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2016 IL App (3d) 160488-U

Order filed December 19, 2016

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2016

MELANIE HOSBROUGH,)	Appeal from the Circuit Court
)	of the 10th Judicial Circuit,
Petitioner-Appellant,)	Peoria County, Illinois,
)	
v.)	Appeal No. 3-16-0488
)	Circuit No. 16-OP-323
)	
THOMAS DOERING,)	Honorable
)	David A. Brown,
Respondent-Appellee.)	Judge, Presiding.

JUSTICE WRIGHT delivered the judgment of the court.
Presiding Justice O'Brien and Justice Schmidt concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court's finding petitioner failed to establish respondent sexually abused the minor victim was not contrary to the manifest weight of the evidence.
- ¶ 2 Petitioner, Melanie Hosbrough, appeals the trial court's order denying a verified petition for an order of protection under the Illinois Domestic Violence Act of 1986 (750 ILCS 60/101 *et seq.* (West 2016)) against respondent, Thomas Doering. We affirm.

FACTS

¶ 3

¶ 4 On March 30, 2016, the trial court granted an emergency order of protection under the provisions of the Illinois Domestic Violence Act of 1986 based on a petition filed by Melanie Hosbrough (petitioner) against her ex-husband, Thomas Doering (respondent). 750 ILCS 60/101 *et seq.* (West 2016). In the petition, filed on behalf of petitioner’s minor child, petitioner alleged:

“My daughter told me her father was touching her in her private area’s [sic] including her vagina and butt. He was putting his fingers inside her. She told him to stop and he wouldn’t. He told her he thought she would like it. She stated her father’s dad, whom her dad lives with came downstairs and told him to stop and took her upstairs to get away from him. She has over the course of the last 10 days given more details. It did not all come out all at once. He said she would be in trouble if she said anything to anyone.”

Petitioner sought a court order granting her the physical care and possession of the minor and terminating respondent’s visitation with the minor.

¶ 5 On April 13, 2016, respondent filed a response denying the allegations contained in the verified petition for order of protection. On that date, the court appointed a guardian *ad litem* to represent the minor. The hearing on the plenary petition took place on July 11, 2016, and July 13, 2016.

¶ 6 During the hearing, Maureen Hoffman, a licensed advanced practice nurse employed by the Pediatric Resource Center (“PRC”), testified as an expert witness. Hoffman testified that on April 7, 2016, the Illinois Department of Children and Family Services referred the minor to the PRC for a medical examination following a report of alleged sexual abuse. Hoffman examined

the minor on April 21, 2016. During the physical examination, Hoffman did not see any physical evidence of sexual abuse.

¶ 7 During this examination, the minor told Hoffman that the minor's father "sticked [*sic*] his finger in [her] bottom, and then a needle." When Hoffman asked the child to show her "bottom," the child pointed to "her front and her back private part[s]." According to Hoffman, the child also said "it felt bad" and reported she bled for five minutes.

¶ 8 Next, Amy Braman testified before the court as an expert in trauma assessment in children and youth counseling. Braman explained that she has a master's degree in social work and child welfare and practiced in her field for the past 13 years. Braman provided counseling services to the minor on approximately a dozen occasions beginning on April 6, 2016.

¶ 9 During her counseling sessions with the minor, the child told her "multiple times about the finger inside her bottom and her bo-bo" and also described "a needle being placed in her bottom, full of water."¹ When Braman asked the minor where her father touched her, the minor pointed to the same locations on herself and then again on an anatomically correct doll. The minor also drew pictures demonstrating for Braman how "her dad touched her bo-bo." The minor also drew a picture of the needle squirting water for Braman.

¶ 10 Braman testified that the minor said that her father told her not to say anything about "the secret" because "her mommy would be mad." Braman testified that the minor seemed anxious when discussing her father's actions and would "hop around a lot more, get into my desk, a lot of touching my face and wanting to sit on my lap and telling things into my ear." The minor also told Braman she was scared of her father and "she's afraid to visit with him because she thinks

¹Petitioner testified the minor refers to her vagina as her "bo-bo."

he will hurt her bottom again.” However, the minor also reported to Braman she misses her father.

¶ 11 Based on her interactions with the minor, Braman opined the minor experienced trauma symptoms, including heightened awareness, increased fear, sleeping difficulties, separation anxiety, and the need to feel in control of situations.

¶ 12 Janice Hosbrough (“Janice”), petitioner’s mother, testified after the minor returned from a visit at respondent’s home, the minor told Janice either that her dad touched her butt or stuck his finger in her butt. Janice told the minor that they should telephone the minor’s mother and tell her about this incident. According to Janice, the minor said her father told her that she was not supposed to tell anyone. When Janice inquired further, the minor stated that it happened in the basement.

¶ 13 Janice also testified that the minor told her in early April her “daddy touched her butt with a needle” and made her bleed. The minor testified that Jenna Noland, respondent’s sister’s girlfriend, cleaned the needle with a cotton ball and her aunt, Tressa Vreeland, put a band-aid on her.

¶ 14 Janice testified that she noticed a change in the minor’s sleeping behaviors because the minor now wakes up at least two or three times during the night. She also talks in her sleep, saying, “[N]o, you can’t do that” or “[N]o, don’t do that.”

¶ 15 Petitioner also testified before the court. Petitioner corroborated her mother’s testimony by explaining that on March 21, 2016, the minor told petitioner about the sexual abuse for the first time after the minor returned from her father’s home. Petitioner said the minor complained, “My daddy put his fingers in my butt, in my bo-bo.” According to her testimony, petitioner immediately checked the minor’s vagina and buttocks area, but did not see anything unusual.

¶ 16 After the minor came back from the next visit with her father, she told petitioner that her daddy “said he’s very sorry” and “[h]e’ll never do those things again.” At this point, petitioner contacted the police.

¶ 17 Petitioner also testified the minor’s sleeping habits have changed since the sexual abuse. The minor has difficulty falling asleep, wakes up many times during the night, has nightmares, and talks in her sleep by stating, “don’t, stop, go slow, go slow, don’t hurt, don’t hurt, just go slow, just go slow.” Petitioner also testified the minor has had stomachaches, headaches, and bathroom issues since the incident.

¶ 18 Petitioner testified that the minor said that her father told her what happened is a “family secret” and she would be in trouble if she told anybody else. Petitioner testified the minor was scared to see her father and was afraid the abuse would continue. On cross-examination, petitioner admitted her daughter has made up stories in the past.

¶ 19 Dr. Volkan Sumer, the minor’s family physician, testified he saw the minor April 5, 2016, in part, due to concerns that she was sexually abused by her father. Dr. Sumer then spoke to the minor alone about the sexual abuse allegations. The minor told Dr. Sumer her father sticks her in her private areas with a needle and sticks his finger in her bottom. When Dr. Sumer asked the minor where she was touched, she pointed to the rectal area of a doll. The minor told Dr. Sumer her father had gotten into trouble for what he did and was not allowed to be alone with her. The minor was fearful her father would hurt her again. According to the minor, her father told her he was sorry for what he did.

¶ 20 Dr. Sumer found it very concerning that a child of the minor’s age could come up with her description of what occurred. Based on the minor’s reports, Dr. Sumer contacted the Illinois

Department of Children and Family Services (“DCFS”), which in turn referred the minor to the PRC.

¶ 21 By agreement, the minor testified and answered questions from the attorneys outside the presence of the parties. Petitioner’s attorney first questioned the minor, followed by the guardian *ad litem*, and then respondent’s counsel.

¶ 22 During direct examination, the minor repeatedly directed petitioner’s attorney to talk through the microphone. In response to questions from petitioner’s attorney, the minor stated her father “sticked [*sic*] his finger in there.” When asked “where” he stuck his finger, the minor responded, “[i]n my bo-bo and my bottom.” She also said, “[a]nd a needle.” The minor explained to counsel the needle was pink and was about as long as the microphone she was using. When asked why her father was doing this to her, she said, “Because. He wanted to do it because he thinks it was funny.”

¶ 23 When asked how many times her father abused her, the minor responded, “[t]hirty.” When asked whether it was a truth or lie that “daddy put his finger in your boo-boo,” the minor responded it was a truth. When asked whether it was a truth or lie that “daddy put his finger in your butt,” the minor responded it was a truth. Finally, when asked whether it was a truth or lie that her father used a needle, the minor responded it was a truth.

¶ 24 Next, the guardian *ad litem* questioned the minor. The guardian *ad litem* asked about what others had told her to say prior to the hearing in court. The minor responded her grandmother said that she had to tell the truth.

¶ 25 Finally, respondent’s attorney cross-examined the minor. He asked the minor whether the needle was pink or silver. The minor responded it was pink. The minor testified again, “He stuck a pink needle in my butt and bo-bo.” When the attorney asked the minor whether she had told

other people the needle was silver, she admitted that she had. The attorney then asked the minor, “So that’s a lie, right?” The minor responded, “The silver needle was, but the pink needle wasn’t.” When asked whether it bled, the minor responded, “Yes, yes, yes, yes, yes, yes.” The minor testified Jenna Noland, respondent’s sister’s girlfriend, cleaned the needle with a cotton ball and her aunt, Tressa Vreeland, put a band-aid on her.

¶ 26 When respondent’s attorney asked how long ago it happened, the minor responded, “[f]orty years ago.” The minor further stated, “I haven’t seen him [her father] in a long time. I’m glad he’s here though. I want to give him a hug.” When the attorney asked the minor if she wanted to give her father a hug, she responded, “Yes.” The minor testified she was not afraid of her father. The minor then said that she was only afraid of him when “he did the bad thing.”

¶ 27 After the minor’s appearance before the court, respondent’s father, Thomas Doering, Sr. (Doering Sr.), testified. He explained respondent resides in his home and when the minor has overnight visits, she sleeps in respondent’s upstairs bedroom. According to Doering Sr., the minor shares a queen-sized bed with respondent. Doering Sr. reported the minor did not complain about her father’s actions and did not appear afraid of her father.

¶ 28 Respondent’s sister, Tressa Vreeland, testified she has two daughters, Gracie and Francie. She testified the minor and Gracie, who is six years old, often engage in imaginative play. Gracie and the minor often play doctor together. Vreeland testified Gracie received doctor kits as Christmas gifts and one of the kits included a mock hypodermic needle that is purplish-pink in color with glitter. She denied seeing anyone clean a hypodermic needle with a cotton ball or placing a band-aid on the minor’s private area.

¶ 29 Darla Doering, respondent's mother, testified she lives with her husband and respondent. As part of her job, she delivers medicine to nursing homes but does not handle hypodermic needles or bring them into her home.

¶ 30 Next, Jenna Noland, respondent's sister's girlfriend, testified. She said she occasionally stayed at the Doering home with her girlfriend, Kayla Doering. She denied she ever cleaned a needle with a cotton ball that was used on the minor. Noland also testified the minor loves playing doctor. The minor has never expressed a fear of her father or complained about her father hurting her. Noland could not explain how the minor would have knowledge of digital penetration.

¶ 31 Kayla Doering ("Kayla"), respondent's sister, also testified she was unaware of anything in the Doering home that would cause the minor to know about anything of a sexual nature.

¶ 32 Respondent testified he lives with his mother and father. He denied touching his daughter's vagina or buttocks and denied penetrating those areas digitally or by use of a needle. Respondent denied apologizing to his daughter and stated, "I would never mistreat my daughter, so no, I have never said sorry. I didn't do anything." Respondent testified the minor was a very outgoing and imaginative child.

¶ 33 During cross-examination, respondent admitted a DCFS investigator asked to speak to him, and he refused to talk to the investigator on advice of his counsel. Respondent testified he had no idea how he could be \$45,000 behind in child support and his child support payments are set up to be automatically taken out of his paycheck. He later conceded he was court-ordered to pay 20 percent of his income exceeding \$45,000 in child support and that he earned about \$90,000 in 2015; yet, he only paid an additional \$1200 in child support that year.

¶ 34 Respondent admitted the minor sometimes talked in her sleep. He also admitted there was a bedroom in the basement. He conceded he was the primary occupant of the basement. However, he said his sister Kayla lived in the basement until she moved out of the house to start nursing school in May of 2016. Respondent denied it was possible for the minor to accidentally come across a sex act in his home. Respondent said he had not put diaper rash cream on the minor for the last three years.

¶ 35 Respondent testified that in 2009, he was convicted of a felony DUI and cocaine was found in his system. He denied ever using needles as a drug user, and testified he had not used drugs in the past five years.

¶ 36 As a rebuttal witness, petitioner testified respondent's testimony that he never had a syringe in his home was untrue because when dating respondent, she would wake up after parties at his apartment to discover drug paraphernalia including needles, burnt spoons, and other items. She advised the court that after observing respondent high on many occasions, she left respondent because of his illegal drug usage.

¶ 37 After hearing all of the testimony and receiving the arguments from counsel, the court found the minor's testimony was not "entirely believable." In support of this observation, the judge stated that he found some of the minor's answers to counsel's questioning to be "fanciful." For example, the judge was troubled by the minor's "embellishments of a foot-long or two foot-long pink needle" and her testimony describing conduct by her father that took place, as the court stated, "30-some times over 40 years [ago]."

¶ 38 Further, based on the minor's behavior in the courtroom, the trial judge concluded the minor did not appear to be scared of her father because she smiled and waved at respondent during the hearing and at one point, asked if she could give him a hug. The court also

commented on the minor’s undisputed strong imagination. Finally, the court expressed reservations about the minor’s attention-seeking behavior witnessed by the court during the proceedings. The judge noted the minor “commanded attention” on the stand and testified with her own “style” and “flair.”

¶ 39 Without ruling on respondent’s standing objection to the witnesses’ hearsay testimony about the minor’s prior out-of-court statements, the court found that even considering all the child’s previous out-of-court statements as substantive evidence, the court was “not convinced one way or the other whether this abuse happened or it didn’t happen.” Therefore, the court found petitioner failed to satisfy her burden of proof by a preponderance of the evidence.

¶ 40 Consequently, on that same date, July 13, 2016, the court entered an order vacating the interim order of protection and denied the relief requested by petitioner. Petitioner filed a timely notice of appeal on August 12, 2016.

¶ 41 ANALYSIS

¶ 42 On appeal, petitioner argues the trial court erred by denying her verified petition requesting the court to enter a plenary order of protection. Petitioner asserts the trial court’s finding was contrary to the manifest weight of the evidence and the order of protection should have been issued by the court. Respondent submits the trial court properly found petitioner’s evidence, including the child’s hearsay statements to others prior to trial, was insufficient to support the allegations contained in the verified petition for order of protection.

¶ 43 The Illinois Domestic Violence Act of 1986 provides that an order of protection shall be issued if the court finds that the petitioner or a minor child in the care of such person has been abused by a family member. 750 ILCS 60/214(a) (West 2016)). Under section 205(a) of the Act, proceedings to obtain an order of protection are civil in nature and the question of whether

petitioner has been abused is an issue of fact that must be proven by a preponderance of the evidence. See 750 ILCS 60/205(a) (West 2016); See *Best v. Best*, 223 Ill. 2d 342, 348-49 (2006). A reviewing court will reverse a trial court's finding that there was insufficient evidence of abuse to warrant the issuance of an order of protection only if it is against the manifest weight of the evidence. *Best*, 223 Ill. 2d at 349-50.

¶ 44 A trial court's decision is against the manifest weight of the evidence "only if the evidence 'clearly' calls for a conclusion opposite to that reached by the trial court or only if the factual findings on which the decision depends are clearly, plainly, and indisputably erroneous." *In re Marriage of Tedrick*, 2015 IL App (4th) 140773, ¶ 51. "Under a manifest weight of the evidence standard, we give deference to the trial court as the finder of fact because it is in the best position to observe the conduct and demeanor of the parties and the witnesses and has a degree of familiarity with the evidence that a reviewing court cannot possibly obtain." *In re D.F.*, 201 Ill. 2d 476, 498-99 (2002). Therefore, we will not substitute our judgment for that of the trial court regarding "the credibility of witnesses, the weight to be given to the evidence, or the inferences." *Id.* at 499.

¶ 45 In this case, the trial court conducted an extensive two-day evidentiary hearing. The court heard testimony from numerous witnesses, including petitioner, respondent, various members of the victim's immediate family, and expert witnesses. In addition, the court received testimony from the minor and witnesses describing the minor's statements about her father's alleged misconduct.

¶ 46 With respect to these multiple out-of-court statements by the minor, various witnesses, including the minor's grandmother, mother, agents of DCFS, the minor's counselor, and medical professionals, testified the minor gave fairly consistent versions reporting her father penetrated

her digitally and with a needle. She also indicated she was afraid of her father, suffered pain and bleeding from the penetration, and was instructed by her father not to tell anyone about his conduct. In addition, the court received testimony from petitioner's witnesses reporting the minor seemed to develop unusual sleep patterns and began talking in her sleep after the minor reported her father's abuse. By all accounts, the minor was outgoing and imaginative.

¶ 47 It is well established that the trial court is in a superior position to evaluate the credibility of each witness in this case. See *In re D.F.*, 201 Ill. 2d at 498-99. The trial court thoughtfully weighed all the evidence in this case, including the minor's out-of-court statements. The court found the minor was not afraid of her father contrary to the minor's statements to others. In addition, the court found the minor displayed attention-seeking behavior in the courtroom that caused the court to doubt the veracity of the minor's account of the purported abuse. After some deliberation, the judge concluded the minor was not believable.

¶ 48 Based on the record before us, the trial court's findings are supported by the record in this case. Therefore, we affirm the decision of the trial court.

¶ 49 CONCLUSION

¶ 50 The judgment of the circuit court of Peoria County is affirmed.

¶ 51 Affirmed.