2016 IL App (1st) 151931-U

FIRST DIVISION
JUNE 30, 2016

Nos. 1-15-1931, 1-15-2222, 1-15-2225, and 1-15-2732 (Consolidated)

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re AMARE T. and DEVONTA T. and AUBREY W.,	)	Appeal from the
Minors-Respondents-Appellants	)	Circuit Court of
	)	Cook County.
and	)	
BRAYDEN W.,	)	
Minor-Respondent-Appellee	)	
	)	Nos. 14 JA 00953
(The People of the State of Illinois,	)	14 JA 00954
Petitioner-Appellant-Appellee,	)	14 JA 00955
v.	)	15 JA 00216
	)	
Brandi L.,	)	
Respondent-Appellee-Appellant,	)	
	)	
and	)	Honorable
Devonta T. and Antoine W.,	)	Andrea M. Buford,
Respondents).	)	Judge Presiding

PRESIDING JUSTICE CUNNINGHAM delivered the judgment of the court.
Justices Connors and Harris concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court's findings concerning four of the respondent-mother's children, in adjudication proceedings arising from injuries suffered by one of those children (Brayden), are affirmed with respect to three children (Amare, Devonta, and Brayden) and reversed as to the youngest child (Aubrey). The trial court did not

> err in granting the mother's motion for a directed finding with respect to Brayden's two older half-siblings, Amare and Devonta, as the trial court's findings that the State failed to prove neglect and abuse with respect to those two children were not against the manifest weight of the evidence. However, the trial court's subsequent finding that Brayden's later-born sibling Aubrey was not abused or neglected was against the manifest weight of the evidence because the trial court erroneously relied on testimony pertaining to Amare and Devonta. Separately, the court's findings that Brayden had been abused and neglected are affirmed. Finally, the mother's constitutional arguments challenging the findings of abuse for Brayden are without merit.

¶ 2 The State, the Office of the Cook County Public Guardian (the guardian), and Brandi L. (the mother) filed four separate appeals arising from an adjudication hearing concerning allegations of abuse and neglect with respect to four of the mother's children. For the following reasons, we affirm the circuit court's findings with respect to three of those children, but reverse and remand with respect to its findings for the youngest child, Aubrey.

¶ 3 BACKGROUND

¶ 4 These consolidated appeals arise from allegations of abuse and neglect concerning four of the mother's children: Amare T., a boy born in January 2008; Devonta T., a boy born in July 2006; Brayden W., a boy born on March 28, 2014; and Aubrey W., a girl born on March 3, 2015. Antoine W. (the father) is the natural father of the two younger children, Brayden and Aubrey,[1] and lived in the same home with the mother and all four children at all relevant times. The father participated in the underlying proceedings but is not a party to this appeal.

¶ 5 The children came to the attention of the Department of Children and Family Services (DCFS) after Brayden was hospitalized on August 17, 2014 with serious injuries, including skull

[1]Devonta T. Sr., the natural father of the two older children, Amare and Devonta, was named as a respondent in the petitions concerning those two children, but he did not appear in the underlying proceedings and is not a party to this appeal.

fractures. Although the parents could not explain the injuries, they later indicated their suspicion of Ronald Johnson, the boyfriend of the mother's sister. Johnson was subsequently arrested.

¶ 6 On September 4, 2014, the State filed petitions for adjudication of wardship and motions for temporary custody of Amare, Devonta and Brayden pursuant to the Juvenile Court Act of 1987 (Act) (705 ILCS 405/1-7 *et seq.* (West 2012)). The petition for Brayden alleged that he had been abused and neglected based on the parents' inability to explain his injuries. The petitions for Amare and Devonta were premised on Brayden's injuries, and alleged that Amare and Devonta had been neglected through exposure to an injurious environment and abused through exposure to a substantial risk of physical injury. DCFS was granted temporary custody, and the guardian was appointed to represent the children.

¶ 7 On March 9, 2015, shortly after Aubrey's birth, the State filed another petition, also premised on Brayden's injuries, alleging that Aubrey was neglected due to an injurious environment and abused due to substantial risk of physical injury. The court granted temporary custody of Aubrey to DCFS and appointed the guardian to represent her. An adjudication hearing concerning all four children commenced on June 29, 2015.

¶ 8 The State's first witness was DCFS investigator Belinda Warren. Warren testified that on August 17, 2014 she had separate conversations with the mother and father. The mother explained that Brayden had been taken to the University of Chicago, Comer Children's Hospital, (the hospital) twice on August 17, and that his severe injuries were only discovered at the second visit.

¶ 9 The mother related to Warren that she had worked the evening of August 16, 2014, during which time the father supervised Brayden, Amare, and Devonta. The mother told Warren

that after she returned home, Brayden had been "fussy" and she had been unable to console him. The mother became alarmed and called an ambulance in the morning of August 17. At the hospital, doctors concluded that he had an ear infection, prescribed medication, and discharged him.

¶ 10 The mother told Warren that after returning home from the hospital, Brayden slept for a time, but later woke up crying and could not be consoled. The mother again called an ambulance. Brayden was again taken to the hospital, where physicians found that Brayden had head trauma, including skull fractures. The mother told Warren that she had "no idea" how Brayden's injuries occurred. The mother had not mentioned Johnson when she spoke to Warren.

¶ 11 Warren also spoke with the father in the hospital, who similarly told her that Brayden began crying inconsolably after the mother returned from work the previous evening. He also told Warren that he had "no idea" how Brayden had been injured, and did not mention Johnson.

¶ 12 Warren also testified that she had spoken to Brayden's older half-siblings, Amare and Devonta, at the hospital. Devonta, who was 8 at the time, told Warren that the children were on the bed with Brayden when a glass bottle fell and "hit the baby on the head." Devonta told Warren that the father was in the kitchen cooking at that time.

¶ 13 Warren testified that when she spoke to Amare and Devonta, she did not notice any signs of injuries, abuse or neglect. Warren also agreed that they were well dressed and well groomed.

¶ 14 Following Warren's testimony, the State next called Dr. Veena Ramaiah. Dr. Ramaiah testified she is a member of the Child Protective Services Team at the hospital, that she is board certified in pediatrics and "subspecialty board certified in child abuse pediatrics." Without

objection, Dr. Ramaiah was qualified as an expert in pediatrics and "child abuse and neglect pediatrics."

¶ 15 Dr. Ramaiah testified that she had reviewed Brayden's medical records, including physician and social worker notes, and had spoken to his treating physicians. Dr. Ramaiah described Brayden's numerous injuries. Brayden had "comminuted skull fractures," that is, fractures "in multiple pieces on his skull." In addition, Brayden had "subdural and epidural intracranial hemorrhage," which she described as "bleeding around the surface of the brain," as well as swelling of the brain. In addition, Brayden had "bleeding in his eyes called retinal hemorrhages with retinoschisis." Dr. Ramaiah described this condition as "cavities that are in the back of the eye that result from the retina tearing away[] from the back of the eye."

¶ 16 Dr. Ramaiah testified that skull fractures generally occur from an "impact injury" whereas retinal hemorrhages result from cranial rotational injury, which occurs when "the brain [is] shifting around inside the skull." She testified that "in the context of abuse, we see it in the context of shaking injury."

¶ 17 In addition to the skull and retinal injuries, Dr. Ramaiah testified that Brayden was found to have "a healing rib fracture." She opined that such a rib fracture could have resulted from either "a direct impact or blow to that area to break the bone, or a sustained violent squeezing of the chest."

¶ 18 Dr. Ramaiah opined that the retinal injuries could have occurred near the same time as the other head injuries. However, she opined that the rib injury was at least six or seven days old when it was discovered.

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¶ 19 Dr. Ramaiah opined that, based on the "numerous injuries that Brayden had, and the fact that no adequate explanation was ever provided," "the manner of injury was abusive." Dr. Ramaiah also stated that "these are all very concerning highly suspicious injuries."

¶ 20 Dr. Ramaiah testified that she had spoken to two social workers assigned to the case and reviewed their notes. First, she had reviewed the notes of Gail Aranda, an emergency room social worker, who had interviewed the mother and father on August 17, 2014. Aranda's notes did not record any explanation provided by the parents for Brayden's injuries. As described by Dr. Ramaiah, Aranda's notes indicated that the parents reported that they gave Brayden ear drops after returning from the hospital on the morning of August 17. However, Brayden "was still crying and fussy" and later "became unresponsive and *** started having seizures" which prompted them to call an ambulance.

¶ 21 Dr. Ramaiah had also reviewed the interview notes of Lisa Kuntz, the pediatric intensive care unit social worker at the hospital. Dr. Ramaiah recalled that Kuntz's notes contained "emerging or new history of a cousin in the home, or another relative," who had taken Brayden from the mother, and then informed her that there was "something wrong with the baby."

¶ 22 The record on appeal includes Kuntz's notes, which were part of the hospital records admitted into evidence. Kuntz's interview notes indicate that on August 19, 2014, the mother recalled that Johnson held Brayden shortly before his injuries were discovered. Kuntz's note reports:

> "Mom states that Ronald [Johnson] said he wanted to take the baby and try to calm him so he took Brayden. Mom told him to hold him to the side so the ear drops stayed in and he walked

> out of the room to another area of the basement. *** Per mom, not more than a few minutes later he calls out saying something like, 'what is wrong with the baby' and brings Brayden to her and Brayden per mom is stiff with his toes pointing straight down, arms stiff and eyes not focusing."

According to Kuntz's note, the mother and Brayden's maternal grandmother soon discovered that the back of Brayden's head was "soft and mushy,'" prompting them to call an ambulance.

¶ 23 The same notes from Kuntz on August 19, 2014 describe further statements by the mother concerning Johnson. Notably, Kuntz recorded that the mother described a prior incident involving Johnson and Brayden:

> "[M]om confided in [Kuntz] that a few weeks ago, Ronald was downstairs with the baby alone and then brought the baby to them and there was blood on his finger and coming from the baby's mouth. Mom *** looked in his mouth and found a small cut on the roof of his mouth. Mom, at the time did not think much of it, but did say now that the baby did not have long fingernails and there was blood on Ronald's fingers. She also said she did not want to say anything bad about Ronald as he was [the father's] cousin, but this is the health and welfare of her baby and she wants every avenue to be looked at."

The same August 19, 2014 note later states: "Mom and dad feel that there may be more to the story of what happened with dad's cousin, Ronald and state that when he came to the hospital last

night he made statements to them like, 'do you want me to just take the fall for this?' Mom states she told him she wanted him to tell the truth to the detective and DCFS and be honest." These excerpts of Kuntz's notes were not discussed during testimony at the adjudication proceedings.

¶ 24 Following Dr. Ramaiah, the State next called Gwendolyn Adams, a DCFS child protection investigator. Adams testified that Brayden's household included the mother, father, Brayden, Amare, Devonta, the maternal grandmother, as well as five siblings of the mother. Adams noted that the parents had no prior indicated reports for child abuse.

¶ 25 Adams also testified that Johnson was "in the home quite often, pretty frequently because he was dating [the mother's] sister. So, he lived in the home as well." The mother's sister and Johnson shared a bedroom adjacent to the room shared by the father, mother, and Brayden.

¶ 26 Adams testified that she had met with the parents at the hospital on August 18, 2014. The mother reported to Adams that the previous morning, Johnson had attempted to calm Brayden after he began crying. Johnson "walked away with the baby for a short period of time. And when [Johnson] returned the baby back to mom that is when mom noticed that something else was wrong." The mother indicated that Johnson was "only gone for maybe a few seconds" before he returned with Brayden, after which Brayden was "stiff" and "his eyes were rolling back in his head." However, the mother told Adams that she did not know how Brayden was injured.

¶ 27 Adams also spoke with the father on August 18, 2014. The father told Adams that "[h]e was the only one caring for [Brayden]" the previous day while the mother was at work, and made no mention of Johnson. The father told Adams that he did not know how Brayden was injured.

¶ 28 Adams again spoke with the mother on August 20, 2014. Adams mentioned Brayden's rib fracture at that time, but the mother had no explanation for that injury.

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¶ 29 Adams further testified that she had interviewed Amare and Devonta on August 28, 2014. Adams testified that she asked the children if they felt safe at home with the mother and father, and asked them about methods of discipline. Amare told Adams that he felt safe in the home, although he did indicate that he was disciplined by being "whipped with a belt." However, Amare did not indicate that he was fearful of anyone in the home. Devonta similarly indicated he was disciplined with a belt, but Adams testified that he had also indicated that he felt "safe" in the home.

¶ 30 On cross-examination, Adams recalled that one of the children expressed fear of Kendall, one of the mother's brothers, who was about 14 years old. However, neither child expressed fear of the parents. Adams also testified she did not observe any signs of abuse or neglect, agreeing that Amare and Devonta appeared to be "well groomed" and "well taken care of." Adams also stated she had observed a visit by the parents with Amare and Devonta on September 10, 2014 at the home of the children's great-grandmother, and agreed that the visit was "safe and appropriate."

¶ 31 Adams further testified that she had a telephone conversation with the father on September 3, 2014, in which the father stated that he had just learned new information and expressed concern that Johnson may have harmed Brayden. However, at that time the father had again indicated that Johnson did *not* have access to Brayden on August 17, 2014.

¶ 32 At the close of her investigation, Adams testified, she had "indicated" the mother and father for "substantial risk of harm." Adams also "indicated" Johnson for Brayden's head injuries.

¶ 33 Following Adams, the State called Jerome Watkins, a DCFS child protection investigator who was assigned to investigate risk to Aubrey after her birth in March 2015. Watkins

acknowledged that the parents had been "indicated allowed" with respect to Brayden, which meant "there was some evidence to show that there was some responsibility on the part of the parents." Based upon Brayden's injuries, Wright recommended that the mother and father be "indicated for risk to [Aubrey]."

¶ 34 Watkins spoke to the mother and father after Aubrey's birth. They told him that they were cooperating with DCFS and participating in recommended services. Watkins also visited the mother and father's home on March 6, 2015. He found the home to be appropriate and did not find any safety issues.

¶ 35 Following Watkins' testimony, the mother made a motion for directed findings that Amare and Devonta were not abused or neglected. The mother's counsel relied upon the testimony that those children were "well taken care [of] and that there were no visible signs of abuse or neglect" and emphasized that, unlike Brayden, they were old enough to communicate if they felt threatened. The mother argued that evidence of harm to Brayden was "not conclusive evidence of abuse or neglect" for his siblings, and that the State had offered no evidence that either Amare or Devonta had been harmed.

¶ 36 On July 14, 2015, the trial court granted the motion for directed findings. In rendering its decision, the court stated that it need not "determine who may be responsible for the child's neglect" and emphasized that "parents are not adjudicated neglectful," but "minors are adjudicated neglected." The court noted: "There is no [per] se rule that the neglect of one child conclusively establishes the neglect of another. The neglect should be measured not only by circumstances surrounding the sibling, but also by the care and condition of the child in question."

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¶ 37 The court found that although Brayden had suffered serious injuries, "The worker testified that the home appeared safe. The other children did not have injuries. They appeared to be well taken care of, were not afraid of returning home even though they had been spanked with a belt and [stated] that their parents never hurt Brayden." The court also noted that "[t]he parents have cooperated and are involved in services."

¶ 38 The court further reasoned: "In the cases where the Court has found anticipatory neglect, the State has been able to introduce some evidence to establish a prima facie case; for example, there is a history of domestic violence in the home that impacts or could potentially impact all of the children ***." In contrast, the court reasoned: "Here the State and the Public Guardian only argue that [Brayden] was injured. The parents could not explain the injuries and the injuries were nonaccidental. Finding anticipatory neglect based only upon that is akin to accepting it as conclusive proof and doesn't require the State to meet its burden."

¶ 39 The court granted the motion for a directed finding, concluding the State had failed to prove that Amare and Devonta were neglected. On July 14, 2015, the court entered a written order granting the motion and dismissing the petitions regarding Amare and Devonta.

¶ 40 On July 15, 2015, the guardian filed a notice of appeal (No. 1-15-1931) from the order dismissing the petitions concerning Amare and Devonta. Also on July 15, 2015, our court granted the guardian's request for a stay of the trial court's July 14, 2015 order with respect to Amare and Devonta. The guardian filed an amended notice of appeal on August 10, 2015. On August 12, 2015, the State separately filed a notice of appeal from the same order. Those appeals were later consolidated with the appeals from the court's subsequent findings concerning Brayden and Aubrey.

¶ 41 Following the directed finding with respect to Amare and Devonta, adjudication proceedings continued with respect to Brayden and Aubrey. The mother called Johnson as a witness. Johnson stated his name and birth date and that he had resided[2] in Harvey, Illinois. However, Johnson answered "I plead the fifth" when asked if he was familiar with the parents or the children. The State attempted a cross-examination, but Johnson also "plead[ed] the fifth" in response to questions about whether he had made statements about how Brayden was injured.

¶ 42 Following Johnson, the mother called Detective Richard Hagen of the Chicago Police Department, who had investigated Brayden's injuries. Hagen had a number of conversations with Johnson, beginning on August 18 at the hospital. Johnson had indicated that he was dating the mother's sister, Amber, and that several times per week he stayed in Amber's bedroom, which was next to the bedroom of the children's parents.

¶ 43 Johnson told Hager that he stayed in the home the night before Brayden's hospitalization and had awakened to the sound of Brayden crying. He reported that he went into the parents' room, where he saw Brayden with the mother, who appeared to be upset. Initially, Johnson told Hager that he took Brayden for a brief time and walked out of the room, but returned him to the mother after only 20 to 30 seconds.

¶ 44 However, in subsequent interviews, Johnson's statements had "evolved," leading to his arrest. Hager had multiple conversations with Johnson on August 25, 2014. On that date, Johnson told Hager that he took Brayden from the mother's bedroom, and "walked out into the hallway toward the front of the basement of the residence." Johnson stated that while he was

[2]The transcript suggests that Johnson was incarcerated at the time of the adjudication proceeding.

holding Brayden, his phone received a text message and "he fumbled getting his phone out of his pocket, and it fell to the floor." Johnson told Hager that he "bent over to retrieve his phone," at which point Brayden's head struck the corner of a granite counter. After police were unable to find a text message on his phone from that time frame, Johnson revised his statement to say that his phone may have received an email rather than a text message.

¶ 45 Hager considered Johnson's statements to be an "admission that he caused the injury to the skull," which led him to arrest Johnson. However, Hager denied that Johnson had provided an explanation for Brayden's rib injury.

¶ 46 Hager also testified that he spoke to the mother and father several times. Hager stated that the parents initially did not provide any explanation of how Brayden was hurt. However, on or about August 19th, the father called Hager and expressed concern about Johnson. At that time, the father related that Johnson had told the parents that he would "take the blame" for Brayden’s injuries.

¶ 47 Hager testified that when he asked the parents about the rib injury, they had directed him to speak with Daivon, a son of the father from a prior relationship. Hager spoke with Daivon, but Hager did not make a determination as to how the rib injury occurred.

¶ 48 The mother next called Sherry Wright, paternal grandmother of Brayden and Aubrey. She testified that she had visited the father and mother’s home several times during the summer of 2014, that she had never seen either parent shake or hit Brayden, and that they acted appropriately when Brayden was fussy or crying.

¶ 49 The mother next called Daivon W., a 13-year-old son of the father. Daivon testified that he saw his father every weekend, that he was a "great" father, and denied that his father had ever

hit him. Daivon had visited the mother and father's home "every other week" during the summer of 2014, and stated that the parents acted appropriately with Brayden.

¶ 50 Daivon also testified that he knew Johnson, who had been introduced to him as a "cousin." Daivon had observed Johnson hold Brayden on multiple occasions. Daivon stated that on one occasion during the summer of 2014, he had observed Johnson "holding [Brayden] up like over his head and was like shaking him," and that it was "hard enough for like Brayden to, you know, get into a daze." Daivon had been worried by Johnson's behavior and took Brayden from Johnson. Daivon testified that the parents were in the home at that time, but that he had not told anyone about this shaking incident until after Brayden was hospitalized.

¶ 51 Daivon testified that there was another instance in which Johnson's handling of Brayden had concerned him. He recalled seeing Johnson holding Brayden "with one hand" "[l]ike around right here, like the ribs." Daivon testified that his father and other family members were in the room, but that he did not believe that anyone saw Johnson as "nobody was really paying attention."

¶ 52 Following Daivon, the mother testified that she had been engaged in services and that she and the father were in parenting coaching. She testified that she completed individual therapy from October 2014 until January 2015 and had resumed therapy after Aubrey's birth. In therapy, she was trying "to come to terms with what happened with Brayden," to cope with having the children removed from the home and "not being able to be here for the recovery of Brayden the way I wanted to be."

¶ 53 In closing arguments, the State asked for findings of abuse and neglect for Brayden. For Aubrey, the State sought findings of abuse by substantial risk of injury and neglect due to

injurious environment. The State argued that it presented "unrebutted expert medical testimony" that Brayden's injuries were the result of abuse.

¶ 54 During argument the State's attorney remarked: "the source of the harm is still unknown in this case. We do not know who did it." At that point, the mother's counsel objected, noting that the State was prosecuting Johnson for the injuries to Brayden's skull. The mother argued that the State could not take the conflicting position that the perpetrator was unknown. The court indicated it would consider briefing on the issue but allowed argument to proceed.

¶ 55 The State proceeded to argue that since the source of the harm was "still unknown" Brayden and Aubrey were still at risk, and that the parents' inability to explain Brayden's injuries demonstrated an injurious environment for any child in the household.

¶ 56 The guardian similarly argued that the court need not determine the identity of the perpetrator in order to find abuse. The guardian argued that either the parents or Johnson must have inflicted the injuries, and that that even if Johnson had caused the injuries, the court must still find that Brayden was abused because Johnson was a family member and member of the household. The guardian also argued that anticipatory neglect theory applied to Aubrey, as the State had established an injurious environment in the home.

¶ 57 The argument by the mother's counsel acknowledged Dr. Ramaiah's testimony but argued that Johnson had inflicted the injuries to Brayden's skull. The mother also argued that, based on Daivon's testimony, the court should find that Johnson had also inflicted Brayden's rib injury.

¶ 58 The mother argued that neglect could not be found because the parents could not have known that Johnson would harm Brayden, and that the court could not find abuse under the Act,

due to the lack of evidence that Johnson was a member of the household or a family member. The father's counsel similarly argued that the parents had no reason to suspect that Johnson would harm Brayden, and urged that the parents "acted appropriately at all times" by seeking medical treatment promptly and informing authorities when they became suspicious of Johnson.

¶ 59 The court issued its rulings with respect to Brayden and Aubrey on August 13, 2015. The court noted Dr. Ramaiah's testimony that the head injuries would not have occurred accidentally, and that the "manner of injury was abuse." The court also noted her testimony that Brayden's rib fracture "was at least six to seven days old," that it resulted from "direct impact or blow or by a violent squeezing of the chest," and that "[s]he ruled out any genetic or organic causes for the injury."

¶ 60 The court noted that "[t]he parents were indicated allowed" by DCFS and that Johnson "was indicated for the head injuries to Brayden." The court also noted that Johnson had been arrested for the head injuries. The court stated that Johnson's relationship to the family was "unclear," noting that Johnson visited the home "at least several times per week" and was dating the mother's sister. The court noted that the only testimony as to Johnson's potential family relationship was Daivon's testimony that Johnson was introduced to him as a cousin.

¶ 61 With respect to the rib fracture, the court found that "we do not know how or when it occurred or who was responsible." The court noted that the "mother attempted to establish that Mr. Johnson was also responsible" for the rib fracture through Daivon's testimony, but found "the testimony elicited was speculation."

¶ 62 The court recognized that the meaning of neglect "varies depending on the specific facts of each case." The court noted that a child may be neglected, even if it is "impossible to

determine who is at fault," and that "parents are not adjudicated neglectful; rather, minors are adjudicated neglected."

¶ 63 With respect to Brayden, the court found that he had suffered at least two injuries at different times, and that "[b]oth occurred while in the care and custody of the parents." Citing Dr. Ramaiah's opinion testimony, the court found that the State had proven "neglect injurious environment, substantial risk of physical injury, and physical abuse."

¶ 64 With respect to Aubrey, however, the court found that the State had failed to establish neglect or abuse under the theory of anticipatory neglect. The court recognized that "there is no p[er] se rule," that the neglect of one sibling demonstrates the neglect of another, "but that neglect should be measured by the circumstances surrounding the sibling as well as by the care, *** of the child in question." The court then found there was "no evidence presented as to any improper care or treatment of Aubrey." The court explained:

> "In fact, the only evidence presented was the home appeared safe. The children did not have injuries. There were no signs of abuse or neglect. He [sic] was described as well-groomed and appeared to be well taken care of. Although we do not have to wait for a child to be injured, if we were to find neglect in this case, it would be akin to having a p[er] se rule, that the neglect of one child conclusively establishes the neglect of another."

The court thus concluded that the State had not proven that Aubrey was exposed to an injurious environment or was at risk of physical injury.

¶ 65 After its ruling, the mother's counsel asked the court to clarify whether it had made a finding that Johnson was the perpetrator of Brayden's injuries. The court responded in the negative: "I merely said that the parents were indicated allowed according to the testimony of the [DCFS] representative, and that Ronald Johnson was indicated, and he was arrested. So that's all I said with respect to the perpetrator."

¶ 66 Later that day, at the request of counsel, the court made specific findings that the testimony of Dr. Ramaiah, as well as that of Warren, Adams, Watkins, Detective Hagen, the paternal grandmother, and the mother, were credible. With respect to Daivon, the court noted that his testimony contained "speculation" that Johnson had caused the rib injury, but otherwise found his testimony credible.

¶ 67 On August 13, 2015, the court entered an adjudication order finding that Aubrey was not abused or neglected and dismissing the corresponding petition.[3] On the same date, the court entered a separate adjudication order finding that Brayden was abused and neglected.

¶ 68 On August 14, the mother submitted a brief pursuant to her objection during the State's closing argument. That brief argued that the State should not have been permitted to argue that the perpetrator was unknown, since the State had prosecuted Johnson. The mother's brief attached an August 2014 criminal complaint that alleged that Johnson committed "Aggravated

[3] Upon the guardian's motion, on August 13, 2015, this court stayed the order dismissing the petition for Aubrey pending the guardian's appeal. On August 20, 2015, the mother filed a motion in this court seeking to lift the stay for Aubrey; this court denied the motion on September 11, 2015. In October 2015 and again in February 2016, the mother filed additional motions in our court to reconsider the emergency grant of stays concerning the circuit court's adjudication orders for Amare, Devonta, and Aubrey, and seeking return of the children to the mother's custody pending this appeal. We denied both motions, in orders entered November 6, 2015 and March 1, 2016.

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Battery/Child Permanent Disability" by "striking the victim's head against a granite counter top edge." The mother's submission also attached Johnson's indictment by a grand jury.

¶ 69 The State filed a response on August 28, 2015. In that brief, the State took the position that "although Ronald Johnson is responsible for the impact injuries, the People cannot name him as the perpetrator of all the injuries." The State urged that "who caused what injuries are matters of opinion" to which judicial estoppel did not apply.

¶ 70 On September 11, 2015, the court entered an order finding that the mother had demonstrated "judicial estoppel of the State's closing argument" but that the issue was "moot in light of the State's amended position in briefing." On September 15, 2015, the court entered an "Amended Adjudication Order" stating that the abuse or neglect of Brayden was inflicted by "Ronald C. Johnson (as to the head injuries)" and "an unknown perpetrator (as to the rib injury)." On September 18, 2015, the court entered another order stating that it had "reconsidered its adjudication order entered on August 13, 2015 to reflect that Ronald C. Johnson perpetrated the minor's head injuries and the perpetrator of the rib injury is unknown."

¶ 71 The court separately conducted a dispositional hearing with respect to Brayden. As the dispositional findings are not challenged on appeal, the evidence from the dispositional hearing is not detailed here. On September 18, 2015, the court entered a disposition order finding that both the mother and father were fit, able, and willing to care for Brayden.

¶ 72 A total of four appeals resulted from the adjudication proceedings, which have been consolidated. In addition to the appeals by the State and guardian with respect to the directed findings concerning Devonta and Amare, on August 13, 2015 the public guardian (but not the State) separately appealed from the court's order dismissing the petition concerning Aubrey.

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Separately, on September 29, 2015, the mother filed a notice of appeal (No. 1-15-2732) from the court's findings that Brayden was neglected and abused. On November 19, 2015, that appeal was consolidated with the three pending appeals regarding Brayden's siblings.

¶ 73 ANALYSIS

¶ 74 We note that we have jurisdiction because each of the four notices of appeal was filed within 30 days of a corresponding final adjudication order. See Ill. S. Ct. R. 303(a) (eff. May 30, 2008).

¶ 75 We first address the State and guardian's contentions that the court erred in granting the mother's motion for a directed finding with respect to Amare and Devonta. The applicable standard of review was explained by our court in *527 S. Clinton, LLC v. Westloop Equities, LLC*, 403 Ill. App. 3d 42 (2010):

> "In a bench trial, section 2-1110 of the Code allows the defendant, at the close of the plaintiff's case in chief, to move for a directed finding in his or her favor. 735 ILCS 5/2-1110 (West 2006). In ruling on such a motion, a court must engage in a two-step analysis. [Citation.] First, the court must determine as a matter of law whether the plaintiff has presented a *prima facie* case. [Citation.] That is to say, did the plaintiff present some evidence on every element essential to the cause of action? [Citation.] Second, if the plaintiff has presented some evidence on each element, the court then must consider and weigh the totality of the evidence presented, including evidence which is favorable to the

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> defendant. [Citation.] After weighing all the evidence, the court should determine, applying the standard of proof required for the underlying cause, whether sufficient evidence remains to establish the plaintiff's *prima facie* case." *Id.* at 52.

¶ 76 "If the circuit court finds that the plaintiff has failed to present a *prima facie* case as a matter of law, the standard of review is *de novo*. [Citation.] If, however, the circuit court considers the weight and quality of the evidence and finds that no *prima facie* case remains, the circuit court's decision will not be disturbed on appeal unless it is against the manifest weight of the evidence." *Id.* at 52-53 (applying *de novo* review because "the circuit court did not make any credibility findings").

¶ 77 Thus, to determine the proper standard of review we must ascertain whether the trial court found that the State had "failed to present a *prima facie* case as a matter of law," in which case our review is *de novo*, or if it "consider[ed] the weight and quality of the evidence and f[ound] that no *prima face* case remains." *Id.*

¶ 78 The public guardian argues that *de novo* review should apply to the directed finding "[b]ecause the court did not assess the weight and quality of the evidence, but looked strictly at the type of evidence it believed the State had presented." In making its ruling in this case, we recognize that the court used some language suggesting that the State had not established a *prima facie* case. That is, the court stated: "In the cases the Court has found anticipatory neglect the State has been able to introduce some evidence to establish a prima facie case," but that "[h]ere the State and the Public Guardian only argue that the sibling was injured." However, the transcript indicates that the trial court *did* assess the weight and quality of the evidence in

deciding to grant the directed finding. Specifically, the court credited testimony regarding the DCFS workers' interactions with Amare and Devonta, noting: "The worker testified that the home appeared safe. The other children did not have injuries. They appeared to be well taken care of, were not afraid of returning home even though they had been spanked with a belt and that their parents never hurt Brayden." This indicates that, in deciding the motion for a directed finding, the court had considered the weight and quality of the evidence. Thus, we will proceed to review the granting of the directed finding under the manifest weight of the evidence standard.

¶ 79 "A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident." *In re Arthur H.*, 212 Ill. 2d 441, 464 (2004). Thus, in assessing the trial court's directed finding that the State had failed to prove neglect with respect to Amare and Devonta, we review whether the opposite result was clearly evident. While it may be a close question, we cannot say that the opposite result was clearly evident and thus we will not reverse the directed finding.

¶ 80 The State sought to establish that Amare and Devonta were neglected pursuant to section 2-3(1)(b) of the Act, which provides that "those who are neglected include" "any minor under 18 years of age whose environment is injurious to his or her welfare." 705 ILCS 405/2-3(1)(b) (West 2012). The State also sought to prove that Amare and Devonta were "abused" pursuant to section 2-3(2)(ii), which provides that a minor is abused if a "parent or immediate family member, or any person responsible for the minor's welfare, or any person who is in the same family or household as the minor, or any individual residing in same home as the minor, or a paramour of the minor parent" "creates a substantial risk of physical injury to such minor by other than accidental means ***." 705 ILCS 405/2-3(2)(ii) (West 2012).

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¶ 81 We first address the directed finding with respect to the allegations of neglect due to an injurious environment. In a proceeding for adjudication of wardship, "It is the burden of the State to prove allegations of neglect by a preponderance of the evidence. [Citation.] In other words, the State must establish that the allegations of neglect are more probably true than not. [Citations.] On review, a trial court's ruling of neglect will not be reversed unless it is against the manifest weight of the evidence." *In re Arthur H.*, 212 Ill. 2d at 463-64. "If the State fails to prove the allegations of abuse, neglect or dependence by a preponderance of the evidence, the court must dismiss the petition." *Id.* at 464.

¶ 82 "[T]he term 'injurious environment' has been recognized by our courts as an amorphous concept that cannot be defined with particularity. [Citations.] In general, however, the term 'injurious environment' 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.) *Id.* at 463. As the trial court recognized, neglect is a fluid concept and depends on the particular facts of each case. "[C]ases involving allegations of neglect and adjudication of wardship are *sui generis*, and must be decided on the basis of their unique circumstances." *Id.*

¶ 83 The State and guardian's arguments that Amare and Devonta were exposed to an injurious environment were premised on the theory of anticipatory neglect. "Under the anticipatory neglect theory, the State seeks to protect not only children who are the direct victims of neglect or abuse, but also those who have a probability to be subject to neglect or abuse because they reside, or in the future may reside, with an individual who has been found to have neglected or abused another child. [Citation.] The theory of anticipatory neglect flows from the concept of an 'injurious environment' which is set forth in the Act." *Id.* at 468.

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¶ 84 In *Arthur H.*, our supreme court cautioned that "there is no *per se* rule that the neglect of one child conclusively establishes the neglect of another child in the same household. [Citations.] Rather, such neglect should be measured not only by the circumstances surrounding the sibling, but also by the care and condition of the child in question." (Internal quotation marks omitted.) *Id.*

¶ 85 Our supreme court recognized that "Although section 2-18(3) of the Act *** provides that the proof of neglect of one minor 'shall be admissible evidence' on the issue of the neglect of any other minor for whom the parent is responsible," our supreme court "emphasize[d] that the mere admissibility of evidence does not constitute conclusive proof of the neglect of another minor." *Id.* at 468. Rather, "[e]ach case concerning the adjudication of minors, including those cases pursued under a theory of anticipatory neglect based upon the neglect of a child's sibling, must be reviewed according to its own facts." *Id.*

¶ 86 With these principles in mind, we decline to find that the trial court's determination that the State failed to prove neglect for Amare and Devonta was against the manifest weight of the evidence. That is, we cannot say that the opposite conclusion (that those children were neglected) was clearly evident. That is not to say that we are not troubled by the fact that Brayden, an infant, suffered such serious injuries at the hands of someone in the household, yet the parents have no explanation for how the injuries occurred. It does raise questions regarding the vigilance with which they are attending to the children.

¶ 87 In contending that the trial court's ruling was against the manifest weight of the evidence, the State argues that the evidence of abuse of Brayden – including Dr. Ramaiah's undisputed expert testimony — established a *prima facie* case that Amare and Devonta were neglected. As

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support, the State cites a 1990 decision, *In re David D.*, 202 Ill. App. 3d 1090 (1990). In that case, our court reversed an order granting a respondent's motion for a directed finding with respect to the State's allegations of neglect due to injurious environment, concluding that "the evidence of abuse of a sibling in the present case is sufficient to establish a *prima facie* case of neglect based upon an injurious environment to David." *Id.* at 1094.

¶ 88 Despite the language of *David D.*, we reject the suggestion that under the facts of this case, a trial court is precluded from granting a directed verdict, as long as the State elicits evidence of a sibling's abuse. First, we note that *David D.* found that evidence of sibling abuse "*in the present case*" was sufficient to establish a *prima facie* case of neglect. (Emphasis added). *Id.* *David D.* did not suggest that evidence of sibling abuse, under *any* facts, always precludes a court from granting a directed finding. Indeed, our court later stated "sibling abuse is *prima facie* evidence of neglect," but that "this presumption is not permanent; it weakens over time, and it can be overcome." *In re Edricka C.*, 276 Ill. App. 3d 18, 28 (1995).

¶ 89 Further, we note that *David D.* was decided in 1990, well before our supreme court's statements in *Arthur H.* emphasizing that evidence of another minor's neglect "does not constitute conclusive proof of the neglect of another minor" and that each case asserting anticipatory neglect "is *sui generis*, and must be decided on its own facts." *Arthur H.*, 212 Ill. 2d at 468-70.

¶ 90 Moreover, a reading of the Act makes it clear that the legislature could have, but did not, specify that evidence of sibling neglect is *prima facie* evidence of abuse or neglect of another minor. For example, section 2-18(2) of the Act states that certain types of evidence "shall constitute prima facie evidence of abuse or neglect," such as a medical diagnosis of failure to

thrive syndrome, proof that a minor was born with narcotics withdrawal symptoms, or proof that a parent involved the minor in certain criminal activities. 705 ILCS 405/2-18(2) (West 2012). We note that proof of the neglect of another child in the household, is *not* included in this listing of "prima facie" evidence. Rather, the very next provision of the Act states: "proof of the abuse, neglect or dependency of one minor shall be admissible evidence on the issue of the abuse, neglect or dependency of any other minor for whom the respondent is responsible." 705 ILCS 405/2-18(3) (West 2012). Had the legislature intended that evidence of abuse or neglect as to one child could be considered *prima facie* evidence of abuse or neglect as to another, it could have easily included it within section 2-18(2). However, the legislature clearly differentiated *prima facie* evidence from merely "admissible" evidence. This statutory distinction further undermines the State's argument that evidence of Brayden's abuse precluded the court from granting a directed finding with respect to Amare and Devonta.

¶ 91 We also address the guardian's reliance on *In re Juan M.*, 2012 IL App (1st) 113096, for the proposition that the court should have found neglect for Amare and Devonta due to Brayden's injuries, notwithstanding the lack of any evidence that Amare and Devonta had been harmed. In that case, we affirmed findings that a nine-month-old (Juan) was abused and neglected, as well as the finding that his older sister, 28-month-old Kihara, was neglected due to an injurious environment, where the State offered uncontroverted expert testimony that Juan's skull fractures were caused by inflicted trauma. That case did not discuss any evidence of injury suffered by Kihara. On appeal, our court concluded that "the evidence supporting the neglect finding for Juan also supports the neglect finding for his sister Kihara, who lived in the same house as Juan and for whom [Juan's parents] were responsible." (Internal quotation marks omitted.) *Id.* ¶ 66.

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¶ 92 The guardian urges that *Juan* demonstrates that the trial court must have erred by not finding Amare and Devonta neglected on the basis of Brayden's injures alone. In this respect, the guardian's position comes close to advocating for a "*per se* rule that neglect of one child conclusively establishes the neglect of another child in the same household." *Arthur H.*, 212 Ill. 2d at 468. We disagree. *Juan* simply demonstrates that a trial court *may* find that an uninjured child is neglected due to an injurious environment, based on evidence of injuries to a sibling and other factors in evidence. However, that does not mean that it was "against the manifest weight of the evidence" for the trial court to conclude otherwise in this case. The facts and circumstances of each case when analyzed individually must stand or fall on their own merit.

¶ 93 We acknowledge that the record in this case contained ample evidence that *Brayden* was mistreated and seriously injured. The State and the guardian's appellate briefing details the extensive testimony of Dr. Ramaiah regarding the severity of his injuries, as well as her uncontroverted expert opinion that the manner of the injuries was non-accidental. Therefore, the evidence that Brayden's injuries were the product of abuse was undoubtedly "admissible evidence" on the question of whether other minors in the parents' care had been abused or neglected. 705 ILCS 405/2-18(3) (West 2012).

¶ 94 However, such evidence of Brayden's injuries was not conclusive proof as to whether any other child was abused or neglected. *Arthur H.*, 212 Ill. 2d at 468. Rather, with respect to Amare and Devonta, their possible neglect was to be "measured *not only by the circumstances surrounding the sibling* [Brayden], but also by [their] care and condition ***." (Emphasis added.) *Id.* That is, the trial court was obligated to consider the "care and condition" of Amare and Devonta, apart from and in addition to the evidence of harm to Brayden.

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¶ 95 It is apparent that the court did so in granting the directed finding. The trial court credited Warren's testimony that Devonta and Amare appeared to be well taken care of and showed no signs of abuse or neglect. The court opined that there was evidence that the home was safe. Further, the court specifically commented on the credibility of the mother's witnesses, all of whom testified to the appropriateness of the care being rendered to the children by the mother and father. The trial court also referenced Adams' testimony that Amare and Devonta indicated that they felt safe, notwithstanding the injuries to their younger brother. Thus, we cannot say that the court's ruling was against the manifest weight of the evidence.

¶ 96 Moreover, we find it significant that Devonta and Amare were significantly older than Brayden, who was merely four months old when he was hospitalized. Unlike Brayden, those children were old enough to communicate whether they had been harmed; and, in fact, indicated that they had *not* been harmed. Further, we note the lack of evidence to suggest that Johnson (who was found to be the perpetrator of Brayden's head injuries) ever interacted with, let alone mistreated, either Devonta or Amare. Under these circumstances, we cannot say that it was unreasonable for the court to find that, despite Brayden's injuries, the State failed to establish by a preponderance of the evidence that Devonta and Amare were subject to an injurious environment.

¶ 97 Likewise, we decline to find error with respect to the court’s determination that the State failed to prove Amare and Devonta were abused pursuant to section 2-3-(2)(ii) of the Act, which provides that minors are "abused" if a parent, household member, or other person responsible for the minor's welfare "creates a substantial risk of physical injury to such minor by other than

accidental means which would be likely to cause death, disfigurement, impairment of emotional health, or loss or impairment of any bodily function." 705 ILCS 405/2-3(2)(ii) (West 2012).

¶ 98 As with their arguments for neglect, the State and guardian's arguments for abuse acknowledge the lack of evidence that either Amare or Devonta had been injured, but instead argue that the trial court was obligated to find abuse because they were in the same environment in which Brayden had suffered inflicted injuries. The State argues that the evidence demonstrates "it is more probable than not that Amare and Devonta, who were in the same environment in which someone inflicted life-threatening injuries on their infant brother, were also subject to an environment that placed them at substantial risk of injury." The State additionally urges that the trial court "failed to properly consider evidence Amare and Devonta reported being whipped with a belt"; that the court "ignored evidence" that one of the children expressed fear of the mother's 14-year-old brother and "ignored evidence" that the mother "left Brayden in the care of [Johnson] when [she] knew that Brayden had previously been injured while in [Johnson's] care."

¶ 99 While the State's arguments are not without merit, such arguments essentially ask our appellate court to reweigh the evidence and decide, *de novo,* that the State proved by a preponderance of the evidence that Devonta and Amare were subject to substantial risk of physical injury. However, our role under the applicable standard of review is simply to decide whether the opposite conclusion is clearly evident. We cannot say so in this case.

¶ 100 Although evidence of Brayden's injuries was certainly relevant, it did not establish conclusive evidence that any of his siblings was neglected or abused. The trial court could reasonably conclude that notwithstanding the injuries to Brayden, the State had not proved that a

family member, household member or any other person within the language of section 2-3(2) had "create[d] a substantial risk of physical injury" to his older siblings. This is especially the case, considering: (1) Warren and Adams' testimony that Amare and Devonta appeared to be well taken care of; (2) the fact that Amare and Devonta were old enough to communicate but did not express fear of being in the home; and (3) the lack of evidence that Johnson interacted with Amare or Devonta.

¶ 101 We acknowledge the testimony that Amare and Devonta indicated they were disciplined with a belt, and that one child expressed fear of the mother's 14-year-old sibling. While such evidence is troubling, we cannot say that it renders the trial court's determination, under the totality of the facts, against the manifest weight of the evidence. With respect to the mother's 14-year-old sibling, there was nothing to suggest that he had ever actually threatened or inflicted any physical harm to Amare or Devonta. With respect to the testimony that the children indicated that they were disciplined with a belt, we cannot say the court was unreasonable in declining to find such testimony demonstrated that either child was at "substantial risk of physical injury *** which would be likely to cause death, disfigurement, impairment of emotional health, or loss or impairment of any bodily function." 705 ILCS 405/2-3(2)(ii) (West 2012). Rather, Adams testified that both children told her that they felt safe in the home.

¶ 102 We recognize that a different court faced with the same evidence might come to a different conclusion. That is, presented with the same evidence, a reasonable trial court might find that the State had met its burden of proof with respect to the neglect and abuse allegations for Amare and Devonta. Indeed, had we been in the position of the trial court, we might have reached a different conclusion. Given the severity of Brayden's injuries and the fact that the

fractured rib was an older injury than the head injury, it suggests a less than vigilant parenting style by the mother and father. However, that is not the relevant inquiry under the applicable standard of review, under which we must determine whether the opposite conclusion is clearly evident. We cannot say that it is in this case.

¶ 103 Finally, we address the State's argument that the court improperly considered post-petition evidence with respect to Amare and Devonta. The State urges that the court erred in admitting, over objections: (1) Adams' testimony that she observed an appropriate postpetition visit by the parents with Amare and Devonta on September 10, 2014 and (2) testimony by DCFS investigator Watkins that, following Aubrey's birth in March 2015, the mother told him that she was compliant with DCFS-recommended services in connection with the pending proceedings concerning her other children. The State argues that it was improper for the court to consider such postpetition evidence because it was irrelevant to whether Amare and Devonta were abused or neglected at the time that their adjudication petitions were filed.

¶ 104 Our court has held that in an adjudication hearing, "there is no 'bright-line postpetition test for admissibility of evidence.' " *In re Rayshawn H.*, 2014 IL App (1st) 132178, ¶ 38 (citing *In re Edricka C.*, 276 Ill. App 3d 18, 32 (1995)). "Rather, the test for admissibility of postpetition evidence depends on whether it is relevant to the allegations in the petition for adjudication." *Id.* "Evidence is relevant if it tends to prove a fact in controversy or render a matter in issue more or less probable." *Id.* ¶ 32 (citing *In re Kenneth D.*, 364 Ill. App. 3d 797, 803 (2006)).

¶ 105 "The admission of evidence is within the sound discretion of a trial court, and a reviewing court will not reverse the trial court absent a showing of an abuse of that discretion.

[Citation.] An abuse of discretion occurs when no reasonable person would take the view adopted by the trial court." *U.S. Bank v. Lindsey*, 397 Ill. App. 3d 437, 533 (2009). "Moreover, a party is not entitled to a reversal based upon rulings on evidence unless the error was substantially prejudicial and affected the outcome of the trial." *Id.;* see also *McHale v. W.D. Trucking*, 2015 IL App (1st) 132625, ¶ 89 ("[W]e will not reverse a verdict based upon the trial court's evidentiary rulings unless the court's error substantially prejudiced the aggrieved party and affected the outcome of the case.").

¶ 106 Since there is no bright-line rule barring the admission of postpetition evidence, we decline to find that no reasonable person would take the view adopted by the trial court in allowing the testimony at issue. We cannot say that it was unreasonable for the court to find that the parents' behavior towards Amare and Devonta during a supervised visit (while the children were in protective custody) could be considered relevant to the court's assessment of the safety of Brayden's siblings. This is especially the case since the petitions for those children were based on a theory of *anticipatory* neglect stemming from Brayden's injuries. Further we cannot say that it was unreasonable for the trial court to consider evidence of the mother's participation and compliance with services recommended by DCFS. All of these factors taken together gave the court a more complete picture of the environment to which the children would return.

¶ 107 Moreover, even if we were to find that the admission of such postpetition evidence was erroneous, we would not reverse the trial court's findings on that basis. That is, given the totality of the facts and circumstances considered by the trial court, we do not see how the admission of such evidence caused prejudice or affected the outcome of the case. Rather, our review of the trial court's ruling indicates that, regardless of the postpetition evidence, the trial court would

have still concluded that the State did not prove abuse or neglect with respect to Brayden's siblings.

¶ 108 The State emphasizes that, in ruling on the motion for directed finding, the trial court stated "The worker testified that the home appeared safe" and that "The parents have cooperated and are involved in services." Nonetheless, the court also indicated that it was relying on the testimony of DCFS workers, based on their interactions with Devonta and Amare *prior* to the petition, that the children "appeared well taken care of" and "were not afraid of returning home." Thus, even without postpetition evidence, the court could conclude that the State had not established abuse or neglect. See *U.S. Bank*, 397 Ill. App. 3d at 457-58 ("[E]ven if we were to conclude that the testimony was improperly admitted, the law is clear that the erroneous admission of testimony does not constitute grounds for reversal where there was sufficient competent evidence to support the ruling."). Thus, we decline to reverse the trial court's findings due to the admission of postpetition evidence.

¶ 109 Having determined that the trial court did not err with respect to Brayden's older half-siblings, Amare and Devonta, we turn to the guardian's appeal with respect to the court's findings with respect to Brayden's younger sibling, Aubrey. The public guardian urges that the findings that Aubrey was not abused or neglected were contrary to the manifest weight of the evidence. Relying on the theory of anticipatory neglect and the evidence regarding Brayden's injuries, the guardian urges that the "manifest weight of the evidence showed that Aubrey was abused and neglected."

¶ 110 The guardian emphasizes that at the time of adjudication hearing, Aubrey was close to Brayden's age when he was injured; that "her parents had failed to protect Brayden on at least

two occasions"; that Watkins testified that the parents had been "indicated" as having some responsibility; and the court did not make a finding as to the perpetrator of Brayden's rib fracture. The guardian argues that since the parents "did not protect Brayden" the home environment cannot be deemed safe for Aubrey.

¶ 111 We reiterate that although evidence of Brayden's harm is certainly relevant and admissible as to Aubrey under an anticipatory neglect theory, the court was required to consider Aubrey's particular factual circumstances. See *Arthur H.*, 212 Ill. 2d at 468; *In re Kenneth D.*, 364 Ill. App. 3d 797, 801 (2006) ("Anticipatory neglect should take into account not only the circumstances surrounding the previously neglected sibling, but also the care and condition of the child named in the petition.").

¶ 112 In this case, the court found there was "no evidence presented as to any improper care or treatment of Aubrey." However, in explaining that finding, the court proceeded to erroneously cite evidence regarding other children, stating:

> "In fact, the only evidence presented was the home appeared safe. The children did not have injuries. There were no signs of abuse or neglect. He [sic] was described as well-groomed and appeared to be well taken care of. Although we do not have to wait for a child to be injured, if we were to find neglect in this case, it would be akin to having a p[er] se rule, that the neglect of one child conclusively establishes the neglect of another."

As pointed out by the guardian's brief, the trial court relied upon testimony referring to other children in explaining its findings for Aubrey. Specifically, the court incorrectly referred to

Aubrey as "he." Further, there was no testimony that Aubrey was "well-groomed" or any other testimony specifically describing how Aubrey had been cared for. Rather, it is apparent that the court mistakenly referenced testimony regarding Amare and Devonta as the basis for its findings with respect to their much younger sibling, Aubrey.

¶ 113 In other words, the trial court relied on incorrect, inapplicable evidence when it rendered its findings as to Aubrey. As a result, we are unable to affirm the trial court's findings, even under the deferential manifest weight of the evidence standard. "A judgment is against the manifest weight of the evidence only when an opposite conclusion is apparent or when findings appear to be unreasonable, arbitrary, *or not based on evidence*." (Emphasis added and internal quotation marks omitted.) *In re Kendale H.*, 2013 IL App (1st) 130421, ¶ 28. Here, the court's findings as to Aubrey were simply not based on evidence concerning Aubrey. Without an explanation from the trial court as to the particular facts in evidence *pertaining to Aubrey* that formed the basis for its findings, we cannot affirm its determination with respect to that child. Thus, we will reverse and remand to give the trial court an opportunity to explain the specific facts upon which it based its findings concerning Aubrey.

¶ 114 In reaching this conclusion, we emphasize our particular concern for risk of harm to Aubrey under the facts of this case. As noted by the guardian, we find it significant that at the time of adjudication, Aubrey was an infant close to the age of Brayden at the time Brayden received his life-threatening injuries. Further, the fact that no determination was ever made as to the perpetrator of Brayden's injuries—as well as the fact that his rib injuries and possibly his head injuries were not discovered by the parents for several days— adds to our concern that Aubrey faces a similar risk. Furthermore, we also note our uncertainty about Aubrey's current

status and whether she is in the custody of her parents.[4] For the foregoing reasons, we will reverse the trial court's findings with respect to Aubrey. However, we will remand to give the trial court another opportunity to explain its ruling regarding Aubrey, based on the evidence relevant and specific to that child.

¶ 115 We now turn to the mother's separate appeal from the court's findings that Brayden was neglected and abused. The mother first argues that such findings were against the manifest weight of the evidence. Alternatively, she argues that application of section 2-3(2) of the Act to find that Brayden was abused violates the parents' constitutional equal protection and substantive due process rights.

¶ 116 The mother does not dispute Dr. Ramaiah's unrebutted testimony that, in her expert opinion, Brayden had suffered injuries as a result of abuse. However, she argues that –since Johnson was the perpetrator of *all* injuries and the parents lacked notice of his risk to Brayden –

[4] Although the orders dismissing the petitions for Amare, Devonta, and Aubrey were stayed pending appeal, on October 6, 2015 our court granted the guardian's unopposed "motion to Release Partial Jurisdiction to the Trial Court to determine if unsupervised day visits are appropriate and if DCFS should have the discretion to allow future unsupervised overnight visits" with the parents. The guardian's submissions to our court indicate that, between October 8, 2015 and January 29, 2016, the parents had unsupervised day visitation and supervised overnight visitation with Amare, Devonta, and Aubrey four nights per week, at which time the parents "were residing in the home of Aubrey's foster parent." After the parents obtained their own housing in late January 2016, DCFS authorized unsupervised overnight visitation. According to the guardian, beginning in February 2016 the parents had "unsupervised day and overnight visitation [with Aubrey] from Friday night through Tuesday" as well as "unsupervised day and overnight visitation [with Amare and Devonta] from Monday night through Friday night." In May 2016, the guardian filed a status report reflecting that the trial court had granted the parent's motions close proceedings with respect to Brayden and had directed Brayden's return to the parents' custody. However, that status report made no mention of the current status of Aubrey, Amare, or Devonta.

Brayden could not be found to be neglected or abused within the meaning of the Act. As set forth below, we find these arguments to be without merit.

¶ 117 The mother first argues that the finding of neglect due to injurious environment was against the manifest weight of the evidence. She argues that neglect cannot be found absent evidence that the parents had notice that Johnson posed a risk of harming Brayden. Her argument relies upon *In re A.P.*, 2012 IL 113875, in which our supreme court affirmed the reversal of a trial court's finding that the respondent's children were neglected due to an injurious environment. Specifically, she argues that pursuant to *A.P.*, "when the harm suffered by a minor results from the act or omissions of someone other than the minor's parents, a finding of neglect cannot survive unless the parents 'knew or should have known' the offending caregiver was 'unsuitable.'"

¶ 118 We do not find *A.P.* applicable to this case. Under *A.P.*'s facts, the respondent mother had left her two children in the supervision of her boyfriend, McLee (who was not the children's father), while she went to an appointment. *Id.* ¶ 3. When the respondent returned, she discovered that one of the children, A.P., had been burned on his face, and she immediately took A.P to the emergency room for treatment. *Id.*

¶ 119 The State alleged that A.P. was neglected because "McLee had burned A.P's face with hot water by other than accidental means" and the burns "could not have occurred absent abuse or neglect on the part of McLee." *Id.* ¶ 4. Because she had decided to leave the minors in McLee's care, the trial court specifically declined the mother's request for a finding that she had not contributed to the injurious environment. *Id.* ¶ 10.

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¶ 120 Our appellate court reversed the trial court, concluding that the finding of neglect was against the manifest weight of the evidence. *Id.* ¶ 12. Our supreme court agreed, rejecting the proposition that "the State can obtain a finding of neglect due to a babysitter leaving a child unattended, resulting in injury, even without a showing of any knowledge by the parents that the babysitter was an unsuitable caregiver." *Id.* ¶ 24. Our supreme court reasoned that such an interpretation of the Act would "allow a finding of neglect due to an injurious environment *whenever* an injury to a minor could be attributed to improper supervision on the part of a selected caregiver, even in the case of the most conscientious parent who has exerted every reasonable effort in choosing a competent caregiver for his or her child." (Emphasis in original). *Id.*

¶ 121 Our supreme court reasoned that "in order to support the trial court's neglect findings *** there had to be some indication that respondent knew or should have known that McLee was an unsuitable caregiver." *Id.* ¶ 25. However, there was "no indication that McLee could not provide a safe and nurturing shelter for respondent's children" and no evidence "that respondent had any reason to be concerned about him looking after the children." *Id.* ¶ 26. Thus, our supreme court found that the finding of neglect was against the manifest weight of the evidence.

¶ 122 In this case, the mother urges that the facts of this case are "not meaningfully distinguishable from *A.P.*" and that the trial court "did not, and could not have, concluded that the parents were reasonably aware of the threat posed" by Johnson.

¶ 123 We disagree, as we find that *A.P. is* distinguishable. First, *A.P.* concerned a single injury whose perpetrator (McLee) had been identified. In contrast, in this case, there was uncontroverted testimony that Brayden suffered multiple injuries, including skull fractures,

retinal hemorrhaging, and a rib fracture. Moreover, Dr. Ramaiah testified that the rib fracture was an old injury which had occurred several days prior to Brayden's admission. Further, although the trial court made a finding that Johnson perpetrated the "head injuries," the court specifically found that the rib fracture's perpetrator was unknown.

¶ 124 The mother claims that the lack of a finding as to the perpetrator of the rib injury "does not remove this case from the ambit of *A.P.* because no testimony (medical or otherwise) established that the injury (standing alone) was anything other than accidental." That is, she asserts that Dr. Ramaiah did not specifically testify that the rib injury was abusive. She thus argues that "because Dr. Ramaiah could not assert that Brayden's rib fracture was intentionally inflicted *** without tying that injury to those perpetrated to the minor's head, any conclusion as to abusive causation of the rib fracture independent of Mr. Johnson would be against the manifest weight of the evidence."

¶ 125 We reject the mother's argument. Not only did Dr. Ramaiah testify that all of Brayden's injuries were "very concerning highly suspicious injuries," she specifically testified that the rib injury was caused by either "a direct impact or blow" or a "sustained violent squeezing of the chest." Nowhere did her testimony suggest that she believed it could be inflicted accidentally, and there was no other evidence presented to suggest that the rib fracture could have occurred unintentionally. The mother's argument seems to ignore the fact that the parents are responsible for being vigilant and observant of the physical well-being of their infant child.

¶ 126 We note also that Daivon testified that "no one was paying attention" to the infant when he observed Johnson squeezing the infant. The testimony cumulatively gives the impression of a chaotic household in which there was no vigilance regarding the infant. In any event, there was

no evidence that Johnson inflicted the rib injury, other than the testimony elicited from Daivon, which the trial court found to be speculative. Thus, we cannot assume, as the mother's argument presumes, that *all* of Brayden's intentional injuries had been inflicted by Johnson. Thus, this case did not present a situation such as that in *A.P.*, where a single injury was tied to a single identified perpetrator.

¶ 127 Moreover, even assuming that Johnson perpetrated all such injuries, the mother's suggestion that the parents lacked any notice that he might pose a threat is belied by the record, specifically: (1) Daivon's testimony that he had observed Johnson handling Brayden in a concerning manner in the presence of the father and possibly other family members yet no one seemed to be paying attention; and (2) medical records reflecting that the mother admitted a prior incident in which she saw blood on Johnson's fingers and a cut in Brayden's mouth shortly after Johnson handled Brayden. Given that evidence, we reject the mother's assertion that she is in the same position as the mother in *A.P.*, who lacked any reason to suspect that her boyfriend was not a suitable caregiver. Further, in *A.P.*, there was no impression of the chaotic household as exists in this case. Thus, we do not find that this case is analogous to *A.P.*

¶ 128 In turn, we decline to find error in the trial court's finding that Brayden was neglected pursuant to the Act. Given the undisputed evidence that Brayden suffered multiple inflicted injuries and neither the mother nor father could explain how the injuries occurred, that bespeaks a serious inattention to the well-being of the infant. Accordingly, we certainly cannot say that the trial court's finding of neglect due to injurious environment was against the manifest weight of the evidence.

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¶ 129 With respect to the findings of abuse, the mother similarly argues that such findings are against the manifest weight of the evidence, because the parents "could not reasonably have been expected to anticipate that Ronald Johnson would harm their child." Again relying on the reasoning of *A.P.*, the mother argues that the evidence in this case did not support findings of parental fault sufficient to prove abuse under the relevant statutory provisions of the Act.

¶ 130 Brayden was found abused pursuant to section 2-3(2)(i) as well as 2-3(2)(ii) of the Act, which provide:

> "Those who are abused include any minor under 18 years of age whose parent or immediate family member, or any person responsible for the minor's welfare, or any person who is in the same family or household as the minor, or any individual residing in the same home as the minor, or a paramour of the minor's parent:
>
> (i) inflicts, causes to be inflicted, or allows to be inflicted upon such minor physical injury, by other than accidental means, which causes death, disfigurement, impairment of physical or emotional health, or loss or impairment of any bodily function;
>
> (ii) creates a substantial risk of physical injury to such minor by other than accidental means which would be likely to cause death, disfigurement, impairment of emotional health, or loss or impairment of any bodily function." 705 ILCS 405/2-3(2) (West

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2012).

¶ 131 The mother argues that "[b]ecause Ronald Johnson inflicted all of the injuries to Brayden that can be characterized as non-accidental," the trial court should have, but did not, determine whether Johnson fit within one of the specific categories of persons referenced in the opening language of section 2-3(2). That is, the court did not specifically find whether Johnson was a "person responsible for the minor's welfare," a member of "the same family or household," or that Johnson resided in the same household. 705 ILCS 405/2-3(2) (West 2012).

¶ 132 Without such a finding, the mother argues, the court's findings of abuse "must have been premised on the notion that [the parents] *allowed* Mr. Johnson to injure Brayden." However, the mother argues, the parents could not have "allowed" Johnson to injure Brayden unless they had prior knowledge of "Johnson's capacity for brutality" or otherwise permitted his abuse of Brayden. In turn, she argues that, without evidence of the parents' knowledge that Johnson posed a threat, the findings of abuse were against the manifest weight of the evidence.

¶ 133 However, for the same reasons noted with respect to the findings of neglect, the mother's argument is without merit. First, her argument assumes, erroneously, that Johnson was found to be responsible for *all* injuries to Brayden. That is not the case. The court only found that "head injuries" were inflicted by Johnson but specifically declined to find a perpetrator with respect to the rib injury, which had been inflicted some time before the head injury.

¶ 134 Especially given the testimony regarding the numerous other individuals living in the same home, the court could have reasonably found it more probable than not that one of those individuals inflicted the rib injury. That is, the court reasonably could have found that it was more likely than not that a person "in the same family or household" or "residing in the same

home" as Brayden had inflicted, "cause[d] to be inflicted, or allow[]ed to be inflicted" the rib injury "by other than accidental means," constituting abuse pursuant to section 2-3(2)(i). 705 ILCS 405/2-3(2)(i) (West 2012). Similarly, given the apparent chaos in the household and the large number of people coming and going, there was even more reason for the parents to be vigilant regarding the physical well-being of their infant. Therefore, the court could find the State had proven that some member of the family or household had "create[d] a substantial risk of physical injury to [Brayden] by other than accidental means" pursuant to section 2-3(2)(ii).

¶ 135 The mother's argument against the findings of abuse fails for an independent reason: as we have already pointed out, the record *did* include evidence suggesting that the parents had notice that Johnson posed a threat to Brayden. Based on that evidence, as well as the large number of people in the household, the court could find that the parents had "allowed" injury to be inflicted under section 2-3(2)(i), or had "create[d] a substantial risk of physical injury" to Brayden under section 2-3(2)(ii), by permitting him to be handled by Johnson or others without supervision. Thus, we do not find that the abuse findings with respect to Brayden were against the manifest weight of the evidence.

¶ 136 Finally, the mother raises constitutional challenges to the findings that Brayden was abused pursuant to section 2-3(2) of the Act. She argues that the parents' equal protection and due process rights are violated if a child can be found abused, despite the lack of any showing that the parents breached a duty of care before their child was harmed by a third party. However, those arguments again rely on the incorrect assumptions that (1) Johnson inflicted all injuries and (2) that there was no evidence that the parents had any reason to be concerned about Johnson.

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¶ 137 The mother's equal protection argument claims that findings of abuse in this case "would create arbitrary distinctions as between similarly situated parents," based on whether the State seeks findings of neglect or abuse. She argues that our supreme court's *A.P.* decision established that findings of *neglect* must be supported by a finding that a parent breached a duty of care. Thus, she argues that similarly situated parents as the respondent in *A.P.* (careful parents who were not at fault for the harm to their child inflicted by a third party) would be unfairly treated if the State was nevertheless able to obtain findings of *abuse* under the same circumstances.

¶ 138 She posits an example of parents who leave their child with a priest, lacking any notice or knowledge that the priest poses any danger. She argues that if the priest molested the child, there would be different findings based on whether the State sought findings of neglect pursuant to section 2-3(1) or abuse under section 2-3(2). She argues that, pursuant to *A.P.*, the parents "would find themselves victorious *** on allegations of neglect" if they had "conscientiously vetted the priest as a caregiver." However, the mother argues that the same facts could lead to findings of abuse under section 2-3(2) because the priest would qualify as a "person responsible for the minor's welfare." 705 ILCS 405/2-3(2) (West 2012). She contends that such a result is unjust because "in both situations no State intervention would be necessary, or justified, because the parents *** took every conceivable precaution and were merely the victims of tragedies outside the scope of foreseeability." She proceeds to argue that the findings that Brayden was abused under section 2-3(2), as applied to the parents, violate their right to equal protection.

¶ 139 Similarly, the mother asserts that application of section 2-3(2) violated the parents' substantive due process rights because it is not narrowly tailored to avoid undue infringement on the parents' right to raise their children. She asserts that the Act unfairly defines abuse "without

regard to whether the parents themselves pose a risk to their child." Since section 2-3(2) permits findings of abuse "where a minor's safety has been compromised by circumstances beyond the control of parents," she contends that it "cannot satisfy the narrow-tailoring requirement of strict scrutiny as a least restrictive means." As applied in this case, she urges that since "Johnson's actions were beyond the control of respondent-parents, applying section 2-3(2) in this case would violate [the parents'] right to Substantive Due Process."

¶ 140 Although these constitutional arguments are creative, we need not address them, as they are inapplicable to the circumstances of this case. The mother offers challenges on behalf of parents who do not inflict injury, and who could not reasonably foresee that a third party would harm their child. The mother's arguments thus presume that (1) Johnson was the only perpetrator of Brayden's injuries and (2) the parents lacked any notice that Johnson was a threat. However, as discussed above, these assumptions are belied by the record. Thus, the mother is not in a position to argue that she and the father are equivalent to the indisputably blameless parents in her hypothetical arguments. Thus, it is not appropriate for us to address her "as applied" constitutional challenges to section 2-3(2) of the Act.

¶ 141 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County with respect to its findings regarding Amare, Devonta, and Brayden. However, with respect to Aubrey, we reverse the trial court's findings (which were improperly premised on evidence concerning Amare and Devonta). On remand, we direct the trial court to explain whether, based on the evidence relevant to Aubrey, it finds that Aubrey was abused or neglected

¶ 142 Affirmed in part and reversed in part.

¶ 143 Cause remanded.