



the mother of M.S. The parties were never married and were not living together at the time M.S. suffered the injuries which led to a petition for adjudication of wardship being filed on February 17, 2012. The petition alleged that M.S. was abused in that her parent either inflicted or allowed to be inflicted nonaccidental physical injury which resulted in sustained swelling and bruises while M.S. was in the care of respondent. The petition also alleged that M.S. was neglected in that she was in an environment that was injurious to her welfare in that Hannah had knowledge of respondent's anger management issues and failed to act in a manner to protect M.S.

¶ 5 On February 21, 2012, a shelter care hearing was held, at which time M.S. had been taken into protective custody and placed in the care of her maternal grandmother. On August 31, 2012, an adjudicatory hearing was conducted and the State was allowed to dismiss the portion of the petition against Hannah and proceed solely on the allegations against respondent. The parties stipulated to the admission of an affidavit provided by Dr. Faye Doerhoff of Cardinal Glennon Children's Hospital in St. Louis and M.S.'s medical records from the hospital, wherein Dr. Doerhoff opined that M.S.'s injuries were consistent with abuse.

¶ 6 Vanessa Shaw, a Department child protective investigator, testified that she responded to a hotline report on February 16, 2012, that a five-month-old was taken to Good Samaritan Hospital emergency room with facial swelling and bruising. By the time Shaw arrived at Good Samaritan, M.S. had already been transferred to Cardinal Glennon. Shaw and Detective Jeremy Reichert, a Mt. Vernon police officer, then went to Cardinal Glennon to investigate. At the hospital, Shaw and Reichert learned that M.S. had been evaluated by a doctor who found the nature of the injuries consistent with abuse. They also learned that M.S. would not be admitted. Staff from Cardinal Glennon gave Shaw photographs of M.S. which showed the injuries to her face. These photographs were admitted into evidence.

¶ 7 Shaw and Reichert interviewed respondent at the hospital. Respondent told them he had been staying with his cousin, her boyfriend, and their children. He took M.S. to their house the previous evening where M.S. was fussy and projectile vomited several times after being fed formula. M.S. slept in a crib, but at some point, respondent put her in bed with him. When he woke up at 5 a.m., he noticed bruising on M.S.'s face. He called Hannah who told him to bring M.S. back to her house so they could discuss why she had bruises. When told about Dr. Doerhoff's conclusion that the bruises were not accidentally inflicted, Shaw said respondent told her he "would like to think it was the crib, but after looking at it in better light, he said he might have done it, but he'd like to think he didn't." Respondent also told Shaw he was the only person who took care of M.S. the prior evening.

¶ 8 Hannah told Shaw and Reichert that M.S. did not have any injuries when respondent picked her up the previous evening. Once respondent brought M.S. home and Hannah saw the bruises, she called her mother who advised her to take M.S. to the emergency room.

¶ 9 Reichert's testimony generally corroborated Shaw's, except that he remembered respondent said he had asked his cousin to watch M.S. while he took a shower. Reichert also testified that respondent's only explanation for the bruises was the crib, but he also said "[he] might have done it," but would like to think that he did not. Reichert went to the cousin's home to examine the crib and found that the slats were two inches apart, which was inconsistent with the bruising on M.S.'s face. Reichert further testified that he and Shaw interviewed Hannah's mother who reported that respondent rode with her to Cardinal Glennon, during which time they did not discuss M.S.'s injuries.

¶ 10 Reichert also spoke with respondent's cousin and her boyfriend, both of whom corroborated respondent's version of events. The cousin said she watched M.S. while respondent showered. Either the cousin or her boyfriend said M.S.'s face looked flushed or blotchy earlier in the evening, and the cousin wondered if M.S. was teething and had a fever

or was getting sick, as her own children were. The boyfriend told Reichert that he did not sleep well and heard respondent moving around during the night like he was fixing a bottle. Reichert showed the cousin and her boyfriend the photographs taken at Cardinal Glennon, and both said the bruises were not present on M.S.'s face before respondent took M.S. downstairs to sleep. Reichert thought that the cousin's bedroom was only 15 to 20 feet away from where respondent and M.S. were sleeping, but neither the cousin nor the boyfriend said they heard M.S. scream that night.

¶ 11 Hannah's father testified that Hannah and M.S. lived with him, as did his other daughter, her boyfriend, and their daughter. Respondent had also lived in his home, but moved out. He testified that he saw M.S. as Hannah was taking her out to respondent for the evening. He kissed M.S. goodbye on the cheek and did not see any bruises on her face. He said M.S. was behaving as usual and did not appear to be sick. He was also there the next morning when respondent brought M.S. back, and he saw the bruises but could not tell what caused them. He said Hannah was "freaked" by M.S.'s bruises.

¶ 12 Hannah's sister testified that she thought she watched M.S. during the day before respondent picked her up while Hannah was at work at her job at McDonald's. The sister did not notice any bruises or marks on M.S. and said M.S. was behaving normally.

¶ 13 Hannah testified that she and respondent shared custody of M.S., although there had been conflict between the two about custody. The police got involved and helped them settle the dispute. Hannah said it was not unusual for M.S. to stay overnight with respondent after he got off work. While Hannah's sister thought Hannah had been at work, Hannah did not think she worked the day in question. She recalled M.S. seemed like she might have a stomachache, for which Hannah gave her some "gas medicine." Hannah said M.S. was fine after that. Hannah identified pictures she took of M.S. not long before respondent picked up M.S. for the evening.

¶ 14 Hannah said when respondent brought M.S. back, she immediately asked him "what [he] had done" and respondent denied doing anything to M.S. Respondent told her the injuries might have been caused by the crib. Hannah testified respondent was "anxious" and "shaky" that morning. Hannah admitted that during her interview with Shaw and Reichert she told them she did not think respondent did anything to M.S. because he had never been violent with M.S.

¶ 15 Respondent's cousin testified that she lived with her boyfriend and their combined children and they allowed respondent to live with them. Respondent worked for her father's construction company between 7 a.m. and 5 p.m. each day. On the evening in question, respondent asked her to watch M.S. while he took a shower. The cousin put M.S. in a nonmobile bouncer toy in the living room, along with her four daughters who were watching television. After 10 minutes, one of her daughters brought M.S. into the kitchen to her because she did not think M.S. "looked right." The cousin noticed that M.S.'s face was red and flushed and that M.S. had a cough and was fussy. Respondent ate dinner with his cousin's family. During dinner, M.S. fell asleep. Respondent took her downstairs and put her to sleep. Respondent came back upstairs and finished his dinner. At approximately 8:30, respondent's cousin heard M.S. cry out. She went and put a pacifier in M.S.'s mouth just as respondent was coming downstairs to check on M.S. M.S. calmed down, and respondent went back upstairs. Respondent's cousin went to bed around midnight and did not hear anything from respondent or M.S. after that even though their bedrooms were relatively close.

¶ 16 Respondent's cousin's boyfriend testified that he got home right after respondent on the evening in question. M.S. was sitting in a bouncer chair in the living room and he noticed her face was red, she was coughing a little, and she seemed like she was getting sick. He explained that he has a heart condition and rarely sleeps more than three hours a night. At

approximately 11:30 p.m., he heard respondent go into the downstairs bathroom to make a bottle and heard M.S. fussing a little, but she got quiet after she took the bottle. At approximately 2:30 a.m., he heard the same thing. After that, he fell asleep, and by the time he woke up, respondent and M.S. were already gone.

¶ 17 Respondent testified he "personally didn't notice anything abnormal" about M.S. when he picked her up from Hannah's, except she was coughing a little. M.S. had some colds in the past and the pediatrician had given him and Hannah some breathing treatments to help clear mucus. He testified that he fed M.S. a bottle, and she fell asleep, so he laid her on the couch in the living room while he finished his dinner. After dinner, M.S. was asleep, so he took her downstairs to his room and asked his cousin to listen for M.S. if she woke up. He said he went to bed about 10 p.m. and M.S. woke up about 11 p.m. He fed her a bottle, but she vomited it back up. He laid her back down in the crib, but she did not go back to sleep despite his patting her on the back. He finally put her in bed with him. He was lying on his side with M.S. by his stomach. M.S. woke up again at 3 a.m. and he fed her again, and she vomited again. They went back to sleep in his bed until 5 or 5:15 a.m. when his alarm went off. He went outside to smoke a cigarette. When he returned, he noticed M.S.'s face and lips were bruised. He called Hannah and he called his boss to tell him he would not be at work because something was wrong with M.S. Respondent did not know what caused the bruises. Respondent said he would have thought M.S. would have screamed or cried when she received the injuries, but he did not hear her. At first he thought the injuries were caused by the crib, but then he saw a handprint on M.S.'s face and then he thought maybe he caused the injuries when M.S. was sleeping in his bed. He said when he awoke, his hand was on M.S.'s stomach just as it was when they went to sleep. Respondent said he was sure he did not cause the injuries to M.S.

¶ 18 Hannah's mother testified she had custody of M.S. since M.S. was five months old.

When M.S. started teething, her face would get red.

¶ 19 After hearing all the evidence, the trial court found that based upon Hannah's pictures showing no bruises on M.S.'s face prior to respondent picking her up, it was clear the injuries were inflicted while M.S. was in respondent's care and were not accidentally inflicted. The trial court noted that respondent's statement that he might have done something to M.S. was very close to an admission. At the dispositional hearing, an agreed order was entered. The trial court found that Hannah was willing and able to care for M.S. but respondent was not, due to his failure to cooperate with recommended services and his sporadic visitation with M.S. Hannah was given custody of M.S. and guardianship remained with the Department, with visitation between M.S. and respondent to be at the discretion of the Department. Respondent now appeals.

¶ 20

#### ANALYSIS

¶ 21 The issue raised in this appeal is whether the trial court erred in finding that respondent abused or neglected M.S. Respondent contends that the trial court's finding that he abused or neglected his daughter by exposing her to an injurious environment was not supported by a preponderance of the evidence. We disagree.

¶ 22 In an adjudicatory hearing, the issue to be determined is whether the minor is abused, neglected, or dependent. *In re Austin W.*, 214 Ill. 2d 31, 43, 823 N.E.2d 572, 580 (2005); 705 ILCS 405/2-21(1) (West 2010). The State is required to prove its allegations of abuse and neglect by a preponderance of the evidence. *In re Enis*, 121 Ill. 2d 124, 520 N.E.2d 362 (1988). A preponderance of the evidence is the amount of evidence that leads the trier of fact to find that a condition is "more probably true than not." *In re Arthur H.*, 212 Ill. 2d 441, 464, 819 N.E.2d 734, 747 (2004). A trial court is vested with "wide discretion" when making a determination as to abuse and neglect. *In re Ashley F.*, 265 Ill. App. 3d 419, 425, 638 N.E.2d 368, 372 (1994). Courts have held that the discretion afforded the trial court in an

abuse or neglect case is even greater than the typical manifest weight standard because of "[t]he delicacy and difficulty of child-custody and child-neglect cases." *In re Stilley*, 66 Ill. 2d 515, 520, 363 N.E.2d 820, 822 (1977); *In re D.L.*, 226 Ill. App. 3d 177, 185, 589 N.E.2d 680, 684-85 (1992). Therefore, the trial court's decision should not be disturbed unless it is manifestly unjust or palpably against the weight of the evidence. *In re Stilley*, 66 Ill. 2d at 520, 363 N.E.2d at 822; *In re D.L.*, 226 Ill. App. 3d at 185, 589 N.E.2d at 685. A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident. *In re Arthur H.*, 212 Ill. 2d at 464, 819 N.E.2d at 747.

¶ 23 Pursuant to the Juvenile Court Act of 1987 (Act), an abused minor includes any child "under 18 years of age whose 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." 705 ILCS 405/2-3(2)(i) (West 2008). The Act specifies that a neglected minor, in turn, encompasses "any minor under 18 years of age whose environment is injurious to his or her welfare." 705 ILCS 405/2-3(1)(b) (West 2008). "Although the term 'injurious environment' is a broad and amorphous concept that cannot be defined specifically, \*\*\* it includes the breach of a parent's duty to ensure a safe and nurturing shelter for the children." *In re Alexis H.*, 401 Ill. App. 3d 543, 551, 929 N.E.2d 552, 560 (2010) (quoting *In re A.W.*, 231 Ill. 2d 241, 254, 897 N.E.2d 733, 741 (2008)). The term "neglect" is similarly broad, but has generally been "defined as the failure to exercise the care that circumstances justly demand and includes both unintentional and willful disregard of parental duties." *In re L.H.*, 384 Ill. App. 3d 836, 841, 894 N.E.2d 883, 888 (2008). Cases involving allegations of neglect and abuse are *sui generis* and must be resolved by evaluating the unique facts and circumstances present in each case. *In re Arthur H.*, 212 Ill. 2d at 463, 819 N.E.2d at 747.

¶ 24 In the instant case, the petition for adjudication of wardship alleged that M.S. was abused because her parent inflicted, caused to be inflicted, or allowed to be inflicted physical injuries which caused swelling and bruises to M.S. and that M.S. was neglected because she was "in an environment that is injurious to her welfare in that [M.S.] has sustained swelling and bruises to the body, while in the care of [respondent]." The evidence adduced at trial showed that M.S., who was five months old at the time, suffered swelling and bruises to her face while she was in respondent's care. Hannah took pictures of M.S. on the day in question, and there were no marks or bruises on her face less than an hour before respondent picked up M.S. for visitation. Furthermore, respondent's cousin and her boyfriend both told Detective Reichert that the bruises were not present on M.S.'s face before respondent took M.S. downstairs to sleep.

¶ 25 The examining physician at Cardinal Glennon Children's Hospital opined that M.S.'s injuries were consistent with abuse. Respondent's only explanation for what occurred was that M.S. may have injured herself in her crib; however, after looking at the crib, Detective Reichert determined that the slats were two inches apart, which was inconsistent with the injuries to M.S.'s face. While respondent's relatives with whom he was living on the night in question testified that nothing unusual occurred, neither of them gave any explanation as to what actually caused the swelling and bruises on M.S. and neither of them specifically testified that respondent was not at fault. During the investigation, respondent stated he might have done it, but he would like to think he did not.

¶ 26 Respondent challenges the trial court's decision to give weight to the photos of M.S. taken by Hannah on the date in question as well as the trial court's decision to find that respondent's statement to the police was "pretty close to an admission." However, the photographs clearly showed that less than an hour before she left with respondent, M.S. had no marks on her face. Respondent did not contradict the photos. He admitted that M.S.

appeared fine when he picked her up from Hannah. Moreover, respondent's statement to the police shows that, at least initially, respondent did not affirmatively deny that he caused the injuries to M.S. Respondent actually stated that he might have caused M.S.'s injuries, but he hoped that he did not. The evidence was sufficient to show that it was more probable than not that M.S. was abused and neglected. The pictures speak for themselves. M.S. clearly sustained trauma to her face while in respondent's care.

¶ 27 Pursuant to section 2-21 of the Act, the trial court must first determine whether a minor is abused or neglected. Once the trial court has adjudicated the child was neglected, the statute directs the court to consider the actions of the parents. 705 ILCS 405/2-21(1) (West 2010). *In re Arthur H.*, 212 Ill. 2d at 466, 819 N.E.2d at 748. After carefully reviewing the record, we cannot find anything which contradicts the trial court's findings that respondent was responsible for the injuries to M.S. M.S. was in respondent's care when the injuries occurred, and respondent has no explanation as to how M.S. was injured. The trial court was in a better position than we are to observe the demeanor of respondent and Hannah and to judge the credibility of all the witnesses. Under the circumstances presented here, we cannot say the trial court's finding that respondent abused and neglected M.S. was against the manifest weight of the evidence.

¶ 28 For the foregoing reasons, we hereby affirm the judgment of the circuit court of Jefferson County.

¶ 29 Affirmed.