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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

IN THE INTEREST OF TYLER W. and)	Appeal from the
TERRANCE W.,)	Court Circuit of
)	Cook County.
Minors –Respondents-Appellees,)	
(THE PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Petitioner-Appellee,)	16 JA 0125
)	
v.)	The Honorable
)	Nicholas Geanopoulos,
ROSEMARY C.,)	Judge Presiding.
)	
Respondent-Appellant,)	
And)	
)	
TERRANCE W.,)	
)	
Respondent-Appellee.))	

PRESIDING JUSTICE NEVILLE delivered the judgment of the court.
Justices Pucinski and Hyman concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court erred when it admitted into evidence uncertified hospital records without any testimony from persons familiar with the hospital's procedures for creation and retention of its records. Because the trial court relied on the records in finding that Rosemary C.'s children suffered from neglect, we must reverse the adjudication and remand for a new trial.

¶ 2 Rosemary C. appeals from the adjudication of her children as neglected, contending that the State did not present an adequate foundation for certain hospital records the court admitted into evidence. We hold that because the State presented no testimony about the hospital's procedures for the creation and retention of its records, the trial court erred when it admitted the records into evidence. The trial court relied on the records when it found the children neglected. Therefore, we must reverse the judgment and remand for further proceedings consistent with this order.

¶ 3 **BACKGROUND**

¶ 4 Rosemary C. gave birth to Terrance W. in 2011 and to Tyler W. in 2013. On July 6, 2016, stray bullets from a drive-by shooting struck Terrance as he and Tyler played outside the home of their great-grandmother. Their father, also named Terrance W., took Terrance to University of Chicago hospital, where doctors successfully treated the wounds. We will refer to the father as Terrance Sr. and to the son as Terrance Jr., although neither uses Jr. or Sr. as part of his name.

¶ 5 On August 1, 2016, the State filed petitions to adjudicate Terrance Jr. and Tyler as wards of the court. The State alleged, "While [Terrance Jr.] was hospitalized mother's visitation was restricted due to her displaying bizarre and inappropriate behaviors. *** Medical personnel have concerns with mother caring for this minor." The circuit court granted temporary custody of the children to the Department of Children and Family Services (DCFS), and DCFS placed the children with their grandmother, Terrance Sr.'s mother. Both Rosemary and Terrance Sr. engaged in services with DCFS.

¶ 6 Neither parent testified at the adjudication hearing. The State presented only one witness: Alicia McCree, a child protection specialist who worked for DCFS. The State introduced into evidence, without objection, medical records concerning Rosemary's hospitalization at Mt. Sinai Hospital in May 2016, two months before the shooting. According to the records, on May 21, 2016, Rosemary's mother brought Rosemary to the hospital and told a nurse that Rosemary had acted oddly, "laughing inappropriately, and responding to internal stimuli." The nurse found Rosemary "anxious, apprehensive but cooperative." The nurse noted, "Pt was observed staring blankly into space, with difficulty concentrating," and "pt. is pleasant upon approach and cooperative. [N]o aggressive behavior noted." Rosemary told the nurse she had "occasional crying episode[s]." The doctor said Rosemary "was crying. She was depressed. *** She was not aggressive."

¶ 7 The hospital discharged Rosemary three days after she arrived. In the discharge summary, the doctor said Rosemary "took her medications. She denied any side effects. At no time did she try to harm herself. *** She improved her coping skills. Gradually, her symptoms started to improve." The doctor added, "The patient was discharged on her medication. *** The patient agreed to take her medications." The doctor diagnosed Rosemary as bipolar. Nothing in the record from Mt. Sinai Hospital indicates the severity of Rosemary's bipolar disorder. Nothing in the record from Mt. Sinai Hospital indicates that any doctor found that without medications, Rosemary would expose her children to an unreasonable risk of harm.

¶ 8 McCree testified that in July 2016, after the shooting, Rosemary admitted she had not taken the prescribed medications consistently. Rosemary said one of the medications,

Zyprexa, upset her stomach. McCree counted the pills and found Rosemary had taken only two. Rosemary had taken more of the second medicine, Depakote. She told McCree she took that medicine "when she was feeling sad or crying." McCree told Rosemary she needed to take the prescribed medications and tell her doctor about any adverse side effects.

¶ 9 The State offered into evidence records from Terrance Jr.'s hospitalization for gunshot wounds. For foundation, the State elicited the following testimony:

"Q. During the course of your investigation, you had mentioned you had contact with hospital personnel?

A. Yes.

Q. Did you also receive records from hospital personnel related to Terr[a]nce [Jr.]'s hospitalization?

A. Yes.

Q. Is it in the normal course of business to receive such records while investigating a case?

A. Yes.

Q. Is it in the normal course of business to include those records in your DCFS information when you bring the case to court?

A. Yes.

Q. In this case, if you recall, who specifically did you get these from?

A. The social worker.

Q. Did you receive them in person?

A. No.

Q. How did you receive them?

A. I believe they were scanned to me.

Q. Did you confirm with [the social worker] that those were the records she sent?

A. Yes.

Q. Ms. McCree, if you could take a minute to review these records.

Ms. McCree, after reviewing those records, do they appear to be the records you received *** during the course of your investigation?

A. Yes.

Q. And do they appear to be in the same or substantially the same condition as when you received them?

A. Yes.

Q. And these are records that, in the normal course of business, you received to inform your investigation?

A. Yes."

¶ 10 The trial court admitted the records into evidence over Rosemary's objection that the State had not presented an adequate foundation.

¶ 11 McCree testified that she asked Rosemary about her conduct as reflected in several statements in Terrance Jr.'s hospital records. McCree testified:

"[Rosemary] reported that she didn't believe she was acting inappropriately or in a manner that would harm her child. She stated that she was not touching or messing with any equipment. She said that she did raise the sheets and the blankets to check her son's bandages as she was wanting to make certain they were clean.

She stated that she did check once and saw that the bandage was bloody and she made a request to have the bandages changed. She stated that she was looking over the shoulders of the doctors or nurses because she wanted to make certain they were caring for her son properly.

She stated that she was nervous. She had never been in such a situation before so she was watching to see the care they were giving her son.

Q. Did you talk to her about any visitation restrictions she put in place?

A. Yes.

Q. What did she state about that?

A. She restricted visitors because at the time her son was sedated and she was concerned for germs, people coming and going in the room.

If he's sedated, what is the point of having all of that people bringing in germs or what have you. So she wanted to restrict visits at least until he was no longer sedated.

Q. Did you talk to her about an incident where she was moving her son or carrying her son?

A. Yes.

Q. What did she report about the incident?

A. [Rosemary] reported that a therapist at the hospital showed her how she could pick up her son and sit him up in the bed or sit with him if she sat in the recliner.

She stated, on this particular day, she sat her son up. And to her, he appeared to be very uncomfortable, to be in pain. So she decided to pick him up and hold him while she sat in the recliner.

She stated that while she was backing up to sit in the chair, a nurse came into the room and the nurse believed she was perhaps going to fall and said something to her. But mom stated she wasn't falling or thinking she was going to fall. She said that perhaps the therapist never told the nurse that she was permitted to do this."

¶ 12 The court permitted an assistant State's Attorney to read into the record several passages from the University of Chicago records related to Terrance Jr.'s hospitalization.

¶ 13 The State also presented a petition Rosemary filed in February 2015, a year and a half before the shooting, asking a court to enter an order of protection telling Terrance Sr. to stay away from Rosemary. She supported the petition with an affidavit in which she said that in January 2015, about one month after she and Terrance Sr. broke up, she dropped off Terrance Jr. and Tyler at Terrance Sr.'s home. Terrance Sr. said he wanted to talk and Rosemary walked away. Terrance Sr. grabbed Rosemary by the neck and threw her against the house. She got out of his grip and got to her car. As she drove away, he pounded on the car.

¶ 14 According to the affidavit, a week later, Terrance Sr. banged on the door of Rosemary's apartment, saying he wanted to talk. Rosemary called the police. Terrance Sr. came again a few days later. Rosemary spoke to him through the door, but when he continued banging on the door, she again called police. The court entered the order of protection, which terminated in July 2015, without further incident.

¶ 15 The trial court held that the State proved Terrance Jr. and Tyler were neglected in that they had been subjected to an injurious environment. The court explained:

"[T]here is this incident where Terr[a]nce was shot in a drive-by. There is no indication that the parents were doing anything wrong at that time or somehow were involved in a situation that caused the child *** to be shot or that they did anything negligent.

*** It does seem, based on the records, that after a few days the mother's behavior based on the notes that were admitted does seem to worsen for whatever reason. ***

*** She obviously has a mental health history, and I think it is documented pretty well in the notes that her interactions at that time *** were not that of someone who was just being normally stressed due to the horrific situation she had been presented with. ***

*** [B]ased on the affidavits, there was a history of domestic violence in the past. I'm not saying it was occurring at the time that the child was shot, but there is that history. I think given all of the facts and circumstances surrounding

what occurred here that the State has proven the allegation of neglect injurious environment as to both of the children in this case."

¶ 16 The court immediately proceeded to the dispositional hearing. Neither parent testified at the dispositional hearing. The State presented only one witness: Jameka English, a caseworker for Terrance Jr. and Tyler. She testified that both parents participated well in DCFS services, and they kept scheduled visits with their children. Both children adjusted well to living with Terrance Sr.'s mother.

¶ 17 The court said:

"As to the mother, she is doing everything she's been asked to do. I find that she's unable only for some reason other than financial circumstances alone to care for, protect, train or discipline the minors at this time.

I make the same finding as to the father. As I indicated, both parents are cooperative. They come to court, doing what they've been asked to do, and they've done the services. But there are outstanding services, some of which they're in the middle of ***. I think it's important that we keep going on with the services before return home is a possibility."

¶ 18 The court gave the guardianship administrator custody of the children, and set a goal of returning the children to their parents' custody within five months. Rosemary appealed, but Terrance Sr. did not.

¶ 19 ANALYSIS

¶ 20 Rosemary contends that the trial court erred when it admitted into evidence Terrance Jr.'s hospital records. The trial court found the records admissible under section 2-18(4)(a) of the

Juvenile Court Act (Act). 705 ILCS 405/2-18(4)(a) (West 2016). We will not disturb the trial court's decision to admit records into evidence under section 2-18(4)(a) unless the trial court abused its discretion. *In re J.Y.*, 2011 IL App (3d) 100727, ¶ 13.

¶ 21 Section 2-18(4)(a) provides:

"Any writing [or] record *** 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. A certification by the head or responsible employee of the hospital or agency that the writing [or] record *** is the full and complete record of the condition *** and that it satisfies the conditions of this paragraph shall be prima facie evidence of the facts contained in such certification. A certification by someone other than the head of the hospital or agency shall be accompanied by a photocopy of a delegation of authority signed by both the head of the hospital or agency and by such other employee." 705 ILCS 405/2-18(4)(a) (West 2016).

¶ 22 The records here bore no certification of either kind described in the statute, so the State needed to present evidence concerning the creation of the record. "To establish a foundation,

the proponent must show 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. [Citations.] The author of the writing does not need to testify; anyone familiar with the business and its procedures may testify about how the writing was prepared." *J.Y.*, 2011 IL App (3d) 100727, ¶ 13.

¶ 23 The State presented only McCree's testimony as foundation for the documents. McCree worked for DCFS, not the hospital. She did not claim any familiarity with hospital procedures for the creation or retention of records like those the State presented to the court. Because no one familiar with the hospital and its procedures testified about how hospital personnel prepared the records, the State did not satisfy the requirements of section 2-18(4)(a). *J.Y.*, 2011 IL App (3d) 100727, ¶ 14.

¶ 24 The State cites *In re Nyanli M.*, 2016 IL App (1st) 152262, as authority supporting the trial court's evidentiary ruling. In *Nyanli*, Payne, a caseworker assigned to Nyanli's case, working for Lakeside Community Center, asked the director of KinderCare to send Payne a letter documenting the director's observations of Nyanli's behavior. Although the director did not testify, the appellate court found the director's letter admissible as a business record of Lakeside, under section 2-18(4)(a). The appellate court said, "Payne testified that he had concerns about Nyanli's behavior and that he requested the KinderCare director to document her observations in a letter. Thus, the letter was created in order to assist DCFS with its services and Nyanli's care." *Nyanli M.*, 2016 IL App (1st) 152262, ¶ 39. The director created the letter in response to Payne's request as a Lakeside record concerning Nyanli, and not as part of KinderCare's usual record keeping. The *Nyanli* court found that Payne had sufficient

knowledge concerning the creation of the record and the procedures for the creation and retention of Lakeside records to warrant the admission of the letter into evidence.

¶ 25 McCree did not testify about the creation of the hospital records introduced here, and she did not claim familiarity with procedures for creation and retention of the hospital's records. *Nyanli* does not contradict *J.Y.*, and it does not justify the admission into evidence of the hospital records at issue here. See *In re J.C.*, 2012 IL App (4th) 110861, ¶ 28.

¶ 26 The State argues that the error had no prejudicial effect. "An evidentiary ruling in error by the trial court requires reversal only where the error played a substantial part in the verdict." *J.Y.*, 2011 IL App (3d) 100727, ¶ 15. The records admitted into evidence without the requisite foundation included several notes from nurses and social workers the hospital employed. According to the notes, on July 10, 2016, nurses found Rosemary "checking placement/securement of medical devices." The notes continue:

"[Rosemary] asked RN to change chest tube dressing, which was lightly saturated serosanguinous fluid with an occlusive seal. Mom continued to ask >10 times for RN to change dressing ***. Explained to mom the risk of infection associated with unnecessary dressing changes, but mom insisted that RN change it. Once the chest tube dressing was changed, mom tried to remove right abdominal dressing. RN explained to mom that the dressing was clean, dry, intact, and she is not to touch any medical devices or dressings on the pt. Mom also asked RN to no longer turn pt on right side ***. *** Charge RN explained to mom the importance of turning pt side to side to optimize pt lungs. Mom continued to express desire not to turn pt on right side ***. Charge RN

expressed concern *** that mom is not allowing him optimal care by interfering and worrying about devices."

¶ 27 In another note from the same day, a nurse described Rosemary's "increasingly erratic behavior." The nurse said Rosemary "refus[ed] to follow RN instruction to only allow medical professionals to touch medical devices ***. RN called into room multiple times due to mother verbalizing fear of pumps beeping that in fact are not alarming; mother has requested multiple times that multiple RNs check pumps. *** Mother denied some behaviors directly witnessed by charge/bedside RNs and pt's father."

¶ 28 According to a note dated July 13, "RN walked in on mom holding patient, backing up, and almost falling over chair that had the foot rest out. RN took patient and put back in bed and instructed mom again *** about not picking up patient or messing with patient's lines."

¶ 29 A social worker reported on an altercation between Rosemary and Terrance Sr. concerning visitors.

"Mom kept saying she could restrict visitor[s] despite what SW was telling her about the Visitation Policy and that dad is the legal father and could have visitors. Mom would escalate and then was telling the father that he would 'never see his son again and she was taking him and their other child with her after discharge and he would never be allowed to visit them again.' *** She has poor insight into her behaviors, poor impulse control and definitely there is something going on with her own mental health.

About 30 minutes later, there was an issue in the Family Lounge and SW was right outside the room. SW walked in [to] find the mother in there with *** her

mother, Francis. There was some exchange of words and mom was yelling that 'she was going to throw a chair.' The grandmother did not have a chair."

¶ 30 The hospital restricted Rosemary's visits due to the behavior described in the notes.

¶ 31 The trial court's comments show that the court relied on the hospital records to justify the finding of neglect. We cannot find the error harmless.

¶ 32 Finally, the State asks us to remand solely for the hospital to certify the records admitted into evidence, and to affirm the trial court's judgment in all other respects. The State argues that Supreme Court Rule 366 (Ill. S. Ct. R. 366 (eff. Feb. 1, 1994)) establishes our authority to enter such an order. The State cites no case in which an appellate court found that it had the power to enter such an order when the trial court erred by admitting evidence without proper foundation. We will not foreclose the parties from using any evidence proffered in accordance with section 2-18(4)(a) of the Act. 705 ILCS 405/2-18(4)(a) (West 2016). We must reverse the trial court's judgment and remand for a new trial. *In re Westland*, 48 Ill. App. 3d 172, 177 (1977). Because we must remand for a new trial, we need not address the other issues Rosemary raised.

¶ 33 CONCLUSION

¶ 34 The trial court erred when it admitted into evidence uncertified hospital records without testimony from persons familiar with the creation and retention of the records. Because the trial court relied on the improperly admitted evidence in its adjudication of the children as neglected, we reverse the judgment and remand for a new trial.

¶ 35 Reversed and remanded.