minor-respondent-appellee Jillabelle H. (Jillabelle) was physically abused or neglected by a parent; and a February 27, 2013 order entered by the trial court which

determined that it was in Jillabelle's best interest to be adjudicated a ward of the court. On appeal, mother-respondent-appellant Amber H. (Amber) argues that: (1) the trial court erred in finding that Jillabelle was neglected due to an injurious environment because the State failed to meet its burden of proof; and (2) the trial court erred in striking Amber's demand for a bill of particulars and denying her motion to dismiss, and motion for summary judgment. For the following reasons, we affirm the judgment of the circuit court of Cook County.

¶ 3

### BACKGROUND

¶ 4 On November 27, 2008, Jillabelle was born. Amber is Jillabelle's mother and paternity tests have established that Nicholas K. (Nicholas) is Jillabelle's father. Nicholas is not a party to this appeal.

¶ 5 On June 9, 2011, Jillabelle was taken to the hospital because she had bruises on her face, neck and back. On June 22, 2011, the State filed a petition for adjudication of wardship for Jillabelle. The petition alleged that: Jillabelle was neglected due to an injurious environment pursuant to section 2-3(1)(b) of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/2-3(1)(b) (West 2010)); Jillabelle was abused pursuant to section 2-3(2)(i) of the Act (705 ILCS 504/2-3(2)(i) (West 2010)); and Jillabelle was abused due to a substantial risk of physical injury pursuant to section 2-3(2)(ii) of the Act (705 ILCS 405/2-3(2)(ii) (West 2010)). The petition also alleged that the medical personnel that examined Jillabelle stated that the injuries on her face were consistent with hand prints; Amber's explanation was not consistent with Jillabelle's injuries; and Jillabelle's injuries were the result of non-accidental trauma.

¶ 6 Also, on June 22, 2011, the circuit court of Cook County held a temporary custody hearing

for Jillabelle. The trial court appointed Robert F. Harris, Cook County Public Guardian (Public Guardian) as Jillabelle's attorney and guardian *ad litem*. The trial court found that probable cause existed that Jillabelle was abused or neglected. The trial also found that reasonable efforts had been made but did not eliminate the immediate and urgent necessity to remove Jillabelle from the home. Further, the trial court entered a visitation order which granted Amber supervised day visits up to seven days a week, at the discretion of the Department of Children and Family Services (DCFS).

¶ 7 On December 8, 2011, Amber filed a motion for summary judgment; a notice and demand for a bill of particulars; and a motion to dismiss the petition for adjudication of wardship. On January 5, 2012, the State filed a motion to strike or deny Amber's demand for a bill of particulars. On January 13, 2012, the State filed a response to Amber's motion for summary judgment. On January 17, 2012, the State filed a response to Amber's motion to dismiss. On January 26, 2012, the Public Guardian, on behalf of Jillabelle, filed a response to Amber's motion for summary judgment. Also on January 26, 2012, the Public Guardian filed a response to Amber's motion to dismiss. On February 27, 2012, the trial court held a hearing on all of Amber's motions up to that date. The trial court denied Amber's motion for summary judgment and motion to dismiss. Also, the trial court struck Amber's demand for a bill of particulars.

¶ 8 On May 3, 2012, the trial court held an adjudicatory hearing. At the adjudicatory hearing, Dr. Mary Jones (Dr. Jones) testified. Dr. Jones is a general pediatrician at Loyola University Medical Center (Loyola). Dr. Jones testified that she has been employed at Loyola since February of 2011. Dr. Jones is a board-certified pediatrician. She testified that she practices in the area of child abuse but does not hold a child abuse certification. Dr. Jones testified at length that her

background in the area of child abuse began in 2002. Dr. Jones testified that there have been between 70 and 100 occasions where she has rendered an opinion about whether a child was subjected to abuse and neglect. She testified that she found that a child suffered a non-accidental injury in less than 10% of those occasions. Dr. Jones also described her procedure for evaluating a child's injuries. She testified that the first step is to interview the parent or caretaker of the child to get a history of the child's injuries. Then Dr. Jones performs a physical examination and orders testing or imaging if needed. Lastly, Dr. Jones reviews the child's entire medical history. Dr. Jones testified that she then determines if the child's injuries were accidental or non-accidental. Dr. Jones stated that she has testified in child protection proceedings multiple times, but was not sure if she has ever been found to be an expert in child abuse pediatrics. The State then tendered Dr. Jones as an expert in pediatric medicine and child abuse pediatrics. The trial court, over defense counsel's objection, found Dr. Jones to be an expert in pediatrics and child abuse pediatrics.

¶ 9 Dr. Jones testified that she first examined Jillabelle at the Pediatric Ambulatory Clinic at Loyola on June 9, 2011. Dr. Jones also saw Jillabelle on June 10, 2011. The State then admitted photographs of Jillabelle's injuries into evidence. The State showed Dr. Jones a picture of Jillabelle's right cheek, and Dr. Jones testified that her opinion to a reasonable degree of medical certainty was that Jillabelle's injuries were non-accidental. Dr. Jones reasoned that it would take a significant impact to break the blood vessels that caused Jillabelle's bruising, and the narrative of Jillabelle's injuries was not plausible. Dr. Jones was shown additional pictures of Jillabelle's injuries and she stated that there were red linear bruises on both of Jillabelle's cheeks. Dr. Jones testified that she did not question Jillabelle about her injuries during the examination because it is very difficult to

question a child under the age of three without asking questions that are leading. Dr. Jones testified that the injuries on Jillabelle's cheeks were consistent with hand prints.

¶ 10 Next, Dr. Jones testified as to a linear mark across the midline of Jillabelle's neck. Dr. Jones stated that the bruising was approximately four to five centimeters in length. Dr. Jones testified that her opinion to a reasonable degree of medical certainty was that the mark across Jillabelle's neck was non-accidental. Dr. Jones stated that she was told that the mark on Jillabelle's neck could have been caused by a necklace, but that the necklace in question was made of seashells and did not correspond to Jillabelle's injury.

¶ 11 Dr. Jones testified that she was told that Jillabelle fell face first off of a bed. However, Dr. Jones stated that the story she was given was not reasonable as related to Jillabelle's injuries. Dr. Jones testified that according to the story she was told, she would have expected to see injuries to other parts of Jillabelle's face as opposed to injuries just localized to Jillabelle's cheeks. Dr. Jones stated that she received inconsistent stories regarding Jillabelle's injuries. Dr. Jones testified that when she receives inconsistent stories, it leads her to believe that the caretakers are not being forthright with their explanation. Dr. Jones testified that Jillabelle could not have caused the injuries to herself. She stated that to a reasonable degree of medical certainty, someone slapped Jillabelle.

¶ 12 Charlotte Wiley (Wiley) testified that she was Jillabelle's teacher in 2011. Wiley has been a toddler teacher at Triton College for 14 years. Wiley testified that on June 9, 2011, Amber brought Jillabelle to school, and Wiley noticed that Jillabelle had scratches and marks on her face. Amber told Wiley that Jillabelle was jumping on the bed and fell in between some dressers. Wiley testified that after Amber left, Wiley asked Jillabelle what happened to her face. Jillabelle told Wiley that

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she fell off Amber's bed, and began to imitate jumping up and down. Wiley testified that Jillabelle had scratches on both sides of her face that were "a couple inches long." Wiley did not notice any other injuries on Jillabelle. Wiley testified that she did not think that there was an emergency or any reason to call a doctor.

¶ 13 Valerie Lorenzo (Lorenzo) testified that Wiley is her co-teacher, and that Jillabelle was her student in 2011. Lorenzo is a teacher and also the Assistant Director of the toddler center at Triton College. She has been the Assistant Director for 10 years and a teacher for 16 years. Lorenzo testified that on June 9, 2011, she noticed black and blue marks on Jillabelle's face. Lorenzo asked Wiley what happened, and Wiley told Lorenzo the story that Amber told to Wiley. Lorenzo testified that she spoke to Jillabelle while Wiley was present. Lorenzo asked Jillabelle what happened and Jillabelle responded "jumping, jumping." Jillabelle then told Lorenzo that she fell. Lorenzo testified that she asked Jillabelle what happened a second time and received the same answer. Lorenzo then called the director, Cindy Mentone (Mentone). Lorenzo testified that she performed a body check on Jillabelle with Mentone and Wiley present. Lorenzo lifted Jillabelle's shirt and changed her shorts, but did not see any additional marks on Jillabelle. Throughout the morning, Lorenzo continued to ask Jillabelle how she injured her face and Jillabelle consistently gave the same answer as when Lorenzo first inquired.

¶ 14 Lorenzo testified that Amber came to pick up Jillabelle that afternoon. Lorenzo spoke to Amber for 10 or 15 minutes to find out what happened to Jillabelle. Lorenzo testified that Amber stated that the previous night, Jillabelle was jumping on the bed and fell and hit her face. Amber did not tell Lorenzo who was present when Jillabelle was injured. Amber asked if she should take

Jillabelle to the doctor and Lorenzo suggested that it would be a good idea to do so. Amber told Lorenzo that she would take Jillabelle to the doctor, and would call the toddler center to let them know what the doctor diagnosed. Lorenzo was not concerned about Jillabelle's well-being because she believed that Amber's story matched Jillabelle's bruises. Lorenzo stated that there had never been a sign of any problems while Jillabelle was her student. Lorenzo testified that she did not contact a medical professional because Jillabelle's injuries did not look bad.

¶ 15 Mentone testified that she is the Director of the Child Development Center at Triton College. Mentone has held her position for 23 years. Mentone testified that on June 9, 2011, either Wiley or Lorenzo called her and asked her to come to the toddler room. Mentone went to the toddler room and noticed that Jillabelle had some red marks on her face. Mentone testified that she then spoke to Wiley and Lorenzo, and the teachers told her what Amber and Jillabelle had said earlier in the morning. Mentone then asked Jillabelle what happened, and Jillabelle told Mentone that she was jumping and fell off the bed. Mentone testified that after she talked to Jillabelle, she told Wiley and Lorenzo that she wanted to speak with Amber when it was time for Jillabelle to be picked up. Mentone did not contact a medical professional because, judging from the information that she received, she felt that Jillabelle's injuries were accidental. Mentone testified that she spoke to Amber that afternoon. Amber was very upset and said that Jillabelle was jumping on the bed, and when she fell, it happened very quickly. Amber told Mentone that she tried to reach Jillabelle before Jillabelle fell, but was not able to prevent the fall. Mentone testified that she encouraged Amber to take Jillabelle to the doctor, but she was not sure who raised the topic of going to the doctor. Amber told Mentone that she would take Jillabelle to the hospital on her way home. Mentone testified that a few

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days later, Amber called and told her that Jillabelle had been taken by DCFS and would not be returning to school. Mentone stated that she was never concerned about Amber's caretaking abilities.

¶ 16 Wayne Waters (Waters) testified that he has been a Child Protection Specialist for DCFS for 19 years. Waters testified that he prepared a Child Endangerment Risk Assessment Protocol (CERAP) for Amber on June 14, 2011. A CERAP is used during a child protection investigation when DCFS does not have enough information to conclusively determine that a child is safe. Waters testified that he prepared the CERAP because Jillabelle was hospitalized for bruises on her cheeks, back and neck. Waters stated that according to the report, Amber indicated that Jillabelle fell out of a bed, but a doctor indicated that Jillabelle's injuries could not have been caused by falling out of a bed. Waters testified that DCFS felt that Jillabelle should be placed under a safety plan pending further investigation, as opposed to being taken into custody. The court then granted the State's request to admit into evidence the CERAP prepared by Waters. Waters testified that on the CERAP he prepared, he marked "yes" under the question "Is there a reasonable cause to suspect the caretaker caused moderate to severe harm or has made a plausible threat of moderate or severe harm to the child?" In preparing the CERAP, Waters relied on Jillabelle's injuries, and that a doctor indicated that the injuries could not have happened in the way that Amber described.

¶ 17 Rafael V. (Rafael) testified that he had known Amber for two and a half years, and that he was previously engaged to Amber. Rafael testified that at 6 p.m. on June 8, 2011, he was the caretaker for Jillabelle. At that time, Rafael lived with Amber and Jillabelle in a building above a restaurant that Rafael owned. Amber was a waitress at the restaurant and Rafael was her boss. On June 8, 2011, Amber was covering a shift and Rafael cared for Jillabelle from 6 p.m. to midnight.

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Rafael testified that between 7 and 8 p.m., he was playing with Jillabelle on the bed. Rafael stated that he was arching his body back and forth while Jillabelle was jumping over him. Rafael testified that while Jillabelle jumped, his leg hit her body and she flew off the bed and fell head first into her toys. Rafael stated that he panicked. According to Rafael, Jillabelle was breathing but not responding so he grabbed her face to shake her and get her up. Rafael testified that he grabbed both sides of Jillabelle's face with his fingers. Rafael shook Jillabelle for about 30 seconds before she responded. Rafael asked Jillabelle if she was ok and she responded "yeah, yeah." Rafael then gave her some ice cream. Rafael stated that Jillabelle was not crying after she fell.

¶ 18 Rafael testified that around 8:45 p.m., Amber called to make sure everything was fine. Rafael told Amber that everything was fine, but that Jillabelle had a "little incident." Rafael testified that Amber came upstairs around 10:15 p.m. and he told her what happened to Jillabelle. Rafael stated that Jillabelle was awake when Amber arrived and she told Amber that she was playing with Rafael and fell off the bed. Rafael told Amber that Jillabelle fell off the bed and went face first into her toys. Rafael testified that he, Amber, and Jillabelle then drove another employee home. According to Rafael, they arrived back at home around 12 a.m. and Jillabelle's face was red and swollen. Neither Rafael nor Amber put anything on Jillabelle's face to treat it. Rafael testified that he had taken care of Jillabelle many times since she was six months old. He stated that he was the only person in the room when Jillabelle fell.

¶ 19 Rafael further testified that he was interviewed by Kenneth Leggin (Leggin) from the Department of Child Protection (DCP) in June 2011. Rafael stated that he told Leggin that he did not see Jillabelle dive off the bed. Rafael testified that he lied to Leggin and said that he was in the

bathroom and did not see Jillabelle fall. Rafael stated that his whole conversation with Leggin was a lie. Rafael testified that he told Leggin that Amber was in the room when Jillabelle fell, and that he suggested that Amber take Jillabelle to the hospital. Rafael stated that he lied to Leggin because Amber said she wanted to handle the situation.

¶ 20 Amber testified that on June 8, 2011, she worked at Rafael's restaurant from 6 p.m. to 10 p.m. While Amber was working, Rafael was caring for Jillabelle in the apartment above the restaurant. Amber testified that around 7:30 or 8 p.m., Rafael called her. After having a conversation with Rafael, Amber continued working until 10 p.m. and closed the restaurant. Amber then went upstairs and immediately checked on Jillabelle because she knew that Jillabelle had fallen. Amber testified that she asked Jillabelle a few questions and then gave Jillabelle a popsicle. Amber then got a cold towel and put it on Jillabelle's forehead. Amber testified that the next morning she took Jillabelle to school. On cross-examination, Amber testified that she lived with Rafael and Jillabelle in 2011. She stated that she did not know whether Jillabelle's injuries were accidental. The parties then rested and the hearing proceeded to closing arguments.

¶ 21 On November 29, 2012, the trial court issued its judgment at the adjudicatory hearing. The trial court noted that Dr. Jones found that the significant amount of bruising and linear marks on Jillabelle's face indicated that there were hand prints on Jillabelle's face. Dr. Jones stated that the history she was given did not appear to be plausible. The court mentioned that Dr. Jones' opinion to a reasonable degree of medical certainty was that the injuries to Jillabelle's face and neck were non-accidental. The trial court also noted that there were no medical experts called to countervail the expert testimony of Dr. Jones. Further, the trial court noted that Rafael testified that he lied

during the investigation of Jillabelle's injuries; and that Amber's stories were inconsistent. Therefore, the court found that Jillabelle was physically abused. The court also found that the physical abuse that Jillabelle suffered showed that she was neglected due to an injurious environment. Further, the court found that Jillabelle was abused because she was at a substantial risk of physical injury. The court stated that all of its findings were by a preponderance of the evidence.

¶ 22 On February 27, 2013, the trial court held a dispositional hearing for Jillabelle. The testimony and evidence at the dispositional hearing presented the following facts. From July 2011 until the dispositional hearing, Jillabelle had been placed with her maternal grandmother. Jillabelle's caseworker saw her in January 2013 and found that the placement was safe and appropriate. In February 2013, Amber found a bruise on Jillabelle's right shoulder. The origin of the bruise was unknown, but the incident resulted in a safety plan which specified that Amber could not have any males present when visiting with Jillabelle. Jillabelle's maternal grandfather saw the bruise and believed it was caused because he holds Jillabelle tightly when he lifts her out of a truck.

¶ 23 In order to achieve reunification with Jillabelle, Amber was required to complete therapy services and comply with random urine drops. Amber has made progress since January 2012. However, she refused to cooperate with requests for urine drops in January and February 2013. Shortly before the dispositional hearing, the maternal grandparents stopped answering telephone calls from the caseworker's agency; and refused to let the agency in the home. As a result, the agency planned to move Jillabelle to a different foster home. Amber has completed a parenting class and a Juvenile Court Assessment Protocol, but has not completed all her required services. Although Amber's visitation order states that she is not allowed to have males present when visiting with

Jillabelle, the supervisor of Jillabelle's caseworker and Jillabelle's therapist stated that she has talked about a male who was present during a visit with Amber. Amber's therapist has worked with Amber on past and current stressors, identification of defense mechanisms, and preparation for single motherhood, but believes that Amber still needs individual therapy. Amber's therapist believes that Amber displays immaturity at times, and is sometimes in denial about DCFS's expectations of her.

¶ 24 During the dispositional hearing, Amber made a statement to the court. Amber stated that she would never hurt her daughter and she is trying to take responsibility for her daughter. She stated that she has been going to therapy and completed a parenting class. Amber acknowledged that she failed to comply with urine drops. Amber also admitted that she lied at the hospital. She stated that her daughter was abused, but that she was not the abuser. Amber stated that she understands and respects the process that she is going through, but she just wants it to end. She stated that she made a poor choice and promised that she would not do it again.

¶ 25 After hearing arguments from the State, the Public Guardian, and counsel for Amber, the trial court found that it was in Jillabelle's best interest to be adjudged a ward of the court. The trial court found that Amber is unable to care for, protect, train or discipline Jillabelle for some reason other than financial circumstances alone. The trial court terminated the temporary custody of the maternal grandparents and placed Jillabelle in the custody and under the guardianship of D. Jean Ortega-Piron, the DCFS Guardianship Administrator. The court then admonished Amber of her rights to appeal and addressed some of its concerns with the case. The trial court also offered words of encouragement to Amber in the effort of reunification with her daughter. However, Amber interrupted the court with multiple profanity-laden statements, and attempted to exit the courtroom

after making the disrespectful statements to the court. The trial court held Amber in contempt of court. The trial court later addressed Amber's lack of respect for the court. Counsel for Amber made a statement, and Amber apologized for her behavior. Following a recess, the trial court addressed Amber's contempt charge. The trial court found that Amber's apology was not sincere. The trial court found Amber in direct criminal contempt and sentenced her to two days in the Cook County Department of Corrections.

¶ 26 On February 28, 2013, Amber filed a timely notice of appeal pursuant to Illinois Supreme Court Rule 303 (eff. May 30, 2008). Therefore this court has jurisdiction to consider Amber's arguments on appeal.

¶ 27 ANALYSIS

¶ 28 We determine the following issues on appeal: (1) whether the trial court erred in finding that Jillabelle was neglected due to an injurious environment because the State failed to meet its burden of proof; and (2) whether the trial court erred in striking Amber's demand for a bill of particulars and denying her motion to dismiss and motion for summary judgment.

¶ 29 As a preliminary matter, we note that both the Public Guardian on behalf of Jillabelle, and the State, argue that Amber's brief on appeal should be stricken and her appeal should be dismissed due to multiple violations of Illinois Supreme Court Rule 341 (eff. Feb. 6, 2013) and Illinois Supreme Court Rule 342 (eff. Jan. 1, 2005). If an appellant's brief does not comply with the supreme court rules, this court has the authority to dismiss the appeal. *Epstein v. Galuska*, 362 Ill. App. 3d 36, 42 (2005). However, the supreme court rules "are not limitations upon the court of review, but rather are admonishments to the parties." *Roberts v. Dow Chemical Co.*, 244 Ill. App. 3d 253, 256

(1993). This court may consider improperly raised arguments where such consideration is necessary to produce a just result. *Brown v. Brown*, 62 Ill. App. 3d 328, 332-33 (1978). We acknowledge that the majority of Amber's brief is in violation of the supreme court rules. Most notably, Amber's brief largely consists of restatements of the evidence presented at the various hearings in the trial court, without any accompanying argument or legal citation whatsoever. However, the arguments that Amber does present warrant consideration in the interest of finding a just result. Therefore, although we admonish Amber for her multiple violations of the supreme court rules, we will address the merits of the appeal.

¶ 30 We first determine whether the trial court erred in finding that Jillabelle was neglected due to an injurious environment because the State failed to meet its burden of proof.

¶ 31 Amber argues that the trial court erred in finding that Jillabelle was neglected due to an injurious environment because there was no indication that Rafael was unable to properly care for Jillabelle. Amber asserts that Rafael had taken care of Jillabelle many times without any incident. Amber contends that the trial court's duty is not to assess blame, but simply to determine whether a child was neglected. Amber claims that her response to Jillabelle's injuries was appropriate and shows that Jillabelle was not neglected. Amber points out that she was not present when Jillabelle was injured, and the trial court declined to name a perpetrator in this case. Amber contends that it is unjust to find that a child was neglected due to a babysitter's conduct without showing that the mother had any knowledge that the babysitter was an unsuitable caretaker. Amber argues that if the State is not required to show that a mother had reason to know that a babysitter was unsuitable, then any time a child is injured by a babysitter the court could find that the child was neglected, no matter

how conscientious the parent was in selecting the babysitter. Amber maintains that Dr. Jones's testimony was not credible because she is not certified in child abuse pediatrics, and argues that Dr. Jones should not have been qualified as an expert by the court. Also, Amber asserts that there has been no history of abuse or domestic violence against Jillabelle.

¶ 32 In response, the Public Guardian argues that the trial court's findings were consistent with the manifest weight of the evidence.<sup>1</sup> The Public Guardian asserts that the trial court clearly articulated its findings, and the basis for each of its findings. The Public Guardian contends that the trial court primarily relied upon the credible expert testimony of Dr. Jones in making its determinations. The Public Guardian points out that Amber attempts to discredit Dr. Jones's testimony, but Amber does not cite any legal authority to support her argument and did not offer expert testimony to rebut Dr. Jones at trial. The Public Guardian argues that the trial court correctly found that Jillabelle was neglected due to an injurious environment because Amber did not seek immediate medical attention for Jillabelle's injuries, and Amber's testimony implied that she had doubts about Rafael's suitability as a caretaker. The Public Guardian asserts that the same evidence that supported the court's determination that Jillabelle was abused supports the finding that Jillabelle was neglected due to an injurious environment.

¶ 33 Additionally, the Public Guardian argues that the trial court properly adjudicated Jillabelle a ward of the court at the dispositional hearing because the court's judgment was in Jillabelle's best

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<sup>1</sup>We note that both the Public Guardian and the State filed a brief on appeal. The Public Guardian presented numerous arguments in its brief and the State adopted all of the Public Guardian's arguments. Therefore, in the interest of clarity, we will respond only to the Public Guardian's arguments.

interest. Primarily, the Public Guardian argues that Amber has forfeited any argument regarding the trial court's judgment at the dispositional hearing because she does not present a substantive argument on this issue in her brief on appeal. Alternatively, the Public Guardian argues that the trial court's judgment at the dispositional hearing was consistent with the manifest weight of the evidence. The Public Guardian contends that there was ample evidence and testimony presented at the dispositional hearing to support the trial court's judgment. The Public Guardian points out that Amber refused two requests for random urine drops, and Amber violated her visitation conditions by having a man present while visiting with Jillabelle. Also, the Public Guardian noted that Amber displayed contumacious behavior in the courtroom when the trial court issued its judgment at the dispositional hearing. Therefore, the Public Guardian argues that the trial court's judgments at the adjudicatory hearing and dispositional hearing should be affirmed.

¶ 34 When a petition for adjudication of wardship is brought under the Act, the trial court's paramount consideration is the best interest of the child. *In re F.S.*, 347 Ill. App. 3d 55, 62 (2004). "The Act provides the procedures that must be followed for determining whether a minor should be removed from his or her parents' custody and made a ward of the court." *In re A.P.*, 2012 IL 113875, ¶18. Pursuant to the Act, the trial court employs a two-step process to determine whether the child should become a ward of the court. *Id.* The first step is the adjudicatory hearing where the trial court considers only whether the child is abused, neglected, or dependent. *Id.*; 705 ILCS 405/2-18(1) (West 2010). The State must prove the allegations in the petition by a preponderance of the evidence. *In re Marcus H.*, 297 Ill. App. 3d 1089, 1095 (1998). The trial court's finding will not be disturbed on review unless it is against the manifest weight of the evidence. *Id.* "A finding is against

the manifest weight of the evidence only if the opposite conclusion is clearly evident." *A.P.*, 2012 IL 113875, ¶17. Under the manifest weight of the evidence standard, deference is given to the trial court because it is in the best position to observe the conduct and demeanor of the parties and witnesses. *In re D.F.*, 201 Ill. 2d 476, 498-99 (2002). Therefore, we review the trial court's judgment at the adjudicatory hearing under the manifest weight of the evidence standard. "[C]ases involving allegations of neglect and adjudication of wardship are *sui generis*, and must be decided on the basis of their unique circumstances." *Id.* (quoting *In re Arthur H.*, 212 Ill. 2d 441, 463 (2004)).

¶ 35 In this case, the trial court found that Jillabelle was neglected due to an injurious environment, abused, and abused due to a substantial risk of injury. The Act defines those terms as follows:

"(1) Those who are neglected include:

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(b) any minor under 18 years of age whose environment is injurious to his or her welfare.

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(2) Those who are abused include any minor under 18 years of age whose 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, or any individual residing in the same home as the minor, or a paramour of the minor's parent:

(i) inflicts, causes to be inflicted, or allows to be inflicted upon such minor physical injury, by other than accidental means, which causes, death, disfigurement, impairment of physical or emotional health, or loss or impairment of any bodily function; [or]

(ii) 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 or impairment of any bodily function." 705 ILS 405/2-3(1)(b), (2)(i), (2)(ii) (West 2010).

Neglect is generally defined as the "failure to exercise the care that circumstances justly demand." (Internal quotations omitted.) *Arthur H.*, 212 Ill. 2d at 463. An "injurious environment" cannot be defined with particularity, but has generally been interpreted to include the breach of a parent's duty to ensure a safe and nurturing shelter for her child. *In re Sharena H.*, 366 Ill. App. 3d 405, 416 (2006).

¶ 36 Amber argues that all of the trial court's findings at the adjudicatory hearing should be reversed. However, she focuses mainly on the trial court's finding that Jillabelle was neglected due to an injurious environment. In support of her argument, Amber largely relies on our supreme court's decision in *In re A.P.*, 2012 IL 113875. In *A.P.*, the respondent was the mother of A.P. and J.P. *Id.*, ¶ 3. The mother left A.P. and J.P. at home with her boyfriend and her boyfriend's two children while she went to a doctor's appointment. *Id.* When the mother returned, she noticed that A.P. had been

burned on his face. *Id.* As a result, the State filed a juvenile petition. *Id.*, ¶ 4. DCFS records show that in interviews with DCFS, the mother's boyfriend gave several inconsistent stories as to what caused A.P.'s injuries. *Id.* at 6. At the adjudicatory hearing, the evidence showed that as soon as the mother noticed A.P.'s injury when she returned home, she rushed A.P. to the hospital. *Id.*, ¶ 6-7. Although the trial court did not find that A.P.'s injuries were caused by abuse, the court did find that A.P. and J.P. were neglected due to an injurious environment. *Id.*, ¶ 10.

¶ 37 On appeal, this court reversed the trial court's judgment that A.P. and J.P. were neglected. *Id.*, ¶ 12. The supreme court affirmed the appellate court's opinion. *Id.*, ¶ 29-30. The supreme court noted that when the mother noticed A.P.'s injuries, she immediately rushed him to the hospital. *Id.*, ¶ 26. The court reasoned that the mother had no indication whatsoever that her boyfriend would not be a suitable caretaker for her children. *Id.* Additionally, the court reasoned that there was no indication that the children had been injured by the mother's boyfriend in the past, or that the mother had any reason to be concerned about her boyfriend caring for the children. *Id.* The court concluded that the trial court's finding of neglect supports the theory that neglect could be found whenever a child is injured due to a babysitter's conduct, no matter how conscientious the parent is in selecting the babysitter. *Id.*, ¶ 24. Therefore, the supreme court affirmed the judgment of the appellate court which reversed the trial court's finding of neglect. *Id.*, ¶ 29.

¶ 38 The Public Guardian argues that the instant case is distinguishable from *A.P.* We agree. In *A.P.*, when the mother noticed A.P.'s injury, she sought immediate medical assistance and there was no indication that the mother was dishonest at any time. In this case, the evidence shows that when Amber noticed Jillabelle's injuries, she did not take her to the hospital until the next afternoon; and

only after being encouraged to do so by Jillabelle's teachers. Moreover, Amber lied to Mentone and Dr. Jones about what happened to Jillabelle. Also, Rafael's testimony shows that Amber encouraged him to lie as well. Clearly, Amber was less concerned with her child's well-being than with avoiding culpability for herself and Rafael. By choosing to lie about how Jillabelle suffered her injuries, Amber made the choice to align herself with Rafael (the unsuitable caretaker), as opposed to aligning herself with her injured child. As the Public Guardian argues, the fact that Amber lied about Jillabelle's injuries indicates that she may have had reason to doubt Rafael's ability to care for Jillabelle. This is distinguishable from *A.P.* in which the mother had no reason to believe that her boyfriend was an unsuitable caretaker. Amber's conduct shows that the trial court was reasonable in finding that Jillabelle was neglected due to an injurious environment. The trial court had to make a determination based on the evidence presented. That evidence suggested that Amber was not Jillabelle's ally in protecting her from injury. Since the trial court's concern for the well-being of the child extends beyond the current injuries, which is the subject of the adjudication, the court clearly had concerns about Amber's willingness and ability to protect Jillabelle from harm in the future. As the dispositional hearing later revealed, Amber's behavior in refusing to comply with all of the conditions imposed by DCFS showed that the trial court was correct in finding that Jillabelle was exposed to an injurious environment.

¶ 39 In cases involving neglect and adjudication of wardship, each case must be decided on the basis of its unique circumstances. *A.P.*, 2012 IL 113875, ¶17 (quoting *Arthur H.*, 212 Ill. 2d at 463). Although the instant case and *A.P.* have some factual similarities, this case is clearly distinguishable. Rather than show a commitment to complying with the conditions mandated by DCFS, Amber

seemed determined to lie and be non-compliant. In other words, her behavior infers that she did not take the process seriously, thereby sending the clear message that she could not be trusted with Jillabelle's well-being.

¶ 40 Likewise, we are unpersuaded by Amber's argument that Dr. Jones's testimony was not credible, and that Dr. Jones should not have been qualified as an expert by the court. Amber does not provide any legal support for her argument. Moreover, this court has held that expert medical testimony, such as the testimony offered by Dr. Jones, cannot be ignored by the trial court:

"The circuit court cannot disregard expert medical testimony that is not countervailed by other competent medical testimony or medical evidence. Moreover, the circuit court, itself, cannot second-guess medical experts. If the circuit court does not follow medical evidence, the circuit court is acting contrary to the evidence." *In re Ashley K.*, 212 Ill. App. 3d 849, 890 (1990).

It is undisputed that Amber did not offer medical testimony or evidence in rebuttal to Dr. Jones's testimony. Therefore, following the reasoning in *Ashley K.*, the trial court did not err in qualifying Dr. Jones as an expert and relying on her testimony in making its findings. Thus, we hold that the trial court did not err in finding that Jillabelle was neglected due to an injurious environment.

¶ 41 We note that in her brief on appeal, Amber mentions the trial court's judgment in the dispositional hearing. However, Amber does not present a substantive argument regarding the dispositional hearing. As the Public Guardian points out, in her brief, Amber occasionally uses the terms "adjudicatory hearing" and "dispositional hearing" interchangeably. The Public Guardian

further argues that because Amber did not present an argument regarding the trial court's judgment at the dispositional hearing, she has forfeited consideration of this issue. We agree with that argument. If an appellant does not present an argument in his opening brief, then the appellant forfeits that issue. *Vancura v. Katris*, 238 Ill. 2d 352, 369 (2010); Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013). "An issue that is merely listed or included in a vague allegation of error is not 'argued' and will not satisfy the requirements of the rule." *Vancura*, 238 Ill. 2d at 370. Additionally, we note that Amber did not respond to the Public Guardian's argument and did not file a reply brief. Therefore, we hold that Amber has forfeited any argument regarding the trial court's judgment at the dispositional hearing, and we need not address the dispositional hearing.

¶ 42 We next determine whether the trial court erred in striking Amber's demand for a bill of particulars and denying her motion to dismiss and motion for summary judgment.

¶ 43 Similar to her treatment of the dispositional hearing issue, Amber does not offer any substantive argument to support her position as to her bill of particulars, motion to dismiss, or motion for summary judgment. She simply lists each in a separate heading, and includes individual summaries of the proceedings before the trial court. Specifically as to the demand for a bill of particulars and motion to dismiss, the only argument in Amber's brief regarding those issues is that the trial court ruled on those matters "without reasons or basis." Amber does not present any argument regarding her motion for summary judgment. Needless to say, Amber does not provide any legal citation whatsoever in support of her assertion. Therefore, pursuant to Rule 341(h)(7) and *Vancura*, we hold that Amber has forfeited her argument that the trial court erred in striking her bill of particulars and denying her motion to dismiss, and motion for summary judgment.

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¶ 44 For the foregoing reasons, the judgment of the circuit court of Cook County is affirmed.

¶ 45 Affirmed.