2019 IL App (1st) 173049-U
No. 1-17-3049

SECOND DIVISION
February 13, 2019

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

IN THE MATTER OF: G.M.,	)	Appeal from the Circuit Court
	)	of Cook County.
Minor-Respondent-Appellee,	)	
	)	
(PEOPLE OF THE STATE OF ILLINOIS,	)	No. 17JA14
	)	
Petitioner-Appellee,	)	
	)	The Honorable
v.	)	Andrea Buford,
	)	Judge Presiding.
C.M.,	)	
	)	
Mother-Respondent-Appellant).	)	

JUSTICE PUCINSKI delivered the judgment of the court.
Justices Mason and Hyman concurred in the judgment.

ORDER

¶ 1 *Held:* circuit court order adjudicating child a "neglected" minor reversed and the cause remanded where the court affirmatively relied on hearsay evidence that was not corroborated by other competent evidence to support its finding.

¶ 2 Following an adjudication hearing under the Illinois Juvenile Court Act of 1987 ("Juvenile Court Act" or "Act") (705 ILCS 405/1-1 *et seq*. (West 2016)), the circuit court found that G.M. was a neglected minor. At the conclusion of the disposition hearing that followed,

G.M. was made a ward of the court. On appeal, C.M., the biological mother of G.M., contests the circuit court's finding that her daughter was neglected, arguing that the court's determination was based on its improper admission and consideration of hearsay. C.M. further argues that the court's neglect finding is against the manifest weight of the evidence. For the reasons explained herein, we reverse the judgment of the circuit court and remand for proceedings consistent with this disposition.

¶ 3 BACKGROUND

¶ 4 C.M. gave birth to G.M. on January 3, 2017. C.M.'s husband, E.G., is G.M.'s biological father.[1] Prior to her marriage to E.G., C.M. gave birth to three other minor children, each of whom had been removed from her care by the Illinois Department of Child and Family Services ("DCFS" or "the Department") due to her inability to safely and properly parent. Based upon C.M.'s prior history with DCFS, the State filed a petition for adjudication of wardship and a motion for temporary custody on behalf of G.M. shortly after her birth.

¶ 5 In its filings, the State alleged that G.M. was "neglected" as that term is defined by the Act because she was subjected to an environment injurious to her welfare (705 ILCS 405/2-3(1)(b) (West 2016)). The State further alleged that G.M. was also an "abused" minor because she was at "substantial risk" for physical injury (705 ILCS 405/2-3(2)(ii) (West 2016)). Finally, the State alleged that G.M. was also a "dependent" minor because she was not being provided with proper care due to the physical or mental disability of her parent (705 ILCS 405/2-4(1)(b) (West 2016)). In support of its claims of neglect, abuse, and dependency, the State alleged:

> "Mother has two prior indicated reports for substantial risk of physical injury/environment injurious to health and welfare by neglect. Mother has three other

[1] Although he participated fully in the circuit court proceedings, E.G. has not challenged the court's rulings in this matter and is not a party to this appeal.

> minors who are in DCFS custody with findings of abuse and/or neglect and/or dependency having been entered. Mother has been inconsistent with reunification services. Mother has been diagnosed with intellectual disability and dependent personality disorder. Per a psychological evaluation mother's intellectual functioning is extremely low and affects her ability to safely parent. Father needs to be assessed for services. Parents are married and reside together."

¶ 6 The court granted the State's motion for temporary custody "based on the facts as alleged in the People's petition." The cause subsequently proceeded to an adjudication hearing.

¶ 7 At the hearing, Deisy Anaya, a child protection investigator employed by DCFS, testified that she was the individual assigned to investigate the allegations of abuse, neglect, and dependency concerning G.M. After becoming apprised of C.M.'s prior involvement with the Department, Anaya conducted an in-person interview with C.M. on January 5, 2017, two days after G.M.'s birth. During the interview, C.M. acknowledged that three of her children had been removed from her care and custody, but stated that she was working toward regaining custody of her third child. At the time of the interview, C.M. informed Ayala that she was living with E.G., her husband of about one year. E.G. was the biological father of G.M., but he was not the biological father of her three other children. C.M. explained that E.G. was aware of her prior history with DCFS and the likelihood that the Department would initiate proceedings following G.M.'s birth. E.G., however, expressed a willingness to "help" C.M.

¶ 8 After speaking with C.M., Anaya conducted an interview with E.G. that same day. During that interview, E.G. confirmed he was aware of C.M.'s history with DCFS and stated his understanding that C.M.'s "mental delay" was the reason for the Department's involvement.

E.G. expressed his desire to "keep" his daughter and indicated that he did not want to give up his rights as a father. After conversing with C.M. and E.G., Anaya took protective custody of G.M.

¶ 9 On cross-examination, Anaya acknowledged that C.M. expressed a willingness to move out of her marital home to allow E.G. to take custody of their daughter. Moreover, E.G. stated that he would be willing to do whatever it took to get his daughter back, including separating from his wife. Anaya explained, however, that the Department did not pursue a separation arrangement once she became apprised of E.G.'s daily marijuana use. Anaya testified that she was informed of the drug use "by one of the collaterals of the father."

¶ 10 Martha Castaneda, a case manager employed by the Children's Place Association (the Association), testified that she has been working with C.M. since November 2016. By that time, DCFS had assumed guardianship of her three other children. Castaneda explained that C.M. had taken part in parent coaching and therapy prior to G.M.'s birth; however, she had been "unsuccessfully" discharged from parent coaching because of her "very slow progress" in learning and applying positive and appropriate parenting behavior. That is, C.M. "did not prove her ability to parent without having someone there coaching her constantly." At the time of G.M.'s birth, Castaneda was aware that C.M. was married to E.G. and that he was G.M.'s putative father. He had not yet been assessed for services by her agency.

¶ 11 On cross-examination, Castaneda acknowledged that although she had not assessed E.G. for services, she had met him on the prior occasions that he was present during C.M.'s visitation sessions with her other children. Although E.G. expressed a willingness to be assessed for services, he had not been assessed prior to G.M's birth or prior to her placement into protective custody. Castaneda acknowledged that the Association did not preclude conducting a parenting

assessment prior to a child's birth. By the date of the adjudication hearing, E.G. had been assessed for services, but no written report had yet been completed.

¶ 12 Following Castaneda's testimony, the State entered several exhibits into evidence including a report authored by Eduardo Montoya, Psy, D., at Lake Michigan Neuropsychology, PLLC in 2016. Based on the report, C.M. possessed an IQ of 57 and was unable to read and write. Dr. Montoya classified C.M.'s intellectual functioning as "extremely low," which made it "difficult for her to process increasingly complex information." In addition, her issues inhibited her ability to care for her own daily needs. Dr. Montoya opined that C.M.'s "intellectual and cognitive issues are likely to interfere with her ability to exercise sound judgment and [the] decision-making ability needed to adequately parent and ensure a safe and stable environment for her children." Her intellectual limitations also made it unlikely that she would substantially benefit from any parenting classes; however, he did believe that there were steps that could be taken to better relay information to C.M., including providing the "information in small pieces with sufficient repetition" and presenting the information "via visual channels in order to allow for adequate acquisition, consolidation, and organization."

¶ 13 In addition to Dr. Montoya's report, the State also introduced into evidence the certified adjudication and disposition orders of C.M.'s other three minor children, each of whom had been found to be either abused, neglected, and/or dependent and had been removed from her custody.

¶ 14 After hearing the aforementioned evidence and the arguments of the parties, the court concluded that the State had met its burden of proving by a preponderance of the evidence that G.M. was a neglected minor because she was subjected to an injurious environment. The court explained its ruling as follows:

"The mom in this case has three other children who were removed from her care. There's testimony the mom may not be able to parent alone because of her intellectual and cognitive capacity. Mom cannot take care of her own daily needs and did not make progress in her parenting class and was unsuccessfully discharged."

The father in this case was not assessed, but the Department does believe that he uses marijuana on a daily basis.

For those reasons, the State has met its burden."

¶ 15 Although the State had also alleged that G.M. was an abused and dependent minor, the court found that it had failed to substantiate the allegations of abuse and dependency. The cause was then continued for a disposition hearing. At the conclusion of the disposition hearing, the court determined that it was in G.M.'s best interest to be made a ward of the court.[2] In doing so, the court found that both C.M. and E.G. were presently "unable" to properly parent, but announced the goal of returning G.M. home in 12 months. This appeal followed.

¶ 16 ANALYSIS

¶ 17 On appeal, C.M. contests the propriety of the circuit court's adjudication finding that G.M. was a neglected minor. She argues that the court's decision was informed by its erroneous admission of, and reliance upon, hearsay testimony. Alternatively, C.M. argues that the court's finding of neglect is against the manifest weight of the evidence.

[2] Because C.M. does not challenge the circuit court's disposition finding, we need not recount the testimony and evidence that the parties presented to the court during the disposition hearing.

¶ 18 The State and Public Guardian, in turn, both respond that the circuit court's neglect finding is supported by the manifest weight of the evidence and that any improper consideration of hearsay evidence was harmless.[3]

¶ 19 Because an understanding of the Juvenile Court Act and the procedures outlined therein is important to evaluate the specific arguments raised by C.M., we will first provide a brief overview of the Act and the provisions relevant to this appeal before addressing the substantive merit of her claims.

¶ 20 The overarching purpose of the Juvenile Court Act is to protect and ensure the safety, and the emotional, mental, and physical welfare of minor children in a manner that best serves the best interests of those children, their families, and the community. *Julie Q. v. Department of Child and Family Services*, 2013 IL 113783, ¶ 39; *In re Austin W.*, 214 Ill. 2d 31, 43 (2005); 705 ILCS 405/1-2(1) (West 2016). Proceedings under the Act are civil and nonadversarial (*Julie Q.*, 2013 IL 113783, ¶ 390), and are not designed to assign liability to any party (*In re R. B.*, 336 Ill. App. 3d 606, 614 (2003)); rather the " 'paramount consideration' " of any proceeding initiated under the Act is to ensure that a child's best interest is being protected (*In re N.B.*, 191 Ill. 2d 33, 343 (2000), quoting *In re K.G.*, 288 Ill. App. 3d 728, 734-35 (1997)). In recognition of the fact that it may be in the best interest of a minor child to be removed from the custody of his or her biological parents, the Act sets forth a multi-step process that must be adhered to in order to determine whether a child should be made a ward of the state. *In re A.P.*, 2012 IL 113875, ¶ 18; *In re Austin W.*, 214 Ill. 2d at 254; *In re Zariyah A.*, 2017 IL App (1st) 170971, ¶ 71.

[3] The Public Guardian also devotes a substantial portion of its brief toward the evidence presented at the subsequent disposition hearing as well as the propriety of the circuit court's dispositional order making G.M. a ward of the court. Given that C.M. limits her appellate arguments solely to the circuit court's adjudication finding of neglect, we limit our review accordingly.

¶ 21 The procedure commences when the State files a petition for adjudication of wardship on behalf of a minor child, which in turn, triggers a temporary custody hearing, during which the court must determine whether there is probable cause to believe that the child is neglected, abused, or dependent. 705 ILCS 405/2-10 (West 2016); *In re Arthur H.*, 212 Ill. 2d at 462; *In re Zariyah A.*, 2017 IL App (1st) 170971, ¶ 71. Following the placement of a minor child into temporary custody, the cause proceeds to an adjudication hearing, where the court must determine whether the preponderance of the evidence supports the finding that the child is, in fact, neglected, abused, or dependent. 705 ILCS 405/2-21(1) (West 2016); *In re A.P.*, 2012 IL 113875, ¶ 19; *In re Austin W.*, 214 Ill. 2d at 43; *In re Zariyah A.*, 2017 IL App (1st) 170971, ¶ 71. A preponderance of the evidence is the amount of evidence that leads the trier of fact to find that a condition is "more probable than not." *In re Arthur H.*, 212 Ill. 2d 441, 464 (2004); *In re N.B.*, 191 Ill. 2d 338, 343 (2000). If the circuit court concludes that the State has satisfied its burden of proving that the minor child is neglected, abused, or dependent, the cause then proceeds to a dispositional hearing, where the court must determine whether "it is consistent with the health, safety, and best interests of the minor to be made a ward of the court." 705 ILCS 405/2-21(2) (West 2016); see also *In re A.P.*, 2012 IL 113875, ¶ 21; *In re Arthur H.*, 212 Ill. 2d at 464; *In re Zariyah A.*, 2017 IL App. (1st) 170971, ¶ 71. At a dispositional hearing, a court may consider "[a]ll evidence helpful" to make a determination that is in the best interest of the minor child. 705 ILCS 405/2-22(1) (West 2016); *In re Zariyah A.*, 2017 IL App (1st) 170971, ¶ 71. In contrast, the more stringent rules of evidence apply at the earlier adjudicatory hearing stage. 705 ILCS 405/2-18(1) (West 2016); *In re Zariyah A.*, 2017 IL App (1st) 170971, ¶ 71; *In re Aniylah B.*, 2016 IL App (1st) 153662, ¶ 24.

¶ 22 Having set forth the relevant framework, we now turn to the specific issues raised by C.M. on appeal. As set forth above, C.M. argues that the court's finding of neglect was based on its improper admission and consideration of hearsay evidence.

¶ 23 The admission of evidence at an adjudicatory hearing is reviewed for an abuse of discretion. *In re A.W.*, 231 Ill. 2d at 253-54; *In re Aniylah B.*, 2016 IL App (1st) 153662, ¶ 22. The issue of whether evidence constitutes hearsay, however, presents a purely legal issue that is subject to *de novo* review. *People v. Sundling*, 2012 IL App (2d) 070455-B, ¶ 82. Hearsay is "a statement, other than one made by the declarant while testifying at [a] trial or hearing, offered into evidence to prove the truth of the matter asserted." Ill. R. Evid. 801(c) (eff. Oct. 15, 2015). Hearsay is generally inadmissible unless a specific exception applies because there is no opportunity to cross-examine the declarant. *People v. Dunmore*, 389 Ill. App. 3d 1095, 1106 (2009); *In re J.B.*, 346 Ill. App. 3d 77, 81 (2004). An out-of-court statement from a nontestifying witness that is not introduced to prove the truth of the matter asserted, however, does not constitute hearsay. *In re Zariyah A.*, 2017 IL App (1st) 170971, ¶ 88. For example an out-of-court statement used simply to show its effect on the listener and to explain the listener's course of conduct is not hearsay. *Id.*; *Dunmore*, 389 Ill. App. 3d at 1106.

¶ 24 At the adjudication hearing, the State elicited testimony from DCFS investigator Deisy Anaya that she received information that E.G. regularly ingested marijuana. That information was "related to [her] by one of the collaterals of the father." C.M.'s attorney objected to Anaya's testimony, arguing that it constituted inadmissible hearsay. In response, the State represented that Anaya's testimony was not being presented for the truth of the matter asserted—that E.G. was a frequent marijuana user—rather, the State maintained that the testimony was being presented for the limited purpose of explaining Anaya's course of conduct as an investigator and

why she did not pursue an arrangement whereby G.M. could be placed solely into the physical custody of her father. The court ultimately elected to admit the evidence for the purpose of showing "the effect it had on the decision that the Department made." Following Anaya's testimony, the State posed inquiries to case manager Martha Castaneda, who had been working with C.M. during her prior involvement with DCFS. During her testimony, Castaneda explained that C.M. had previously been engaged in therapy and parent coaching after her three prior children had been removed from her custody. Castaneda had received information from C.M.'s parenting coach that C.M. had been unsuccessfully discharged from coaching due to the fact that she made "very slow progress" in learning and applying appropriate parenting behavior. C.M.'s attorney objected to Castaneda's testimony concerning C.M.'s unsuccessful discharge from parent coaching, arguing that the State was again eliciting improper hearsay evidence. The State, in turn, denied that the evidence was being presented for the truth of the matter asserted and argued that it was simply being presented to explain Castaneda's course of conduct in making referrals for services in the case. The circuit court once again overruled C.M.'s hearsay objection.

¶ 25 Notwithstanding the court's ruling, the State and Public Guardian both relied on the testimony of Anaya and Castaneda for the truth of the matter asserted when the parties delivered their closing arguments. That is, both parties urged the court to enter a finding of neglect based upon evidence that E.G. was a regular marijuana user and that C.M. had a documented history of mental disability and had been unsuccessfully discharged from parent coaching. The court also relied on the testimony for the truth of the matter asserted when it delivered its oral and written[4] adjudication ruling, citing C.M.'s unsuccessful discharge from parenting class and the

[4] In its brief written order, the court expressly found: "Mother has three other children who have been removed from her care, mother has no substantial progress in services/parent coaching [and was] unsuccessfully discharged. Father smokes marijuana daily."

Department's belief that E.G. "uses marijuana on a daily basis" as bases for its neglect finding. Accordingly, even if Anaya's testimony concerning E.G.'s marijuana use, and Castaneda's testimony concerning C.M.'s unsuccessful discharge from parenting coaching was admissible for the purpose of showing the effect the information had on the listener, the information was subsequently improperly relied on by the State and Public Guardian as well as by the court for the truth of the matter asserted during the hearing. See, *e.g.*, *In re A.J.*, 296 Ill. App. 3d 903, 917 (1998) (even though evidence of the father's purported drug use was admitted to explain the conduct of the caseworkers, the record established that the evidence was ultimately considered for the truth of the matter asserted, and thus its admission constituted error).

¶ 26 The State and Public Guardian, however, both submit that any erroneous consideration of the aforementioned testimony for the truth of the matter asserted was harmless in light of the other evidence presented at the hearing, including the fact that C.M. had mental limitations that resulted in her three prior children being removed from her care, and that E.G. had not yet been assessed for services.

¶ 27 The erroneous admission of hearsay evidence in an adjudication hearing constitutes harmless error where it is cumulative of other *properly admitted* evidence. *In re Zariyah A.*, 2017 IL App (1st) 170971, ¶ 90. Where, however, the hearsay evidence is not cumulative of other properly admitted evidence, and where it is clear from the record that the court affirmatively relied on the hearsay evidence to make its adjudicatory finding, then the admission of the hearsay evidence cannot be deemed harmless. *Id*. ¶ 108. That is because the court's express reliance on the improperly admitted hearsay evidence conclusively shows that the evidence impacted the court's decision and the outcome of the adjudication hearing. *Id*. ¶¶ 104-08. For example, in *Zariyah A.*, this court rejected arguments advanced by the State and Public

Guardian that improperly admitted hearsay evidence concerning the mother's diagnosis of bipolar disorder was harmless where the State failed to present any competent non-hearsay evidence regarding the mother's diagnosis and where the court specifically referred to her diagnosis "both in its written adjudication orders and on the record at the conclusion of the adjudicatory hearing." *Id*. ¶ 108.

¶ 28 In this case, the State failed to present any competent, non-hearsay evidence to support a finding that E.G. smoked marijuana on a daily basis. Moreover, although the State presented evidence that C.M.'s three prior children had been removed from her care after findings of neglect, abuse, and/or dependency had been entered to support its theory of anticipatory neglect,[5] it failed to present any competent, non-hearsay evidence that C.M. had been unsuccessfully discharged from parenting coaching. The hearsay evidence in this case was thus not simply cumulative of other properly admitted evidence. Moreover, we cannot say that that the hearsay evidence had no impact on the court's ultimate determination that G.M. was a neglected minor given that the court cited the evidence on the record at the conclusion of the adjudication hearing and in its subsequent written order as reasons for its neglect finding. See *In re Zariyah A.*, 2017 IL App (1st) 170971, ¶ 108. The admission and consideration of the hearsay evidence cannot be deemed harmless under such circumstances. *Id*.

¶ 29 In light of this conclusion, we elect to reverse the court's adjudication determination and remand for a new adjudication hearing. Remand rather than outright reversal is the appropriate remedy when a reviewing court, considering all of the evidence presented during the

[5] Pursuant to a theory of anticipatory neglect, "the State seeks to protect not only children who are the direct victims of neglect or abuse, but also those who have a probability to be subject to neglect or abuse because they reside, or in the future may reside, with an individual who has been found to have neglected or abused another child." *In re Arthur H.*, 212 Ill. 2d at 468. Although there is no *per se* rule that a parent's neglect of one child conclusively establishes the neglect of another child in the same household (*Id.* at 468), the theory of anticipatory neglect is premised upon the recognition that "a parent's treatment of one child is probative of how that parent may treat his or her other children" (*In re Zion M.*, 2015 IL 151119, ¶ 30) and that a "court should not be forced to refrain from taking action until each particular child suffers an injury" (*In re Brooks*, 63 Ill. App. 3d 328, 339 (1978)).

adjudication hearing, including the improperly admitted hearsay evidence, can conclude that there is sufficient evidence to support the court's finding of neglect. *Id*. ¶¶ 114-15. As set forth above, the State presented evidence of C.M.'s documented mental limitations and her prior involvement with DCFS. The State also presented evidence that C.M. was living with E.G., who had not yet been assessed for services. In our view, this evidence, coupled with the aforementioned hearsay evidence, was sufficient to support the court's finding of neglect. Remand for a new adjudication hearing is nonetheless necessary because the record demonstrates that the court's decision was informed by its improper reliance on hearsay evidence and it is not clear that the court would have reached the same result absent its reliance on the improper evidence. *Id*. ¶ 119.

¶ 30 CONCLUSION

¶ 31 The judgment of the circuit court is thus reversed and the cause remanded for a new adjudicatory hearing.

¶ 32 Reversed and remanded.