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2013 IL App (4th) 130247-U
 NOS. 4-13-0247, 4-13-0248, 4-13-0249 cons.

FILED
 August 19, 2013
 Carla Bender
 4th District Appellate
 Court, IL

IN THE APPELLATE COURT
 OF ILLINOIS
 FOURTH DISTRICT

In re: J.P., a Minor,)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
Petitioner-Appellee,)	Vermilion County
v. (No. 4-13-0247))	Nos. 12JA67
ASHLEY PEASLEE and MARK PEASLEE,)	12JA68
Respondents-Appellants.)	12JA69
-----)	

In re: E.P., a Minor,)
THE PEOPLE OF THE STATE OF ILLINOIS,)
Petitioner-Appellee,)
v. (No. 4-13-0248))
ASHLEY PEASLEE and MARK PEASLEE,)
Respondents-Appellants.)
-----)

In re: C.M., a Minor,)	
THE PEOPLE OF THE STATE OF ILLINOIS,)	
Petitioner-Appellee,)	
v. (No. 4-13-0249))	
ASHLEY PEASLEE,)	Honorable
Respondent-Appellant.)	Claudia S. Anderson,
)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
 Justices Pope and Knecht concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's adjudicatory order, which adjudicated respondents' children neglected, was not against the manifest weight of the evidence.

¶ 2 On November 5, 2012, the State filed a petition for adjudication of wardship as to C.M. (born April 20, 2007), E.P. (born September 19, 2008), and J.P. (born September 27, 2012), the children of respondent, Ashley Peaslee. Respondent, Mark Peaslee, is the father of E.P. and J.P. C.M.'s father did not participate in the trial court proceedings and is not a party to this appeal. Following a January 2013 hearing, the trial court entered an order adjudicating the children neglected minors. In March 2013, the court entered a dispositional order, adjudicating the minors wards of the court and appointing the Illinois Department of Children and Family Services (DCFS) as their guardian.

¶ 3 Respondents separately appealed, arguing the trial court's finding that the minors were neglected was against the manifest weight of the evidence. We have consolidated the appeals and, after a careful review of the record before us, we affirm the court's judgment.

¶ 4 I. BACKGROUND

¶ 5 On November 5, 2012, the State filed a petition for adjudication of wardship as to the minors, C.M. (case No. 12-JA-69), E.P. (case No. 12-JA-68), and J.P. (case No. 12-JA-67) in the Vermilion County circuit court. In support of the petitions, the State claimed J.P. was an abused and neglected minor and E.P. and C.M. were neglected minors as defined by sections 2-3(2) and 2-3(1) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(2), 2-3(1) (West 2010)). The allegations stem from a hotline call from the emergency room at Provena Hospital in Danville that J.P. was being treated for a skull fracture on November 2, 2012. Neither respondent could provide a consistent or plausible explanation for how the injury occurred. The treating physician opined the injury was the result of blunt impact due to being dropped or something falling on the child.

¶ 6 The day after the petitions were filed, the trial court conducted a shelter-care hearing and, after considering the evidence presented, the court entered a temporary custody order, awarding DCFS temporary custody of the three minors. Respondents were allowed supervised visitation for two hours once a week.

¶ 7 On January 11, 2013, the trial court allowed the State's motion to amend the petition to remove the allegations of abuse. The State alleged all three children were neglected: J.P. was neglected based upon an environment injurious to his welfare due to his parents' inadequate supervision and because he suffered an unexplainable skull fracture, and E.P. and C.M. were neglected based upon an environment injurious to their welfare due to the injuries suffered by J.P.

¶ 8 On January 25, 2013, the trial court conducted an adjudicatory hearing. Jessica Vella, a nurse in the emergency room at Provena, testified regarding J.P.'s injuries. She said J.P. was brought to the hospital by respondent mother at approximately 10:30 a.m. on November 2, 2012. Respondent mother told the staff she was concerned because the infant's head was swelling and had begun bruising the night before. Vella asked respondent mother for an explanation of the injury. First, respondent mother said she was carrying the child through the house the night before when a plastic toy, that had been thrown by respondent mother's two-year-old niece, may have hit J.P. in the head. Respondent advised the child acted normally that evening, but she brought him to the hospital the next day due to increased swelling and bruising. Vella said respondent then told a different nurse she was certain the toy had hit the child. Vella said J.P. was treated for a depressed skull fracture. Vella said respondent told a third story; she said another child hit J.P. on the head with a flashlight because that child wanted J.P.'s pacifier.

¶ 9 Tricia Peoples, a DCFS investigator, testified she first responded to a hotline call

regarding J.P. near the time of his birth. She was still investigating that incident when she received the call regarding his skull fracture. Peoples spoke with respondent mother at the hospital, who first mentioned her daughter and said it was " 'a jealous thing.' " Respondent mother then advised the child had been hit by a toy that had been thrown. Respondent mother told Peoples she was " 'boggle-headed,' " meaning she was upset and could not think. Peoples told respondent to calm down and relay what had happened. Respondent said she did not know what caused the injury; she did not see anything happen. J.P. was fine when he went to bed, but the next day, she noticed the bruising and swelling. Respondent father had told respondent mother a toy had been thrown and respondent mother assumed the toy had hit J.P. Peoples spoke with her supervisor, who advised Peoples to take protective custody of J.P. Peoples left the hospital and contacted police, who went with her to the residence to speak with respondent father.

¶ 10 Respondent father told Peoples initially that J.P. had been hit by a thrown toy. He then said J.P. was on the bed when the two-year old, who had been jumping on the bed, hit her knee on J.P.'s head. Peoples took protective custody of C.M. and E.P. Peoples testified respondent mother had a prior indicated report with DCFS for inadequate supervision of C.M. and E.P. However, the prior report with regard to J.P., taken at the time of his birth, was determined to be unfounded.

¶ 11 Peoples testified that, at the time of the incident, four adults and five children were living in the residence. Respondents lived with the maternal grandmother, Connie Adams, and her husband. Two other children, who are relatives of respondent mother, resided in the home as well. Only respondent mother was indicated in the current report because only she was determined to be the primary caretaker of J.P. the night of the incident and the next day. The State rested.

¶ 12 Respondent mother called her mother, Connie Adams, as a witness. Adams testified that she and her family reside on the first floor, while respondents and their children live on the second floor. Adams did not witness the injury to J.P. Respondent mother brought J.P. to Adams the next day and Adams noticed swelling to J.P.'s head, but she did not notice any redness or bruising. Adams drove respondent mother and J.P. to the hospital and dropped them off. J.P. was not crying or fussing. Adams said respondent mother told her that respondent father had said the two-year-old had thrown a toy and hit J.P. Adams said she saw J.P. at approximately 8:30 p.m. on the night of the incident and noticed nothing unusual.

¶ 13 Respondent mother testified on her own behalf. She said she was with J.P. the entire evening except when she went to the bathroom. Respondent father stayed with him and her two-year-old niece in the bedroom. When she exited the bathroom, she heard J.P. crying and went to comfort him. Her niece was on her way out of the bedroom. Respondent mother saw the toy, a flashlight, that had "hurt the baby." Respondent father told her that her niece "was on the bed and, you know, she tumbles, trying to get close to him or to the—yeah, to my baby boy [J.P.], and, you know, she had the flashlight and whacks him with it directly—." Respondent mother did not witness the incident. Respondent mother did not notice anything unusual during the rest of the evening. The next day, she said she noticed J.P.'s head was swelling. She had a child die at the age of six months from hydrocephalus, so she did not "want to lose another child." She said she told the medical personnel at the hospital she did not know how the injury occurred because she was not present. She said she told Vella that J.P. got hit in the head with a toy, referring to the flashlight.

¶ 14 On cross-examination, respondent mother testified that she went to a parent-teacher conference at school on the evening of the incident. She had taken the children with her. They

arrived home at approximately 10 p.m. She carried J.P. into the house in his car seat and got him ready for bed. The incident with the flashlight had occurred earlier during the day, sometime between 8 a.m. and 10 a.m. She said she did not notice any swelling until approximately 10 a.m. the next day. She denied telling hospital staff that her daughter had hit J.P. because she was jealous or to get his pacifier. She said she told Peoples about the flashlight incident as described to her by respondent father.

¶ 15 At the conclusion of respondent mother's testimony, all parties rested. After considering the evidence and arguments of counsel, the trial court stated as follows:

"Okay. Well, I guess here's what I know. This is a 36-day old child when this event, what the event was, occurred, and the mom testified, and the records really support this, that this was a tiny little baby, you know, born maybe a couple weeks early, but one way or another I think grandmother testified the little guy was six pounds or something around that nature. *** In any event, [the doctor] advised or opines that a thrown toy was unlikely to cause this fracture. So, you know, I think there's really some question as to the plausibility of at least that particular version of the story. But just to play devil's advocate for a minute, even if that were the case, and I would not— neglect isn't something that requires necessarily intent, even if the story as advanced by these parents were true, it would amount to an injurious environment and inadequate supervision at the very least because why? You wouldn't leave a 36-day old child on a bed with

a two-year old jumping around on the bed with a—you've described it as a metal flashlight. That is and of itself is a problem. That's my point of view. I have to be honest with you, I just don't buy it. The credibility of the mother really is just dashed here. It's just dashed, meaning that she isn't consistent with anything other than at the end of the day, after giving all the different stories, she wasn't there. ***

It also defies credibility, really, for me at least, in my observation of these witnesses that Jessica the nurse *** would have any reason to come in and testify as she did. Because basically what's being suggested here is that she misrepresented either her presence at the hospital and/or her comments in the discussion with the mother, and it gets even more difficult for me to buy when, not only can the mother not remember talking to this nurse, but she doesn't really remember even talking to the DCFS investigator. So there's a couple of things that could work their way into that, either some misrepresentation or confusion about what the truth really is or something else that might have altered your state of mind at the time. I don't know.

I think there is just a lot here that supports the court entering a finding of neglect, and frankly, I'm inclined to enter on all three counts. ***

Children basically are neglected if their environment is

injurious to their welfare. So if a child is neglected or harmed as a result of a parent's action or inaction the child's safety or well-being is endangered, that amounts to exactly what's been alleged, injurious environment. Why do I think all three counts? Well, here's why. Count III [(J.P.'s injurious environment due to suffering a skull fracture)], clearly no doubt preponderance of the evidence and beyond I would say. And so a finding will enter on that.

As to inadequate supervision as to his mother, I think I recited why I would make that finding, she's a parent of a child who I've already recited and she failed to supervise him appropriately and that's why I would enter a finding on count I.

The same thing is true as to count II. If even, as I said, what these parents have tried to advance is the reason for the fracture but, which, candidly, I don't buy for one minute, but even if someone were to buy that argument, the father obviously failed to supervise his child. If he would allow the two-year old to jump up and down on the bed while a six pound infant is laying there, and it's a bouncy mattress, the mother has described it as a bouncy mattress, and so I'm just envisioning what's going on. So maybe I'm not a medical professional, maybe that caused a fracture, doctor doesn't think so, I don't really think so, but one way or another I think these parents were neglectful of their children by virtue of inadequate supervision.

That's why I would also find under the provisions of the Juvenile Court Act that [E.P.] is neglected in that his environment is injurious to his welfare due to the injuries that were suffered by [J.P.] and I say that recognizing that I'm not finding abuse here, I'm finding neglect.

And I'm also going to enter a finding that [C.M.] is also a neglected child in that her environment is injurious to her welfare due to the injuries suffered by sibling [J.P.]"

On January 28, 2013, the trial court entered an adjudicatory order.

¶ 16 On March 1, 2013, the trial court conducted the dispositional hearing. The State presented the dispositional report prepared by the caseworker as its only evidence. According to this report, respondent mother acknowledged "she has been investigated by the DCFS on eight or more occasions." Respondent father has a criminal history, including convictions for aggravated battery, marijuana possession, and driving under the influence of alcohol and/or drugs. He has participated in several treatment programs. All three minors are placed together in their maternal great aunt's home and are doing well. DCFS recommended it be named as guardian for the minors and that they remain in foster care. No other evidence was presented. The court entered a dispositional order, finding both parents unfit and unable to care for, protect, train, or supervise the three minors and making the minors wards of the court. These consolidated appeals followed.

¶ 17

II. ANALYSIS

¶ 18 Respondents appealed, each challenging the trial court's finding of neglect. Respondents claim the State failed to prove respondents had created an environment injurious to the children's welfare. They contend the State presented no evidence to demonstrate respondents had

neglected their parental duties, causing J.P.'s injuries and a risk of harm to E.P. and C.M. We note respondents challenge only the court's adjudicatory order, not the dispositional order.

¶ 19 When a petition for adjudication of wardship is filed under the Juvenile Court Act, the primary consideration is the best interest of the minor. *In re R. G.*, 2012 IL App (1st) 120193, ¶ 31. The State must prove its allegations of neglect by a preponderance of the evidence, which is an amount of evidence that leads the trier of fact to find the allegations are more probable than not. *Id.* A reviewing court will not disturb a trial court's neglect findings unless they are against the manifest weight of the evidence. *Id.* A determination is against the manifest weight of the evidence when the opposite conclusion is clearly evident from the record or the determination is arbitrary, unreasonable, or not based on the evidence presented. *In re J.B.*, 2013 IL App (3d) 120137, ¶ 14. "The trial court has the best opportunity to observe the demeanor and conduct of the parties and witnesses and, therefore, it is in the best position to determine the credibility and weight of the witnesses' testimony." *In re E.S.*, 324 Ill. App. 3d 661, 667 (2001).

¶ 20 Respondents contend the trial court's finding that all three children were neglected due to an injurious environment (section 2-3(1)(b) of the Juvenile Court Act) was against the manifest weight of the evidence. Section 2-3(1)(b) states that those who are neglected include "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).

¶ 21 "Neglect' is generally viewed as a failure to exercise the regard that circumstances justly demand and encompasses willful as well as unintentional disregard of parental duties." *In re S.D.*, 220 Ill. App. 3d 498, 502 (1991). "An injurious environment is an amorphous concept that cannot be defined with particularity but has been interpreted to include the breach of a parent's duty

to ensure a safe and nurturing shelter for his or her children." *In re D.W.*, 386 Ill. App. 3d 124, 135 (2008).

¶ 22 The State alleged J.P.'s environment was injurious to his welfare where respondents failed to provide adequate supervision, which resulted in J.P.'s skull fracture. Neither respondent was able to provide a reasonable explanation of how the injury occurred. The State further alleged E.P. and C.M. were neglected due to their injurious environment as evidenced by the injuries suffered by J.P. Respondents acknowledged they "could not specifically explain what happened to cause the injury to J.P.," but they contend the State presented insufficient evidence to demonstrate they had neglected their parental duties.

¶ 23 The evidence presented to the trial court included the witnesses' descriptions of the various accounts told by respondents to explain how the month-old infant suffered a depressed skull fracture. In fact, respondent mother, whom the trial court found lacked credibility, testified on her own behalf, again explaining how the incident occurred and adding details not previously disclosed. Prior to her testimony at trial, she had not disclosed that J.P. was injured earlier in the day, rather than in the evening, as previously reported. The court found that, no matter which story was true, each version provided a sufficient basis, on its own, to demonstrate inadequate supervision. Respondent mother admitted she was J.P.'s primary caretaker on the day of his injury. She used the restroom, leaving J.P. in respondent father's care. According to the latest version of events, J.P. was lying on the bed, with a two-year-old jumping on the bed, holding a flashlight. Either the flashlight or the toddler's knee hit J.P. in the head.

¶ 24 The totality of the evidence suggested the following versions of the incident: (1) respondent mother was carrying J.P. through the house when a toy was thrown, *possibly* hitting him

in the head; (2) the toy *definitely* hit him in the head; (3) another child hit J.P. in the head with a flashlight to get his pacifier; (4) respondent father told respondent mother another child hit J.P. with a toy or threw it at him; (5) respondent father saw the two-year-old's knee hit J.P.'s head while J.P. was lying on the bed; and finally, (6) respondent father told respondent mother the two-year-old tumbled on the bed and "wack[ed]" J.P. on the head with a flashlight while J.P. was lying on the bed.

¶ 25 The treating physician opined it was unlikely that a toy or a child had caused J.P.'s skull fracture. Regardless, the various versions of the incident, coupled with respondent mother's past indicated reports of inadequate supervision, her lack of credibility, and the remaining evidence of record, sufficiently supported the trial court's finding that all three minors were neglected due to their injurious environment. J.P. suffered an unexplained skull fracture, which not only put him at risk for injury in his home environment, but placed his siblings at risk as well. See *In re R.R.*, 409 Ill. App. 3d 1041, 1044-46 (2011) (neglect finding of all sibling minors, where one suffered unexplained head injury, was supported by the evidence); see also *In re J.W.*, 386 Ill. App. 3d 847, 856-57 (2008) (unexplained injuries to an infant were sufficient to establish neglect).

¶ 26 The evidence supports the finding that the State proved, by a preponderance of the evidence, that all three minors were neglected due to an injurious environment. See *In re F.S.*, 347 Ill. App. 3d 55, 67 (2004) (the trial court found that the respondent's explanations with respect to her ignorance regarding the child's injuries was "inconceivable," and there was sufficient evidence to find that the respondent unintentionally disregarded her parental duties). As detailed above, the injuries to J.P. were not sufficiently explained and the circumstances adequately support a finding of neglect. We conclude the court's determination is not arbitrary or unreasonable and is based on the evidence presented. Accordingly, we hold the court's finding pursuant to section 2-3(1)(b) of the

Juvenile Court Act was not against the manifest weight of the evidence.

¶ 27

III. CONCLUSION

¶ 28

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

¶ 29

Affirmed.