2015 IL App (1st) 141270-U

No. 1-14-1270

Filed June 12, 2015

FIFTH DIVISION

IN THE APPELLATE COURT

OF ILLINOIS

FIRST JUDICIAL DISTRICT

RYERESSIE BODY, Plaintiff-Appellant, v. ILLINOIS DEPARTMENT OF CHILDREN AND FAMILY SERVICES and DIRECTOR RICHARD CALICA, Defendants-Appellees.	) Appeal from the) Circuit Court) of Cook County)) No. 13 CH 14389)) Honorable) Neil Cohen,) Judge Presiding.

PRESIDING JUSTICE PALMER delivered the judgment of the court.
Justices McBride and Gordon concurred in the judgment.

ORDER

¶ 1 *Held*: The decision of the Department of Children and Family Services (DCFS) denying plaintiff's motion to expunge the indicated finding of neglect of a child is affirmed. DCFS's failure to make its final determination within 60 days as required by statute does not warrant expungement of the indicated finding. The administrative law judge's factual findings were not against the manifest weight of the evidence and DCFS met its burden to show that the ALJ's finding indicating plaintiff for neglect was justified.

¶ 2 Defendants, the Department of Children and Family Services (DCFS) and DCFS director Richard Calica, denied plaintiff Ryeressie Body's request to expunge an indicated finding of neglect entered against her for her inadequate supervision of K.M., a three-year old boy attending her daycare facility. On administrative review, the trial court affirmed the decision. Plaintiff appeals, arguing: (1) DCFS's failure to complete its investigation and issue a finding within 60 days was contrary to statutory guidelines and prejudicial error, (2) the findings of the administrative law judge (ALJ) were against the manifest weight of the evidence and (3) the ALJ's determination that plaintiff was neglectful was clearly erroneous. We affirm.

¶ 3 BACKGROUND

¶ 4 Plaintiff, a licensed daycare provider, operated Safe Heaven Day Care in her home. On October 9, 2012, DCFS received a phone call on its hotline reporting plaintiff for her suspected neglect of three-year old K.M. The caller alleged that, on October 8, 2012, K.M. was found walking unattended in an alley when he was supposed to be in plaintiff's daycare facility.

¶ 5 Pursuant to the Abused and Neglected Child Reporting Act (Act) (325 ILCS 5/1 *et seq.* (West 2012)), DCFS receives and investigates reports of suspected child abuse or neglect and maintains a state central register of all initial, preliminary and final reports of suspected child abuse or neglect. 325 ILCS 5/7.7 (West 2012). If DCFS determines after a preliminary investigation that a report "is a good faith indication of alleged child abuse or neglect," then it will start a formal investigation. 325 ILCS 5/7.4(b)(3) (West 2012). During the formal investigation, DCFS must "determine, within 60 days, whether

the report is 'indicated' or 'unfounded' and report it forthwith to the central register." 325 ILCS 5/7.12 (West 2012). A report is "indicated" if DCFS determines after its formal investigation of the report "that credible evidence of the alleged abuse or neglect exists." 325 ILCS 5/3 (West 2012). A report is "unfounded" if DCFS determines "after an investigation that no credible evidence of abuse or neglect exists." 325 ILCS 5/3 (West 2012). "[W]here it is not possible to initiate or complete an investigation within 60 days the report may be deemed 'undetermined' provided every effort has been made to undertake a complete investigation. [DCFS] may extend the period in which such determinations must be made in individual cases for additional periods of up to 30 days each for good cause shown." 325 ILCS 5/7.12 (West 2012).

¶ 6 After making its determination, DCFS must provide written notification of its determination to "the alleged perpetrator," who may then request DCFS to amend the record or remove the record of the report from the state central register and has the right to an administrative hearing before an ALJ. 325 ILCS 5/7.12, 7.16 (West 2012). Following such a hearing, the ALJ will make a recommendation regarding the perpetrator's request and the director of the DCFS will then adopt, modify, or disagree with the ALJ's recommendation. 89 Ill. Adm. Code 336.220(a) (2005). The director's decision is the final administrative decision. 89 Ill. Adm. Code 336.220(a)(1) (2005).

¶ 7 Here, DCFS initiated a preliminary investigation on the same day that it received the hotline report. Following that investigation, it determined that a formal investigation of the incident was warranted to investigate whether plaintiff should be indicated for child neglect under "allegation #74" titled "Inadequate Supervision" (89 Ill. Adm. Code 300.appendix B (Allegation 74) (2011)). DCFS investigator Erma Rogers conducted the

investigation. On November 5, 2012, Rogers notified plaintiff that DCFS intended to indicate her for child neglect and that she could request a teleconference with a neutral DCFS administrator prior to the final decision. Plaintiff requested a teleconference and, on December 11, 2012, participated in a teleconference with Rogers, Roger's supervisor and a DCFS administrator who had not been involved in the investigation. On December 19, 2012, the administrator recommended that plaintiff be indicated for neglect. Rogers telephoned plaintiff on December 20, 2012, to let her know that allegation #74 would be indicated and explained the appeal process to her.

¶ 8 On December 24, 2012, the state central register sent plaintiff a letter informing her that, after a thorough investigation, DCFS had found credible evidence that she abused or neglected a child. It notified her that DCFS had indicated her for inadequate supervision, the indicated report would be retained on file in the state central register for five years and plaintiff had the right to appeal the decision. Plaintiff filed an appeal of the decision with DCFS, requesting DCFS expunge the indicated finding from the central register. ALJ Carmen Medina held an administrative hearing during which she heard testimony from plaintiff, DCFS investigator Erma Rogers and K.M.'s parents.

¶ 9 Plaintiff testified that she had operated her daycare facility in the basement of her home for 13 years. For the past year, she had operated it alone without assistants. As she was working alone, she generally watched only six children at a time. On October 8, 2012, she was working alone with five children in her daycare facility, three four-year olds and two three-year olds, including three-year old K.M. It was K.M.'s third birthday that day and plaintiff had planned a party for him, as she did for all the children in her program. Plaintiff stated K.M. was "very active." He was in the process of being "potty

trained" and could feed himself but was not "verbal" as he could not say whole sentences and did not speak clearly. Plaintiff testified he could not say his name and did not know his home address or the daycare facility's address.

¶ 10 Plaintiff testified that, at approximately 11:35 a.m., she went from the basement to her first floor to start preparing the cupcakes and ice cream for K.M.'s birthday party. The children came upstairs with her but then all had to go to the bathroom. There were two bathrooms in the daycare facility, one on the first floor and one in the basement. The two oldest children went back down to the basement to use the bathroom and K.M. went to use the first floor bathroom. Plaintiff went to her kitchen, three feet away from the bathroom, to obtain the cupcakes and ice cream from the refrigerator. She testified none of the children were in the kitchen with her because they had gone back downstairs.

¶ 11 Plaintiff testified that, at approximately 11:55 a.m., she received a phone call from Shaunta Hunt, K.M.'s mother. Hunt asked her whether K.M. was at the daycare facility and plaintiff responded that he was. Hunt then said "because my uncle said," and then either were cut off or hung up. Plaintiff picked up the cupcakes and was going down the stairs when the children came back up. She then observed her front door was open and counted only four children. Plaintiff testified she asked the children where K.M. was and "[t]hat's when they started yelling, 'Ms. Body, his daddy got him.' " She stated K.M.'s four-year old cousins told her K.M.'s "daddy got him."

¶ 12 Plaintiff and the children ran outside, where she asked a man named "Leo" whether he had seen a little boy out by himself. Leo had not, so plaintiff put the children in her car and drove around the neighborhood looking for K.M. She telephoned K.M.'s

parents multiple times but they did not answer. Plaintiff knew Hunt's uncle, Alan, so she drove to his house. She told Alan, who was standing outside, that she was looking for K.M. because Hunt had called her. Plaintiff testified Alan "just hushed up and (inaudible). And I'm like that ain't normal" but she asked him to let her know if K.M. appeared.

¶ 13 Plaintiff testified that she was driving back to the daycare facility to call the police when she observedw K.M.'s father, Nicholas Miller, putting K.M. in his car in front of their house. She exited her car and asked Miller what he was doing with K.M. Miller responded that "Oh, Ms. Body, he has been gone for at least 20 minutes." Plaintiff stated that she questioned how Miller could know how long K.M. had been gone if he had not come to the daycare facility himself and taken K.M. as the other children had told her. Plaintiff stated her daycare facility was around the corner from K.M.'s house. She asserted she had already circled by K.M.'s house once while looking for him. Miller's car had not been in front of the house on her first loop but, "the second time all of a sudden he is there." K.M.'s grandmother came out of the house and told plaintiff to "just let it go, let Shaunta [Hunt, K.M.'s mother] calm him down" but plaintiff told her "this is wrong," that Miller had come to the daycare facility and taken K.M. without telling her.

¶ 14 Plaintiff testified that K.M. did not know how to open the door to her house because it was a security door. She stated she had been leaving the front storm door unlocked as her doorbell was broken and the parents of her charges were complaining about having to knock hard on the door. Plaintiff stated the black steel storm door was "extremely heavy," "has to be opened by an adult" as "you have to jam down on it in order to open it" and was easier to open from the outside than the inside. She knew

K.M. was not able to open the storm door because his mother had told her "with your crazy door, I can't get out." Plaintiff had never seen K.M. attempt to open the door. Plaintiff testified that, although the other children told her that K.M.'s father took him from the house, she had not heard anyone come into the house. She stated she did find it strange that the door was "wide open" as all the parents knew to knock at the door. Plaintiff stated that she had the interior door behind the black storm door physically open that day. Once one passed beyond the two doors into her home, there were five stairs leading down to the basement and five stairs leading up to the first floor. Plaintiff testified that the last time she saw K.M. was on her first floor, when observed him going inside the first floor bathroom.

¶ 15 Investigator Rogers testified that she investigated whether Allegation #74 (inadequate supervision) was indicated. In the course of her investigation, she observed K.M. at his home. She did not engage him in conversation but stated he was "very active, loud, playing" and appeared well cared for. She also met with plaintiff and observed the daycare facility. She explained to plaintiff that the report to the hotline stated that K.M. was found coming out of an alley when he was supposed to be in plaintiff's care. Rogers testified that plaintiff told her that she did not know how K.M. left the daycare facility and thought Miller had picked up K.M. without her knowledge. Plaintiff told Rogers that one of the children in her daycare facility had told her that Miller had picked him up. Rogers met with the child but the child did not tell her that K.M.'s father had picked K.M. up from the daycare facility.

¶ 16 Rogers spoke to Hunt, K.M.'s mother, on the day the report came in, the day after K.M. was alleged to have walked out of the daycare facility. Rogers testified Hunt

told her that a man named "Mack," who attended the church on the corner, saw K.M. coming out of an alley alone, recognized him and took him to K.M.'s home.[1] Rogers also spoke to K.M.'s grandmother, Janice Giles, who told her she and K.M.'s father were home that day and that "Mack" found K.M. walking alone and brought him home. [2] Rogers testified that, despite having told both Hunt and Giles that it was important that she speak with Mack, "it took some time" to obtain a contact phone number for Mack. On December 10, 2012, she finally spoke on the phone with someone who identified himself as Mack. Rogers had only a contact number for Mack. She never met Mack, did not ask him for his last name or phone number, did not know whether "Mack" was his first name or last name and spoke to him only once. On cross-examination, Rogers stated she did not speak with Miller, K.M.'s father until December 5, 2012.[3]

¶ 17 Rogers testified she also spoke to four parents of other children attending the daycare facility, all of whom "spoke very highly" of plaintiff and the care she provided to the children. She stated that, during her site visit to the daycare facility, the exterior black wrought iron front door was shut and not locked but she was unable to open it. Once the door was open, she was able to "manipulate" it. Rogers stated that a three-year old child would not be able to open the door by himself, as "[t]his particular door,

[1] In Roger's investigative reports, she referred to the man who found K.M. walking in the alley variously as "Mick" and "Mack." Rogers testified she thought K.M.'s mother and grandmother identified the man as "Mack" and that her use of "Mike" was a typographical error but that "they could have said Mike.

[2] Rogers referred to Hunt's mother, K.M.'s grandmother, as Janice Giles. However, Hunt testified her mother's name was Vicky Bernay and that she did not know anyone named Janice Giles.

[3] Investigator Roger's testimony that she met with Miller on December 5, 2012, conflicts with her report in the investigative file that she spoke with Miller on October 24, 2012.

when it's closed, it's closed."

¶ 18 Rogers testified that, at the end of her investigation, plaintiff was indicated for allegation #74, inadequate supervision. DCFS then held an "administrator's conference," a telephone conference between Rogers, her supervisor, a DCFS administrator and plaintiff, during which the information developed during the investigation was discussed and plaintiff presented her own information and reasoning concerning the report. Rogers testified that, following the conference, the indicated findings were upheld by the administrator as the situation had involved a three-year old minor who was put in a situation greater than his maturity, was found alone and "somehow got out of the daycare." Rogers stated that "[p]er [DCFS], it is or was Ms. Body's responsibility to ensure that *** the minor didn't get out of the daycare and that he is safe at all times while under her care."

¶ 19 The court admitted into evidence the 55-page "investigative packet" containing notes and records of interviews prepared by Rogers in the course of her investigation. In one of the records, Rogers reported that Hunt telephoned her with Mack's contact information on December 10, 2012 and she spoke to Mack five minutes later. She reported that Mack told her he observed K.M. walking alone without his parents, knew K.M., approached him and asked from where he was coming. K.M. told Mack he was coming "from the babysitter" and Mack then took K.M. home.

¶ 20 Hunt, K.M.'s mother, testified that the daycare facility was "right around the corner a block away" from where she lived with K.M. and Miller. On October 8, 2012, K.M. was attending plaintiff's daycare facility, as he had for almost two years. It was K.M.'s birthday and he was turning three years old that day. Hunt testified that K.M. was

learning to say his name and did not know his address. She stated she usually walked K.M. to school through the alley "straight there" as the daycare facility was only a block away from her home but on that day, she and Miller drove K.M. to the daycare facility. Miller then drove her to school. Hunt testified Miller had taken the day off from work in order to help Hunt's mother move furniture "around the house" and to spend time with K.M. on his birthday later that day, after Hunt returned from school. Hunt subsequently stated that Miller had stayed home to rest as he was tired and his back hurt but had to help her mother move furniture. Hunt's mother, Vicky Bernay, lived with Hunt, Miller and K.M.

¶ 21 Hunt testified that, between noon and 12:30 p.m., she received a phone call at school from "Mack," the deacon of the church close to her house. Although she had attended the church only once or twice, "they" knew her family very well. Mack told Hunt he had found K.M. "coming out of the alley from the daycare." When he did not see either of K.M.'s parents, Mack took K.M. into the shop "downstairs from" Hunt and Miller's apartment. Someone in the shop phoned Hunt's mother, who came downstairs with Miller. Hunt testified that Miller then phoned her to tell her that K.M. was not at the daycare facility and that Mack had found him coming out of the alley and brought him home. Hunt averred she did not know Mack's last name or phone number and had never spoken to him on the phone before. She did not know how Mack obtained her phone number but thought he might have obtained it from his father, who did have her number.

¶ 22 Hunt testified that, after Mack called her, she phoned plaintiff and asked her whether K.M. was at the daycare facility. Plaintiff replied that he was. Hunt left school

and rushed home to see K.M. She asked him how he "got out of the door" but he, "being a typical two year old, really [didn't] know how to talk very clearly." He did not tell her that Miller had picked him up from the daycare facility or that Mack had picked him up or that he was walking down the alley. Hunt did not telephone the police but the next day, October 9, 2012, telephoned DCFS.

¶ 23 Hunt averred plaintiff told her "the kids" told her Miller had picked K.M. up from the daycare facility. She said this could not have happened as Miller and her mother were home at the time Mack dropped off K.M. Hunt had known plaintiff almost all her life and had herself attended plaintiff's daycare facility. The children of Hunt's family members had attended the daycare facility with K.M. and were still attending the daycare facility after the incident. Hunt had never asked the children's parents what happened at the daycare facility on October 8, 2012, but that one of her relatives told her that "Jacoby," a child in the daycare facility with K.M., told his mother that K.M. left the daycare facility on his own. Hunt stated there were two doors to the daycare facility, a black storm door and a normal entry door behind it. She testified that she had never observed the storm door open and that opening the storm door was a problem, that "you have to open it from the inside to get in." She initially testified that K.M. would not have been able to open the storm door but then stated that there was "a slim possibility, 50/50" that he could open it and "whose [*sic*] to say his abilities couldn't let him open the door." She averred that she had specifically asked K.M. how he "got out" of the door because she knew that it would have been difficult for him to open the door.

¶ 24 Miller, K.M.'s father, testified that he took a day off on October 8, 2012. He thought he took the day off because he was not feeling well and did not remember

having hurt his back or moving furniture. Miller and Hunt drove K.M. to the daycare facility that day. Miller then drove Hunt to school, came home and "laid back down." Hunt's mother and sister were also home. Miller testified that he woke up when K.M. came through the door by himself. Miller had not been expecting K.M. to come home and did not remember what time the child came home. He thought it was no later than 11:30 a.m. Miller stated he immediately phoned Hunt and "that was the first she had heard of it." Hunt told him she would call plaintiff but did not tell him she had spoken to anyone named Mike or Mack. Miller knew Mack as Mack was a deacon at the church next door to Miller's apartment and Miller observed him standing outside the church every day. Miller did not know Mack's last name or phone number.

¶ 25 Miller testified that, after phoning Hunt and telling her he did not know how K.M. came home, he "stormed out the door to get her from school." When he went downstairs, Mack was standing there. Mack told Miller he had observed K.M. come around the corner, walk past him and start "pushing on the door like he sees everybody else do," at which point Mack "grabbed" K.M. and yelled for help. Miller subsequently learned that, when no one in the apartment heard Mack, Mack took K.M. into the shop underneath Miller's apartment. The people in the shop came out and helped Mack yell. Hunt's sister then came downstairs and opened the door and K.M. ran upstairs. Miller testified that, after talking to Mack, he "jumped in the car and rolled off and [plaintiff] was standing downstairs also." Miller took K.M. with him in the car.

¶ 26 Miller testified that he was upset when K.M. came home, as he was struggling to understand how K.M. came home, but he did not call the police and instead called DCFS the next day. Miller denied picking K.M. up at the daycare facility. He denied

planning to spend time with K.M. while Hunt was in school, testifiying that he could not have done this as K.M. was in the daycare facility. He averred he, not Mack, was the one who called Hunt to tell her K.M. was not at the daycare facility. Miller stated he gave Mack's phone number to the DCFS investigator in December 2012.

¶ 27 On April 24, 2013, the ALJ issued a recommendation that the director deny plaintiff's request to expunge the indicated finding for allegation #74. Following a detailed recitation of her findings of facts, the ALJ stated that she found the investigator's testimony credible, plaintiff's testimony "somewhat credible" and the testimony of K.M.'s parents Hunt and Miller "not credible." Then, applying the Act and administrative rules and procedures, she found DCFS had met its burden to establish by a preponderance of the evidence that plaintiff had inadequately supervised K.M., plaintiff was a perpetrator of child neglect as defined in allegation #74 and the indicated finding for allegation #74 should be upheld. The ALJ found it was uncontested that K.M. was too young to care for himself and was unable to provide information as to his name, where he lived and contact information for his parents or caretaker.

¶ 28 Addressing plaintiff's argument that K.M. was not able to open the door himself and that one of the children had told plaintiff that K.M.'s father had picked him up from the daycare facility, the ALJ stated that both Miller and Hunt denied that Miller had picked K.M. up at the daycare facility. She noted that Hunt's and Miller's testimony regarding how they learned that K.M. had arrived at their home "contained a lot of inconsistencies that did not match" but stated that the issue under consideration was not whether Miller and Hunt were believable. Rather, she found the issue was that plaintiff, "the caretaker responsible for the care and supervision of [K.M.] (and the other

four children) did not properly supervise [K.M.] since [K.M.] left [plaintiff's] home without her knowledge. Additionally [plaintiff] did not become aware of [K.M.]'s absence until Ms. Hunt called her up and asked for him."

¶ 29 The ALJ held:

> "The Department Rule lists examples of Inadequate Supervision to include, leaving children alone when they are too young to care for themselves and leaving children unattended in a place that is unsafe for them when their maturity, physical condition, and mental abilities are considered. In this instance it is clear that [K.M.] was too young to care for himself and that he was found unattended and wondering [*sic*] in the street which was unsafe for him or any other child his age or in the best case scenario was picked up by his father without [plaintiff] noticing his absence. A preponderance of the evidence did establish that [plaintiff] inadequately supervised [K.M.]."

¶ 30 On May 6, 2013, the director issued his decision denying plaintiff's request to expunge the indicated finding on allegation #74 from the record. He stated he adopted the ALJ's "specific findings of facts and conclusions of law," incorporated them into his decision and concurred with the ALJ's recommendation that plaintiff's request be denied. His decision was the final administrative decision.

¶ 31 Plaintiff filed a complaint for administrative review of the director's decision in the Circuit Court of Cook County. She argued the ALJ's findings adopted by the director were clearly erroneous as the ALJ's factual findings did not support her conclusion that K.M. was unsupervised, the ALJ erroneously concluded the credibility of the witnesses was not an issue and the ALJ relied on hearsay testimony from "a late appearing

mystery man [Mack or Mike] with no indicia of reliability." Plaintiff also argued that DCFS erred procedurally when it failed to complete its investigation within the requisite 60-days prescribed in section 7.12 of the Act.

¶ 32 On April 14, 2014, the trial court affirmed the director's final administrative decision. It found that DCFS's ruling "75 days" after the start of the investigation was well within the 30-day extension period contemplated by the Act and the extension was for good cause given the need to contact a key witness (Mack) before completing the investigation. The court also found that the ALJ's findings adopted by the director were not clearly erroneous. It held that any uncertainty regarding whether K.M. left plaintiff's daycare facility on his own accord or was picked up by his father was "irrelevant since there is no conflict on the fact that Plaintiff had absolutely no knowledge where K.M. was or how he left her home." The court stated there was sufficient evidence to uphold the finding of inadequate supervision without having an answer to the question of how K.M. left the daycare facility, holding "the ultimate issue is determined by the uncontradicted evidence that K.M. was too young to care for himself and the Plaintiff left K.M. unsupervised for at least 20 minutes. Indeed Plaintiff did not even become aware of K.M.'s absence until K.M.'s mother called to ask about him." The court noted that the purported hearsay testimony of Mack was "never central to the ALJ's decision" and the ALJ had acknowledged the credibility issues and inconsistencies in testimony and dismissed them as irrelevant. Plaintiff filed a timely notice of appeal from the court's order on April 28, 2014.

¶ 33 ANALYSIS

¶ 34 The decision of the director adopting the ALJ's findings of fact and

recommendation to deny plaintiff's request to expunge the indicated report is a final administrative decision subject to judicial review under the Administrative Review Law (735 ILCS 5/3-101 *et seq.* (West 2012)). 325 ILCS 5/7.16 (West 2012); 89 Ill. Adm. Code 336.220(a)(1) (2005). In an administrative review case, we review the decision of the agency, here the findings of the ALJ adopted by the director, not that of the circuit court. *Marconi v. Chicago Heights Police Pension Board*, 225 Ill. 2d 497, 531 (2006). The standard of review we use to consider administrative decisions depends on the question presented. *Marconi*, 225 Ill. 2d at 532; *City of Belvidere v. Illinois State Labor Relations Board*, 181 Ill. 2d 191, 205 (1998). Plaintiff here raises the following three challenges to the director's final decision: (1) DCFS's failure to complete its investigation and issue a finding within 60 days was contrary to statutory guidelines and prejudicial error, (2) the ALJ's findings were against the manifest weight of the evidence and (3) the ALJ's determination that plaintiff was neglectful was clearly erroneous.

¶ 35 (1) 60-Day Decision Period

¶ 36 Plaintiff first argues that DCFS's failure to complete its formal investigation and render a decision within 60 days of the filing of the hotline report was a procedural error contrary to statutory guidelines and DCFS's own investigative procedures. She asserts the delay deprived her of her due process rights, voided the entire proceeding against her and warrants expungement of the indicated finding. DCFS responds plaintiff forfeited this argument as she did not raise it at the administrative level and, in the alternative, plaintiff is not entitled to expungement as a brief 17-day extension of time is reasonable to allow DCFS to complete its investigation.

¶ 37 Pursuant to section 7.12 of the Act:

> "The Child Protective Service Unit shall determine, *within 60 days*, whether the report is 'indicated' or 'unfounded' and report it forthwith to the central register; where it is not possible to initiate or complete an investigation within 60 days the report may be deemed 'undetermined' provided every effort has been made to undertake a complete investigation. The Department *may extend* the period in which such determinations must be made in individual cases *for additional periods of up to 30 days each for good cause shown*. The Department shall by rule establish what shall constitute good cause." (Emphases added.) 325 ILCS 5/7.12 (West 2012).

¶ 38 The Illinois Administrative Code (Code) provides similarly that "[u]pon completion of a formal investigation of abuse or neglect, [DCFS] investigative staff shall make a final determination as to whether a child was abused or neglected. 89 Ill. Adm. Code 300.110(i)(2) (1998). The final determination "must" be completed within 60 days of "[t]he time the report was received at the State Central Register," which "begins the investigative process." 89 Ill. Adm. Code 300.90(d) (1990). The Code also provides:

> "When investigative staff have been unable, for good cause, to gather sufficient facts to support a decision within 60 days of the date the report was received, the allegation shall be considered undetermined. Additional periods of 30 days shall then be permitted to complete the investigation, after which a determination shall be made. In the absence of credible evidence of abuse or neglect, the allegations and the report shall be designated unfounded." 89 Ill. Adm. Code 300.110(i)(3)(C) (1998).

¶ 39 DCFS received the initial report accusing plaintiff of child neglect on October 9, 2012, and started its preliminary investigation that day. It is uncontested that DCFS did not complete its formal investigation and render a decision "within 60 days of the date the report was received" (89 Ill. Adm. Code 300.110(i)(3)(C) (1998)). Instead, the parties agree that DCFS rendered its decision 77 days after the report was received, on December 24, 2012, when the state central register notified plaintiff by letter that DCFS had determined she had abused or neglected a child and indicated her for inadequate supervision. It being uncontested that DCFS exceeded the statutory 60-day time frame by 17 days, the question is whether the Act requires that the indicated finding be expunged from the central record. Interpretation of a statute is a question of law that we review *de novo*. *Branson v. Department of Revenue*, 168 Ill. 2d 247, 254 (1995).

¶ 40 As an initial matter, defendant claims plaintiff forfeited her timeliness argument as she did not raise it during the administrative hearing and raised it for the first time to the trial court. "Generally, a court conducting an administrative review will not consider an issue or defense not raised at the administrative level." *Montalbano v. Illinois Department of Children & Family Services*, 343 Ill. App. 3d 471, 475 (2003). The forfeiture rule applies equally to issues involving constitutional due process rights. *S.W. v. Department of Children & Family Services,* 276 Ill. App. 3d 672, 679 (1995). Plaintiff responds that she did raise the timeliness issue during the administrative hearing when she cross-examined Investigator Rogers regarding the amount of investigatory time that had elapsed before Rogers spoke to Miller, K.M.'s father, (58 days after receipt of the hotline report) and to Mack (62 days after receipt of the hotline report).[4]

[4] As noted previously in footnote 3, Investigator Roger's testimony that she did

¶ 41 Although plaintiff's cross-examination of Rogers arguably shows plaintiff was concerned with the timeliness of the investigation, she did not pursue this concern by bringing it to the ALJ's attention. The logical place to raise the issue would have been in a pre-hearing motion or at least in closing argument. Yet plaintiff filed no such motion and, in her closing argument, she made no mention of the timeliness of the investigation, addressing mainly the inconsistencies between Hunt's and Miller's testimony and the unreliability of anything "Mack" is alleged to have told witnesses Rogers, Hunt and Miller. By plaintiff's failure to raise the timeliness issue to the ALJ, she forfeited the argument on appeal. Nevertheless, forfeiture is an admonition to the parties rather than a limitation on court's jurisdiction and does not prevent us from considering the merits of plaintiff's argument in the interests of justice. *Montalbano*, 343 Ill. App. 3d at 475. Therefore, as plaintiff did make some record regarding the reasons for Rogers' delay in making contact with Mack, we will address plaintiff's timeliness question. We disagree with plaintiff that DCFS's failure to complete its investigation and make its determination within 60 days deprived her of her due process rights.

¶ 42 Plaintiff asserts the statutory deadlines to complete investigations and render decisions should be completely adhered to based on their express language and the delay here deprived her of her due process rights, voided the entire proceeding against her and warrants expungement of the indicated finding.

> "To give validity to its findings and orders, an administrative agency must comply with the procedures and rules promulgated by the legislature. * * * The failure to comply with a mandatory provision of a statute will

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not interview Miller until December 5, 2012, conflicts with a report she made in the investigative file stating that she spoke to Miller on October 24, 2012.

> render void the proceeding to which the provision relates. [Citation.] Furthermore, such rules as are lawfully adopted by an administrative agency pursuant to statutory authority have the force of law and bind the agency to them. [Citation.] This is particularly true where the agency's noncompliance with its own rules prejudices one who is subject to the authority of the agency." *Stull v. Department of Children & Family Services*, 239 Ill. App. 3d 325, 332 (1992).

In contrast, a directory provision is one "the observance of which is not necessary to the validity of the proceeding." *Cooper v. Department of Children & Family Services*, 234 Ill. App. 3d 474, 481 (1992).

¶ 43 There is no question that, as the subject of an "indicated" report in accordance with the Act, plaintiff's liberty interest protected by the due process clause of the United States Constitution was implicated when the indicated report was placed in the state central register. See *Cavarretta v. Department of Children & Family Services*, 277 Ill. App. 3d 16, 21-22 (1996) (citing U.S. Const., amend. XIV); *Stull v. Department of Children & Family Services*, 239 Ill. App. 3d 325, 335 (1992). The due process clause of the fourteenth amendment to the United States Constitution provides that life, liberty, and property cannot be deprived without due process. *Id.* at 21 (citing U.S. Const., amends. V, XIV; *Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 541 (1985)). Although damage to a person's reputation, standing alone, does not implicate a Federal liberty interest, "stigmatization plus the loss of present or future government employment is sufficient to rise to the level of a protectible liberty interest." *Cavarretta*, 277 Ill. App. 3d at 21. Accordingly, being placed on the state central register of

suspected child abusers and neglectors implicates a Federal liberty interest as there is a "substantial risk" that the subject of an indicated report will be barred from pursuing her chosen profession, such as teaching and, as here, child care. *Lyon v. Department of Children & Family* Services, 209 Ill. 2d 264, 274-75 (2004); *Cavarretta*, 277 Ill. App. 3d at 22 (following *Stull*, 239 Ill. App. 3d at 335).

¶ 44 Plaintiff challenges DCFS's failure to determine that the report was indicated or unfounded within 60 days as required by section 7.12 of the Act. A delay in deciding whether to indicate a report occurs *before* the indicated report is recorded in the central register.[5] DCFS's 17-day delay in making its decision to indicate plaintiff for child neglect occurred during pre-deprivation proceedings, as until DCFS made its decision to indicate and recorded this finding in the central register, plaintiff was neither stigmatized by an indicated report nor prohibited from working in her chosen child care profession, *i.e.*, she had yet not been deprived of a liberty interest.[6]

¶ 45 Further, the time limits set forth in the Act are directory, not mandatory.[7] Whether a statute is mandatory or directory "depends upon the intent of the legislature, which is ascertained by examining the nature and object of the statute and the consequences which would result from any given construction." *Cooper*, 234 Ill. App. 3d at 481.

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[5] Necessarily, DCFS cannot record an "indicated" report in the central register until after it has actually determined that the report is indicated.

[6] In contrast, administrative appeals from indicated decisions are post-deprivation proceedings, proceedings occurring after a plaintiff has been deprived of a liberty interest by being reported as indicated on the state central register.

[7] In *Stull*, a 1992 decision, the court stated "[w]e find no cases which address whether the time limit set forth in section 7.12 of the Act within which DCFS must complete its investigation is mandatory or directory." *Stull*, 239 Ill. App. 3d at 334. This is still true today, as *Stull* itself did not decide the issue and no more recent decision has addressed the question.

> " 'In brief summary, when a statute prescribes the performance of an act by a public official or a public body, the question of whether it is mandatory or directory depends on its purpose. If the provision merely directs a manner of conduct for the guidance of the officials or specifies the time for the performance of an official duty, it is directory, absent negative language denying the performance after the specified time. If, however, the conduct is prescribed in order to safeguard someone's rights, which may be injuriously affected by failure to act within the specified time, the statute is mandatory.' " *Stull*, 239 Ill. App. 3d at 331-333 (quoting *Andrews v. Foxworthy*, 71 Ill. 2d 13, 21 (1978)).

¶ 46 Section 7.12 sets forth no negative language denying performance by DCFS if it fails to meet the 60-day time limit for determining whether a report is indicated or unfounded. The Act provides neither sanctions for failure to comply with the 60-day time limit nor that the subject of an indicated report is entitled to expungement of the report upon failure by DCFS to meet the 60-day time limit. The 60-day time requirement in the Act may, therefore, be interpreted as being merely directory rather than mandatory." *Cooper*, 234 Ill. App. 3d at 482 (analyzing whether DCFS's failure to comply with timing provisions set forth in the Child Care Act of 1969 was mandatory or directory).

¶ 47 As to the nature and object of the statute, the Act's purpose is twofold: "to protect children from neglect and abuse" and "to protect subjects [of reports of suspected child abuse or neglect] from the detrimental effect of inaccurate reports." *Shawgo v. Department of Children & Family Services*, 182 Ill. App. 3d 485, 490 (1989). The consequence of a mandatory interpretation of section 7.12 is that DCFS's failure to

comply with the 60-day time limit would result in its loss of jurisdiction to address the charges of abuse or neglect. On the other hand, a directory construction would balance the interest in protecting children from abuse and neglect against the subject's right to a prompt determination. Therefore, as the Act does not set forth sanctions for failure to comply with the 60-day time limit in section 7.12 and the persons the statute is intended to protect will be adversely affected by a mandatory interpretation, the 60-day time limit for determining whether a report is indicated or unfounded is directory.

¶ 48 Citing *Stull,* plaintiff argues that DCFS's 17-day delay in making the determination to indicate plaintiff was not "timely" in the context of protecting her due process rights and her right to pursue her profession as a licensed child care worker. In *Stull*, the court found:

> "whether deemed to be mandatory or directory, the time limitations set forth in the Act and administrative rules at the very least reflect the judgment of the legislature and the agency as to what constitutes a reasonable length of time in which the agency must act. We think it follows that a gross deviation from those time limitations would be deemed to be unreasonable and contrary to the legislative intent, evidenced by the setting of time limitations, that the agency act in a reasonably timely manner." *Stull*, 239 Ill. App. 3d at 334 (analyzing the impact of DCFS's delay in resolving a teacher's administrative appeal from an indicated finding of child abuse).

In *Stull*, DCFS had delayed more than one year before deciding a teacher's request to expunge an indicated finding of child abuse from the state central record. The court

stated "the consequences of being listed on the State central register as a child abuser are grave and require that the subject of a report be provided a hearing in which to contest the report within a short time." *Id*. at 335. The court declared itself "unwilling to set a specific time limit, believing that such a task is better left to the legislature," but did find "that nearly one year is an unreasonable length of time." *Id*. at 335-36. The court found DCFS's year-long delay in making its final administrative ruling on the teacher's appeal of the denial of his request to expunge the record was unreasonable and deprived the teacher of his right to constitutional due process. *Id*. at 335. It, therefore, affirmed the decision of the circuit court reversing DCFS's decision and ordering DCFS to expunge the indicated report regarding the teacher from the state central record. *Id*. at 336.

¶ 49 As noted above, plaintiff is challenging DCFS's pre-deprivation procedures and not, as did the teacher in *Stull*, post-deprivation procedures. However, we agree with Stull that "a gross deviation" from the time limitations set forth in the Act "would be deemed to be unreasonable and contrary to the legislative intent, evidenced by the setting of time limitations, that the agency act in a reasonably timely manner." *Stull*, 239 Ill. App. 3d at 334. We do not, however, find a 17-day delay in making the determination to indicate is a "gross deviation" from the time limitations set forth in section 7.12 such that it is unreasonable or contrary to the legislative intent.

¶ 50 The 17-day delay was reasonable, for good cause and well within the 30-day extension provided for under the Act. The Act provides that, "where it is not possible to initiate or complete an investigation within 60 days," DCFS "may extend the period in which such determinations must be made in individual cases for additional periods of up

to 30 days each for good cause shown" and "shall by rule establish what shall constitute good cause." 325 ILCS 5/7.12 (West 2012). The Code established the rule that "[g]ood cause for extending the period for making a determination an additional 30 days may include but is not limited to the following reasons:" (1) a delay has been requested due to a pending criminal investigation, (2) medical or autopsy reports have not yet been received, (3) the delay is beyond DCFS's control as the report involves an out-of-state investigation and (4) additional time for interviews and gathering evidence is required as multiple alleged perpetrators or victims are involved. 89 Ill. Adm. Code 300.110(i)(3)(D) (1998).

¶ 51 The circumstances of the case at bar provided good cause for extending the period for making the determination an additional 30 days as set forth in section 7.12 of the Act (325 ILCS 5/7.12 (West 2012)). One of the procedures DCFS requires for a formal investigation is "[i]nterview all identified witnesses who reported to have knowledge of the incident." 89 Ill. Adm. Code 300.Procedures (Allegation of Harm #74) (2002). Presumably in compliance with this requirement, Investigator Rogers and her supervisor prepared an investigation plan that included as its next to last item: "make disposition when all interviews have been conducted." Mack was an identified witness. In fact, Mack was the key witness, as Mack was the person who was alleged to have found K.M. alone on the street when the child should have been in the daycare facility. A full and complete investigation would necessarily encompass an interview with Mack, whose firsthand account of whether, when and where he found K.M. was crucial to the investigation as all other accounts of his finding K.M. alone on the street came as hearsay from Hunt and Miller. However, due to factors beyond her control, Rogers was

not able to conduct an interview with Mack until December 10, 2012.

¶ 52 Rogers testified she told both Hunt and Giles that she needed contact information for the person who found K.M. (Mack) as it was important that she speak with him, but "it was sometime" before she actually got a phone number to contact him. She did not find this delay unusual "on the total circumstances," as Hunt had told her she was trying to get in touch with the pastor of the church to get Mack's phone number. In one of her investigative reports, Rogers recorded that she spoke with Hunt on October 15, 2012, and Hunt told her she had given Roger's cell phone number to Mack and asked him to call Rogers. Rogers reported Mack had not contacted her.

¶ 53 On December 6, 2012, the day after plaintiff requested the teleconference to argue her case that she should not be indicated for neglect to a neutral administrator, Rogers made an additional effort to locate Mack by going to the church where Mack was alleged to work. The church was closed and she saw no phone number listed outside. Rogers had spoken with Hunt several times throughout October but Hunt did not provide her with Mack's telephone number until December 10, 2012. Rogers then telephoned the number and spoke to "Mack", thus completing the necessary interview. The next day, Rogers, her supervisor, plaintiff and a DCFS administrator participated in the teleconference requested by plaintiff. During the teleconference, Rogers reported on her conversation with Mack. Given how crucial the Mack interview was to the investigation, we find DCFS had good cause to delay its determination until it had obtained this interview. Under the circumstances, a 17-day delay was not unreasonable where the only information known about the crucial witness was his first name and the only persons able to provide contact information regarding this witness were parties

interested in the dispute who were not forthcoming with the necessary contact information.

¶ 54 Plaintiff argues there was no good cause for the delay as the entries in the investigative file show there was no action in the investigation between October 24, 2012, and December 5, 2012. She argues that Rogers could have gone to the church to look for Mack much earlier than December 6, 2012. She also points out that none of the four scenarios set forth in Rule 300.110(d) as "good cause" existed here. However, section 300.110(d) provides that good cause is "not limited to" those four scenarios. 89 Ill. Adm. Code 300.110(i)(3)(D) (1998). If good cause for a 30-day extension exists where medical or autopsy reports have not yet been received (89 Ill. Adm. Code 300.110(i)(3)(D)(ii) (1998)) or where additional time for interviews and gathering evidence is required where multiple perpetrators or victims are involved (89 Ill. Adm. Code 300.110(i)(3)(D)(iv) (1998)), then it exists where, as here, additional time is required for interviewing a witness crucial to the investigation.

¶ 55 We find, as did the trial court, that extending the investigation in order to interview Mack, a key witness, was for good cause. Despite Investigator Rogers' repeated requests for Mack's contact information and the fact that Hunt and Miller apparently saw Mack on their street frequently, if not every day, Rogers did not receive Mack's contact information from Hunt until almost two months after the start of the investigation, after which she immediately contacted Mack. Under these circumstances, a 17-day extension for completing the investigation and making the determination regarding the report was reasonable and for good cause. A 17-day delay falls well within the 30-day extension period permitted under section 7.12 of the Act.

¶ 56 Plaintiff points out that the record does not show that DCFS ever sought a 30-day extension of time in which to make a report to the central register or that a DCFS supervisor approved such a request. She does not cite authority for her underlying supposition that a 30-day extension must be formally requested and approved or how such a request is to be made and it is not our role to find support for her argument. Nevertheless, we find in DCFS's administrative procedures the requirement that, "[i]f a 30-day extension to the formal investigation is necessary, the Investigation Specialist shall send a request to his or her supervisor who will evaluate the request. If the supervisor approves the request, the supervisor will send the request to the Investigation Manager for review and final approval of the extension." 89 Ill. Adm. Code.Procedures 300.60 (2010).

¶ 57 Plaintiff is correct that there is no evidence in the administrative record showing a formal request for an 30-day extension was made and approved. However, the record shows Investigator Rogers' supervisors tacitly approved extending the investigation beyond 60 days. The investigative file shows Rogers consulted with her immediate supervisor on December 6, 2012, the day after she had informed plaintiff that DCFS intended to indicate her for allegation #74, and reported that plaintiff was requesting a teleconference "because she believe[s] she was being set up." On December 7, 2010, a DCFS regional supervisor ordered that the teleconference "needs to be assigned TODAY." The conference was then held on December 11, 2010, and the administrator made her decision eight days thereafter. Since plaintiff made her request for a teleconference only two days before the end of the 60-day period and a supervisor ordered the conference be assigned, this necessarily entails that a supervisor approved

extending the period for making the final determination beyond 60 days on the basis of the teleconference alone.

¶ 58 Further, plaintiff suffered no prejudice from the delay. Where the subject of a report for suspected child abuse or neglect is a child care worker such as plaintiff, DCFS is required to notify the child care worker in person if it intends to indicate for child abuse or neglect. 89 Ill. Adm. Code 300.160(c)(2)(D) (2005). Once the child care worker has been notified of the intent to indicate, he or she may request a teleconference presided over by a neutral administrator, one who was not involved in the investigation. [8] 89 Ill. Adm. Code 300.160(c)(1)(a) (2005). The teleconference is not a hearing. 89 Ill. Adm. Code 300.160(c)(3)(E) (2005). However, the child care worker and/or her representative is allowed to provide the administrator "with any information that will help [DCFS] make the most accurate decision regarding the *** allegations." 89 Ill. Adm. Code 300.160(c)(4)(A) (2005). Here, plaintiff received the benefit of the teleconference during which she heard all the evidence Investigator Rogers had amassed, including the information Rogers received from Mack, and she was given the opportunity to provide her version of events before the final decision to indicate was made. Therefore, she suffered no prejudice from the short delay in making the decision to indicate her for neglect.

¶ 59 In sum, as the 60-day time limit in section 7.12 is directory and the 17-day delay was for good cause, within an allowable 30-day extension and did not prejudice plaintiff,

[8] The teleconference is referred to as a Dupuy hearing, following *Dupuy v. Samuels*, 397 F.3d 493 (2005), in which the Seventh Circuit Court of Appeals ordered that DCFS must provide child care workers accused of child abuse or neglect an opportunity to respond to the allegation before it indicates and discloses an abuse/neglect report.

plaintiff is not entitled to expungement of the indicated finding as a matter of law.

(2) Factual Findings

¶ 60 Plaintiff next argues the ALJ's findings that K.M. was found alone and unattended were against the manifest weight of the evidence, asserting (A) DCFS introduced inadmissible hearsay evidence rather than competent evidence to show that K.M. was found alone and (B) the record reveals "major" inconsistencies in the testimony of K.M.'s parents, unsupported factual inference and a careless investigation into the facts. These questions raise factual issues. We review an agency's purely factual determinations under the manifest weight of the evidence standard of review. *Marconi*, 225 Ill. 2d at 534. Under this standard, we take the agency's finding of fact as *prima facie* true and correct and will reverse a factual finding only if, after viewing the evidence in the light most favorable to the agency, we conclude that no rational trier of fact could have agreed with the agency's decision and an opposite conclusion is clearly evident. *Marconi*, 225 Ill. 2d at 534; *S.W. v. Department of Children & Family Services*, 276 Ill. App. 3d 672, 681 (1995); *Abrahamson v. Illinois Department of Professional Regulation*, 153 Ill. 2d 76, 88 (1992). If the record contains evidence to support the agency's decision, we must affirm that decision. *Marconi*, 225 Ill. 2d at 534. We find no error in the ALJ's factual findings.

¶ 61 Plaintiff is correct that the evidence that K.M. was found alone on the street when he should have been in the daycare facility was hearsay. The person who allegedly found K.M. alone on the street was "Mack." Yet Mack did not testify. Instead, his version of events came in through Hunt and Miller's testimony regarding what he told them, Rogers' testimony regarding what Hunt and Miller told her Mack told them and Roger's

report of her phone interview with Mack, who she had never met and whose last name she did not know. Plaintiff is also correct that Hunt's testimony conflicted with that of Miller on numerous points and, as a result, the ALJ found Hunt and Miller not credible.

¶ 62 However, notwithstanding plaintiff's assertions to the contrary, the ALJ neither relied on the hearsay evidence and conflicting testimony in making her determination nor held that K.M. was found alone and unattended. In her decision, the ALJ stated that the issue under consideration was not whether Miller and Hunt were believable but rather was whether plaintiff, as the caretaker responsible for K.M.'s care and supervision,

> "did not properly supervise [K.M.] since [K.M.] left [plaintiff's] home without her knowledge. Additionally [plaintiff] did not become aware of [K.M.]'s absence until Ms. Hunt called her up and asked for him."

Noting that examples of inadequate supervision included "leaving children alone when they are too young to care for themselves and leaving children unattended in a place that is unsafe for them when their maturity, physical condition, and mental abilities," the ALJ held:

> "In this instance it is clear that [K.M.] was too young to care for himself and that he was found unattended and wondering [*sic*] in the street which was unsafe for him or any other child his age *or* in the best case scenario was picked up by his father without [plaintiff] noticing his absence. A preponderance of the evidence did establish that [plaintiff] inadequately supervised [K.M.]." (Emphasis added.)

Taken together, the ALJ's holding was that, no matter whether K.M. left the daycare

facility on his own or was taken from the building by his father, plaintiff did not notice when he left and did not notice he was gone until sometime later after Hunt's phone call and plaintiff was, therefore, properly indicated for inadequate supervision.

¶ 63 To reach her conclusion, the ALJ did not rely on the hearsay evidence or inconsistent testimony as plaintiff's own testimony supported the conclusion. Plaintiff testified she took the children up to the first floor at approximately 11:35 a.m. and she last saw K.M. when he went to the bathroom on the first floor. She admitted she did not realize K.M. was gone from the building until after Hunt phoned her at approximately 11:55 a.m., at which point she left the kitchen, saw the front door was open and noticed K.M. was not among the children coming up the stairs from the basement. Plaintiff stated she did not assist K.M. in the bathroom or wait for him while he was in the bathroom but rather went into the kitchen to prepare for his party. She testified she had assumed he went down to the basement after he used the bathroom and that she did not see or hear him leave the building. Plaintiff's testimony shows that she left K.M. completely unattended for approximately 15 to 20 minutes, between the time K.M. went to the bathroom shortly after 11:35 a.m. and the time plaintiff discovered him missing after Hunt's phone call at 11:55 a.m. Plaintiff's testimony, standing alone, is sufficient to support the ALJ's finding that plaintiff left K.M. unattended. The hearsay and inconsistent testimony are essentially irrelevant in making this finding and the finding is, therefore, not against the manifest weight of the evidence.

¶ 64 (3) Neglect

¶ 65 Plaintiff lastly argues that the ALJ incorrectly determined that her conduct constituted neglect. This argument presents a mixed question of law and fact, requiring

interpretation of the Act and application of factual findings to that interpretation. We review mixed questions of law and fact under the clearly erroneous standard. *Marconi*, 225 Ill. 2d at 532; *Rose v. Board of Trustees of the Mount Prospect Police Pension Fund*, 2011 IL App (1st) 102157, ¶ 69. Under this standard, we afford some deference to the agency's experience and expertise and must accept the agency's findings unless, after reviewing the record, we are left with the " 'definite and firm conviction that a mistake has been committed.' " *AFM Messenger Service, Inc. v. Department of Employment Security*, 198 Ill. 2d 380, 391-95 (2001) (quoting *United States v. United States Gypsum Co.*, 333 U.S. 364, 395 (1948)). The ALJ's decision finding plaintiff to be a perpratrator of child neglect as defined in allegation #74 was not clearly erroneous.

¶ 66 The Act provides that, if DCFS determines after a formal investigation of a report of suspected child abuse or neglect "that credible evidence of the alleged abuse or neglect exists," then the report is " 'indicated.' " 325 ILCS 5/3 (West 2012). The Code defines " 'credible evidence of child abuse or neglect' " to mean "that the available facts, when viewed in light of surrounding circumstances, would cause a reasonable person to believe that a child was abused or neglected." 89 Ill. Adm. Code 300.20 (2011). In an administrative hearing regarding a child neglect finding, DCFS has "the burden of proof of justifying the refusal to amend, expunge or remove the record" and "must prove that a preponderance of the evidence supports the indicated finding." 89 Ill. Adm. Code 336.100(e) (2002).

¶ 67 Here, the director accepted the ALJ's finding that plaintiff was a perpetrator of child neglect under allegation #74 and her recommendation that plaintiff's request to expunge the indicated finding of neglect should therefore be denied. The Act defines

"neglected child" as, in relevant part, "any child *** who is subjected to an environment which is injurious insofar as (i) the child's environment creates a likelihood of harm to the child's health, physical well-being, or welfare and (ii) the likely harm to the child is the result of a blatant disregard of parent or caretaker responsibilities" 325 ILCS 5/3 (West 2012). It defines " '[b]latant disregard' " as "an incident where the real, significant, and imminent risk of harm would be so obvious to a reasonable parent or caretaker that it is unlikely that a reasonable parent or caretaker would have exposed the child to the danger without exercising precautionary measures to protect the child from harm." *Id*.

¶ 68 DCFS's rules categorize harm resulting from neglect and abuse into "allegations."[9] Plaintiff was indicated for neglect under allegation #74, which is titled "inadequate supervision." Under allegation #74, inadequate supervision is indicated when a “child has been placed in a situation or circumstances that are likely to require judgment or actions greater than the child's level of maturity, physical condition, and/or mental abilities would reasonably dictate.” 89 Ill. Adm. Code 300.Appendix B (2011). Allegation #74 includes examples of inadequate supervision, such as "[l]eaving children alone when they are too young to care for themselves" and "[l]eaving children unattended in a place that is unsafe for them when their maturity, physical condition, and mental abilities are considered." 89 Ill. Adm. Code 300.Appendix B (2011).

¶ 69 Allegation #74 provides three categories of factors to be considered when determining whether a child is inadequately supervised. "Child" factors "include the

[9] DCFS has the power " '[t]o make all rules necessary for the execution of its powers.' " *Julie Q. v. Department of Children & Family Services*, 2013 IL 113783, ¶ 23 (quoting 20 ILCS 505/4 (West 2008)). "Pursuant to this authority, DCFS promulgated Appendix B to describe the 'specific incidents of harm' that constitute abuse or neglect. 89 Ill. Adm. Code 300.Appendix B (2011)." *Id*.

child's age and developmental stage, particularly related to the ability to make sound judgments in the event of an emergency," "physical condition, particularly related to the child's ability to care for or protect himself or herself" and "mental abilities, particularly as they relate to the child's ability to comprehend the situation." *Id*. "Caregiver factors consist of the amount of time it takes the caregiver to reach the child, whether the caregiver can see or hear the child, and the caregiver's maturity, physical condition, emotional condition, and cognitive ability to make appropriate judgments on the child's behalf." *L.F. v. Department of Children & Family Services*, 2015 IL App (2d) 131037, ¶ 50 (citing 89 Ill. Adm. Code 300.Appendix B (2011)). "Incident factors include the frequency and duration of the occurrence, whether it occurs in the day or night, whether there are other people overseeing the child, and whether there are any 'other factors that may endanger the health and safety of the child.' " *Id*. (quoting 89 Ill. Adm. Code 300.Appendix B (2011)).

¶ 70 DCFS met its burden of proof to show that plaintiff had placed K.M. "in a situation or circumstances that [were] likely to require judgment or actions greater than [K.M.'s] level of maturity, physical condition, and/or mental abilities would reasonably dictate" (89 Ill. Adm. Code 300.Appendix B (2011)) when plaintiff left K.M. unattended even though he was too young to care for himself. Looking first to the child factors, the evidence supports the ALJ's finding that K.M. was too young to care for himself. A child who has just turned 3 years old is generally of an age and developmental stage that he should not be left alone for 15 to 20 minutes. A three-year old child does not have the ability to make sound judgments in the event of an emergency. This is particularly true here as, per plaintiff's and Hunt's testimony, three-year old K.M. did not yet know his

name or address and could not speak clearly. Therefore, the evidence supports finding K.M. did not have the maturity and mental ability to take care of himself.

¶ 71 Turning to the caregiver factors, it is uncontested that plaintiff was an experienced daycare provider and viewed by other parents of children in her daycare facility as being capable and competent. It is also uncontested that she was available to the children while she was in the kitchen preparing for the birthday party as the children could call to her from the basement or come upstairs to talk to her. Nevertheless, as the ALJ found, K.M. was able to leave the house, whether on his own or with his father, without plaintiff hearing or seeing his exit. The evidence was that K.M. left through the front door, which plaintiff testified is a short distance through the dining room from the kitchen where she was working. Yet plaintiff admitted that she did not notice when K.M. left the house. She did not notice when the door "you have to jam" in order to open it was opened and a child exited through that door. In fact, plaintiff admitted she did not know K.M. was missing until after Hunt had phoned her, when she saw the front door was open and only four children were coming up the stairs from the basement. This evidence supports the finding that plaintiff, K.M.'s caregiver, could neither see nor hear K.M. for a long enough period that he was able to leave or be removed from the daycare facility without her knowledge.

¶ 72 As to the incident factors, the evidence showed that plaintiff left K.M. unattended for approximately 15 to 20 minutes. There was no evidence that plaintiff had left K.M. or any young child alone before. However, plaintiff testified she did not have an assistant on the day K.M. left/was taken from her daycare facility and had not had an assistant for over a year. There was, therefore, no one to oversee the children if plaintiff had to

attend to other matters and she must, necessarily, have left the children alone in such a circumstance.

¶ 73 Leaving any three-year old child unattended for 15 to 20 minutes alone could endanger the health and safety of the child. This is especially true in the case of K.M. who was too young to care for himself and, as plaintiff and Hunt testified, was "very active" and "gets into everything." K.M. did not yet have the level of maturity and/or mental ability to be left on his own and leaving him alone for 15 to 20 minutes placed him in a situation or circumstances that would likely require judgment or actions greater than his level of maturity and mental abilities would reasonably dictate. Plaintiff blatantly disregarded her caretaker responsibilities when she left K.M unattended and out of earshot for such a significant amount of time. A reasonable caretaker would not have left a "very active," immature and essentially defenseless three-year old unattended for this length of time.

¶ 74 As both the ALJ and the trial court found, it is immaterial whether K.M. left the daycare facility on his own accord or whether he was taken away by his father. The crux of the evidence was that, as a result of plaintiff's failure to properly supervise K.M., she did not notice that he left/was taken and did not know he was missing for several minutes. If K.M. left the daycare facility on his own accord, then plaintiff's blatant disregard of her caretaker responsibility to adequately supervise him resulted in a situation in which an immature three-year old was able to leave the daycare facility and wander alone on the streets of Chicago. If K.M. was taken from the daycare facility, whether by his father or someone else, then plaintiff's failure to adequately supervise him resulted in a situation in which a person could come into the house through the

unlocked front door and take K.M., with good motives or bad, without plaintiff's knowledge. Either way, plaintiff failed to sufficiently supervise K.M.

¶ 75 Citing to *Slater v. Department of Children & Family Services*, 2011 IL App (1st) 102914, plaintiff points out that the existence of an injury, standing alone, cannot automatically result in a finding of neglect and, instead, the ALJ must determine whether the injury was the result of the caregiver's or parent's neglectful conduct. *Slater*, 2011 IL App (1st) 102914, ¶ 37 (citing 89 Ill. Adm. Code 300.Appendix B). In *Slater*, the court found an ALJ's determination that a mother was indicated for neglect resulting from her failure to adequately supervise her infant daughter was clearly erroneous, despite the fact that the child suffered a stab wound in her neck from a pencil while in her mother's care. *Id*. at ¶ 39. The court found the evidence showed that the mother was generally attentive, kept the infant within eyesight and tried to keep her away from the pencils the mother was using and that the injury occurred "during a moment when [the mother] was distracted or unaware of [the infant's] quick movements." *Id.* The court held:

> "[t]his is not a case where a mother left her child unsupervised or even a case where the mother was working with an obviously dangerous object, such as a knife. This is simply a case where [the mother] was using pencils near her daughter and failed to observe her daughter *for a slight moment*. While the resulting injury to [the infant] was truly unfortunate, we cannot accept the ALJ's conclusion that merely having pencils in the same room as an infant, *when the child was otherwise being supervised*, is neglectful conduct. Based on the record, we are left with the definite and firm impression that a mistake has been committed and therefore find that

the ALJ's decision that DCFS had met its burden was clearly erroneous." (Emphasis added.) *Id.*

¶ 76 Unlike in *Slater*, the incident here did not occur when the caregiver failed to observe her charge for only a "slight moment" or "when the child was otherwise being supervised." Instead, the incident occurred when K.M. was not being supervised at all and when plaintiff was so distracted by her kitchen tasks that she was unaware of where K.M. was, what he was doing and what was happening to him for a full 15 to 20 minutes.

¶ 77 "If the record contains evidence to support the agency's decision, it should be affirmed." *Abrahamson,* 153 Ill. 2d at 88. Here, given K.M.'s age and level of immaturity, the evidence supports finding that K.M. was subjected to an environment that created a likelihood of harm to his physical well-being or welfare and that the likely harm was the result of plaintiff's blatant disregard of her caretaker responsibilities, *i.e.*, that K.M. was a "neglected child" under section 3 of the Act. 325 ILCS 5/3 (West 2012). We, therefore, affirm the findings of the ALJ and the decision of the director denying plaintiff's request to expunge the indicated finding for neglect from the state central register.

¶ 78 CONCLUSION

¶ 79 For the reasons stated above, we affirm defendants' denial of plaintiff's motion to expunge the indicated finding of neglect from the state central register.

¶ 80 Affirmed.