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2012 IL App (4th) 120129-U

Filed 7/11/12

NO. 4-12-0129

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

MATTHEW S. FRAYSURE,	)	Appeal from
Petitioner-Appellee,	)	Circuit Court of
v.	)	Macon County
NICHOLE M. MASON,	)	No. 11OP376
Respondent-Appellant.	)	
	)	Honorable
	)	Thomas E. Little,
	)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.  
Presiding Justice Turner and Justice Pope concurred in the judgment.

**ORDER**

¶ 1 *Held:* The appellate court affirmed, concluding (1) the trial court's finding that the minor child was abused under the Domestic Violence Act was not against the manifest weight of the evidence, (2) the court did not abuse its discretion in admitting evidence, and (3) the father did not misuse the Domestic Violence Act to obtain custody of the minor child.

¶ 2 On May 16, 2011, petitioner, Matthew Fraysure, filed a verified petition for order of protection, alleging that respondent, Nichole Mason, caused bruises to their daughter, I.F. The trial court granted an emergency order of protection and appointed Fraysure as I.F.'s temporary caretaker. Following a January 2012 plenary hearing, the court granted Fraysure's order of protection, which it extended for two years.

¶ 3 Mason appeals, arguing (1) the trial court's finding that I.F. was abused was against the manifest weight of the evidence, (2) the court erred by admitting certain evidence, and

(3) Fraysure misused the Illinois Domestic Violence Act of 1986 (Domestic Violence Act) (750 ILCS 60/101 to 305 (West 2010)) to obtain custody of I.F. We disagree and affirm.

¶ 4

#### I. BACKGROUND

¶ 5 On May 16, 2011, Fraysure filed a verified petition for order of protection, alleging that Mason caused bruises to I.F., the parties' daughter (born January 10, 2010). The petition indicated that on May 14, 2011, when Fraysure arrived at Mason's house to get I.F., (1) the house smelled like marijuana, (2) I.F. had a foul odor from not being bathed, (3) I.F. was dehydrated and hungry, and (4) I.F. appeared fearful of Mason. The trial court thereafter granted an emergency order of protection and appointed Fraysure as I.F.'s temporary caretaker.

¶ 6

On January 6, 2012, the trial court held a plenary hearing on the petition. Fraysure testified that he is I.F.'s father and Mason is his ex-girlfriend, as well as I.F.'s mother. He and Mason shared time taking care of I.F., but he spent more time with I.F. When he arrived at Mason's to get I.F. on May 14, 2011, Mason was "playing" on her cellular telephone while I.F. was standing in the middle of living room floor. I.F. was wearing thick pajamas, and she looked overheated, pale, sweaty, and "glossy eyed." I.F. "latched" onto Fraysure when he arrived. In the car, I.F. started eating the snacks from the diaper bag as if she had not eaten for "a long time." Once Fraysure and I.F. arrived at Fraysure's parents' home, he changed her diaper and saw that the top half of her body was covered in a rash and the bottom half of her body was bruised. She had bruises on the outside of her left thigh, "two long finger bruises" on the inside of her right thigh, and one along her upper right leg that continued down to her foot. Fraysure took I.F. to the hospital, where she was examined. Hospital staff told Fraysure that he needed to contact the police, but he did not. The hospital contacted the police and the Illinois Department of Children

and Family Services (DCFS).

¶ 7 Teresa Fraysure, Fraysure's mother, testified that Fraysure often visited with I.F. in her home. Teresa had noticed on several occasions that when I.F. returned from Mason's care, I.F. had dirty diapers, often needed a bath, had a diaper rash, had poor hygiene, and was frequently hungry. When I.F. arrived at her home on May 14, 2011, I.F. was "abnormally clutching" Fraysure, was very quiet, and acted lethargic. After Fraysure went upstairs to change I.F.'s diaper, Fraysure called Teresa upstairs to see the bruising on I.F.'s body. Teresa advised Fraysure to take I.F. to the hospital so that I.F. could be fully examined. Teresa explained that she did not initially go to the hospital with Fraysure and only later met up with him.

¶ 8 Edith Clayton, a registered nurse at Kirby Medical Center who had taken classes to identify abuse and neglect as part of her continuing education, testified that she was working in the emergency room when I.F. was brought in. Clayton assisted with I.F.'s examination and found various stages of bruising and a rash on I.F. Clayton explained that the child abuse documentation body map (a diagram that allows the examiner to make markings indicating where injuries appear on a child's body) indicated that I.F. had finger-like bruising on her leg. Clayton took photographs of the bruising. These photographs were later admitted as evidence at the hearing. After conducting an abuse screening, Clayton concluded the evidence warranted her reporting findings to DCFS and the police. Clayton opined that I.F. had been abused based upon the "finger-like bruising and the various stages of bruising" she observed in the emergency room.

¶ 9 Lisa Repko, a physician assistant at Kirby Medical Center, testified that she went through the contents of the medical record prepared on May 14, 2011. Repko performed a medical examination of I.F. and had noted that I.F. had "multiple contusions about the thighs

interiorly" and a "[p]ale blanching macular rash to the trunk." Repko performed a skeletal survey of I.F. to determine whether I.F. had any old fractures or anything that would suggest that I.F. had previously been abused. She also performed a drug screen on I.F., which was negative. Repko explained that she suspected I.F. had been abused. Repko noted that she was required to notify DCFS and police whenever she suspected abuse. As part of her discharge order, Repko directed Fraysure to follow up with DCFS and the Decatur police.

¶ 10 Detective Jeanette Carlton testified that she was assigned to I.F.'s case. Her investigation consisted of interviewing the adults involved, viewing photographs, and obtaining medical records. Detective Carlton spoke with DCFS, Fraysure, Mason, Mason's mother, and Mason's roommate, Courtney Groves. Detective Carlton interviewed Mason, and Mason provided her with an explanation for the bruising. Mason told Detective Carlton that I.F. had thrown herself down on a "Lego" block, causing one of the bruises. Mason said the other bruises could have resulted from (1) her having to grab I.F.'s leg in an effort to keep her from falling off the couch or (2) her holding onto I.F.'s legs when she was on a trampoline. Detective Carlton was skeptical of Mason's story that she grabbed I.F.'s leg on the couch because "it just didn't seem likely" that a person would grab a child in such a way because children are top heavy and that probably would not have prevented I.F. from falling. Detective Carlton did not believe that Mason's explanation for the bruising was consistent with the bruising on I.F. Because of I.F.'s age and the location of the injuries, Detective Carlton opined that the injuries did not appear accidental. Detective Carlton spoke with Groves on several occasions concerning the events surrounding the bruises, and Groves changed her story several times. The inconsistencies in Groves' answers contributed to Detective Carlton's overall conclusion that I.F. was abused.

¶ 11 On cross-examination, Detective Carlton testified that a part of one of the bruises appeared to have a right angle and could have been part of a square similar to that of a "Lego" block. She also testified that Fraysure made allegations that Mason used drugs. Detective Carlton did not inspect the home, but it looked clean and did not appear to present any danger for I.F. She also noted that she did not detect any evidence of cannabis.

¶ 12 Anna Denton, a DCFS child-protection investigator assigned to I.F.'s case, testified that she met with Fraysure's parents, took pictures of I.F.'s leg, back, face, and feet, observed I.F., and interviewed Fraysure, Mason, and Groves. During the course of her investigation, Denton visited Mason's house several times. Mason explained to Denton that one of I.F.'s bruises was from a "Lego" block, and the others were from her grabbing I.F. to keep her from falling off the couch. Denton's investigation report, which the trial court admitted as evidence, indicated that the bruises on I.F.'s body were not located where a two-year-old child would likely have bruises. Denton testified that she also investigated the criminal history of Mason's boyfriend and found that it was "extensive." Denton explained that she did not detect any evidence of drug use.

¶ 13 Mason testified that she had previously been the respondent in an order of protection. Fraysure filed an order of protection against her when she was pregnant with I.F. Mason confessed that she smoked marijuana when she was pregnant with I.F. and that she was involved in domestic-violence and drug-possession cases in the past. One of the cases occurred two years prior to I.F.'s birth but was dismissed. Mason added, however, that she was taking 13 hours of classes at a community college, was working 20 to 30 hours a week, and received \$110.77 from Fraysure every two weeks for child support.

¶ 14 Mason further testified she did not abuse I.F. and had never left I.F. alone with her boyfriend. As for the bruises, Mason stated that one was caused by I.F. falling on a "Lego" block, and the other was caused by her attempt to grab I.F. by her upper thighs when she was falling. She explained that the bruises occurred when I.F. was dancing around on the couch. When I.F. started to fall, Mason grabbed I.F. by her legs to keep her from falling. She first noticed the bruising when she was changing I.F.'s diaper. Mason said she told Fraysure about the bruising before he came to pick I.F. up on May 14, 2011. She informed him that he would see bruises on I.F.'s body, and she wanted him to know before he saw them because they were bad. Mason said that Fraysure told her not to feed I.F. before he picked her up because Fraysure was meeting his parents for lunch and wanted I.F. to eat with them. Mason explained that she did not feel the pajamas I.F. was wearing were inappropriate because I.F.'s feet were "always cold" and that she likes to keep them "covered up." Mason pointed out that DCFS never made an administrative finding that I.F. should be removed from her home.

¶ 15 Kari Rogers, a child-welfare specialist with DCFS, testified that DCFS intended to treat this case as an "intact" case and did not make a finding of immediate and urgent necessity to remove I.F. from Mason. Mason completed several services with DCFS, including a substance-abuse evaluation, several drug screenings, and a parenting class. DCFS dismissed the juvenile case filed against Mason. At the time of the hearing, DCFS was not imposing any restrictions on Mason.

¶ 16 Heather Robinson, a Youth Advocate Center employee, testified that she supervised visits between Mason and I.F. while the DCFS case was pending and after it was dismissed. Robinson testified that I.F. never acted afraid of Mason, I.F. was always happy to see

Mason, and the interactions between the two were appropriate.

¶ 17 Christina Mason, Mason's mother, testified that she saw I.F. on May 12, 2011, while she was babysitting. Christina noticed the bruises on I.F. and asked Mason about the bruises. Mason told her that I.F. had fallen on a "Lego" block. Christina explained that I.F. did not seem scared of Mason when Mason picked her up, I.F. was not inappropriately dressed, was not in pain, and was not malnourished. Christina said that she saw I.F. often and that she has never seen Mason abuse I.F., Mason always fed I.F., and Mason never dressed I.F. inappropriately. Christina added that she had seen I.F. with bruises before, but never large bruises on her legs.

¶ 18 On this evidence, the trial court granted Fraysure's petition for an order of protection. The court noted that it was "placing a great deal of weight" on the photographs of I.F.'s bruises. The court found that the testimony of the registered nurse, the physician assistant, the child-protection investigator for DCFS, and the detective was credible. The court found that "abuse within the meaning of the \*\*\* Domestic Violence Act occurred while the child was in the care of the mother." The court granted the order of protection for two years. Due to Mason's status as a student, the cost of supervised visits, the fact that I.F. had not demonstrated fear of her mother during supervised visits, and the involvement of grandparents on both sides, the court found that continued supervised visits were unnecessary.

¶ 19 This appeal followed.

¶ 20 II. ANALYSIS

¶ 21 Mason argues (1) the trial court's finding that I.F. was abused was against the manifest weight of the evidence, (2) the court erred by admitting certain evidence, and (3)

Fraysure misused the Domestic Violence Act to obtain custody of I.F. We disagree.

¶ 22                   A. The Trial Court's Judgment Was Not Against  
                          the Manifest Weight of the Evidence

¶ 23                   The standard of review for a finding of abuse made under the Domestic Violence Act is whether the trial court's decision is against the manifest weight of the evidence. *Best v. Best*, 223 Ill. 2d 342, 350, 860 N.E.2d 240, 245 (2006). "A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or if the finding itself is unreasonable, arbitrary, or not based on the evidence presented." *Best*, 223 Ill. 2d at 350, 860 N.E.2d at 245. As the finder of fact, the trial court's determinations as to witness credibility, the weight to afford evidence, and the inferences to be drawn from the evidence are entitled to significant deference. *Best*, 223 Ill. 2d at 350, 860 N.E.2d at 245.

¶ 24                   Mason contends that the trial court's decision was against the manifest weight of the evidence. Mason admits that the bruises to I.F. occurred while I.F. was in her care. Mason asserts, however, that the bruises were easily explained. In her brief to this court, Mason attempts to provide further explanation for the bruising, *i.e.*, the fact that I.F. is a toddler who is unstable on her feet and toddlers normally have bruises. She also argues that petitioner's testimony was self-serving and that her actions on May 14, 2011—specifically, telling Fraysure about the bruises in advance and allowing Fraysure to pick I.F. up before he was originally scheduled to do so—do not "comport with someone who has just abused a child." Mason further posits that Fraysure did not present evidence that I.F. had been abused in the past.

¶ 25                   The record shows that Mason presented each of these latter arguments to the trial court. The court heard these arguments, considered the evidence, and found that I.F. was abused.

Specifically, the court found that the testimony of four different expert witnesses was credible. Each of these witnesses testified that I.F. was abused or that they had suspected abuse. Moreover, the court indicated that it was "placing a great deal of weight" on the photographs of I.F.'s bruises. Given our deferential standard of review, we do not agree that the court's determination to grant Fraysure's petition for an order of protection was unreasonable, arbitrary, or that the opposite conclusion was clearly evident. In other words, we do not agree that the court's findings were against the manifest weight of the evidence.

¶ 26 In further arguing that the trial court's determination was against the manifest weight of the evidence, Mason points out that Fraysure's testimony at the hearing contradicted his written narrative in his petition. In his petition, Fraysure stated that when he arrived home with I.F., he fed her, then changed her clothes and diaper, and that is when he saw the bruises. At the hearing, Fraysure testified that he changed I.F.'s diaper as soon as he got home and that is when he saw the bruising. Fraysure also stated in the petition that "DCFS has come to my home [and] undoubtedly confirmed abuse." However, at the hearing, Anna Denton testified that DCFS had not confirmed abuse prior to the filing of the petition.

¶ 27 Although Fraysure may have contradicted himself at the hearing, the trial court also heard the corroborating testimony of his mother, in addition to the testimony of four expert witnesses. The trial court concluded that much of this testimony was credible in determining I.F. was abused. We defer to this determination. See *People v. Dillard*, 319 Ill. App. 3d 102, 106, 745 N.E.2d 185, 189 (2001) (as the trier of fact, the trial court resolves conflicts in evidence).

¶ 28 **B. The Trial Court Did Not Abuse Its  
Discretion In Admitting Evidence**

¶ 29 Mason next contends that the trial court abused its discretion by admitting evidence that was beyond the scope of the proceedings. Mason asserts that some of the evidence Fraysure presented was intended for a custody hearing and not a hearing under the Domestic Violence Act. Other evidence, she argues, was irrelevant or otherwise inadmissible under the rules of evidence. Thus, Mason concludes that the entire hearing was tainted and invites us to reverse the trial court's judgment. We decline Mason's invitation in that regard.

¶ 30 Specifically, Mason challenges the admission of the following evidence: (1) testimony from the paternal grandmother about previous physical conditions of I.F. after being in Mason's care, (2) Mason's boyfriend's criminal background, (3) testimony regarding conversations with Groves when Groves was not called as a witness, (4) Mason's involvement in previous orders of protection and previous allegations of abuse, (5) Mason's marijuana use during her pregnancy with I.F., and (6) Fraysure's child support payments to Mason.

¶ 31 The admissibility of evidence at trial is a matter within the sound discretion of the trial court, and that court's decision will not be overturned absent a clear abuse of that discretion. *People v. Illgen*, 145 Ill. 2d 353, 364, 583 N.E.2d 515, 519 (1991). We agree with Mason that the trial court should not have allowed in evidence concerning Mason's boyfriend's criminal background, Mason's marijuana use, and the issue of child support. However, the record shows that the court carefully considered each objection and acknowledged that it is often difficult to know where to "draw the line" between how much evidence should be admitted in a proceeding for an order of protection versus a proceeding in "divorce court or family court." At the conclusion of the hearing, the court stated that it "listened closely to the evidence" and that it "actually tried to be fairly liberal on [its] rulings from both sides." The court further explained

that it "probably let in more evidence than [it] should have," but that it was "not giving really any weight whatsoever to the evidence that [it] \*\*\* heard about drug use and so on and so forth." Moreover, the court explained that it was "placing the greatest weight" on the photographs of I.F.'s bruises, as the bruises were "very, very serious" and several witnesses had confirmed that the photographs fairly and accurately depicted the condition of I.F.'s legs. In closing, the court also noted that it found the testimony of the four expert witnesses was credible. On this record we conclude that the trial court did not give weight to the erroneously-admitted evidence and that evidence did not influence the court's decision.

¶ 32 C. Fraysure Did Not Misuse the Domestic Violence Act

¶ 33 Finally, Mason contends that Fraysure misused the Domestic Violence Act to obtain custody of I.F. Mason asserts that abuse did not occur in this case and that Fraysure waited an unexplainable length of time to take I.F. to the hospital after he found the bruising. She further contends that the introduction into evidence of a calendar that outlined the times Fraysure had I.F. was for the sole purpose of gaining custody. As support for her position, Mason cites *Wilson v. Jackson*, 312 Ill. App. 3d 1156, 728 N.E.2d 832 (2000).

¶ 34 In *Wilson*, the petitioner and the respondent had a child together out of wedlock after the couple had ended their relationship. *Wilson*, 312 Ill. App. 3d at 1158, 728 N.E.2d at 834. On December 9, 1998, before the child was born, the petitioner went to the respondent's home uninvited. *Id.* The respondent told the petitioner to leave, and when he would not, the respondent pushed him out the door and "hit him in the face, chest, and shoulders." *Id.* After the baby was born, the respondent allowed the petitioner to visit with the baby in her home. *Wilson*, 312 Ill. App. 3d at 1159, 728 N.E.2d at 835. On February 16, 1999, during one of the visits in

the respondent's home, the petitioner and the respondent had a disagreement, and the respondent became "angry and upset," "screamed" at the petitioner, and told him to leave. *Id.* The respondent then " 'jerked' " the child out of the petitioner's arms. *Id.*

¶ 35 Following the incident on February 16, 1999, the petitioner spoke with counselors and support groups and decided he would obtain an emergency order of protection the next time he had possession of the child. *Wilson*, 312 Ill. App. 3d at 1159, 728 N.E.2d at 835. On February 26, 1999, the petitioner picked up the child and filed an emergency order of protection, alleging that the respondent had "physically assaulted him on December 9, 1998, and continuously harassed, intimidated, exploited and manipulated [the] petitioner and the child." *Id.* The petitioner further alleged that on February 16, 1999, the respondent "screamed and used profane language and ripped [the child] from [the] petitioner's hands." *Id.* The trial court granted the emergency order of protection and later issued a plenary order of protection on April 30, 1999. *Wilson*, 312 Ill. App. 3d at 1162, 728 N.E.2d at 837.

¶ 36 The Third District Appellate Court reversed the plenary order of protection because the court found (1) the petitioner misused the Domestic Violence Act to gain custody and (2) the trial court abused its discretion in finding abuse of the child. *Wilson*, 312 Ill. App. 3d at 1164-65, 728 N.E.2d at 839. (We note the appellate court applied an abuse-of-discretion standard in *Wilson*. However, as discussed above, our supreme court has since determined that the proper standard is whether the trial court's finding was against the manifest weight of the evidence.) In regard to the petitioner's misuse of the Domestic Violence Act, the appellate court stated that "[a] careful review of the entire record convince[d] th[e] court that [the] petitioner's primary purpose in seeking an order of protection was not to prevent abuse but was to obtain

visitation with and custody of the child." *Wilson*, 312 Ill. App. 3d at 1164, 728 N.E.2d at 839.

The petitioner "could have filed a petition for visitation or custody under the Parentage Act [citation] or the Marriage Act [citation]," but instead he chose to wait until he had physical custody of the child and then alleged abuse based on two prior encounters he had with the respondent. *Id.*

¶ 37 In reaching its decision that the trial court had abused its discretion in its finding of abuse, the appellate court concluded that the February 16, 1999, incident did not constitute abuse. *Wilson*, 312 Ill. App. 3d at 1166, 728 N.E.2d at 840. The court concluded that the respondent's actions did not create "an immediate risk of physical harm to the child." *Id.* Concerning the December 9, 1998, incident, the court concluded that the respondent's actions did constitute abuse, but were "insufficient to warrant an order of protection in light of [the] petitioner's misuse of the Domestic Violence Act." *Wilson*, 312 Ill. App. 3d at 1167, 728 N.E.2d at 841.

¶ 38 In contrast to *Wilson*, the record here does not indicate that Fraysure plotted to file an order of protection to gain custody of or visitation with I.F. Indeed, the record indicates the opposite conclusion—that Fraysure's purpose in seeking the order of protection was to prevent abuse. Fraysure picked up I.F. for a regularly scheduled visit, noticed the bruising, and at the encouragement of his mother took I.F. to the hospital where medical staff determined abuse had occurred. Medical staff directed Fraysure to contact DCFS and the police, but he did not. Only after consulting with DCFS did Fraysure file an order of protection, two days after the incident. Fraysure's conduct here is unlike the petitioner in *Wilson*, who filed an emergency order of protection based on *prior incidents*, after speaking with counselors and support groups and

predetermining what his course of action would be. Fraysure's actions are best described as reacting to the abuse, whereas the petitioner's actions in *Wilson* are more appropriately described as an offensive use of the Domestic Violence Act.

¶ 39           Moreover, Fraysure provided the court with photographs, as well as the testimony of several expert witnesses who concluded that I.F. had been abused. The finding of abuse made in *Wilson* was based on the testimony of the petitioner, the respondent, and several acquaintances and family members of the respondent, and neither party presented expert witnesses or submitted physical evidence to the trial court. Here, unlike *Wilson*, the record supports a finding of abuse. Accordingly, we reject Mason's claim that Fraysure misused the Domestic Violence Act to obtain custody of I.F.

¶ 40

### III. CONCLUSION

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

¶ 42           Affirmed.