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2018 IL App (4th) 180356-U  
NO. 4-18-0356, 4-18-0357 cons.  
IN THE APPELLATE COURT

**FILED**  
October 17, 2018  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

OF ILLINOIS  
FOURTH DISTRICT

<i>In re</i> I.B., a Minor	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Vermilion County
Petitioner-Appellee,	)	No. 17JA37
v. (No. 4-18-0356)	)	
Kendrick B.,	)	
Respondent-Appellant).	)	
_____	)	
<i>In re</i> I.B., a Minor	)	
	)	
(The People of the State of Illinois,	)	
Petitioner-Appellee,	)	
v. (No. 4-18-0357)	)	
Lexi W.,	)	Honorable
Respondent-Appellant).	)	Thomas M. O’Shaughnessy,
	)	Judge Presiding.

JUSTICE CAVANAGH delivered the judgment of the court.  
Justices Holder White and Knecht concurred in the judgment.

**ORDER**

¶ 1 *Held:* The appellate court affirmed, concluding the trial court’s order adjudicating the minor neglected and abused was not against the manifest weight of the evidence.

¶ 2 Respondents, Lexi W. and Kendrick B., are the parents of the minor, I.B. They appeal separately from the trial court’s dispositional order adjudging I.B. a ward of the court and placing guardianship and custody with the Department of Children and Family Services (DCFS). They each contend the court erred by finding I.B. to be an abused minor. We consolidated the appeals and affirm the court’s judgment.

¶ 3

## I. BACKGROUND

¶ 4 On May 30, 2017, the State filed a three-count petition, alleging I.B., born December 8, 2016, was a neglected and abused minor. Specifically, the State alleged the minor was (1) abused in that respondents inflicted or allowed to be inflicted on the minor physical injury by other than accidental means (705 ILCS 405/2-3(2)(i) (West 2016)) (count I); (2) abused in that respondents created a substantial risk of physical injury to the 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 2016)) (count II); and (3) neglected in that the minor's environment was injurious to her welfare due to the minor having suffered nonaccidental injuries and respondents had no plausible explanation for injuries (705 ILCS 405/2-3(1)(b) (West 2016)) (count III). At the time of the allegations, respondents and the minor lived together in Lexi's father's home.

¶ 5 Evidence presented at the May 31, 2017, shelter care hearing demonstrated that on May 26, 2017, DCFS received a hotline call advising that Lexi had taken I.B., her six-month-old infant, to the hospital because the baby was inconsolably crying. Abdominal X-rays revealed the minor had suffered left and right clavicle fractures. She had bruising on most of her left upper arm, extending linearly across her chest area to a smaller bruise under her right armpit. Respondents both denied hurting the minor. They both suspected a babysitter but otherwise had no reasonable explanation for the injuries. A medical examination revealed that both of the minor's clavicles had been broken on two separate occasions, as each break was in a different stage of healing. Also, the minor's umbilical cord blood tested positive for marijuana and cocaine.

¶ 6 On May 29, 2017, DCFS took protective custody of the minor and placed her in relative foster care with her maternal aunt Tiffany W. The trial court awarded temporary custody to DCFS.

¶ 7 Kendrick's initial service plan, filed August 2, 2017, required him to (1) participate in a substance-abuse assessment and to follow all treatment recommendations, (2) participate in domestic-violence/anger-management counseling, (3) successfully complete probation, (4) participate in individual counseling to address parenting skills, (5) participate in a sex-offender assessment and to follow all treatment recommendations, and (6) refrain from any physical altercation with any other person. Lexi was required to (1) participate in a substance-abuse assessment and to follow all treatment recommendations, (2) participate in domestic-violence/anger-management counseling, (3) participate in individual counseling to address parenting skills, and (4) refrain from any physical altercation with any other person.

¶ 8 On November 21, 2017, the court-appointed special advocate (CASA) prepared a report for the trial court after interviewing the parties and various witnesses, including the foster parent. According to the CASA, the minor was developmentally delayed but had been making progress in her foster home. She was receiving speech and physical therapies and, in CASA's opinion, she was "now in a very healthy environment." Both Lexi and Kendrick individually reported they were no longer in a relationship.

¶ 9 On November 27, 2017, the State filed an amended petition for adjudication adding count IV, which alleged the minor was neglected in that her blood, urine, or meconium contained an amount of a controlled substance, namely cocaine (705 ILCS 405/2-3(1)(c) (West 2016)).

¶ 10 On November 29, 2017, the trial court conducted an adjudicatory hearing. Kacie Henry, an emergency room nurse at Presence United Samaritans Medical Center in Danville, testified she treated I.B. on Friday, May 26, 2017. She said I.B. was crying and was “not able to be consoled.” Because I.B.’s vital signs were normal, the treating physician ordered a chest X-ray. Once the clavicle fractures were discovered and further X-rays of I.B.’s other limbs revealed no further fractures, Henry removed I.B.’s clothing and noticed the bruises on I.B.’s shoulder and chest area. Henry called the police and DCFS. Lexi was not able to explain I.B.’s injuries.

¶ 11 Danielle Lewallen, a Danville police officer, testified she responded to the hospital. After speaking with medical personnel and viewing the X-ray, Lewallen asked Lexi how I.B. had sustained the injuries. She said she did not know. She told Lewallen that I.B. woke that day at 8 a.m. After her feeding, I.B. went back to sleep. Around 11 a.m., I.B. woke up screaming. Because she was not sure what was wrong, Lexi brought her to the hospital. Lexi explained to the officer who had been in the presence of the minor for the past few days. On Monday, five days earlier, she had taken I.B. to the doctor because she was sick. There were no marks or bruises on I.B. at that time. On Tuesday, both parents were with I.B. all day and neither noticed any bruises. On Wednesday, Lexi’s friend, Calie Johnson, kept I.B. most of the day while, according to Lewallen’s report from Lexi, respondents smoked weed and “hung out with some friends.” Calie told respondent she had not noticed any bruises on I.B. that day. Wednesday night I.B. had a bath but Lexi could not recall which parent had bathed her. Lexi advised she had not noticed any marks or bruises on I.B. until they were at the hospital Friday morning.

¶ 12 Officer Lewallen testified she also met with Kendrick at the hospital. He too was unable to provide an explanation for I.B.’s injuries. He suggested I.B. may have been injured

while Calie was babysitting her. However, he stated he had given I.B. a bath Thursday night and he did not see any marks or bruises. He did say he thought I.B. was not moving her arms the way she typically did in the bathtub. Kendrick also told Lewallen he had changed I.B.'s diaper on Friday morning and had not noticed any marks or bruises. When asked about domestic violence, Kendrick advised Lewallen that he and Lexi have had domestic issues in the past. He said “ ‘they had a domestic not too long ago,’ ” but Lewallen could not recall the date of the reported incident.

¶ 13 Lewallen said she met with Lexi again on June 13, 2017. Still, Lexi said she had no idea how I.B. had been injured. The prosecutor posed the following question:

“Q. To this day there is still no explanation on how [I.B.] was injured?”

A. Not that I have been advised.”

¶ 14 On cross-examination, Lewallen learned that Calie's father and her two brothers lived at Calie's residence as well. One of her brother's called Lexi around 4:30 p.m. Wednesday to advise that I.B. was vomiting. Calie's mother returned I.B. to respondents but Lexi did not indicate that anything seemed “unusual” with her. She did note the baby was fussy and would not eat the next day. Lewallen said Lexi told her she brought I.B. to the hospital on Friday because she was crying. Lewallen said he interviewed Lexi later at the police station but she was not as cooperative during that subsequent interview.

¶ 15 The State introduced five photographs taken by Lewallen at the hospital of I.B.'s bruises. Lewallen said Lexi reportedly took I.B. to the doctor on the previous Wednesday, the week before I.B. went to Calie's house. Lexi told Lewallen that the doctor diagnosed I.B. with the flu. Initially when asked, Lexi denied any domestic-violence issues between her and Kendrick, but she later admitted they had physical altercations.

¶ 16 Doctor Brent Reifsteck, a pediatrician at Carle Foundation Hospital in Urbana, testified as the State’s expert in child trauma. Reifsteck said he was the physician in charge of the area’s child-abuse safety team. On May 26, 2017, Reifsteck received a call from DCFS advising I.B. was on her way to Carle from Danville. Reifsteck reviewed the X-rays and saw that each clavicle had an acute fracture in the middle of each bone. “Acute” indicated there were no signs of healing, which meant the trauma had occurred within seven days of the X-ray. The clavicle fractures and the bruising indicated to Reifsteck that I.B.’s injuries were intentional, not the result of an accident. In his opinion, it was very difficult to cause a fracture and bruising in an infant. He said their bones are very pliable. As such, it would take the force equivalent to that of an adult to bruise or break a bone in an infant. Upon questioning by the court, Reifsteck said, when viewing the photographs of I.B.: “This indicates multiple injuries in multiple planes, which is always very suspicious for abuse.”

¶ 17 The adjudicatory hearing resumed on January 12, 2018, with the testimony of 19-year-old Calie Johnson. She said she and Lexi had been “best friends” for six to seven years. She said she babysat I.B. on Wednesday, May 24, 2017. She typically kept I.B. three times per week.

¶ 18 Calie denied having any issues with I.B. on May 24, 2017. She regularly babysat children and never has had an issue. She picked I.B. up from respondents’ house at 8 a.m. She said she stayed at her father’s house all day with I.B. Her 14- and 15-year-old brothers arrived home after school at approximately 3:30 p.m. Her younger brother held I.B. for a short period, maybe 5 to 10 minutes, without incident. Calie did not notice anything unusual about I.B. that day except that she was vomiting. When questioned by Calie, Lexi told her she had changed I.B.’s formula, which made her vomit. Calie changed I.B.’s clothes at least twice throughout the day. At approximately 4 p.m., Calie took a video of I.B. on her cell phone. Calie said I.B. was

laughing and squirming around. She showed the video to Lewallen. Calie's mother and grandfather took I.B. to respondents' house at approximately 6 p.m.

¶ 19 The adjudicatory hearing continued on February 16, 2018. The State rested. Kendrick testified that he, Lexi, and I.B. lived together with Lexi's father. On Wednesday, May 24, 2017, Calie picked up I.B. to watch her for the day at her own request. She returned I.B. home between 6 and 7 p.m. that evening. I.B. fell asleep around 9 p.m. Kendrick said he woke her around 10 p.m. to feed her and I.B. was "being fussy." He said he swaddled her and placed her back in her crib. He next saw her on Thursday morning. He described that day as a "basically normal day." He noticed she was "being fussy and crying." On Friday morning, Kendrick said he left to cut grass at his mother's house. He received a call from Lexi around 12 p.m. saying she had taken I.B. to the hospital "cause she had bruising on her shoulder and arm and that she said both of her collar bones were broken." Kendrick corrected himself and said initially Lexi called him and requested a ride to the hospital because I.B. would not stop crying. Lexi eventually found a ride from a relative. Kendrick arrived at the hospital and was interviewed by Lewallen. He denied ever physically harming I.B. or seeing anyone physically harming her. He had no knowledge of who may have caused I.B.'s injuries.

¶ 20 On cross-examination, Kendrick said he told Lewallen that he had given I.B. a bath on Thursday night. He told her I.B. "was acting normal but then, she wasn't being herself, like she wasn't playing with me like she normally do." He said on Friday, he dressed I.B. in her outfit for the day and did not see any bruises. Kendrick denied telling Lewallen that he and Lexi ever engaged in physical altercations.

¶ 21 Kendrick said I.B. had gone to see her regular doctor, Doctor Ibrahim, on Monday, May 22, 2017, because she had diarrhea and a fever. She was diagnosed with the flu. Kendrick said he did not see or notice any bruising on I.B. that day.

¶ 22 Lexi testified that she had taken I.B. to Doctor Ibrahim the previous week for the flu symptoms and she had a follow-up visit on Monday, May 22, 2107. She testified consistently with Kendrick's testimony about I.B. spending the day with Calie on Wednesday, May 24, 2017. Lexi said she received a message from Calie that I.B. was crying and vomiting. Lexi said, on Wednesday evening, I.B. "was fussy because she was sick and, you know, diarrhea, coughing, um, breathing sounded weird." I.B. ate less than normal on Thursday. On Friday early morning, at approximately 1 a.m., Kendrick woke I.B. up to feed I.B. but she was "really fussy." She told him to just lay her back down. On Friday morning, Lexi said I.B. "was just really fussy." She tried to feed her but "she was just screaming and crying." Lexi asked relatives for a ride to the doctor. She intended to take I.B. to the walk-in clinic at Carle. Her aunt picked her up and took them to the hospital. When Lexi took I.B.'s clothes off at the hospital, she saw the bruises "starting to form" so she said she showed the nurse. The X-rays showed two broken collar bones. She called Kendrick and asked him if he had hurt I.B. She said he said no. She said Kendrick was "always really good with her." She also denied hurting I.B. and said nothing unusual occurred during that week while I.B. was in her care that would have caused the injuries.

¶ 23 On March 21, 2018, the parties convened for the trial court's findings. After reviewing the evidence and arguments of counsel, the court found the State had proved by a preponderance of the evidence all of the allegations stated in counts I, II, III, and IV of the State's amended petition. The court found respondents' assertions of no knowledge of I.B.'s



injuries to “not be credible” and found the abuse or neglect inflicted on the minor was inflicted by a parent.

¶ 24 On May 3, 2018, the trial court entered an adjudicatory order, finding the State had proved by a preponderance of the evidence that I.B. was an abused and neglected minor as alleged in all four counts of the petition. The court found abuse or neglect of the minor was inflicted by “a parent or parents” without naming or identifying which parent specifically inflicted the abuse or neglect.

¶ 25 On May 16, 2018, the trial court held the dispositional hearing. In addition to the dispositional report, the court considered the testimony of Linda Campbell, the caseworker from May 2017 to March 2018 and the testimony of Gwendolyn Parker, the caseworker from March 2018 to May 2018. After hearing the parties’ arguments, the court found both respondents were unfit, unable, and unwilling to care for the minor. The court made the minor a ward of the court and placed her custody and guardianship with DCFS. The same day the court entered a written order consistent with the aforementioned findings.

¶ 26 Respondents filed respective notices of appeal. This court docketed Kendrick’s appeal as case No. 4-18-0356 and Lexi’s appeal as case No. 4-18-0357. On our own motion, this court consolidated the appeals.

¶ 27 This appeal followed.

¶ 28 II. ANALYSIS

¶ 29 The Juvenile Court Act of 1987 (Act) provides a two-step process the trial court must utilize to decide whether the minor should become a ward of the court. *In re A.P.*, 2012 IL 113875, ¶ 18. Step one of the process is the adjudicatory hearing, at which the court considers only whether the minor is abused, neglected, or dependent. See 705 ILCS 405/2-18(1) (West

2016); *A.P.*, 2012 IL 113875, ¶ 19. If the trial court determines the minor is abused, neglected, or dependent at the adjudicatory hearing, then the court holds a dispositional hearing, where the court determines whether it is consistent with the health, safety, and best interests of the minor and the public for the minor to be made a ward of the court. *A.P.*, 2012 IL 113875, ¶ 21.

¶ 30 In this appeal, respondents challenge only the first step and only the trial court's abuse finding. Specifically, respondents argue the court's finding that I.B. was an abused minor was against the manifest weight of the evidence. They claim the State failed to demonstrate that either respondent was responsible for I.B.'s injuries. However, neither respondent challenges the trial court's finding of neglect, including the uncontested allegation of neglect based upon I.B.'s cord blood containing cocaine and marijuana at birth.

¶ 31 Because the State is only required to prove a single ground for neglect, abuse, or dependency, the unchallenged neglect finding regarding the presence of a controlled substance in I.B.'s cord blood alone was sufficient to move the wardship proceedings to the dispositional stage. Accordingly, it was also sufficient for us to affirm the trial court's adjudication of wardship since respondents do not challenge the dispositional order. Nonetheless, we will address the merits of respondents' claims related to the remaining bases for the court's neglect and abuse findings, as they may have collateral consequences. See *A.P.*, 2012 IL 113875, ¶ 11 n.1 (noting the respondent's appeal of a neglect finding was not moot, even where it did not result in an adjudication of wardship, because such a finding could be used as evidence against the respondent at a later time).

¶ 32 The State has the burden to prove allegations of neglect or abuse by a preponderance of the evidence. *In re M.D.H.*, 297 Ill. App. 3d 181, 190 (1998). On review, we

will not reverse a trial court's finding of neglect or abuse unless the finding is against the manifest weight of the evidence. *Id.*

¶ 33 In *In re Z.R.*, 274 Ill. App. 3d 422, 427 (1995), this court wrote the following:  
“A finding of the trial court is found to be against the manifest weight of the evidence only if a review of the record ‘clearly demonstrates’ the opposite result was the proper one. [Citation.] We will not overturn the trial court’s findings merely because we might have reached a different conclusion. We will not second-guess the trial court on the issue of credibility. The trial court is in the best position to determine the credibility of witnesses.” (quoting *In re T.B.*, 215 Ill. App. 3d 1059, 1062 (1991)).

¶ 34 A. Finding of Abuse

¶ 35 Pursuant to the Act, an “abused minor” is a child under 18 years of age whose parent (i) inflicts, causes to be inflicted, or allows to be inflicted upon such minor physical injury, by other than accidental means, which causes death, disfigurement, impairment of physical or emotional health, or loss or impairment of any bodily function (705 ILCS 405/2-3(2)(i) (West 2016)); or (ii) creates a substantial risk of physical injury, by other than accidental means, which causes death, disfigurement, impairment of physical or emotional health, or loss or impairment of any bodily function (705 ILCS 405/2-3(2)(ii) (West 2016)).

¶ 36 In finding that I.B. was abused, the trial court declared that the abuse was inflicted by a parent. The court found “the parents’ assertions of no knowledge of the means of the injuries to not be credible.” Because the trial court has the best opportunity to observe the demeanor and conduct of the parties and witnesses, we defer to the court’s judgment on credibility and weight of the witnesses’ testimony. *In re F.S.*, 347 Ill. App. 3d 55, 63 (2004).

However, the court need not establish that respondents had the specific intent to hurt the child in order to find the State sufficiently proved the minor was abused. *In re M.W.*, 386 Ill. App. 3d 186, 197 (2008). The statute requires only that the physical injury occur by “other than accidental means.” *F.S.*, 347 Ill. App. 3d at 63.

¶ 37 According to Doctor Reifsteck’s un rebutted testimony, I.B.’s medical documentation, photographs, and X-rays revealed her clavicle fractures and bruising had been inflicted intentionally and not as the result of an accident. In his opinion, it was difficult to cause a fracture and bruising in an infant due to the pliability of their bones and the newness of their blood vessels. As the doctor explained, neither the bones nor the blood vessels of an infant have “really had time to become brittle or easily injured, all their parts are new and bendy and easily compressed.” He said a bruise or a fracture would require the force equivalent to that of an adult. Reifsteck said the photographs of I.B.’s injuries “indicate[d] multiple injuries in multiple planes, which [was] always very suspicious for abuse.”

¶ 38 The doctor’s testimony, along with the other evidence presented, supported the trial court’s finding that the State met its burden of proving by a preponderance of the evidence that I.B. was physically abused; accordingly, the court’s finding was not against the manifest weight of the evidence. The court’s inability to determine which parent perpetrated the physical abuse does not compel a different result. As stated above, “the focus of an adjudicatory hearing is not on whether the respondent abused the minor but rather on whether the minor was abused.” *In re J.C.*, 2011 IL App (1st) 111374, ¶ 20. Thus, we find the evidence was sufficient to demonstrate that I.B.’s injuries were the result of nonaccidental trauma.

¶ 39 The same evidence that supports the nonaccidental physical-abuse finding (705 ILCS 405/2-3(2)(i) (West 2016)) also supports the trial court’s finding that the State proved, by a

preponderance of the evidence, that I.B. was abused due to a substantial risk of nonaccidental physical injury (705 ILCS 405/2-3(2)(ii) (West 2016)). Accordingly, we conclude the court's finding of abuse pursuant to section 2-3(2) of the Act was not against the manifest weight of the evidence.

¶ 40

#### B. Finding of Neglect

¶ 41 The Act defines a “neglected minor” as a child “under 18 years of age whose environment is injurious to his or her welfare[.]” 705 ILCS 405/2-3(1)(b) (West 2016). “Neglect” is generally defined as the failure to exercise the care that circumstances justly demand and includes both unintentional and willful disregard of parental duties. *A.P.*, 2012 IL 113875, ¶ 22. Because “neglect” has no “fixed and measured meaning,” it takes its content from the specific circumstances of each case. *Id.* That is, any case involving an adjudication of neglect and wardship must be decided on the basis of its own unique circumstances. *In re Arthur H.*, 212 Ill. 2d 441, 463 (2004). “An injurious environment is an amorphous concept that cannot be defined with particularity but has been interpreted to include the breach of a parent’s duty to ensure a safe and nurturing shelter for his or her children.” *In re D. W.*, 386 Ill. App. 3d 124, 135 (2008).

¶ 42

Again, the same evidence that supports the physical-abuse finding and the finding of abuse due to a substantial risk of physical injury supports the finding that the State proved, by a preponderance of the evidence, that I.B. was neglected due to an injurious environment. In addition to the evidence that I.B. was herself abused, the evidence demonstrated that respondents engage in physical altercations. These incidents of domestic violence necessarily create an environment injurious to the minor’s physical and emotional welfare. Thus, we further conclude

the court's finding pursuant to section 2-3(1)(b) of the Act (705 ILCS 405/2-3(1)(b) (West 2016)) was not against the manifest weight of the evidence.

¶ 43 In sum, based on the above and on the totality of the evidence, we find the trial court's findings that I.B. was a neglected and abused minor were not against the manifest weight of the evidence.

¶ 44 III. CONCLUSION

¶ 45 For the reasons stated, we affirm the trial court's judgment.

¶ 46 Affirmed.