

ARKANSAS COURT OF APPEALS

DIVISION I
No. CA11-1066

JOSEPH LYNCH

APPELLANT

V.

ARKANSAS DEPARTMENT OF
HUMAN SERVICES AND V.L. AND
J.L., MINORS

APPELLEES

Opinion Delivered February 15, 2012

APPEAL FROM THE GARLAND
COUNTY CIRCUIT COURT,
[NO. JV-2011-181]

HONORABLE VICKI SHAW COOK,
JUDGE

AFFIRMED

RAYMOND R. ABRAMSON, Judge

Joseph Lynch appeals from an order of the Garland County Circuit Court adjudicating his daughter, V.L. (born October 29, 1997), and his son, J.L. (born February 16, 1999), dependent-neglected. He argues on appeal that (1) the evidence was insufficient to support the court's determination that the children were dependent-neglected and (2) the trial court erred in refusing to admit evidence that his wife coerced the children into embellishing the events to gain custody of the children and increase her chances of obtaining child support and alimony. We find no error and affirm.

On February 2, 2011, an investigation of Mr. Lynch was opened by the Crimes against Children Division. On February 7, 2011, the Arkansas Department of Human Services (DHS) assisted Mrs. Lynch in entering a safe-house shelter with her children and in obtaining an order of protection against Mr. Lynch.



On March 4, 2011, the Crimes against Children Division's investigation determined the following allegations against Mr. Lynch to be true: suffocation, mental injury, and extreme or repeated cruelty.

On March 8, 2011, the order of protection was dismissed by a Saline County court. That same day, DHS received a report stating that Mr. Lynch had removed the children from school. On March 9, 2011, DHS exercised a 72-hour hold on V.L. and J.L. to prevent severe maltreatment. At that time, there was an open Garland County criminal investigation against Mr. Lynch for the domestic battery of V.L. The children were removed from Mr. Lynch's custody as he was trying to enroll them in the Lakeside School District.

An emergency order in Garland County Circuit Court was entered on March 11, 2011, placing the children in the custody of DHS. A probable-cause order was entered on March 14, 2011, wherein the court found probable cause that V.L. and J.L. were dependent-neglected. The court placed custody of the children back with Mrs. Lynch, providing that a no-contact order remain in place and that the children also have no contact with Mr. Lynch. On May 13, 2011, the court found good cause to continue the adjudication hearing to July 20, 2011.

After a hearing, the trial court adjudicated the children dependent-neglected. The court specifically found that Mr. Lynch had subjected V.L. to physical abuse by interfering with her breathing when he grabbed her by the neck and choked her and that he had subjected J.L. to emotional abuse by making J.L. hold V.L. down while she was being



choked.¹ Mr. Lynch appeals the adjudication order, arguing that there was insufficient evidence to support the determination and that the trial court erred in disallowing evidence of motive for the children to fabricate their claims.

I. *Sufficiency of the Evidence*

Mr. Lynch first argues that there was insufficient evidence to support the trial court's determination that the children were dependent-neglected. He claims that the inconsistencies in the children's testimony as to the extent and duration of the choking incident, V.L.'s characterization of the Superman disciplinary action as a "game," V.L.'s failure to disclose the alleged abuse to her counselor for almost a year, J.L.'s failure to disclose the alleged abuse to his counselor for almost nine months, and V.L.'s failure to confirm some incidents of alleged abuse testified to by other witnesses created doubt that these events occurred at all. He contends there was no testimony of ongoing abuse. He further contends that, because Mrs. Lynch's conversations with the Arkansas State Police child-maltreatment investigator centered solely on her relationship with Mr. Lynch and not on any alleged abuse of her children, the credibility of the allegations is in question. He also emphasizes the testimony of the children's therapist, who testified that V.L. had a pretty vivid imagination and liked to embellish things to sound better or worse than they are.

¹There was also testimony at the hearing that Mr. Lynch subjected V.L. to a disciplinary action called the "Superman game," whereby V.L. would be required to stand on one leg and hold phone books in the air. If she lowered or dropped one of the books, Mr. Lynch would strike her with a belt. The trial court, however, did not address these allegations in its adjudication order.



Adjudication hearings are held to determine whether the allegations in a petition are substantiated by the proof. Ark. Code Ann. § 9-27-327(a)(1) (Repl. 2009). Dependency-neglect allegations must be proved by a preponderance of the evidence. Ark. Code Ann. § 9-27-325(h)(2)(B) (Repl. 2009). We will not reverse the circuit court’s findings unless they are clearly erroneous. *Seago v. Ark. Dep’t of Human Servs.*, 2009 Ark. App. 767, 360 S.W.3d 733. In reviewing a dependency-neglect adjudication, we defer to the circuit court’s evaluation of the credibility of the witnesses. *Id.* And in an adjudication hearing, the focus is on the child, not the parent; at this stage of a proceeding, the juvenile code is concerned with whether the child is dependent-neglected. *Id.* An adjudication of dependency-neglect occurs without reference to which parent committed the acts or omissions leading to the adjudication; the juvenile is simply dependent-neglected. *Albright v. Ark. Dep’t of Human Servs.*, 97 Ark. App. 277, 283, 248 S.W.3d 498, 502 (2007).

Arkansas Code Annotated section 9-27-303(3)(A) (Repl. 2009) defines “abuse,” in pertinent part, as follows:

(vii) Any of the following intentional or knowing acts, with or without physical injury:

...

(c) Interfering with a child’s breathing;

Here, V.L. testified that her father held her down on a bed, placed his hands around her neck, and choked her. She stated that it lasted only a few seconds, but that during that time, she was not able to breathe. She testified that her father had J.L. hold her ankles or legs to restrain her. When her brother let go, she was able to free herself. J.L. confirmed that the



choking took place and that his father ordered him to restrain her legs during the incident. Heather Fendley, a family-service worker, testified that Mr. Lynch admitted to her that the incident occurred, but insisted that he had placed his hand on V.L.'s neck playfully and did not choke her.

Based on this testimony, there was sufficient evidence to support the trial court's determination that abuse by choking occurred. Mr. Lynch's assertions simply go to the credibility of the children's allegations. To find merit in his assertions would require this court to act as a super fact-finder or second guess credibility determinations of the trial court, and that we will not do. *K.C. v. Ark. Dep't of Human Servs.*, 2010 Ark. App. 353, 374 S.W.3d 884; *Albright, supra*.

Mr. Lynch also argues that only one of the abuse allegations meets the definition of abuse under the statute, because the discipline rendered during the "Superman game" does not rise to the level of abuse. However, the trial court did not rely on this allegation in support of its determination, and the remaining abuse-by-choking allegation relied on by the court is sufficient to support an adjudication of dependency-neglect.

II. *Admissibility of Motive Evidence*

Finally, Mr. Lynch argues that the trial court erred in preventing him from presenting evidence of a prenuptial agreement and substantial credit card debt as motives for Mrs. Lynch to have the children fabricate the abuse allegations to better her position on custody and alimony issues in their divorce proceedings.

Matters pertaining to the admissibility of evidence are left to the sound discretion of



the trial court, and we will not reverse such a ruling absent an abuse of that discretion. *See, e.g., Bell v. State*, 334 Ark. 285, 973 S.W.2d 806 (1998). Abuse of discretion is a high threshold that does not simply require error in the trial court's decision, but requires that the trial court act improvidently, thoughtlessly, or without due consideration. *Grant v. State*, 357 Ark. 91, 93, 161 S.W.3d 785, 786 (2004). Furthermore, we will not reverse absent a showing of prejudice, as prejudice is not presumed. *Hill v. State*, 337 Ark. 219, 988 S.W.2d 487 (1999).

In this case, even assuming *arguendo* that Mr. Lynch is correct and that the trial court erred in disallowing this evidence, Mr. Lynch cannot show prejudice. Heather Fendley testified that, in her discussions with Mr. Lynch about the case, he expressed his belief that Mrs. Lynch had done this as a means to obtain a divorce because of a prenuptial agreement. She also testified that he complained about his finances. There was evidence at the hearing that the children had ten or more credit cards in their possession at the time they were taken into protective custody. Mr. Lynch was also allowed to testify that he believed these allegations arose because of the divorce proceedings.² Thus, he was able to argue that there was a motive for his wife to coerce the children into embellishing the allegations. As a result, even if the trial court erred in determining admissibility, we hold that no prejudice occurred.

²An objection was made, but no ruling was rendered.



Cite as 2012 Ark. App. 149

Affirmed.

ROBBINS and WYNNE, JJ., agree.

Janet Lawrence, for appellant.

Tabitha Baertels McNulty, Office of Chief Counsel; and *Keith Chrestman*, for appellees.