

FOURTH DIVISION
January 29, 2015

Nos. 1-14-2689 and 1-14-2826, Consolidated

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

<i>In re</i> Maleek B., a Minor,)	Appeal from the
)	Circuit Court of
Respondent-Appellant,)	Cook County.
)	
(THE PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Petitioner-Appellant,)	
)	
v.)	14 JA 321
)	
SHAQUITA D.,)	
)	
Respondent-Appellee,)	
)	
and)	
)	
CHRISTOPHER B.,)	Honorable
)	Maxwell Griffin, Jr.
Respondent-Appellee.))	Judge Presiding.

JUSTICE HOWSE delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Ellis concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's dismissal of the petition for adjudication of wardship is affirmed; where much of the occurrence evidence in the stipulated record was incomplete and contradictory, yet contained undisputed evidence that Maleek B. was a healthy, well-nourished baby, the State failed to prove neglect by a preponderance of the evidence.

¶ 2 Following a hearing on the State's petition for adjudication of wardship of Maleek B., which proceeded by way of stipulation, the trial court dismissed the State's petition finding that the State had failed to prove neglect by a preponderance of the evidence. The State now appeals the trial court's dismissal of its petition. For the reasons below, we affirm the trial court's dismissal.

¶ 3 Background

¶ 4 Maleek B. (Maleek) was born on January 12, 2014. His mother is Shaquita D., and his putative father is Christopher B. On March 27, 2014, the Department of Children and Family Services (DCFS) took temporary custody of Maleek because it was alleged on that date, his mother left him on the father's doorstep in a car seat while it was raining, without creating a care plan. At that time, the putative father was living with his mother, Maleek's grandmother, Donita.

¶ 5 On March 31, 2014, the State filed a petition for adjudication of wardship and a motion for temporary custody of Maleek. The petition alleged that Maleek was neglected based on a lack of necessary care pursuant to section 2-3(1)(a) of the Juvenile Court Act (the Act), was neglected based on an environment injurious to his welfare pursuant to section 2-3(1)(b) of the Act, and was abused based on a substantial risk of physical injury pursuant to section 2-3(2)(ii) of the Act.¹ In support of the allegations, the petition stated the following facts:

¹ The allegation that Maleek was abused pursuant to section 2-3(2)(ii) is not before this court. 705 ILCS 405/2-3(a)(ii) (West 2012).

"On March 27, 2014 mother left this minor on putative father's doorstep without creating a care plan. Putative father states mother had sent several threatening messages about harming the minor. Mother admits to taking this minor to putative father's house. Putative father states he cannot care for this minor. Paternity had not yet been established."

The motion for temporary custody argued that there was probable cause to believe that Maleek was neglected and there was urgent and immediate necessity to take him into temporary custody.

¶ 6 On that same day, the trial court conducted a temporary custody hearing by way of stipulation and found there was probable cause that Maleek was abused and neglected and that it was a matter of urgent and immediate necessity to place him in the temporary custody of DCFS pending an adjudication hearing on the State's petition. Following the temporary custody proceeding, a paternity test was conducted, which concluded that Christopher B. could not be ruled out as Maleek's father and there was a 99.9999995% chance that Maleek was Christopher B.'s son.²

¶ 7 On June 30, 2014 and August 11, 2014, the court conducted an adjudicatory hearing. At the hearing, the court was presented with evidence by way of stipulations, exhibits and medical records.

¶ 8 The parties stipulated that, if called to testify, DCFS investigator Evert Giscombe would state that on March 27, 2014, he was assigned to investigate allegations of inadequate supervision by the mother. On that date, Giscombe observed Maleek in a car seat on the table at 16142 Oxford Drive in Markham, Illinois. Giscombe had an in-person conversation with

² As such, we refer to Christopher B. as Maleek's father throughout.

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Maleek's father who stated that, although his name was on Maleek's birth certificate, he was not sure if he was the father. The father told Giscombe that the mother sent him text messages indicating that she would hurt Maleek. The father also told Giscombe that earlier in the day, between noon and 1:30 p.m., he heard a bang on the side of his house, looked through a peep hole and saw the mother outside. The father told Giscombe that because he had a cast on his leg and was using crutches, he asked his mother, Donita, to go look outside. The father told Giscombe that Maleek was left at his house by the mother, and that he contacted the police and then DCFS because he was unable to care for the baby.

¶ 9 If called to testify, Giscombe would also state that on March 27, 2014, he had an in-person conversation with the mother. The mother told Giscombe that she dropped Maleek off at Maleek's grandmother's home between noon and 1:00 p.m., and the father was not expecting her or Maleek when she dropped him off. The mother told Giscombe she gave Maleek to his grandmother and then left, and that she did not say anything to Maleek's grandmother when she dropped him off.

¶ 10 The parties stipulated that if the mother was called to testify, she would state that she was not going to hurt Maleek, that she had never hurt Maleek, that she was planning to go back and get Maleek, and that she fed Maleek before dropping him off at the father's house.

¶ 11 The parties further stipulated that, if called to testify, Donita would state that she is the mother of Christopher B. and that she lives at 16142 Oxford Avenue in Markham, Illinois. Donita would state that on March 27, 2014, between noon and 1:30 p.m., her son asked her to go and look outside. When she opened the door, she saw the mother running away, jumping into a car parked outside the home and saying "it's on you now" before leaving. Donita would testify that she saw Maleek in a car seat on the ground in front of her house, that it was raining when the

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mother dropped Maleek off, and that Maleek was left in an area that was uncovered. Donita would also testify that, for some time, she and the mother had been exchanging text messages and that on Tuesday and Wednesday of that week, the mother had sent her several text messages. Donita would further testify that People's Group Exhibit 1 was a true and accurate copy of the text and Facebook messages she received from the mother on those days. The parties stipulated to the foundation and admissibility of the Facebook and text messages between Donita and the mother, which were sent between March 25, 2014, and March 27, 2014.

¶ 12 The following series of Facebook messages took place on March 25, 2014 between 3:00 p.m. and 5:00 p.m.:

"DONITA: Leave alone before I call the police on you for harassment. Im not playing! Leave me and my son the f*ck alone. And take care of YOUR baby. You lost us for good. Now keep on! I done, dont want sh*t to do with you anymore. Now stop contacting me. *** I HATE YOU NOW.

MOTHER: Its gonna be a waist [sic] of time when that social worker come im not doing nothing to Maleek and I'm not saying nun..WTF is Chris coming for with him.

MOTHER: Y'all gonna hate me ever more later.

DONITA: I dont care.

MOTHER: You saying that now.

DONITA: Get it through you head I REALLY DONT GIVE A F*CK NOMORE. MOVE ON WITH YOUR LIFE. I HATE YOU.

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MOTHER: Ok...hope Chris gonna be at the house tonight

MOTHER: [Emotions.]

DONITA: If you go to my house you will be arrested. My
son has a restraining order out on you.

MOTHER: Ok.

MOTHER: You lucky i wont do nothing crazy im not
trying to go to jail."

On the next day, there is a Facebook message in the record that shows on "Wed at 2:54 PM" the mother stated to Donita, "Can you please call me later[.]" The messages that follow do not indicate the day on which they were sent, but show that they were sent between "11:32 AM" and "2:49 PM." The parties acknowledge in their briefs that these messages were sent on Thursday, March 27th, the day that the mother dropped Maleek off at his father's house sometime between noon and 1:30 p.m.:

"MOTHER (11:32 AM): Bringing him to you later

MOTHER (1:50 PM): Please don't let them take him I just
be wanting y'all Help it just be stressful at times

MOTHER (1:50 P.M.): I don't want to be locked up
because of this

MOTHER (2:14 P.M.): Someone is coming to get me
know

MOTHER (2:14 P.M.): *now

DONITA (2:14 P.M.): Come an get him now

MOTHER (2:14 P.M.): At the station right

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DONITA (2:34 P.M.): No at my house

MOTHER (2:49 P.M.): Here in come

MOTHER (2:49 P.M.): This girl just took me out y'all

drive way...

MOTHER (2:49 P.M.): I keep tryna tell her im tryna get

my baby[.]"

The record also contains phone text messages that were sent between the mother and Donita.

These messages are from Thursday, March 27, 2014, the day Maleek was dropped off at the father's home sometime between noon and 1:30 p.m.:

"MOTHER (9:49 A.M.): Can you answer

MOTHER (9:53 A.M.): Now I'm bout to leave him here

since don't nobody care

DONITA (9:53 A.M.): Leave him I don't care!

MOTHER (9:53 A.M.): So if I hurt him you still wouldn't

care

MOTHER (9:57 A.M.): If he died today you still wouldn't

care

MOTHER (9:57 A.M.): If he got dropped on his head you

still wouldn't care

MOTHER (9:57 A.M.): If he got bit you still wouldn't

care

MOTHER (9:57 A.M.): If he got left in the garbage you

still wouldn't care

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MOTHER (10:01 A.M.): No excuse me while I get ready
and do what I need to do

MOTHER (10:05 A.M.): I bet you wouldn't even come to
his funeral

MOTHER (Unknown): [illegible] ... let him scratch up his
face...if he ran out of milk that's on him ... And you think I wont
hurt him.

MOTHER (10:39 A.M.): That's sad. I bet y'all wouldn't do
that to Roko

MOTHER (10:40 A.M.): He mad cause I wont get up and
feed him [photo of Maleek]

MOTHER (10:41 A.M.): ROKO

DONITA (10:41 A.M.): I dont care about you not him.
Yall are DEAD TO ME NOW.

MOTHER (11:45 A.M.): Ppl kill themselves or kill other
ppl over some sh*t like this

MOTHER (11:45 A.M.): Plenty of crazy things You can
do to a baby it Just take the right crazy person to do it

MOTHER (1:47 P.M.): Why is y'all doing this to me...I
don't want to do this myself its stressful"

After admitting the Facebook and text messages into evidence without objection, the State and
the guardian *ad litem* (GAL) rested.

¶ 13 The mother entered Maleek's medical records from Mercy Hospital Medical Center into evidence, without objection. The admission date on the medical records was March 27, 2014. The records indicated that Maleek, at two and a half months, was brought to the hospital on March 27, 2014 for the chief concern of an "inadequate supervisor." The records state that Maleek's general health was "Good," that he was a "well nourished infant" who was "alert, responsive [and] fed well." The records further state that there were no abnormal findings during the hospital visit and that Maleek was "healthy." After the medical records were admitted into evidence, the mother and father rested.

¶ 14 At the close of evidence, the State requested a finding that Maleek was neglected care necessary and environment injurious based on the fact that he was left in the front of a residence in the rain without a care plan, and also based on the messages the mother sent to Donita wherein she threatened to harm Maleek. The GAL concurred with the State's request, and the father also requested a finding of neglect injurious environment. The mother argued that the State failed to meet its burden by a preponderance of the evidence and, therefore, no finding of neglect could be made. The juvenile court judge expressed agreement with the mother, finding that that Maleek was left in the care of an adult relative and, as such, he did not believe that the statute or case law "allows you to get neglect if you leave the child with someone who's capable of caring for the child and a proper age to care for the child. That alone would not be neglect...that's the way the statute reads." Following this statement by the judge, a discussion occurred between the judge and the attorneys, and the judge took the case under advisement.

¶ 15 On August 11, 2014, the juvenile court judge issued his ruling, which found that Maleek had not been neglected. The judge found that the mother's actions did not constitute neglect under the Act. Under section 2-3(1)(a) of the Act, the judge noted that a minor is not to be

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considered neglected "for the sole reason that the minor's parent or other persons responsible for the minor's welfare have left the minor in the care of an adult relative for any period of time, who the parent or person responsible for the minor's welfare knows is both [a] mentally capable adult relative and physically capable adult relative, as defined by the Act." The judge then noted that while paternity had not yet been established at the time the mother dropped Maleek off at Donita's home, the mother believed he was the father, and DCFS accepts who the mother says is the father. The judge noted that there was no evidence in the record that the father was under the age of 21 and, in any case, the father was living with his mother, Donita, at the time of the events. The judge also noted that the evidence was insufficient to show that the minor was left in an injurious environment. There was no evidence as to how long Maleek was left on the doorstep, how hard it was raining, whether Maleek got wet or whether any of these elements threatened Maleek in any way. As to the Facebook and text messages, the judge found that the messages reflected an "emotional exchange" between the mother and Donita that did not show a "direct threat of harm to the child." As such, the juvenile court judge concluded:

"So in looking for something in addition to simply leaving the child, the court finds that the evidence is insufficient to suggest that there was neglect or an injurious environment established by the State given the stipulation of facts that was submitted and the assigned text messages. So the court finds that the State failed to meet its burden of proof and will dismiss the petition at this time."

The trial court also denied the State's request for a stay. This appeal followed.

¶ 16 On September 8, 2014, the GAL filed an emergency motion in this court for stay, which was supported by the State and opposed by the mother. We granted the motion for a stay and ordered that Maleek's temporary custody be reinstated with DCFS.

¶ 17 In this appeal, Maleek's GAL and the State argue that the trial court erred in finding that Maleek was not neglected and, accordingly, erred in dismissing the State's petition for adjudication of wardship. For the reasons below, we affirm the trial court's dismissal of the petition for adjudication of wardship.

¶ 18 Analysis

¶ 19 Both the State and the GAL argue that the juvenile court erred in dismissing the petition for adjudication because the State had proven that Maleek was neglected by a preponderance of the evidence. At an adjudication hearing, the trial court must determine whether a minor is abused, neglected or dependent. *In re Jay H.*, 395 Ill. App. 3d 1063, 1068 (2009). "[T]he Act instructs the circuit court during the adjudicatory hearing to determine whether the child is neglected, and not whether the parents are neglectful." *In re Arthur H.*, 212 Ill. 2d 441, 467 (2004). A proceeding for adjudication of wardship "represents a significant intrusion into the sanctity of the family which should not be undertaken lightly." *In re Harpman*, 134 Ill. App. 3d 393, 396-97 (1985). It is the burden of the State to prove allegations of neglect or abuse by a preponderance of the evidence (*In re Christina M.*, 333 Ill. App. 3d 1030, 1034 (2002)), meaning the State must establish that the allegations of neglect or abuse are more probably true than not. *In re N.B.*, 191 Ill. 2d 338, 343 (2000); *In re M.H.*, 196 Ill. 2d 356, 365 (2001). Cases involving an adjudication of neglect and wardship are *sui generis*, and each case must ultimately be decided on the basis of its own particular facts. *In re Christina M.*, 333 Ill. App. 3d at 1034.

¶ 20 Before reaching the merits of the State and GAL's sufficiency of the evidence claims, we must first address the appropriate standard of review to apply in this case. Ordinarily, a trial court's ruling regarding neglect or abuse will not be disturbed unless it is against the manifest weight of the evidence. *In re Arthur H.*, 212 Ill. 2d at 463-64; *In re M.Z.*, 294 Ill. App. 3d 581, 592 (1998). A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident. *In re A.P.*, 2012 IL 113875, ¶17 (2012). The trial court is generally vested with this wide discretion because it has the best opportunity to observe the witnesses' testimony, assess credibility, and weigh the evidence. *In re E.S.*, 324 Ill. App. 3d 661, 667 (2001).

¶ 21 In this case, however, the trial court's findings were based upon a stipulated record and not based upon any observations of the witnesses or witnesses' testimony. As such, the trial court was not in a better position than the reviewing court to assess credibility or weigh the evidence. Therefore, since we are in the same position as the trial court, the trial court is not vested with wide discretion, and our review is *de novo*. *Alderson v. South Co.*, 321 Ill. App. 3d 832, 846 (2001) (Where the trial court heard no courtroom testimony and determined the issue of jurisdiction solely on the basis of documentary evidence, the trial court is not in a better position than the reviewing court to assess credibility or weigh the evidence and, therefore, the standard of review is *de novo*.); *Norskog v. Pfiel*, 197 Ill. 2d 60, 70-71 (2001) (citing *In re Marriage of Bonneau*, 294 Ill. App. 3d 720, 723-24 (1998) (“If the facts are uncontroverted and the issue is the trial court's application of the law to the facts, a court of review may determine the correctness of the ruling independent of the trial court's judgment.”)).

¶ 22 Neglect Based on a Lack of Necessary Care/Abandonment

¶ 23 On appeal, the State and GAL argue that the trial court erred in dismissing the petition for adjudication because the State presented sufficient evidence to show that Maleek was neglected based on a lack of necessary care/abandonment. Under the Act, neglect based on a lack of necessary care occurs when:

"(a) any minor under 18 years of age who is not receiving the proper or necessary support, education as required by law, or medical or other remedial care recognized under State law as necessary for a minor's well-being, or other care necessary for his or her well-being, including adequate food, clothing and shelter, or who is abandoned by his or her parent or parents or other person or persons responsible for the minor's welfare, except that a minor shall not be considered neglected for the sole reason that the minor's parent or parents or other person or persons responsible for the minor's welfare have left the minor in the care of an adult relative for any period of time, who the parent or parents or other person responsible for the minor's welfare know is both a mentally capable adult relative and physically capable adult relative, as defined by this Act[.]" 705 ILCS 405/2-3(1)(a) (West 2012).

¶ 24 Further, our courts have held that neglect occurs when a parent fails to exercise the care justly demanded by the circumstances and includes willful and unintentional disregard of the parent's duties. *In re J.B.*, 2013 IL App (3d) 120137, ¶ 13. The term "neglect" does not have one fixed meaning, but it takes its content from the specific facts and circumstances of each case. *In re Arthur H.*, 212 Ill. 2d 441 (2004). In general, "neglect" is defined as the failure to exercise

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the care that circumstances justly demand and encompasses both willful and unintentional disregard of parental duties. *In re Christina M.*, 333 Ill. App. 3d at 1034.

¶ 25 We find, based on the record before us, the State failed to prove by a preponderance of the evidence that Maleek was neglected based on a lack of necessary care. Section 2-3(1)(a) of the Act states: "a minor shall not be considered neglected for the sole reason that the minor's parent or parents or other person or persons responsible for the minor's welfare have left the minor in the care of an adult relative for any period of time, who the parent or parents or other person responsible for the minor's welfare know is both a mentally capable adult relative and physically capable adult relative, as defined by this Act[.]" 705 ILCS 405/2-3(1)(a) (West 2012).

A "[m]entally capable adult relative" means a person 21 years of age or older who is not suffering from a mental illness that prevents him or her from providing the care necessary to safeguard the physical safety and welfare of a minor who is left in that person's care by the parent or parents or other person responsible for the minor's welfare." 705 ILCS 405/1-3(9.1) (West 2012). A "[p]hysically capable adult relative" means a person 21 years of age or older who does not have a severe physical disability or medical condition, or is not suffering from alcoholism or drug addiction, that prevents him or her from providing the care necessary to safeguard the physical safety and welfare of a minor who is left in that person's care by the parent or parents or other person responsible for the minor's welfare." 705 ILCS 405/1-3(12.1) (West 2012). There is nothing in the record to suggest that either the father or Donita were not mentally or physically capable adult relatives at the time Maleek was dropped off at their home. As such, the sole fact that the mother left Maleek with the father and Donita cannot support a finding of neglect. 705 ILCS 405/2-3(1)(a) (West 2012); see also *In re Arthur H.*, 212 Ill. 2d at 463-64 (the State had the burden of proving neglect by a preponderance of the evidence).

¶ 26 We note that the State and GAL cite *In re S.R.*, 349 Ill. App. 3d 1017 (2004), and the GAL cites *In re Walter*, 227 Ill. App. 3d 746 (1992), in support of their argument that there was sufficient evidence to show that Maleek was neglected based on a lack of necessary care/abandonment. However, we find both those cases to be factually distinguishable. In *In re S.R.*, the mother refused to pick her child up from the hospital upon being discharged, locked the child out of the home, told an employee of DCFS that she did not want to care for the child anymore, told the child that she would be adopted by a new family, and did not communicate any desire to get the child back while the child was in foster care awaiting the adjudication proceedings. *In re S.R.*, 349 Ill. App. 3d at 1021. After the child was in foster care for more than a month, the mother did not communicate any desire to get the child back. *Id.* As such, the court held that the trial court's finding of neglect based on abandonment was not against the manifest weight of the evidence. *Id.* In *In re Walter B.*, the appellate court reversed the trial court's finding of no neglect based on care necessary where the mother left the child at the police station, "announced that she wanted no part of the child" and "told the police to do what they wanted with [the child]." *In re Walter*, 227 Ill. App. 3d at 755.³

¶ 27 Here, Maleek's mother dropped Maleek off at the home of his father and grandmother, two capable adult relatives. The record showed that she intended to go back and pick up Maleek, and there was no indication in the record that she no longer wanted to care for Maleek. In *In re S.R.* and *In re Walter B.*, the children were left, literally abandoned, at establishments—a hospital and a police station—after the parents made it unequivocally clear that they no longer wanted to care for their children. Given these stark factual differences, we find *In re S.R.* and *In re Walter B.* have no bearing on the outcome of this case.

³ The appellate court also reversed the trial court's finding of unproved sexual abuse of the child where the record contained sufficient evidence to show that the child's father sexually abused him and that the child's mother was aware of the abuse while it was ongoing. *In re Walter*, 227 Ill. App. 3d at 751-755.

¶ 28 The State also makes the argument that the juvenile court misinterpreted section 2-3(1)(a) of the Act, the section of the Act that governs neglect based on a lack of necessary care or abandonment. Again, section 2-3(1)(a) states:

"(1) Those who are neglected include:

(a) any minor under 18 years of age who is not receiving the proper or necessary support, education as required by law, or medical or other remedial care recognized under State law as necessary for a minor's well-being, or other care necessary for his or her well-being, including adequate food, clothing and shelter, or who is abandoned by his or her parent or parents or other person or persons responsible for the minor's welfare, except that a minor shall not be considered neglected for the sole reason that the minor's parent or parents or other person or persons responsible for the minor's welfare have left the minor in the care of an adult relative for any period of time, who the parent or parents or other person responsible for the minor's welfare know is both a mentally capable adult relative and physically capable adult relative, as defined by this Act[.]" 705 ILCS 405/2-3(1)(a) (West 2012).

Specifically, the State argues that the juvenile court judge misinterpreted the language "in the care of" that is found in section 2-3(1)(a) of the Act because the judge's interpretation of such language was "a strict or narrow interpretation, limiting the circumstances under which the statute applies[.]" According to the State, the language "in the care of" needs to be more "liberally construed to ensure that the best interest of the minor, the minor's family, and the

community are served." As such, the State argues "in the care of" was misinterpreted by the judge because such language should have been liberally construed to allow a finding of neglect where "an infant []is literally dumped in the front yard of an unwilling relative[.]"

¶ 29 However, we see nothing in the language of section 2-3(1)(a) of the Act that states the "adult relative" must be willing to care for the minor, as the State suggests here. Rather, section 2-3(1)(a) of the Act only requires that the "adult relative" be a mentally and physically capable adult. See 705 ILCS 405/2-3(1)(a) (West 2012). A court cannot read into a statute words that are not within the intention of the legislature as determined from the statute, nor can a court restrict or enlarge the meaning of a statute. *In re K.H.*, 313 Ill. App. 3d 675, 680 (2000). As such, we find the State's argument that the juvenile court misinterpreted the language of section 2-3(1)(a) of the Act to be flawed and without merit.

¶ 30 We note that the State's argument that Maleek was dumped in the front yard also distorts the facts of this case. Based on the record before us, it appears that the mother left the minor at the home of relatives of the child in an apparent effort to coerce them into sharing childcare responsibilities for the minor. There is a conflict in the stipulated testimony concerning exactly where and how the mother left the child. Donita's stipulation states that Maleek was left on her front yard as the mother was running to a car saying "it's on you now." The stipulated testimony of Giscombe is that he had a conversation with the mother wherein the mother stated that she gave Maleek to Donita without saying anything. The mother's stipulated testimony was that she intended to come back for Maleek. The State had the burden of proof in this case. As such, we cannot definitively say that the State was able to show by a preponderance of the stipulated evidence that Maleek was "dumped in the front yard of an unwilling relative[.]"

¶ 31 Neglect Based on an Injurious Environment

¶ 32 The State and the GAL also argue that the juvenile court erred because the State presented sufficient evidence to make a finding of neglect based upon an injurious environment. The Act defines a neglected minor based on an injurious environment as "any minor under 18 years of age whose environment is injurious to his or her welfare[.]" 705 ILCS 405/2-3(1) (b) (West 2012).

¶ 33 Neglect based on "injurious environment" is an amorphous concept not readily susceptible to definition. *In re J.P.*, 331 Ill. App. 3d 220, 234-35 (2002). "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." (Internal quotation marks omitted.) *In re J.B.*, 2013 IL App (3d) 120137, at ¶ 13.

¶ 34 With respect to neglect based on an injurious environment, we find that the stipulated record is incomplete and contradictory such that it does not allow us to find that the State met its burden by a preponderance of the evidence. The record is incomplete as there are several facts that are unknown, including: How cold was it on the day Maleek was dropped off? Was Maleek dressed properly for that weather? Was Maleek getting wet from the rain? How long was Maleek in the rain? Etc. Without these facts, it is nearly impossible to find that it was more likely than not that Maleek was neglected. It is worth noting, though, that when Maleek was taken to the hospital after allegedly being left in the rain for an unknown period of time, he was found to be a healthy child. As we noted earlier, the record is also contradictory. While Donita would testify that she opened her front door to find Maleek on the front yard and the mother running back to the car saying "it's on you now," Giscombe would testify that the mother told him that she gave Maleek to Donita and did not say anything to Donita at that time. These

stipulated facts directly contradict one another such that we cannot say that one scenario was more likely true than the other.

¶ 35 More importantly, though, the stipulated record established that the mother would testify that she never hurt Maleek, was not going to hurt Maleek, fed Maleek before dropping him off at the father's home and planned to go back to get Maleek. The record also shows that, after the police and DCFS were called, the mother sent a message to Donita stating: "Please don't let them take him I just be wanting y'all Help it just be stressful at times." The mother then returned to the home of Donita and the father in an attempt to get Maleek. Moreover, when Maleek was taken to the hospital after being dropped off at the father's home, the hospital records indicate that Maleek's general health was "Good," that he was a "well nourished infant" who was "alert, responsive [and] fed well." The records further indicated that there were no abnormal findings during the hospital visit and that Maleek was "healthy." As such, the record established that the mother planned to return for Maleek and that Maleek was a healthy, well-nourish baby.

¶ 36 We recognize that several messages from the mother to Donita contained statements which could be construed as hypothetical threats to Maleek and should not be taken lightly. However, we note that those messages were disjointed and incoherent, at best, and were being sent amidst what was clearly a heated argument between the mother and Donita. Further, as stated above, despite these messages, Maleek was found to be a healthy, well-nourish baby. The mother's actions may have been neglectful; however, there is no evidence that this minor was neglected. *In re Arthur H.*, 212 Ill. 2d at 467 ("[T]he Act instructs the circuit court during the adjudicatory hearing to determine whether the child is neglected, and not whether the parents are neglectful.").

¶ 37 The State had the burden of proving neglect by a preponderance of the evidence. *In re Arthur H.*, 212 Ill. 2d at 463-64. The stipulated record we were asked to review was incomplete, at times contradictory, and included evidence that Maleek was a healthy, well-nourish baby. Accordingly, we, like the trial court, cannot say that the State was able to prove that it was more likely true than not true that Maleek was neglected. See *In re J.P.*, 331 Ill App. 3d at 234-35.

¶ 38 The State also makes the argument that the juvenile court erred in interpreting section 2-3(1)(b) of the Act, the section of the Act that governs neglect based on an injurious environment. Section 2-3(1)(b) of the Act states: "(1) Those who are neglected include: * * * (b) any minor under 18 years of age whose environment is injurious to his or her welfare[.]" 705 ILCS 405/2-3(1) (b) (West 2012). The State argues "even for a finding of neglect based on an injurious environment, the juvenile court felt that it needed something beyond the evidence of the mother leaving Maleek by the relatives' doorstep." This argument is based on two sentences that the State pulled from the juvenile court judge's five-page oral ruling wherein the judge stated:

"So in looking for something in addition to simply leaving the child, the court finds that the evidence is insufficient to suggest that there was neglect or an injurious environment established by the State given the stipulation of facts that was submitted and the assigned text messages. So the court finds that the State failed to meet its burden of proof and will dismiss the petition at this time."

We find that the State's argument with respect to these statements mischaracterizes the juvenile court judge's statements when reviewing his ruling as a whole.

¶ 39 In his five-page oral ruling, the juvenile court judge discussed and reviewed all the messages sent between the mother and Donita as well as the circumstances surrounding Maleek

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being left at the home of Donita and the father. With respect to the messages, the juvenile court found that they showed "no direct harm to the child" but rather showed "an emotional exchange" between Donita and the mother that "referenc[ed] some type of issue that they've had with each other[.]" The judge further noted that the messages indicated that the mother did not want to go to the police and that she indicated she would return for Maleek. With respect to the circumstances surrounding the mother dropping Maleek off at the home where Donita and the father were residing, the juvenile court judge noted that he assumed from the stipulated facts that Maleek was not in a covered car seat but that there were no facts as to how long he was left uncovered, whether it was drizzling or was a downpour, or whether Maleek got wet from the rain. The juvenile court judge further noted that there was no evidence before him that showed that Maleek "was in any way harmed or mistreated or not cared for." Based on all these facts and considerations, the judge commented, "So in looking for something in addition to simply leaving the child, the Court finds that the evidence is insufficient to suggest that there was neglect or even an injurious environment established by the State given the stipulation of facts that was submitted and the assigned text messages." The judge did not state, or even imply, that the fact that the minor was left in the care of relatives prevented him from making a finding of neglect injurious environment pursuant to section 2-3(1)(b) of the Act. Rather, we find that it is clear from the judge's entire oral ruling and record that the juvenile court judge's comment implied that, in this case, there was nothing beyond the fact that Maleek was left at the doorstep of an adult relative that could support the State's contention of neglect, and, as the judge further made clear, that fact alone, in this case, was insufficient to support a finding of neglect under the Act. Thus, we find the State's argument relating to the juvenile court judge's interpretation of section 2-3(1)(b) of the Act to be without merit.

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¶ 40

Conclusion

¶ 41 For the above reasons, we affirm the juvenile court's August 11, 2014 order finding that Maleek was not neglected and dismissing the petition for adjudication of wardship. In doing so, we also remove the stay as well as DCFS's temporary custody of Maleek.

¶ 42 Affirmed.