2015 IL App (1st) 150049-U

FIFTH DIVISION
July 31, 2015

No. 1-15-0049

IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

IN THE INTEREST OF J.W. and I.G., Minors-Respondents-Appellees	)	Appeal from the Circuit Court of Cook County
(THE PEOPLE OF THE STATE OF ILLINOIS, Petitioner-Appellee,	)	Nos. 13 JA 532 13 JA 533
v.	)	
T.G., Father-Respondent-Appellant).	)	Honorable Bernard J. Sarley, Judge Presiding.

JUSTICE REYES delivered the judgment of the court.
Presiding Justice Palmer and Justice Gordon concurred in the judgment.

ORDER

¶ 1 *Held*: Affirming adjudicatory and dispositional orders of circuit court of Cook County where (a) denial of father's motion to strike expert opinion did not constitute an abuse of discretion; and (b) findings of abuse and neglect were not against the manifest weight of the evidence.

¶ 2 Respondent-appellant T.G.[1] is the father of minors J.W. and I.G. After an adjudicatory

[1] In the interest of confidentiality, we refer to certain parties herein by their initials. The case caption has been amended accordingly.

hearing, the circuit court of Cook County found that both children were neglected and I.G. also was abused. After a dispositional hearing, the children were made wards of the court. T.G. appeals from both the adjudicatory and dispositional orders. He contends that the circuit court erred in not striking the expert opinion of a physician and that the court's findings of abuse and neglect were against the manifest weight of the evidence. For the reasons that follow, we affirm the judgment of the circuit court.

¶ 3 I. BACKGROUND

¶ 4 T.G. and mother W.W.[2] are the parents of J.W., a male minor born on July 23, 2008, and I.G., a male minor born on August 28, 2012.

¶ 5 A. Petitions for Wardship

¶ 6 On June 6, 2013, the State petitioned the court to adjudicate J.W. a ward of the court. The petition provided, in part:

> "Mother has one other minor who is in DCFS custody with findings of abuse and neglect having been entered. Mother admitted to previously choking that minor. On or about May 9, 2013 this minor's sibling was hospitalized and diagnosed with a skull fracture. This minor's sibling has also been diagnosed with two healing rib fractures.[3] Mother and putative father have made various statements as to how this minor's sibling's head was injured. Mother and putative father have no explanation as to how this minor's sibling's ribs were fractured. Per medical

[2] T.G. filed a notice of appeal to this court; W.W. did not. Pursuant to earlier orders of this court, we granted W.W.'s requests to proceed as a "poor person" and to adopt T.G.'s arguments. However, because neither W.W. nor her counsel signed the notice of appeal – and her name was not listed therein as a party who was appealing – we consider this appeal to have been taken only by T.G. See, *e.g.*, *U.S. Bank Nat. Ass'n v. Avdic*, 2014 IL App (1st) 121759, ¶ 3, fn. 1 ("The notice of appeal must contain the signature of each appellant or appellant's attorney.").

[3] An affidavit filed by an Illinois Department of Children and Family Services (DCFS) investigator on the same date referenced "3 healing rib fractures."

> personnel this minor's sibling's injuries are the result of physical abuse. Family members state mother and putative father have an on-going issue of domestic violence with each other. On or about May 31, 2013 mother violated the safety plan for this minor and minor's sibling. On or about June 2, 2013 mother started a fire in the mailbox which is attached to the family home during an argument with putative father. This minor and minor's sibling were present during this incident."

The petition alleged that J.W. was neglected in that he was a "minor under 18 years of age whose environment is injurious to his *** welfare" (705 ILCS 405/2-3(1)(b) (West 2014)) (Neglect-Injurious Environment).[4] The petition also alleged that J.W. was abused in that his "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 *** 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 2014)) (Abuse-Substantial Risk of Injury).

¶ 7 On the same date, the State petitioned the court to adjudicate I.G. a ward of the court. The petition included substantially the same allegations as in the J.W. petition. In addition to Neglect-Injurious Environment and Abuse-Substantial Risk of Injury, the petition alleged that I.G. was abused in that his "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 *** inflicts, causes to be inflicted, or allows to be inflicted upon such minor physical injury, by other

[4] The petition incorrectly cites "0702 405/2-3(1)(b)."

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 2014)) (Abuse-Actual Injury).

¶ 8 On June 6, 2013, the court granted temporary custody of J.W. and I.G. to the DCFS guardianship administrator; the parents were granted supervised visitation. The court appointed the Cook County Public Guardian (the GAL) as the attorney and guardian *ad litem* for J.W. and I.G. and appointed separate private attorneys for W.W. and T.G.

¶ 9 B. Adjudicatory Hearing

¶ 10 The adjudicatory hearing began on June 2, 2014. The testimony included the following.

¶ 11 1. Dr. Kristine Fortin

¶ 12 Dr. Kristine Fortin (Fortin) testified that she was an attending physician at the Ann and Robert H. Lurie Children's Hospital of Chicago (Lurie) since September 2010. She completed a residency in pediatrics at the University of Montreal and a fellowship in child abuse pediatrics at Brown University. Fortin stated that she is licensed to practice medicine in Illinois and obtained board certifications in pediatrics in 2006 and in child abuse pediatrics in 2011.

¶ 13 Fortin was asked about her familiarity with "a multidisciplinary pediatric education and evaluation consortium [MPEEC] summary statement." She estimated that she had completed "over 100" MPEEC evaluations since 2010 and had testified in court approximately 15 times. Fortin stated that she had been tendered as an expert in child abuse pediatrics "[a]ll of the times [she] testified except for in Massachusetts, [where she] testified in grand jury hearings where there was no expert witness qualification process." After each of the attorneys present – including W.W.'s counsel and T.G.'s counsel[5] – indicated he or she had no objection, the court

[5] T.G.'s counsel conducted limited cross-examination regarding Fortin's qualifications prior to

found Fortin qualified as an expert in child abuse pediatrics.

¶ 14 Fortin testified that, shortly before midnight on May 9, 2013, I.G. "was transferred from Ingalls [Hospital] with a diagnosis of a skull fracture, and there wasn't a clear explanation and a DCFS report had been made prior to his arrival. So for those reasons, at our hospital any child under the age of 12 months with a skull fracture would receive a consultation from the protective services team." Fortin stated that the protective services team was a "multidisciplinary team of physicians and social workers who are called to assess when there are concerns for possible child abuse or neglect."

¶ 15 Fortin testified that she documented her findings regarding I.G. in an MPEEC report and in the medical record. When asked about the "general guidelines or practices when you complete an MPEEC report," she responded, "we would review the child's physical exam, information obtained from the parents. We would review medical records, discuss with the medical team, look at radiology studies and discuss with the radiologist –[.]" After a short interruption, she continued: "So I was saying the radiology tests, laboratory tests, discussing with, so far as the hospital social work team and their assessment, and we also are able to get information from the investigators on the case." She clarified that "investigators" typically would be police and DCFS investigators.

¶ 16 The assistant State's attorney (ASA) asked Fortin, "specifically in the case for the minor [I.G.], what did you rely on to complete the MPEEC report?" Fortin responded:

> "So it would include review of the medical records and discussion with the medical team, including the team at Lurie and the primary care provider, information from the parents, examination of [I.G.], review of the social worker's

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indicating he had no objection.

> notes in discussion with the social worker, review of radiology studies and discussion with the radiologist, review of laboratory studies and information from DCFS in the DCFS case notes."

W.W.'s counsel objected to the State's request to submit the MPEEC summary statement for I.G. into evidence. Counsel argued that "[t]his report contains hearsay from sources that she did not list as people that she had relied on or sources she relied on to bring this report together, and I would like the opportunity to be able to cross her on this during my cross-examination to ascertain whether or not there is hearsay in here." The court indicated that it would withhold ruling on the admissibility of the MPEEC summary statement "until the parties all have a chance to cross-examine." The court allowed Fortin to "rely on the document for her expert testimony."

¶ 17 Fortin testified about the "final diagnosis of injuries" as follows:

> "He had swelling over the left side of his head. He had a skull fracture on the left side of his head in the parietal bone of the head, and the parietal bone is the bone on the side of the head. He also had rib fractures. He had broken ribs. They were the seventh, eighth, and ninth ribs on the left side, and they were the posterior part of the ribs, so posterior means the part near the back or spine. And the rib fractures showed some signs of healing on the initial x-rays."

The ASA asked, "Now, after [I.G.] was diagnosed with both the skull fracture and swelling and partially healed rib fractures, did you consider other potential medical causes for both of these injuries?" Fortin responded "[y]es," stating that "with the head swelling and the fracture, because it was in combination with the rib fractures, we would just consider if there is any issues with bone diseases." When questioned about the "type of testing or studies *** in regards to bone diseases" conducted for I.G., Fortin testified, "So it would be included in our medical

history and physical exam asking about the child's medical history, the family history, looking if there is any signs of dysmorphic features on the exam, looking at the x-rays to see if there is any signs of bone disease, and as well doing some laboratory tests to look at vitamin D levels and mineral levels." Fortin stated that there were no diagnosed bone health or hereditary conditions that would cause I.G.'s injuries.

¶ 18 Fortin then testified regarding I.G.'s two heart-related problems: premature ventricular contraction and an "anomalous right coronary artery." Fortin opined that the cardiology issues "were not determined to be the cause of the injuries," and she stated that she contacted the cardiology team because "especially [she] wanted to make sure what, if any follow-up [I.G.] would need."

¶ 19 Fortin was asked to describe "what type of force would be needed to cause" I.G.'s head injury. She responded, "So we don't know the exact thresholds of injury, but we do see this sometimes with household accidents, for example, like a mother breastfeeding who had dropped the baby or a fall that's the type of force that could explain that type of fracture." As to the timing of I.G.'s head injury, Fortin testified that "it's difficult to date skull fractures on x-rays." She opined that "[t]he fact that there was swelling indicates that it's more of a recent trauma as compared to a remote trauma, but it wouldn't be possible to pinpoint an exact number of days or hours old."

¶ 20 Fortin then was asked to explain the "type of force that would be needed" to cause I.G.'s rib fractures. She stated,

> "So because the infant's rib cage is more elastic, we don't see this type of injury with typical household injuries. The types of accidental injuries that have been described to cause this type of injury would be, for example, like a high speed,

significant motor vehicle crash."

She explained that, at I.G.'s age, a child's ribs are more elastic in that "the cartilage isn't as hardened as it is with an adult." Fortin indicated that she "wouldn't be able to give the exact mechanism or the exact amount of force" that would be needed to inflict the type of posterior rib fracture that I.G. sustained. She noted that "posterior rib fractures because of their location, that means they are near the spine, and typically the mechanism of injury is that the rib actually bends over the spinous process or the bones of the spine." She opined that "we wouldn't expect that type of injury" with a "typical fall or roll."

¶ 21 When asked about the timing of I.G.'s rib injuries, Fortin testified that "at the time of the initial x-rays, we could see that there were some signs of healing already, and it's not possible to determine exactly when healing would start but we know that it takes usually about seven to ten days for the signs of healing to appear." Fortin stated "there was already signs of callus or healing around the rib fractures." She further testified that she conferred with the pediatric radiologist regarding I.G.'s skeletal examination. Fortin explained that I.G. was transferred from Ingalls with a skull fracture, but she followed up with a skeletal survey because "there was the skull fracture in a young child and initially when [I.G.] presented, there was no accidental mechanisms of injury reported so it would be part of the guidelines to complete the assessment during the skeletal survey."

¶ 22 The ASA asked, "Were there any explanations that the parents gave that you reviewed in the Ingalls Hospital records that are consistent with the injuries that [I.G.] was diagnosed with?" Fortin responded, "To the best of my recollection, the information was that they had picked up [I.G.] from his babysitter and noticed a squishy spot on his head and that's why they brought him to the hospital. But there was no report of a certain accident or a mechanism of trauma."

¶ 23 Fortin further testified that she spoke with both W.W. and T.G. on the morning of May 10, 2013. They spoke "about medical history and diet, so there was a lot of information being exchanged[.]" Fortin recalled that "there was initially no mention of any injuries and then [Fortin] asked if there could be any -- did they recall any type of falls or injuries at the home." Fortin then testified as follows about W.W.:

> "She said that she couldn't remember exactly when it happened, but she thought it was about a week ago and then she said she thought it was before May 6, 2013. She said that [I.G.] had a fall from the bed. She said that it happened while she was in the room and the father was in the bathroom, and [I.G.] fell off of the bed."

Fortin testified, "I can't remember if I asked her specifically did she go to the doctor, but I seem to recall that there was no medical attention sought." After refreshing her recollection by reviewing the MPEEC summary statement, Fortin stated that the parents reported that, after I.G. fell of the bed, he "cried for a few minutes and then seemed fine and that he didn't have any vomiting."

¶ 24 Fortin then spoke with W.W. a second time on May 10, 2013, after receiving the results of the skeletal survey. Fortin testified, in part:

> "I asked her if she wanted to see the films, and initially she said she didn't but then she did ask to see the x-rays. I showed it to her, and she just said that she didn't think that there were rib fractures and asked that the films be repeated."

According to Fortin, the "mother said that the parents had recalled another instance of a fall." Fortin described that conversation as follows:

> "She said that she takes night classes on Thursdays so it would have been like the Thursday before, which would have been May 2, 2013. And she said it would

> have happened when she was out and father was home with the children and that father reported a fall from the bed."

¶ 25 Fortin testified that, when creating the MPEEC summary statement, she considered both of the explanations that W.W. had provided regarding I.G.'s falls from the bed. Fortin indicated that, to a reasonable degree of medical certainty, she was able to ascertain whether or not the injuries sustained by I.G. were consistent with a fall from the bed. She opined as follows:

> "So for the rib fractures, they wouldn't be explained from the falls from the bed. For the skull fracture, I'm not sure if it could be explained because I wasn't sure of the exact time frame of when the falls occurred. And at the time he presented with a skull fracture, there was scalp swelling, and typically parents will observe the swelling within a few hours or sometimes it could be a delay of a couple of days. But if a fall -- I wasn't sure exactly when the fall happened, but if a fall happened ten days prior or a week prior, that would be outside of what we would expect for a parent to first notice the swelling. But if it happened a week, I wouldn't be able to say for sure, but it would still be outside of what we would expect."

Fortin testified that "there wasn't a clear explanation for the rib fractures, and for the skull fracture, there were reports of falls but it wasn't clear exactly what happened or the time frame."

¶ 26 The ASA asked Fortin, "Were the explanations that the parents gave regarding the injuries to [I.G.] consistent during your investigation of this case and whatever you reviewed?" Fortin responded that "[t]here were some differences in the histories," which she described as follows:

> "Well, initially what the initial social work assessment and the physicians in the

> emergency room [*sic*], there were no histories of falls reported, and then the mother reported the fall that occurred with her in the room and the father in the bathroom and then she reported a fall that occurred when she was at school on May 2nd. From the DCFS notes, I think the time the mother and father had different time frames of when the falls occurred, and there was an account, to the best of your recollection, that [I.G.] fell with father in the room and mother out of the room as opposed to the opposite or mom being out of the home."

Fortin further testified that "[t]here were no reports to my recollection of falls with the babysitters that [I.G.] had," stating that "[t]he falls that mother told me about were at their home."

¶ 27 The ASA asked Fortin if she was "able to ascertain, to a reasonable degree of medical certainty, whether or not the injuries that [I.G.] was diagnosed with were indicative of child abuse[.]" With respect to the skull fracture, she responded that "it wasn't possible to determine with certainty." With respect to the rib fractures, Fortin testified, in part, as follows:

> "So rib fractures, especially rib fractures in the posterior or the back have a high specificity for abuse because we don't see these commonly with accidents. The type of accidents that would cause this would be known to the parent of an eight-month-old such as like a high speed motor vehicle crash or a really significant household accident. So there was already *** an injury that's concerning and in this case there was no medical diagnosis to explain the injury and no accidental mechanism reported that would clearly explain the injuries."

¶ 28 The ASA asked Fortin whether it was "in the normal course of practice for you to rely on DCFS investigatory notes to create an MPEEC report." Fortin responded, "That would be one

component, yes." Fortin further testified that she did, in fact, rely on "those notes" when she created the MPEEC summary statement for I.G. The following exchange occurred between the ASA and Fortin:

> "Q: And is it in the normal course of experts in your field to rely on medical records and social work investigations with the parties to a case?
>
> A: With social work investigations, do you mean DCFS investigations?
>
> Q: Or the hospital social workers that are part of your team?
>
> A: That would be standard for our team at the hospital.
>
> Q: And did you, in fact, consult with other doctors, social workers, or experts when you created the MPEEC report for [I.G.] in this case?
>
> A. In the process of doing that, yes."

¶ 29 When questioned regarding a minor's reaction to rib fractures, Fortin testified, in part, "We would expect at the time of injury that there would be some crying or fussiness, but with a child who is nonverbal, it can be difficult to diagnose, especially when they are healing." Fortin further testified that neither W.W. nor T.G. stated that they knew about the rib fractures; the fractures were discovered when the skeletal survey was conducted. Fortin did "[n]ot necessarily" find it suspicious that neither parent knew about the rib fractures, stating:

> "I think that typically maybe the caregiver who was with the child at the time of the rib fractures would be aware, but it's possible that if a caregiver was unaware that they might have noticed at the time of injury if they weren't there, the child could have nonspecific symptoms like fussiness or maybe pain being picked up, but because the child is nonverbal and he was so young, it could be possible that the caregiver wasn't there when the injury happened, that they might not know

specifically that there were rib fractures."

Fortin indicated that, when she was assigned I.G.'s case, I.G. was living with both W.W. and T.G. She further stated that "[f]rom the information [she] had, there was no accidental mechanism reported that would explain the rib fractures." When asked "[w]hat else was considered when you made the findings of child physical abuse in this case," Fortin responded, "it would be the injuries, the lack of a medical explanation, as well as the posterior rib fractures."

¶ 30 Responding to questioning by the court, Fortin indicated that one blow "would be enough to cause" the skull fracture and swelling. The court asked, "And it could have been either something striking the child or the child striking an object, either?" Fortin responded, "Correct." She further noted that, although I.G. was only eight months old, he "was developmentally quite advanced. He was able to cruise and pull to stand, and that was a factor in the assessment as well."

¶ 31 In response to cross-examination by the GAL attorney, Fortin testified, in part, that: swelling from a head injury could last longer than three days; there were "signs of healing" on the initial rib x-rays, which Fortin had "look[ed] at" with the radiologist; and "it's approximately seven to ten days before healing starts" with respect to rib fractures in a child of I.G.'s age. The GAL attorney asked Fortin whether she "ha[d] an opinion, within a reasonable degree of medical certainty, whether or not the skull fractures and the rib fractures occurred at the same time[.]" Fortin responded, "It wouldn't be possible to say with 100 percent certainty, but based on the findings presenting with the history, with the swelling, it would seem most likely that they occurred at different times." Fortin also testified that "the rib cage in infants is more elastic, and that's why it takes a lot more force to fracture the ribs and that we don't see rib fractures with routine household accidents."

¶ 32 In response to cross-examination by W.W.'s counsel, Fortin testified, in part, that I.G.'s siblings living in the home were J.W., born in 2008, and two other siblings, one born in 1997 and one born in either 1995 or 1996. Fortin testified that, "[p]er the information obtained by the social worker," the cousin who was babysitting the day I.G. was brought to Ingalls "would have six children age five months to 15 years" present in the home.

¶ 33 W.W.'s counsel asked whether, in her position with the protective services team at Lurie, Fortin interviews "a lot of parents when cases come in[.]" Fortin responded, "Yes." Noting that the MPEEC summary statement referenced W.W.'s grandmother's statements, counsel questioned Fortin about the source of those statements; Fortin indicated that she had not spoken with the grandmother and had received those statements from the DCFS notes.

¶ 34 Fortin also testified that she did not "have a note about asking" about the height of the bed; W.W. had stated I.G. "was on the wood floor." When T.G.'s counsel asked, "how far from the spine were the injuries," Fortin responded, "I don't have the exact measurement, but the posterior would mean that they are not on the side or in front." Fortin also testified, "I wouldn't expect a fall [from a bed] to cause the rib fractures, but it would be possible that a fall from the bed could cause a skull fracture." Counsel asked, "if a child fell on to something that was say pointed, okay, and it hit the ribs, it is possible that that could cause a rib fracture?" Fortin answered:

> "So when a fall is reported, if that type of fall was reported, we would collect information to get the exact of [*sic*] what happened and what the object was to make the assessment, so it's difficult to answer on a hypothetical. But just knowing the type of injuries I've seen from a rib fracture, I wouldn't expect it to be caused from a household fall, but again it's more of a hypothetical."

Fortin testified that, to the best of her recollection, she had not seen a posterior rib fracture from a fall from a bed for a healthy child of I.G.'s age.

¶ 35 T.G.'s counsel questioned Fortin about two skeletal surveys performed on I.G. on May 10, 2013 and May 24, 2013, respectively. Fortin testified that the first noted three fractures on the "seventh, eighth, ninth ribs." On the second skeletal survey, she stated that "[t]here was more healing than on the previous one, and on the eighth and ninth rib fractures and the seventh rib fracture was not as evident on this study." According to Fortin, the attending physician's impression with respect to the second survey was "[h]ealing left eighth and ninth posterior rib fractures, no new fractures are seen."

¶ 36 T.G.'s counsel questioned Fortin regarding her opinion that I.G.'s rib fractures were nonaccidental. Counsel asked, "And you said it was based on the fact that these type of injuries usually are not caused in home falling from a bed, is that correct?" Fortin responded, "That would be based on review of the medical literature, medical studies, life experience could be one aspect but it's not just experience it's the training that I have had, experience from other physicians, the medical literature, it's really a combination of things." Regarding skull fractures, Fortin stated that "we commonly see" swelling beginning within a few hours after the fracture, continuing, "Sometimes the swelling changes over time, like it feels quite hard, and then it becomes squishier, so sometimes the parents don't notice it right away until it becomes that squishier feeling, so sometimes we don't know exactly when it started."

¶ 37 The court then asked about the "typical outward manifestations" that a child would show after rib injuries "going forward." Fortin responded:

> "So sometimes parents will just note that the child is -- sometimes parents don't notice anything, that's possible, and sometimes parents will just note like a

> fussiness and sometimes I have had some parents say that they feel it, like they kind of feel a cracking or sometimes parents say whenever they picked up the child, they noticed the child cry more. So there can be some symptoms that can point you to the fact that there is a rib fracture, but there is definitely cases where there really isn't obvious symptoms, especially with the child who is only eight months old and nonverbal and especially once the injuries are starting to heal like at the time [I.G.] came, then there really are no symptoms. And that's why in children under two, we do the skeletal survey because there is no way for us clinically to really detect that."

The court then asked, "So if the injury occurred outside the presence of parents, then you'd have to rely on those types of observations?" Fortin answered, "Right. There could be either nonspecific symptoms or maybe not really any symptoms, you know, depending on exactly what happened and when."

¶ 38 On redirect examination, Fortin testified that, in reaching her conclusion in this case, she considered the parents' statements regarding the "falls that were reported[.]" She indicated that she would have reviewed a text message in the DCFS notes from W.W.'s phone to the babysitter's wife which provided in part: "[T.G.] had him in the bed last week and let him fall and this had to happen from that because there weren't any bruises or marks I didn't take him to the ER I just didn't let him go to sleep for a while and watched him thru the night!" Fortin testified that she "would have considered the DCFS information as a whole." The following exchange later occurred between the ASA and Fortin:

> "Q: In the MPEEC -- or in the MPEEC investigation that you completed, was there ever any indication through any of the sources that you had contact with that

the minor fell outside the care and the custody of the mother or the father?

A: I just want to clarify that it's a medical evaluation as opposed to the investigation, but there was no reports of injuries outside of the care of the parents, no."

¶ 39 The ASA sought to admit the MPEEC summary statement into evidence. W.W.'s counsel "renew[ed] his objection on hearsay," noting that:

"This does contain statements from the DCP packet, which in and of themselves would not be admissible because of the hearsay. This would be a back doorway of trying to get in some hearsay testimony, but it does contain statements of people that this witness did not talk with, namely the *** great-grandmother of [I.G.] and [J.W], and because of this, you know, I would object based on hearsay."

T.G.'s counsel joined W.W.'s argument. The court ruled as follows:

"Okay. The report, the witness is an expert. She authored a report. She testified regarding the basis of the report, and of course, the report is going to include hearsay information that she received; but because she is an expert witness, she is allowed to rely on the hearsay, and it's part of the report and the veracity or lack of veracity of any of the reports go to weight and not admissibility so the report ** will be admitted over objection."

¶ 40 The MPEEC summary statement included in the record on appeal is an eight-page single-spaced document signed by Fortin. The statement includes details relating to the history of I.G.'s injury and identifies, among other things, basic information regarding I.G., his treatment, and the DCFS investigation. The statement provides, in part, that it is based upon: review of medical

records and discussion with the medical team; examination of I.G; discussion with "social work" and review of social work consultation "including individual interview with mother on 5/10/2013"; "[d]iscussion with the parents on 05/10/2013"; review of radiology studies; and review of DCFS case notes and discussion with investigators. The MPEEC summary statement also includes discussions of I.G.'s dietary history, developmental history, past medical history/birth history, family history and social history. The statement described I.G.'s physical examination; Fortin characterized I.G. as "alert and very active" and noted that he "attempted to climb out of the crib" and, when held by T.G., "climbed on father's shoulder in attempt to get to the windowsill." The MPEEC summary statement also includes information regarding the radiology examinations and consultations and "[p]ertinent [l]aboratory [e]xaminations," "including [b]one health labs." A section entitled "DCFS and Police Investigations" included seven paragraphs regarding the DCFS investigator's conversations with the babysitter, the babysitter's wife, a "maternal Aunt" (Aunt J.), and the maternal grandmother. In a seven-paragraph "assessment," Fortin concluded: "In summary, no accidental mechanism of injury was provided to account for the constellation of [I.G.'s] multiple injuries. It is my best medical opinion that [I.G.] has injuries resulting from child physical abuse."

¶ 41 2. Harriette Holmes

¶ 42 Harriette Holmes (Holmes) testified that she was a child protection investigator with DCFS since 2002; she was assigned to I.G.'s case. On May 9, 2013, she "was given a call by the on-call supervisor informing [her] that [she] needed to go to Lurie Hospital to see a child who had a skull fracture." On the following day, May 10, Holmes ran a data check on the parties, which showed that, with respect to W.W., "there had been prior involvement" with DCFS, "but the case at that time was indicated closed but it was still on the books at that time." When

Holmes saw I.G. in the hospital bed on May 9, "[t]here was a bump on the back of his head that was noticeable[.]"

¶ 43 On May 9, 2013, Holmes had a conversation with W.W. at Lurie; Aunt J. also was present. Holmes testified, among other things, that W.W. had "actually volunteered information to [Holmes] about her prior DCFS involvement," informing Holmes that she had a child "currently who was in DCFS care with [W.W.'s] mom." W.W. told Holmes that "she had choked the child, and that she realized that the relationship between her and her daughter was such that she realized that she couldn't care for her daughter, so her mother had the child."

¶ 44 Holmes testified that, after receiving a "second report with regarding to [I.G.] having rib fractures also," she created a safety plan for J.W. and I.G. on "I want to say May 10th." The children were to be placed with Aunt J.; W.W. and T.G. were to have "supervised contact only" with the children. According to Holmes, both parents "signed off" on the plan.[6]

¶ 45 On May 16, 2013, Holmes had a conversation with W.W. and I.G. at their home in Dolton, Illinois; two detectives from the Dolton police department and one detective from the Chicago police department also were present. Holmes testified in part, as follows:

> "Again we talked about the report and why it came in. At that time, I asked the mom again about the allegations. Mom stated basically that she didn't do anything to the child, you know, that she doesn't know what's going on or why this is going on. I asked her specifically about the child having fallen in her home because initially on May 9th I asked her had the child had any falls, and she told me no. So in the course of the investigation, I found that the child did have falls while in the home."

[6] Holmes testified, "Mom signed off on the plan. We could never catch up with the father. The father eventually signed the plan on May 13th."

During the May 16 conversation, W.W. "admitted that the child had falls at that time." Holmes testified that on May 9, she had asked W.W. "if the child had any falls at all," and W.W. had "stated no." Holmes continued, "On May 9th, I asked her had the child had any falls in the home, and she stated no. She stated whatever happened to [I.G.] had to happen in the cousin's house." According to Holmes, on May 16, 2013, W.W. stated "that there were two falls that she knew of, one that happened in April and one that maybe happened a month before the child fell." Holmes testified, with respect to the fall W.W. "mentioned in April of 2013," that W.W. had stated that "she wasn't in the room, but the child was on the bed with [T.G.] and he fell off the bed and hit the back of his head. She said that she ran into the room after she heard him fall and picked him up. She said he cried for about 30 seconds, but he was consolable." Holmes testified that T.G. stated during the May 16 conversation that "actually that was not true, that the child had two falls within the last ten days to two weeks before the child presented at the hospital." The ASA asked Holmes, "What was the mother's response to father's statements about these two recent falls that [I.G.] had had?" Holmes responded, "She admitted that that was possibly true, and that she was overwhelmed so she didn't remember."

¶ 46 Holmes also testified that she had asked W.W. during the May 16 conversation why "she didn't tell the doctors about the falls." Holmes stated:

> "Mom stated to me that -- well, after a long silence, she stated to me that she did tell the doctors about it, and I stated, no, she didn't. She stated to me, yes, again that she did. And she said, well, she was, like, I did tell the doctors about it. I am just overwhelmed. I can't remember everything. It's just too much for me."

Holmes testified that W.W. had "stated that she took the child to the doctor on either May 2nd or May 3rd." Holmes further stated, in part, that during the May 16, 2013 conversation, T.G. "said

that [I.G.] did not have any rib fractures and that we're making this up."

¶ 47 Holmes testified that, when she met with the parents on May 16, 2013, the safety plan had previously been changed to have another relative (Aunt T.), care for the children. However, on May 16, the children were with Aunt J., which Holmes considered a violation of the safety plan. Holmes explained to W.W. that "anything that goes on with the safety plan, DCFS needs to know immediately, and so she agreed." However, Holmes testified that "we continued to keep the safety plan in place because the background had been done on [Aunt J.], and there were no issues at that time."

¶ 48 Holmes testified that on May 31, 2013, she telephoned W.W. and "explained to her that we needed a well-being check done for J.W. because it was also an MPEEC case at the time, and we needed to make sure that there were no issues or concerns presenting with him." Holmes described W.W.'s reaction as "[i]rate and somewhat hostile." According to Holmes, W.W. "basically told us that *** we were interrupting her life, and that we're asking her to do things and not giving her a schedule for it."

¶ 49 Holmes testified that on "maybe" May 25 or 26, 2013, she visited the children at Aunt T.'s home. Holmes testified that the safety plan in place at the time required the children to be with Aunt J. Holmes stated that the parents never informed her that the minors were not with Aunt J. Holmes considered the foregoing to constitute a violation of the safety plan.

¶ 50 On June 4, 2013, she again visited with the children at the home of Aunt T. Holmes telephoned T.G. who stated that "he knew that the kids were with [Aunt T.] and that she came over to his house and actually got the kids because of an incident that happened that weekend going into it." According to Holmes, T.G. admitted the following during their June 4 conversation:

> "He admitted that he and the mother had gotten into an altercation at the home, that the mother had left out at 5:00 o'clock and didn't come back until 10:00 o'clock that night. I believe it was either that Saturday or Sunday night leading into this, that he put the mother out of the home, and she said some choice words to him about him and the children, tried to stick some paper through the mail slot to set the house on fire or to smoke them out, and she left home."

According to Holmes, T.G. "stated that he and the kids were in the house at the time" that W.W. "put the paper in the mailbox"; the mailbox was connected to the house. Holmes further testified that T.G. stated "that mom tried to set the mailbox on fire, tried to get him to open the door, and he refused to, and when she left she said f*** you and f*** the kids and left."

¶ 51 Holmes also testified that T.G. "stated that *** he is basically a homebody, and *** the partying is not for him anymore and that he had been clean off of drugs for 20 years. And he didn't want to get caught up in that, and mom just wants to party right now and he's not going to do that."

¶ 52 On June 4, 2013, Holmes took protective custody of J.W. and I.G; on cross-examination by W.W.'s counsel, she stated "it was either June 3rd or the 4th or the 5th." Holmes and her supervisor "just didn't feel that the kids were safe and felt they were at risk in the home with all the issues." Holmes referenced "the violation of the safety plan, not one time but two times, the fact that we had a skull fracture with no definitive answer as to how it happened, three healing rib fractures, [and] the domestic violence between the mom and the dad."

¶ 53 The GAL attorney questioned Holmes regarding a conversation between Holmes and J.W. on June 5, 2013, at Aunt T.'s home. According to Holmes, she asked J.W. "if his mommy and daddy scream a lot" and he said "yes, and they fight too." Holmes also asked J.W. "if they

were fighting this weekend, and he stated yes."

¶ 54 During cross-examination by W.W.'s counsel regarding the mailbox incident, Holmes testified, among other things, that she went to the home; it "looked okay" but "[n]o one was there so [Holmes] wasn't able to get in the house and actually see the inside of the mailbox." T.G.'s counsel questioned Holmes regarding whether there were one or two safety plans; the ASA later stated, "I have one that the mother signed, but apparently there were two safety plans in this case."

¶ 55 On redirect examination, Holmes testified that the first time she learned that W.W. has made a statement regarding a fall in the home was when Fortin informed Holmes on May 10, 2013. Holmes further testified that the first time W.W. admitted that I.G. fell in the home was on May 16, 2013, after Holmes confronted W.W. with the information she had learned. Holmes also confirmed that one of the reasons she took protective custody of the children was "a violation of the safety plan, specifically the mother and the father being in the home and the mother putting a fire lit piece of paper into the home where the minors were."

¶ 56 3. Exhibits and Challenge to Fortin Testimony

¶ 57 When the hearing resumed on June 4, 2014, the ASA offered into evidence and then published multiple exhibits. The first were prior certified findings for the female minor sibling whom W.W. had admitted choking. The minor had been found to be abused and neglected, and W.W. was named as the perpetrator.

¶ 58 The next exhibit included medical records from Lurie for I.G. According to the ASA, one of the records indicated that W.W. had requested that the x-rays be repeated "as she does not believe that there are rib fractures." The ASA indicated that the document states "DCFS confirm the patient is to be discharged into a DCFS safety plan with maternal aunt [Aunt J.]." Another

note on the documents stated, in part, the following:

> "Mother thinks he, the patient, got excited and fell from the bed or couch. Mother states that younger cousins know how to pick up or hold patient. Mother says the older siblings do handle patient. Mother has no concerns about [the babysitter] Kenneth or any of Kenneth's children hurting patient accidentally or nonaccidentally. Mother feels that patient's injuries [are] a result of an accident."

In the "police and domestic violence section under the family risk factors," W.W. had stated that the police had visited the home a few times for physical fights between her and T.G.

¶ 59 The ASA also argued that the "consult notes" from the Lurie emergency department records provided, "the parent did not report any accidental traumas in the course of the emergency department evaluation." The diagnoses listed in the Lurie records are "[c]hild physical abuse - primary," "[s]kull fracture," and "[r]ib fracture." The exhibits also included redacted documents from DCFS and records from Ingalls stating, in part, "Mother is unsure if [patient] hurt head while at day care."

¶ 60 After the State and GAL rested, T.G.'s counsel stated he "started looking at some case law regarding Rule 703" and he posited that Fortin's MPEEC summary statement was "permeated with statements of people that she has no idea whether they are reliable or not." Counsel asked the court to "strike her opinion and strike the exhibit out of evidence." The ASA characterized T.G.'s counsel's point as "moot," noting that counsel "had the opportunity to cross-examine the witness yesterday. He had notice that Dr. Fortin was testifying and had notice of what she would be relying on during the testimony." The ASA continued, "[Fortin] stated that experts in her field relied on the documents that she, in fact, relied on, which was outlined very clearly in her MPEEC summary statement[.]" The court stated, "I suppose [T.G.'s counsel] can

make that motion and ask that some portion of the evidence be stricken[.]"

¶ 61 T.G.'s counsel also followed up on the absence of the safety plan that Holmes testified T.G. had signed.[7] The ASA clarified that "the People's petition only alleges that the mother violated the safety plan for the minor and the minor's siblings." The ASA confirmed that the State was not alleging that T.G. violated a safety plan, but noted that "we have other allegations against him." The GAL attorney argued, in part, "I don't believe that this case rises and falls on the safety plan either by the father or the mother violating it." The court concluded, "I guess I don't feel it's necessary for the production of the document to delay the trial, especially if the parties are not arguing that the father violated the safety plan anyway."

¶ 62 4. T.G.

¶ 63 T.G.'s counsel questioned T.G. regarding the events of June 3 and 4, 2013. T.G. indicated that there was no incident, *i.e.*, "nothing out of the ordinary," between T.G. and W.W. on June 4. He also testified that Holmes and Aunt T. called him; he stated, "I doubt if it was June 4th. It was a couple of days later." According to T.G., "[t]he conversation was related to [W.W.] setting the mailbox on fire." His counsel asked, "And who mentioned the mailbox being set on fire?" T.G. responded, "I believe it was [Aunt T.]. I have no idea because I never told Ms. Holmes that the mailbox was set on fire or anything like that." T.G. stated that his mailbox was not set on fire by W.W. at any time.

¶ 64 The following exchange occurred between the ASA and T.G. during cross-examination:

> Q: *** [I]s it your testimony today that [W.W.] did not try to set the mailbox on fire while you and the minors were at home?
>
> A. She did not.

[7] The ASA stated that Holmes "had broken her foot yesterday" and would not appear in court.

Q: Now, isn't it true that on June 3, 2014,[8] you and the mother were having a domestic dispute?

A: No.

Q: In fact, on June 3rd at 12:04 a.m., so very early on June 4th, isn't it true you called the Dolton police 911 line?

A: I cannot recall that.

Q: Well, isn't it true that you called the 911 line reporting that your name was [T.G.] asking them to come because his girlfriend was at the front door and wanted her to be removed?

A: I can't recall that, no.

Q: You don't recall whether or not you called the police?

A; That particular day, no.

Q: But you have called the police on [W.W.] in the past, is that correct?

A: I have.

Q: And that's because you guys have a history of domestic violence between the two of you?

A: I wouldn't say it's domestic violence. I would say probably a disagreement. I would not say domestic violence, no.

Q: But there's been domestic disputes between you and [W.W.] continuously throughout the course of your relationship?

A: Not continuously, no."

The ASA also asked T.G.: "Isn't it true on August 1, 2013 when you were interviewed by [child

[8] It appears counsel was referring to June 3, *2013*.

welfare specialist] Tatiana Smith, you were asked whether or not you and mother had domestic violence or disputes, and you said no?" T.G. responded, "Yes," and stated "sometime you would call the police to stop a violence or a dispute, so me and the mother never had any domestic violence."

¶ 65 During cross-examination by the GAL attorney regarding the June 4, 2013 events, T.G. denied telling Aunt T. that he had changed the locks while W.W. was out of the home. He also denied telling Aunt T. that W.W. tried to break down the door or that a neighbor called to tell T.G. that there was a fire in the mailbox.

¶ 66 5. Motion to Strike

¶ 67 On June 20, 2014, T.G. filed a "motion to strike the expert opinion and to strike from the record Dr. Fortin's MPEEC." T.G. contended that "Dr. Fortin based much of her MPEEC on summaries of interviews conducted by Harriette Holmes, the DCFS investigator." T.G. argued that "[t]here is no evidence in the record that Dr. Fortin ever spoke to any of these persons" and "[t]here has been no showing by the State that the information related by these persons is sufficiently trustworthy to be reasonably relied upon by Dr. Fortin." With respect to the statements of three particular interviewees referenced in the MPEEC, T.G. argued that "[t]hey were all caretakers for [I.G.] at or near the time of the injuries, and, thus, had an inherent motive to not tell the truth." T.G. also asserted that if Holmes's "reports were prepared in anticipation of litigation, it is not reasonable to rely on those reports." Finally, citing a 2013 decision of the Illinois Appellate Court, T.G. claimed that "Dr. Fortin's constellation of multiple injuries theory to form her opinion that [I.G.]'s injuries were the result of child physical abuse was rejected by the Appellate Court in [*In re Yohan K.*, 2013 IL App (1st) 123472], a case in which Dr. Fortin testified and rendered the same opinion."

¶ 68 In its response to T.G.'s motion to strike, the State contended that the circuit court "properly overruled all hearsay objections to Dr. Fortin's testimony." The State argued that "Dr. Fortin properly relied on information received from other physicians and medical professionals involved in the treatment and diagnosis of [I.G.] in coming to her opinions in this case." The State further asserted that "Dr. Fortin properly reviewed and relied on interview contact notes from assigned DCFS investigators in forming her opinions in this case." In addition to conversations between Fortin and W.W. and T.G., the State posited that "Dr. Fortin specifically testified that experts in her field of child abuse pediatrics rely on investigatory notes to help form opinions and that she did the same in the case of [I.G.]." The State also argued that "Dr. Fortin correctly opined to a reasonable degree of medical certainty as an expert in child abuse pediatrics that the mechanism for [I.G.]'s injuries was child physical abuse." The State noted that in *Yohan K.*, "approximately ten separate doctors testified at the adjudication hearing for Yohan, almost all of whom gave medical testimony regarding possible alternative and non-abusive explanations for Yohan's injuries." Conversely, in the instant case, the State contended that "there was no medical explanation to possibly explain the injuries [I.G.] was diagnosed with, specifically in regards to his rib injuries, other than child physical abuse" and "there *was* evidence of abusive action to [I.G.] as seen with the statements that both Mother and Father gave about [I.G.] allegedly falling off the bed, a story that changed multiple times to Dr. Fortin, hospital staff and the DCP investigator." (Emphasis in original.)

¶ 69 The GAL filed a response to T.G.'s motion to strike, adopting the State's arguments. The GAL further stated, in part:

> "Father claims that Dr. Fortin's testimony should be stricken due to her reliance upon certain out of court statements. Dr. Fortin took into consideration a number

> of statements in forming her conclusion that the minor was the victim of physical abuse. However, ultimately Dr. Fortin's conclusion was based on her medical expertise, not the out-of-court statements. In fact, Dr. Fortin was able to form her opinion about the mechanism of injury partly due to the lack of explanation contained [in the out] of court statements as causation. It follows that Dr. Fortin's so-called reliance upon these statements essentially amounts to reliance upon nothing, as the parents, other interviewees and DCP offered no reasonable explanation for the injuries. Furthermore, the parents have failed to provide any evidence contradicting the statements Dr. Fortin considered. The parents still have no rational medical explanation for Isaiah's rib fractures."

The GAL argued that "if the court interprets Dr. Fortin's testimony as relying upon the statements alleged by the father, the father has failed to provide a legal basis for striking Dr. Fortin's expert testimony." According to the GAL, "[t]he father failed to demonstrate, through cross-examination of Dr. Fortin, what, if any, statements she relied upon that are not normally relied upon by those in her field."

¶ 70 During continued proceedings on August 26, 2014, the court asked T.G.'s counsel whether he was "asking to strike portions of Dr. Fortin's testimony[.]" Counsel responded, "Actually, now I am asking to strike the entirety."

¶ 71 6. Officer Stephen Curry

¶ 72 On August 26, 2014, Officer Stephen Curry (Curry) of the Dolton police department testified as a rebuttal witness. Curry testified that he and his partner responded to a call regarding an "unwanted subject" at a home in Dolton on June 4, 2013. Curry testified that he saw T.G. at that home. According to Curry, T.G. "said he wanted [W.W.] off his property and

she tried to burn the house down or something to that nature." Curry told W.W. to leave the property, which she did. Curry saw an "already-burnt piece of paper on, like, the step or something" near the door.

¶ 73 7. Aunt T.

¶ 74 Aunt T. testified that T.G. called her between 12:00 and 1:00 "that morning" on June 3, 2013. According to Aunt T., T.G. informed her that "[W.W.] was not at home and she had been away from home and she tried to put something through the door -- the mailbox to set the house on fire and I had to go and get the kids." Aunt T. clarified that T.G. had indicated that the children were in the home at that time. T.G. also told Aunt T. that "he had changed the locks on the door so [W.W.] couldn't get in the house because she had been away." Aunt T. testified that she "relocated to [T.G.'s] home" because "the mom had not been there and he said that she tried to set the house on fire through the mailbox and the children shouldn't have been there anyway."

¶ 75 Aunt T. further testified that Holmes visited her home at approximately 5:00 p.m. on June 4. According to Aunt T., she called T.G. for Holmes because Holmes "kept trying to get in touch with him and he wouldn't answer her call." Aunt T. testified that, during the earlier call – on "June 3rd going into June 4th" – T.G. had indicated that "he had called the police" after the mailbox incident.

¶ 76 C. Hearing on Motion to Strike

¶ 77 On September 16, 2014, the court heard arguments on T.G.'s motion to strike and on the adjudication.

¶ 78 T.G.'s counsel argued, among other things, that he had not "located anything in the transcript that shows that vitamin D test were [*sic*] in fact done or that mineral test were [*sic*] done to determine bone density, et cetera, et cetera, et cetera." Counsel contended that "[i]f

there's no evidence whatsoever in this case about what vitamin D levels are of the child or whether they were deficient, the expert cannot rule out any nonaccidental means of the breakage of the bones or the ribs." He also argued that Fortin "relie[d] on the statements of third-party civilians," which counsel asserted "is not the type of evidence or information that an expert could reasonably rely upon." Citing *Yohan K.*, T.G.'s counsel also posited that "Dr. Fortin never testified that she was an expert in orthopedics, bone breakage." Counsel argued that "a person who testifies outside their area of expertise is not an expert."

¶ 79 W.W.'s counsel "concurred" with T.G.'s position, stating: "I do find it a little disconcerning [*sic*] that you have someone who is relying on information and statements from other people and forming her opinion. And we have no way of testing the credibility and the reliability of the information she received in forming her opinion. And it does set up a slippery slope."

¶ 80 The ASA initially argued that T.G.'s motion to strike was untimely; "[t]he State had already finished its expert testimony of this witness." The ASA also noted that Fortin "was tendered as a witness without objection" and counsel "knew the content of her report." The ASA also further noted that the MPEEC summary statement "note[d] vitamin D levels were tested within normal ranges concluding the fact that in fact vitamine [*sic*] D was ruled out." Counsel argued that Fortin is an expert in child abuse pediatrics and "in her role as that she works almost as a forensic interviewer. She does test. She meets with the parents. She meets with other doctors. And she does everything she can to assess the injuries that a minor presents with, and rule out any alternative causes." The ASA stated that Fortin did not rely solely on the statement of Aunt J. and Aunt T. "and any other outside source that Counsel wants to say is not credible." Also, the ASA noted that Fortin held independent interviews with the parents "during which they

gave inconsistent statements about what happened to the minor." According to the ASA, "nothing that [Fortin] heard from them or in the medical records she reviewed from both Lurie and Ingalls Hospital did she find anything that would amount to why the minor presented with a head injury and in conjunction with the head three fractured ribs." The ASA also argued that the only witness for the defense was T.G. – who counsel asserted "was impeached numerous times through the State's rebuttal witnesses" – and "[t]here is nothing to contradict what Dr. Fortin testified to." The GAL attorney adopted the ASA's arguments.

¶ 81 The court indicated that it was reasonable for expert physicians to rely on, among other things, medical records, their examinations of patients, discussions with their medical teams and conversations with the parents. Regarding the "interview notes of the four civilians," the court stated as follows:

> "I would note and certainly concede or admit that those interviews are hearsay and it would be inadmissible – they would not be admissible if Investigator Holmes came in and attempted to testify to what those people said.
>
> However, as [the GAL attorney] *** argued, a reliance on those notes in my view amounts to reliance on really nothing as in all four of the summaries the subject stated that they were aware of no explanation for the minor's injuries. I find no basis to strike Dr. Fortin's testimony based on the father's reasonable reliance theory because it was reasonable to rely on everything else. And although courts have previously held that it is reasonable to rely on interviews, with witnesses in this case the interviews really didn't provide any information that was really relevant to the case. So I don't think the reasonable reliance argument is a reason to strike the testimony of the doctor."

The court denied T.G.'s motion to strike Fortin's testimony.

¶ 82 D. Adjudication Orders

¶ 83 After hearing arguments on September 16, 2014, the court ruled on September 24, 2014. The court entered an adjudication order finding Neglect-Injurious Environment with respect to J.W. because "this minor's sibling was diagnosed with three healing rib fractures the result of child physical abuse. Mother and father have a history of domestic violence." Also on September 24, 2014, the court entered an adjudication order finding Neglect-Injurious Environment, Abuse-Substantial Risk of Injury, and Abuse-Actual Injury with respect to I.G. because "minor was diagnosed with three healing posterior rib fractures caused by physical abuse, parents have a history of domestic violence, mother previously choked her daughter who is no longer in her care." Both adjudication orders indicate the "abuse or neglect" was inflicted by a "perpetrator unknown."

¶ 84 E. Dispositional Hearing and Orders

¶ 85 After hearing testimony and arguments, the court entered two disposition orders on November 14, 2014, adjudging J.W. and I.G., respectively, as wards of the court and finding W.W. and T.G. to be "unable for some reason other than financial circumstances alone to care for, protect, train, or discipline the minor[.]"[9]

¶ 86 On December 15, 2014, T.G. filed a notice of appeal, appealing the "Dispositional Order making minors Wards of the Court and adjudication."

¶ 87 II. ANALYSIS

¶ 88 A. Denial of Motion to Strike Fortin Opinion

[9] As discussed below, T.G. states that he "is challenging the dispositional hearing order insofar as it is a prerequisite for appeal." Because T.G. advances no substantive arguments regarding the dispositional orders, we have not provided details regarding the dispositional hearing herein.

¶ 89 Citing Rule 703 of the Illinois Rules of Evidence, T.G. contends that the circuit court erred in denying his motion to strike Fortin's opinion. Rule 703, entitled "Bases of Opinion Testimony by Experts," provides:

> "The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence." Ill. R. Evid. 703 (eff. Jan. 1, 2011).

T.G. asserts that Fortin "relied on the DCFS notes and the information given by the four persons" – the babysitter, the babysitter's wife, Aunt J., and the maternal grandmother – "in forming her opinion," including "a text message that one of the four persons told Harriet [*sic*] Holmes she received from the mother." According to T.G., "[t]here is nothing to show that these persons' statements were sufficiently trustworthy to make Dr. Fortin's reliance on them reasonable."

¶ 90 The GAL[10] counters that "[a]s an expert in pediatric child abuse, Dr. Fortin was allowed to testify as to the facts and data reasonably relied on by other pediatric child abuse experts." According to the GAL, Fortin "stated that it is normal medical practice for her to rely on DCFS investigation notes." The GAL argues that "[T.G.] presented no evidence that it is not normal practice for medical child protective services teams to rely on DCFS investigation notes. It was [T.G.'s] responsibility to challenge the sufficiency or reliability of the basis for Dr. Fortin's opinion during his cross-examination."

¶ 91 " 'Whether a witness is sufficiently qualified to testify as an expert is a matter committed to the sound discretion of the trial court whose determination on the issue may be reversed only

[10] In its appellate brief, the State adopted the arguments of the GAL. For purposes of clarity, we refer solely to the GAL herein.

if it constitutes a clear abuse of discretion.' " *In re Juan M.*, 2012 IL App (1st) 113096, ¶ 53, citing *In re Beatriz S.*, 267 Ill. App. 3d 496, 499 (1994). See also *Southwestern Illinois Development Authority v. Al-Muhajirum*, 348 Ill. App. 3d 398, 401 (2004) ("A trial judge's determination on the admissibility of expert testimony is a decision left to that judge's sound discretion, and we will not disturb it unless the circumstances reveal that the trial judge manifestly abused his discretion.").

¶ 92 "[E]vidence which is substantively inadmissible may nevertheless be admissible for the limited purpose of explaining the basis for an expert's opinion." *Lovelace v. Four Lakes Development Co.*, 170 Ill. App. 3d 378, 382-83 (1988). "Where the issue was the admission or exclusion of an expert's entire opinion testimony, the Illinois Supreme Court adopted the position that the trial court should liberally allow the expert to determine what materials are reasonably relied on by those in his field." *Lovelace*, 170 Ill. App. 3d at 383, citing *Melecosky v. McCarthy Brothers Co.*, 115 Ill. 2d 209, 216 (1986). "It is the opponent's responsibility to then challenge the sufficiency or reliability of the basis for the expert's opinion during cross-examination, and the determination of the weight to be given the expert's opinion is left to the finder of fact." *Lovelace*, 170 Ill. App. 3d at 384.

¶ 93 In this case, Fortin testified that reliance on DCFS investigatory notes would be "one component" in the creation of an MPEEC summary statement. *Cf. Stehlik v. Village of Orland Park*, 2012 IL App (1st) 091278, ¶ 29 (noting that "plaintiffs' expert offered no specifics regarding his firsthand experience with showup procedures; much less with ones comparable to the facts presented here"). No evidence was presented during the adjudicatory hearing that countered Fortin's representation regarding her reliance in the "normal course of practice" on DCFS investigatory notes.

¶ 94 T.G. further argues that "it was not reasonable for Dr. Fortin to rely on the investigative reports of Harriette Holmes in forming her opinion since the reports were prepared with an eye toward litigation and where [*sic*], therefore, untrustworthy." T.G. cites a federal case, *Hernandez v. Foster*, 657 F.3d 463 (7th Cir. 2011) as an example of the "considerable amount of litigation between DCFS and parents over alleged constitutional violations, including safety plans." However, T.G. provides no support for his assertion that the DCFS investigative reports, in general or in this particular case, are prepared with "an eye toward litigation." The GAL acknowledges that in *In re A.P.*, 2012 IL App (3d) 110191, the appellate court held that the circuit court erred in admitting records which contained a report by a physician opining that a child's burns were caused by physical abuse. *Id.* ¶ 6. As the GAL correctly observes, however, "the medical report at issue was not made in the regular course of business." The report was issued months after the child's physical examination and was prepared by a consulting physician. *Id.* ¶¶ 4, 16. Conversely, Fortin was I.G.'s treating physician, and she prepared the report within a few weeks of I.G.'s injuries.

¶ 95 T.G. also cites *People v. Smith*, 141 Ill. 2d 40, 72 (1990) for the proposition that " 'business records' prepared with any eye toward litigation when offered by the party at whose behest such records were made (are inadmissible)." In *Smith*, our supreme court held that "prison incident reports are not admissible under the business records exception to the rule against hearsay when offered to prove the particulars of disciplinary infractions or of confrontations between prison employees, or law enforcement personnel and prison inmates." *Id.* at 74. We do not agree that the *Smith* rationale – in the context of prison incidents – is applicable to the instant case. The GAL observed during the adjudicatory hearing that "some" DCFS investigations are "unfounded or closed for various reasons and they never even see the

courtroom." She continued, in part:

> "This cannot be compared to confrontations between prison employees and inmates. DCFS has no stake in the specific outcome of an investigation. They merely get the hotline call and they go to investigate. That's different than a prison employee having a confrontation with an inmate and that present employee having a stake in the outcome and their statement being possibly unreliable."

In summary, we do not find T.G.'s argument that the DCFS records at issue in the instant case were "prepared with an eye toward litigation" to be persuasive.

¶ 96 "The credibility of the expert and the weight to be given his opinion are matters to be decided by the trier of fact in light of the expert's credentials and the basis for the expert's opinion." *In re J.J.*, 327 Ill. App. 3d 70, 79 (2001). "A trial court is not required to accept the opinion of the expert when the court renders its ultimate determination." *Id.* at 79. The appropriate response to any potential concerns regarding the basis for Fortin's opinion was to permit counsel to engage in vigorous cross-examination of Fortin and to permit counsel to present any evidence in response. The circuit court did just that. In conclusion, the circuit court did not abuse its discretion in denying T.G.'s motion to strike Fortin's opinion.

¶ 97 B. Findings of Abuse and Neglect

¶ 98 T.G. argues that the trial court "failed to prove by a preponderance of the evidence that [I.G.'s] rib fractures were caused by physical abuse." He further contends that "[t]he State had failed to prove by a preponderance of the evidence that [J.W.] and [I.G.] were neglected due to an injurious environment."

¶ 99 "In a proceeding for the adjudication of abused or neglected minors, the State must prove the allegations in the petition by a preponderance of the evidence." *In re Juan M.*, 2012 IL App

(1st) 113096, ¶ 49. "Preponderance of the evidence" is an amount that leads a trier of fact to find that the fact at issue is more probable than not. *Id.* "We will not disturb the trial court's findings that the children have been abused or neglected, unless those findings are against manifest weight of the evidence," meaning that the opposite conclusion is clearly evident or the determination is unreasonable, arbitrary, and not based on the evidence. *Id.* See also *In the Interest of M.Z.*, 294 Ill. App. 3d 581, 592 (1998) ("A trial court's determination that a parent has neglected his or her child is entitled to great deference on appeal and will not be overturned unless the findings of fact are against the manifest weight of the evidence[.]").

¶ 100 T.G. asserts that the "State failed to prove physical abuse for two reasons." First, T.G. contends that "there is no evidence in the record that Dr. Fortin was qualified to render an opinion on the causation of bone fractures." "Even if she was so qualified," T.G. argues,"the lack of evidence regarding her experience in diagnosing the cause of bone fractures does not permit the evidence to rise to the level of proof by a preponderance of the evidence." Second, T.G. contends that "Dr. Fortin was unable to rule out accidental causes for [I.G.'s] posterior rib fractures."

¶ 101 Citing *In re Yohan K.*, 2013 IL App (1st) 123472, T.G. asserts that "[t]his court has previously stated that Dr. Fortin is not an expert in orthopedics." In *Yohan K.*, ten physicians testified at the adjudicatory hearing regarding an infant who had medical issues, including seizures and intracranial bleeding. The witnesses included experts in pediatric hematology, opthalmology, radiology, neurosurgery and orthopedics; Fortin testified as an expert in pediatrics and child abuse pediatrics. *Id.* ¶¶ 46-94. The appellate court reversed the trial court's finding that the infant suffered physical abuse. *Id.* ¶ 157. The court concluded that "[t]he trial court erred by relying on the proponents' 'constellation of injuries' theory to issue a judicial finding of

child abuse in the absence of any evidence of an abusive action by either of the children's only caretakers and a lack of evidence proving causation as to each separate injury, particularly in light of the substantial evidence that Yohan had a preexisting medical condition known to mimic the signs of abuse." *Id.* ¶ 156.

¶ 102 While the *Yohan K.* court noted that "Dr. Fortin has no expertise in either orthopedics or the diagnosis of rickets" (*id.* at 127), the case is distinguishable from the instant matter in a number of respects. Unlike in *Yohan K.*, no other medical expert or medical evidence was presented in this case. Illinois courts have held that a trial court cannot disregard expert medical testimony that is not countervailed by other competent medical testimony or medical evidence. See, *e.g.*, *Juan M.*, 2012 IL App (1st) 113096, ¶ 59; *In re Interest of Ashley K.*, 212 Ill. App. 3d 849, 890 (1991) ("The circuit court cannot disregard expert medical testimony that is not countervailed by other competent medical testimony or medical evidence. Moreover, the circuit court, itself, cannot second-guess medical experts."). We also note that, while T.G. argues on appeal that "Dr. Fortin was not qualified to render an expert opinion on the causation of rib fractures," T.G.'s counsel was aware prior to the adjudicatory hearing that Fortin would testify regarding the skull and rib fractures sustained by I.G.; counsel did not challenge Dr. Fortin's expertise until after the completion of her testimony.

¶ 103 Furthermore, in *Yohan K.*, the parents' "separate accounts" (*Yohan K.*, 2013 IL App (1st) 123472, ¶ 21)) were consistent, whereas W.W.'s explanation of I.G.'s injuries appears to have changed from "no falls" to "one fall" to "two falls," and T.G.'s statements regarding the timing of the fall(s) appear to have differed from those of W.W. In *Yohan K.*, there were "reasonable nonabuse explanations (*id.*, ¶ 147) for each of the individual conditions" suffered by the child; the *Yohan K.* parents "offered sound medical triggers for" (*id.*, ¶ 141) their child's intercranial

bleeding. Conversely, in the instant case, there was no reasonable nonabuse explanation for the skull fractures and rib fractures sustained by I.G.

¶ 104 Fortin testified that the rib fractures were indicative of child physical abuse "[b]ased on the entire assessment." She stated, in part:

> "So rib fractures, especially rib fractures in the posterior or the back have a high specificity for abuse because we don't see these commonly with accidents. The type of accidents that would cause this would be known to the parent of an eight-month-old such as like a high speed motor vehicle crash or a really significant household accident. So there was already an injury that's concerning and in this case there was no medical diagnosis to explain the injury and no accidental mechanism that would clearly explain the injuries."

T.G. contends on appeal that "[t]here are so many varying or uncertain factors in this case that Dr. Fortin's opinion is speculation." We disagree. Although she was unable to state, with absolute certainty, that I.G.'s injuries were the result of physical abuse, her opinion was far from "mere conjecture and guess" (*Dyback v. Weber*, 114 Ill. 2d 232, 244 (1986)), as is posited by T.G. Furthermore, T.G. asserts that Fortin "never discounted that because [I.G.] can both cruise and climb, even going so far as to try to climb off his father's shoulder at the hospital, he may have accidentally broke his ribs in a really significant household accident while climbing at the babysitter's house." However, nothing in the record supports this proposition; it is arguably the type of "conjecture and guess" that T.G. has alleged of Fortin.

¶ 105 T.G. cites *Reed v. Jackson Park Hospital Foundation*, 325 Ill. App. 3d 835 (2001) for the proposition that an "expert cannot base his or her opinion on what may have occurred or what the expert believes happened in a particular case." However, in *Reed*, the court found that the expert

witness "did not demonstrate that his opinion were based on anything more than an educated guess." *Id.* at 844. Similarly in *Modelski v. Navistar Intern. Transp. Corp.*, 302 Ill. App. 3d 879, 886 (1999), also cited by T.G., the "expert" opinions were characterized as "sheer speculation" and "fictional musings." Conversely, based on Fortin's testimony and the other evidence presented, the circuit court's conclusion that the State met its burden of proving I.G. was physically abused was not against the manifest weight of the evidence.

¶ 106 Neglect is defined as " 'the failure to exercise the care that circumstances justly demand and encompasses both willful and unintentional disregard of parental duty.' " *Juan M.*, 2012 IL App (1st) 113096, ¶ 65, citing *In re D.W.*, 386 Ill. App. 3d 124, 135 (2008). "The term 'neglect' has a fluid meaning that varies with the facts and circumstances of each case." *Juan M.*, 2012 IL App (1st) 113096, ¶ 65. "Neglect based on 'injurious environment' is an 'amorphous concept' not readily susceptible to definition." *In the Interest of K.G.*, 288 Ill. App. 3d 728, 735 (1997). An "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.' " *Juan M.*, 2012 IL App (1st) 113096, ¶ 65, citing *D.W.*, 386 Ill. App. 3d at 135.

¶ 107 Citing *In re N.B.*, 191 Ill. 2d 338 (2000), T.G. contends that "there was no evidence presented to show that that [*sic*] the minors were in any danger from the argument between W.W. and T.G." In *N.B.*, the court found that there was "no evidence" that the mother's "temper, though admittedly strong, posed any harm to her children." *N.B.*, 191 Ill. 2d at 351. However, the record in the instant case includes an adjudication order entered on May 19, 2008, finding W.W. "jeopardized the physical and emotional wellbeing" of her daughter T.W. by choking her and "failing to attend the necessary family counseling" after T.W. was sexually abused in another state. Furthermore, evidence regarding domestic violence issues between W.W. and T.G. –

including testimony from Holmes, Aunt T., and Officer Curry[11] regarding the mailbox fire incident in June, 2013 – are consistent with the court's findings that J.W. and I.G. were in an injurious environment.

¶ 108 In his appellate brief, T.G. focuses on the seeming absence of a safety plan signed by T.G. He contends that "the Illinois Supreme Court has held that violation of a safety plan cannot be considered at an adjudicatory hearing as evidence of abuse and neglect unless the State proves that a safety plan existed by entering a signed copy into evidence and unless the is [*sic*] evidence that the person or persons who signed it understood the parameters of the safety plan." However, based on our review of the appellate record, it does not appear that the violation of a safety plan was the only – or primary – basis for the circuit court's findings.

¶ 109 The court's primary concern is the best interests of J.W. and I.G. See *Juan M.*, 2012 IL App (1st) 113096, ¶ 49. I.G., then eight months old, sustained a skull fracture and multiple rib fractures. Based on the evidence presented to the circuit court – including but not limited to I.G.'s medical records and Fortin's opinion regarding the potential causes of I.G.'s injuries,[12] the findings of abuse and neglect in the prior case involving the children's sister,[13] the testimony regarding the mailbox fire incident, and the changing and/or inconsistent descriptions regarding I.G.'s fall or falls – we do not consider the circuit court's findings of abuse and neglect to be

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[11] With respect to the mailbox fire incident, we note that the court stated, "I do believe the Officer's testimony regarding what he saw and what he heard on 6-4-13 in response to the call made, and not [T.G.'s] denial that he never said that or that it did not happen." The circuit court " 'has the best opportunity to observe the demeanor and conduct of the parties and witnesses and, therefore, is in the best position to determine the credibility and weight of the witnesses' testimony.' " *Juan M.*, 2012 IL App (1st) 113096, ¶ 49, citing *In re F.S.*, 347 Ill. App. 3d 55, 63 (2004).

[12] "Proof that one minor is abused, neglected, or dependent is admissible evidence on the issue of abuse, neglect, or dependency of any other minor for whom the parent is responsible." *K.G.*, 288 Ill. App. 3d at 736; *In re R.R.*, 409 Ill. App. 3d 1041, 1045 (2011) (same).

[13] "A parent's behavior toward one minor may be considered when deciding whether a sibling is exposed to an injurious environment." *In re Interest of K.G.*, 288 Ill. App. 3d 728, 736 (1997).

unreasonable, arbitrary or not based on the evidence. *Juan M.*, 2012 IL App (1st) 113096, ¶ 49. Given that the adjudicatory orders were not against the manifest weight of the evidence, we affirm the orders.

¶ 110 Finally, we observe that the notice of appeal sought relief from the adjudicatory orders and the dispositional orders; the dispositional orders adjudged J.W. and I.G. to be wards of the court. In his appellate brief, T.G. states that he "is challenging the dispositional hearing insofar as it is a prerequisite for appeal, and T.G. claims that the trial court erred in finding the minors abused and or [*sic*] neglected, which would render the dispositional hearing order void." T.G. does not advance any other arguments with respect to the dispositional order. As discussed above, we affirm the circuit court's findings at the adjudicatory hearing; accordingly, T.G.'s argument that the dispositional orders should be reversed based on errors in the underlying adjudicatory order is without merit. In the absence of other arguments, we affirm the dispositional orders. See, *e.g.*, *Juan M.*, 2012 IL App (1st) 113096, ¶ 69. See also Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013) (providing that "[p]oints not argued" in an appellant's brief "are waived"); *In re Charles W.*, 2014 IL App (1st) 131281, ¶ 57 ("Because we have concluded that the trial court did not err in finding minors dependent, we similarly reject respondent's challenge to the trial court's dispositional finding.")

¶ 111 CONCLUSION

¶ 112 For the reasons stated above, we affirm the adjudicatory and dispositional orders of the circuit court of Cook County.

¶ 113 Affirmed.