

NOTICE
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2012 IL App (4th) 120075-U

Filed 6/15/12

NO. 4-12-0075

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: B.K., a Minor,)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
Petitioner-Appellee,)	Adams County
v.)	No. 11JA17
ALICIA DAMICO,)	
Respondent-Appellant.)	Honorable
)	Chet W. Vahle,
)	Judge Presiding.

JUSTICE McCULLOUGH delivered the judgment of the court.
Presiding Justice Turner and Justice Steigmann concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court erred in taking judicial notice of certain material at the adjudicatory hearing; however, any error was harmless because the court did not significantly rely on the offending material and there was ample other evidence to support its neglect finding.

¶ 2 Respondent, Alicia Damico, appeals the trial court's finding that her child, B.K. (born March 22, 2011), was a neglected minor. She argues that finding was against the manifest weight of the evidence and the court improperly took judicial notice of a report from previous juvenile court case involving respondent. We affirm.

¶ 3 On April 12, 2011, the State filed a petition for adjudication of wardship, alleging B.K. was neglected due to an injurious environment. It asserted (1) respondent and B.K. were residing with a family friend, April Hess, who had entered into a safety plan with the Department of Children and Family Services (DCFS) and agreed not to allow respondent to be left

unsupervised with B.K., (2) respondent admitted to DCFS that she could not parent B.K. on her own and would need assistance, (3) respondent had a pending case against her for felony retail theft and believed she would go to prison, (4) another minor had been removed from respondent's care in February 2007, and (5) an integrated assessment in the 2007 case indicated respondent had mental-health issues but she had not been seeking or receiving any treatment for those issues. The record shows B.K.'s father was unknown and not a party to the proceedings at issue.

¶ 4 On October 27, 2011, the trial court conducted the adjudicatory hearing. At the State's request, the court took judicial notice of the judgment order in case No. 11-CF-178, showing in June 2011, respondent was convicted of retail theft and sentenced to one year and six months in the Illinois Department of Corrections (DOC). It also asked the court to take judicial notice of certain material in case No. 07-JA-8, a case involving respondent her child D.J., B.K.'s older half-sibling. Concerning that case, the court specifically took notice of the April 2007 adjudication order, finding D.J. neglected due to a domestic-violence incident after which respondent refused to go to a shelter to protect herself or D.J. and indicated she could not care for D.J. It also took notice of the September 2008 order that terminated respondent's parental rights to D.J. based upon findings that (1) respondent was unfit for failing to maintain a reasonable degree of interest, concern, or responsibility as to D.J.; (2) respondent was unfit for failing to make reasonable progress toward D.J.'s return within any nine-month period; and (3) termination was in D.J.'s best interests.

¶ 5 The State also asked the trial court to take judicial notice of the integrated assessment performed in case No. 07-JA-8. Respondent objected and, initially, the court sustained her objection, finding the integrated assessment would contain hearsay and other

inadmissible material. Later, however, the court acted on its own motion and reconsidered its ruling. It determined it could take judicial notice of the integrated assessment as it was part of the court file in that previous case. It noted the assessment had been admitted into evidence in the previous case and respondent had the opportunity to contradict or rebut the information provided therein. The court determined it was for the parties to argue the weight to be given the integrated assessment.

¶ 6 The integrated assessment showed respondent's child, D.J., was taken into protective custody after an incident of domestic violence between respondent and D.J.'s father. Following the incident, respondent indicated she might not continue with an order of protection and felt D.J. needed to go to a foster home. There was also an indicated report of failure to thrive regarding D.J. Further, The assessment described respondent as demonstrating a developmental delay and mental-health concerns. Respondent reportedly admitted she was disabled and needed medication. She acknowledged previously having been on psychotropic medication and hospitalized for mental-health issues.

¶ 7 At the adjudicatory hearing, the State also presented the testimony of Tracie Feller, a DCFS investigator. Feller stated that, in March 2011, DCFS received a report that respondent, an individual with a prior history with DCFS, had given birth to B.K. On March 24, 2011, Feller met with respondent at the hospital and respondent reported that she was living with Hess, a family friend. Feller was aware of information from respondent's prior DCFS case that suggested respondent had mental-health issues. Upon inquiry by Feller, respondent denied that she needed either medication for any mental-health issues or mental-health services. On March 24, 2011, Feller also discussed implementing a safety plan with Hess. Both Hess and respondent

agreed to the plan that required B.K. and respondent to live in Hess's home and Hess to act as B.K.'s primary caregiver. Hess also agreed not leave B.K. alone with respondent.

¶ 8 Feller testified that, when she visited respondent and B.K. in the hospital, respondent seemed nurturing to B.K. However, when discussing the amount of food B.K. should be taking in, respondent stated B.K. would drink a bottle a day. Respondent also told Feller that she was not interested in receiving services from DCFS. Later, when Feller visited Hess's home, she observed it to be clean and adequately furnished. Feller testified that respondent and Hess were well-prepared for B.K.'s arrival.

¶ 9 On March 31, 2011, Feller visited respondent, B.K., and Hess at Hess's home. Respondent expressed concern that she would be unable to take care of B.K. on her own and revealed that she had recently been charged with shoplifting. She reported having a prior criminal history and believed she would end up serving a jail or prison sentence in connection with the new charge against her.

¶ 10 On April 6, 2011, DCFS received a report that respondent attempted to give guardianship of B.K. to a family friend. On April 8, 2011, Feller took protective custody of B.K. after receiving information that suggested an individual named Keith Kelley was also living with Hess. Feller testified Hess "had bonded out" Kelley to Hess's home. Feller considered Kelley's presence in the home to be a violation of the safety plan. At the State's request, the trial court took judicial notice of an appearance bond form in case No. 07-CM-196, involving Kelley. The court also took judicial notice of the charge and judgment order in that case, showing Kelley was charged with battery and domestic battery.

¶ 11 The parties stipulated that, if called, Dr. Gina Dietrich would testify that she

provided prenatal care to respondent during her pregnancy with B.K. Based upon her observations, Dr. Dietrich believed respondent would require support and supervision in caring for B.K. However, she had no concerns that respondent was using illegal drugs or that she had a mental illness.

¶ 12 Hess testified on respondent's behalf. She stated she had known respondent for approximately seven or eight years and respondent had lived with her. Hess agreed to help respondent care for B.K. and entered into a safety plan with DCFS. She acknowledged that she posted bond for Kelley, her boyfriend, and stated she believed it was in relation to a traffic case. Although, on the bond form, Kelley listed Hess's address as his own, Hess denied that Kelley lived in her home and asserted she did not know he reported her address as his own. She acknowledged that she listed a former address on the bond form for herself but testified it was a mistake and not an attempt to hide information.

¶ 13 Hess further stated her involvement with Kelley continued and she was unaware that he had ever been charged with, or convicted of, domestic battery. Finally, she stated that, when confronted by Feller about posting bond for Kelley, she did not tell Feller that Kelley was her boyfriend. Hess testified Feller never asked whether Kelley was her boyfriend and Hess did not volunteer the information, stating instead that she was doing a favor for Kelley's aunt.

¶ 14 On December 20, 2011, the trial court entered its adjudicatory order finding B.K. to be a neglected minor. The court determined as follows:

"[Respondent] was previously found unfit in [case No.] 01[-]JA [-]8 due to neglect and inability to parent and her parental rights were terminated. She is still unable to safely and effectively parent

and nurture [B.K.] without significant support and supervision, she herself has acknowledged that fact, and there is no reason to believe her situation will change anytime soon, especially since she has declined DCFS assistance and was sentenced to DOC. The father is unknown and no one has come forward to claim paternity."

¶ 15 On January 11, 2012, the trial court conducted the dispositional hearing and entered its dispositional order. It adjudicated B.K. a neglected ward of the court and placed her custody and guardianship with DCFS.

¶ 16 This appeal followed.

¶ 17 On appeal, respondent challenges the trial court's neglect finding. She argues (1) the court erred at the adjudicatory hearing by taking judicial notice of the integrated assessment from the 2007 juvenile neglect case involving respondent and (2) the neglect finding was against the manifest weight of the evidence.

¶ 18 At the adjudicatory hearing, the trial court determines whether a minor is abused, neglected, or dependent. 705 ILCS 405/2-18(1) (West 2010). The State must prove allegations of neglect by a preponderance of the evidence. *In re Arthur H.*, 212 Ill. 2d 441, 463-64, 819 N.E.2d 734, 747 (2004). "On review, a trial court's ruling of neglect will not be reversed unless it is against the manifest weight of the evidence" and "[a] finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident." *Arthur H.*, 212 Ill. 2d at 464, 819 N.E.2d at 747.

¶ 19 "A trial court may take judicial notice of matters of record in its own

proceedings." *In Interest of J.G.*, 298 Ill. App. 3d 617, 628, 699 N.E.2d 167, 175 (1998).

However, a party must specify the scope of its judicial-notice request and "wholesale judicial notice of everything that took place prior to the *** hearing is unnecessary and inappropriate."

J.G., 298 Ill. App. 3d at 629, 699 N.E.2d at 175; *In re A.L.*, 409 Ill. App. 3d 492, 504, 949

N.E.2d 1123, 1132 (2011). Generally, "[w]hether evidence is admissible is within the discretion of the circuit court, and its ruling will not be reversed absent an abuse of that discretion." *In re A.W.*, 231 Ill. 2d 241, 256, 897 N.E.2d 733, 742 (2008).

¶ 20 In juvenile abuse or neglect proceedings, clarity in a request for judicial notice is important due to the different rules of evidence that apply in adjudicatory and dispositional hearings. *In re A.L.*, 409 Ill. App. 3d 492, 504, 949 N.E.2d 1123, 1133 (2011). "[T]aking judicial notice *** cannot result in admitting hearsay evidence where it would otherwise be prohibited." *In re A.B.*, 308 Ill. App. 3d 227, 237, 719 N.E.2d 348, 357 (1999). At an adjudicatory hearing, "[t]he standard of proof and the rules of evidence in the nature of civil proceedings *** are applicable." 705 ILCS 405/2-18(1) (West 2010). The rules of evidence are more relaxed at a dispositional hearing and the court may consider "[a]ll evidence helpful" in determining a child's best interests "including oral and written reports." 705 ILCS 405/2-22(1) (West 2010).

¶ 21 Before the trial court, respondent raised foundational and hearsay objections to the State's request that the court take judicial notice of the integrated assessment from respondent's 2007 juvenile neglect case. The court agreed that the assessment likely contained hearsay but, nevertheless, took judicial notice, finding respondent had the opportunity to counter or rebut the information in the assessment in the previous proceedings. On appeal, the State

contends the court properly took judicial notice of the integrated assessment because DCFS was required by statute to prepare one (20 ILCS 505/7(c) (West 2010)) and, as such, the assessment was admissible under the business record exception to the rule against hearsay contained in section 2-18(4)(a) of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/2-18(4)(a) (West 2010)).

¶ 22 Section 2-18(4)(a) of the Act (705 ILCS 405/2-18(4)(a) (West 2010)) provides as follows:

"Any writing, record, photograph or x-ray of any hospital or public or private agency, whether in the form of an entry in a book or otherwise, made as a memorandum or record of any condition, act, transaction, occurrence or event relating to a minor in an abuse, neglect or dependency proceeding, shall be admissible in evidence as proof of that condition, act, transaction, occurrence or event, if the court finds that the document was made in the regular course of the business of the hospital or agency and that it was in the regular course of such business to make it, at the time of the act, transaction, occurrence or event, or within a reasonable time thereafter." 705 ILCS 405/2-18(4)(a) (West 2010)).

For evidence to be admitted under section 2-18(4)(a), the proponent must establish a foundation by showing "the writing was (1) made as a memorandum or record of the condition or event; (2) made in the ordinary course of business; and (3) made at the time of the event or within a reasonable time thereafter." *In re J.Y.*, 2011 IL App (3d) 100727, ¶ 13, 962 N.E.2d 1, 5 (2011).

¶ 23 Here, the State requested the trial court take judicial notice of the integrated assessment, a writing containing hearsay. Such evidence is inadmissible at an adjudicatory hearing. Although the State argues the integrated assessment fits within section 2-18(4)(a)'s business-records exception to the hearsay rule, as discussed, certain foundational requirements had to be met for admittance under that section. This record does not show the State established any of those foundational requirements. Further, while the record indicates the integrated assessment was previously admitted at a *dispositional hearing* in respondent's 2007 juvenile neglect case, the evidentiary rules for dispositional hearings are less stringent than those for adjudicatory hearings. In this instance, the court erred in taking judicial notice of the integrated assessment.

¶ 24 Nevertheless, we find the trial court's error was harmless. See *J.Y.*, 2011 IL App (3d) 100727, ¶ 15, 962 N.E.2d at 6 (Where ample evidence supports the court's neglect finding, errors in the admission of evidence may be deemed harmless). First, the record does not show the trial court relied upon the material contained in the integrated assessment in reaching its decision. Specifically, the State's purpose in submitting the assessment was to show respondent suffered from mental-health issues and the court made no mention of those issues in its decision.

¶ 25 Second, sufficient other evidence supported the trial court's neglect finding. In particular, respondent's parental rights to another child were terminated in 2008. We note "proof of the abuse, neglect or dependency of one minor shall be admissible evidence on the issue of the abuse, neglect or dependency of any other minor for whom the respondent is responsible." 705 ILCS 405/2-18(3) (West 2010). Additionally, in the present case, respondent expressed concern that she would be unable to take care of B.K., respondent was in prison after having been convicted of retail theft, and B.K.'s father was unknown. Finally, although respondent points out

she lived with Hess and Hess assisted in caring for B.K., the record indicates Hess was deceptive about her living situation and not forthcoming with DCFS about her relationship with an individual she bonded out of jail.

¶ 26 Here, the record shows the trial court did not significantly rely on the integrated assessment and ample other evidence supported the court's decision. The court's neglect finding was not against the manifest weight of the evidence.

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

¶ 28 Affirmed.