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ARKANSAS COURT OF APPEALS
DIVISION III
No. CV-22-720

LANE BEANBLOSSOM AND REBECCA BEANBLOSSOM		Opinion Delivered May 10, 2023
APPELLANTS		APPEAL FROM THE WASHINGTON COUNTY CIRCUIT COURT
V.		HONORABLE DIANE WARREN, JUDGE
ARKANSAS DEPARTMENT OF HUMAN SERVICES AND MINOR CHILDREN		[NO. 72]V-22-244]
APPELLEES		REVERSED AND REMANDED

BART F. VIRDEN, Judge

Rebecca Beanblossom appeals the Washington County Circuit Court’s adjudication of her two children, MC1 (born 08/21/20) and MC2 (born 12/28/21), as dependent-neglected. Lane Beanblossom appeals the circuit court’s adjudication of his child, MC2, as dependent-neglected. We reverse and remand.

I. Background

On April 25, 2022, the Arkansas Department of Human Services (Department) filed an ex parte petition for emergency custody and dependency-neglect regarding MC1 and MC2, alleging abuse, neglect, and parental unfitness as grounds. The affidavit attached to the petition set forth the following information. On April 21, Christi Griffin, a Department family service worker (FSW) based in northwest Arkansas, received a call from Deidre

Uselton, an investigator for the Arkansas State Police Crimes Against Children Division (CACD), requesting a safety response because MC2 had been admitted to Arkansas Children’s Hospital in Little Rock (ACH) with two subdural hematomas, a fractured rib, a bruised arm, a pulmonary contusion, and scattered intraretinal hemorrhaging behind her left eye. Uselton explained to Griffin that the caller stated that the parents’ stories were inconsistent, and Lane had admitted that he dropped MC2 and was rough with her a few days earlier. Griffin called Dr. Karen Farst, one of MC2’s doctors at ACH and a child-abuse specialist, who told Griffin that the injuries were consistent with abuse—shaking or slamming a baby’s head too hard—not a fall or drop, and Lane’s statement that he was rough with MC2 on Monday matched her timeline regarding MC2’s symptoms. Dr. Farst stated that MC2 had no bleeding disorders or history of brain bleeds.¹ FSW Whitnee Patterson spoke with the Beanblossoms on the phone while they were at ACH, and she asked the parents to explain the events leading up to that moment. Lane told Patterson that he and Rebecca took MC2 to see a doctor because MC2 had been vomiting for two days and having trouble with feedings, and she had been fussier than normal. Neither parent could explain MC2’s injuries, and Lane stated that the only thing they had done differently was to administer a “poop whistle” which is an over-the-counter device that assists babies in passing gas. Both parents stated that they were MC2’s caregivers, and no one else took care of MC2 for long

¹MC2 was born prematurely at twenty-six weeks’ gestation.

periods of time. Lane repeated to Patterson that he might have been a little rougher than normal while playing with MC2, but not such that he would have caused her injuries.

The ex parte order for emergency custody was entered on April 25, and MC1 and MC2 were placed in the Department's custody. On May 26, after the April 26 hearing, the court entered the probable-cause order finding that probable cause existed to remove the children from the Beanblossoms' custody, and in light of MC2's severe injuries and the parents' inability to provide a reasonable explanation for the injuries, the Department made reasonable efforts to prevent the need for removal. MC1 was placed with her father, Brenton Parker. Lane was found to be MC2's parent because his name is on her birth certificate, and he signed an affidavit of paternity.

On June 17, the Department filed a motion for a continuance because Dr. Farst was unavailable to testify. The motion was denied. At the hearing, the Department renewed its motion for a continuance, and the court denied the motion, ruling that the Department had known about the June 21 adjudication hearing since the April 26 hearing; thus, the motion was untimely, and the Department failed to establish good cause.

At the hearing, CACD investigator Deidre Uselton testified that on April 21, she spoke to Lane and Rebecca on the phone, but only about their relatives' contact information. Uselton testified that MC2's specific injuries were "a bruise on her left forearm, a bilateral subdural hematoma—" Lane's counsel objected, asserting that the testimony was hearsay because Uselton was testifying about what Dr. Farst had written in a medical report and did not stem from Uselton's personal observation. Counsel also asserted that a foundation had

not been laid for the testimony, and the court instructed the attorney ad litem to do so. Uselton stated that she based her true finding of abuse against Lane on “the medical reports from Dr. Farst and Children’s Hospital in Little Rock.” Counsel repeated the hearsay objection to Uselton’s testimony regarding the contents of Dr. Farst’s report. The circuit court overruled the objection. Uselton stated that Detective O’Dell with the Fayetteville Police Department interviewed Lane, and she, Uselton, based her true finding on the information gleaned from O’Dell’s interview and Dr. Farst’s report. Uselton later stated that her finding was based on the initial hotline call, and “it’s not from Dr. Farst or a medical report, it is the initial report that I received.” Uselton reiterated that Detective O’Dell did the investigation, and she based her true finding of abuse on the hotline call and information O’Dell gathered.

Christy Griffin testified that she requested that a Little Rock-based FSW go to ACH to see MC2 in person. The FSW called Griffin to join in the conversation, and they talked about how MC2’s injuries may have occurred. Lane and Rebecca denied knowing how the injuries occurred, and Lane admitted that he had been a little rough with MC2 earlier that week.

Whitnee Patterson, the Washington County FSW involved in the case, testified that she drafted the case plan. She explained that she also spoke with the Beanblossoms over the phone about how the injuries may have occurred, but they could not provide a reason for MC2’s injuries. Patterson also stated that Lane explained that he handled MC2 a little roughly, and he and Rebecca were the child’s only caregivers.

Rebecca testified that MC2 was in her and Lane's custody when the child's injuries occurred, and her friend Caitlin was in the home around that time. No one else ever took care of MC2, and Rebecca did not believe Caitlin or Lane caused the injuries. Rebecca could not explain how the injuries could have occurred. She testified that it was possible that MC1, who was crawling and pulling up at the time and weighed around eighteen pounds, could have accidentally fallen on MC2.

The Department requested that Dr. Farst's medical report be admitted into evidence, and Lane's counsel objected, arguing that the report was inadmissible hearsay. The court sustained the objection, and the report was not admitted.²

Testimony continued, and Lane stated that he did not know how MC2's injuries occurred, and no one else was living in the home or caring for her. He explained that MC2 was born prematurely at twenty-six weeks and "was very small, very fragile, so accidental mishandle is a big possibility"; however, he did not know who could have mishandled MC2. Lane also stated that he could have swaddled her too hard. Lane explained that he and Rebecca took MC2 to a walk-in clinic in Fayetteville because she was vomiting and they were having trouble feeding her, and the provider there recommended taking her to Arkansas Children's Northwest Hospital in Springdale for more testing. The health care provider there told them to take MC2 to ACH in Little Rock, and she was transported there by ambulance.

²The Department requested admission of a packet of six separate medical records from different doctors and a social worker. Parent counsel objected on the same basis as his objection to Dr. Farst's report. The objection was sustained.

The court ruled from the bench that the children were dependent-neglected. The court found that the CACD conducted an investigation and made a true finding of abuse against Lane, who admitted he was rough with MC2. The court found that MC2 had “suffered injuries sufficient for her to be vomiting and taken to the urgent care clinic” and was then transported to ACH. The injuries were not adequately explained by the parents. The circuit court found that the Beanblossoms did not file a responsive pleading to the petition for dependency-neglect; thus, none of the allegations in the petition and attached affidavit had been denied, and allegations that are not denied are deemed admitted. Rebecca’s counsel asserted that the Beanblossoms were not required to file a responsive pleading to the Department petition, pursuant to Ark. Code Ann. § 9-27-325(b)(1) (Supp. 2021). The court ruled that the Arkansas Rules of Civil Procedure required the parents to file a response, or the allegations would be deemed admitted. The undenied allegations, the court ruled, were that the Department was called for a safety response, Lane admitted dropping and being rough with MC2, no third party could have been responsible for the injuries, and the child was not walking and able to injure herself. The court found inadequate supervision and physical abuse as the basis for the dependency-neglect finding against the parents.

The circuit court entered the order finding MC1 and MC2 dependent-neglected due to physical abuse and inadequate supervision on August 15. The court found that first contact with the Department occurred at ACH because MC2 was admitted to ACH with “two subdural hematomas, a fractured rib, a bruised arm, a pulmonary contusion, and

scattered intraretinal hemorrhaging behind the left eye,” and because of these injuries, the Department was deemed to have made reasonable efforts to prevent removal. The court found that “allegations in the petition and accompanying affidavit are substantiated by the proof and that there was a true finding of child abuse [against Lane] by the CACD investigator and that the child suffered injuries consistent with abuse and the child was not mobile.” MC2 was not walking, only crawling and pulling up, when she began vomiting. Rebecca and Lane were the child’s only caretakers and offered no plausible explanation for the injuries. The Beanblossoms took MC2 to a walk-in clinic, and from there she was transported to ACH in Little Rock for treatment. The court also found that CACD investigator Diedre Uselton testified that there was a true finding of abuse against Lane, and her testimony was credible. The court recounted that FSW Whitnee Patterson testified that she talked to Lane and Rebecca by phone, and neither was able to provide a plausible explanation for MC2’s injuries, though Lane admitted he may have been too rough with her and dropped her. Patterson testified that the parents told her they were the only caregivers for MC2. Lane admitted that MC2’s injuries occurred while she was in his care but that he believed she was injured accidentally. The court found that the allegation that the Department received a call requiring a safety response was not denied. The court also found that MC1 was to remain with her biological father because Rebecca was unfit, and MC1 was in danger of harm if returned to her custody because of MC2’s injuries and the parents’ inability to explain them.

Lane and Rebecca timely filed separate notices of appeal. On appeal and in separate briefs, both Rebecca and Lane argue that the circuit court admitted hearsay evidence, and that admission resulted in extreme prejudice and constituted reversible error. The Beanblossoms also assert that the court's "default judgment" against them was clear error. Lane separately contends that the circuit court erroneously relied on the CACD true finding of abuse against him. Additionally, Rebecca asserts that the evidence supporting the circuit court's finding of abuse or failure to adequately supervise regarding her was insufficient.

II. Discussion

A. Standard of Review

An adjudication of dependency-neglect is immediately appealable. Ark. Sup. Ct. R. 6-9(a)(1)(A). The purpose of an adjudication hearing is to determine whether the allegations in the petition are substantiated by the proof. *Ark. Dep't of Hum. Servs. v. Hall*, 2021 Ark. App. 108, 618 S.W.3d 219. The burden of proof at an adjudication hearing is preponderance of the evidence. *Id.* In dependency-neglect cases, the standard of review on appeal is de novo, but the appellate court will not reverse the circuit court's findings unless they are clearly erroneous. *Hilburn v. Ark. Dep't of Hum. Servs.*, 2018 Ark. App. 420, 558 S.W.3d 885. A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire evidence is left with a definite and firm conviction that a mistake has been made. *Hall, supra.* Moreover, in reviewing dependency-neglect adjudications, we defer to the circuit court's evaluation of the credibility of the witnesses. *Worrell v. Ark. Dep't of Hum. Servs.*, 2010 Ark. App. 671, 378 S.W.3d 258.

The focus of an adjudication hearing 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. *Ussery v. Ark. Dep't of Hum. Servs.*, 2022 Ark. App. 250, at 28, 646 S.W.3d 266, 282. A dependent-neglected juvenile is defined as any juvenile who is at substantial risk of serious harm as a result of abuse, neglect, or parental unfitness to the juvenile or a sibling of the juvenile. *Raynor v. Ark. Dep't of Hum. Servs.*, 2022 Ark. App. 263, at 7, 646 S.W.3d 406, 411. Additionally, a finding of dependency-neglect occurs without reference to whether a particular parent committed the acts or omissions that caused the dependency-neglect; rather, the juvenile is simply dependent-neglected. *Araujo v. Ark. Dep't of Hum. Servs.*, 2019 Ark. App. 181, 574 S.W.3d 683.

B. Admission of Hearsay Testimony

Rebecca and Lane assert on appeal that the circuit court erroneously allowed CACD investigator Uselton to testify about what Dr. Farst wrote in her medical report. They argue that Uselton had no basis on which to testify about MC2's specific condition, and she relied solely on the out-of-court statements for her testimony regarding MC2's condition; thus, Uselton's testimony was inadmissible as hearsay, and prejudice resulted from the court's decision to allow the testimony. We agree and reverse and remand.

Hearsay is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. Ark. R. Evid. 801(c). Hearsay testimony is generally inadmissible pursuant to Arkansas Rule of Evidence 802. Matters pertaining to the admissibility of evidence are left to the sound discretion of

the circuit court, and we will not reverse such a ruling absent an abuse of that discretion. *Tadlock v. Ark. Dep't Hum. Servs.*, 2009 Ark. App. 821, 373 S.W.3d 361. Abuse of discretion is a high threshold that does not simply require error in the circuit court's decision, but requires that the circuit court act improvidently, thoughtlessly, or without due consideration. *Williams v. Ark. Dep't of Hum. Servs.*, 2019 Ark. App. 194, 575 S.W.3d 415. Furthermore, we will not reverse absent a showing of prejudice, as prejudice is not presumed. *Tadlock, supra*.

The Department asserts that Uselton's "statement was not being presented for the truth of the matter asserted, but instead as a basis for Uselton's investigative finding." We disagree. The purpose of Uselton's testimony about the content of Dr. Farst's report was to prove MC2's medical condition and that it was the result of physical abuse; thus, the court abused its discretion by admitting inadmissible hearsay.

The erroneous admission of hearsay is subject to a harmless-error analysis. *Id.* We will not reverse if the hearsay evidence is cumulative of other evidence admitted without objection. *Id.* Here, the hearsay testimony was not merely cumulative or admitted through another source. Without Uselton's testimony that MC2 suffered a bilateral subdural hematoma and a bruise on her left forearm, the remaining evidence adduced at the hearing is as follows: Lane admitted being rough with MC2 earlier in the week, the Beanblossoms took her to the hospital for vomiting and difficulty feeding, MC2 was not yet able to walk, her sister could not be the source of MC2's vomiting and difficulty feeding because MC1 was only pulling up, and she weighed eighteen pounds. The hospital escalated the child's

care, eventually sending her to ACH via ambulance. The circuit court’s finding that “the child suffered injuries consistent with abuse” demonstrates the court’s reliance on Uselton’s statement about the contents of Dr. Farst’s report. Under the specific facts of this case, there is no argument to be made that admission of the hearsay testimony was harmless, because it was relied on by the circuit court and not cumulative or admitted from another source. Consequently, we must reverse and remand this case for a new hearing.

Because we reverse and remand on the hearsay issue, we need not reach the Beanblossoms’ remaining points on appeal.

Reversed and remanded.

THYER and HIXSON, JJ., agree.

Dusti Standridge, for separate appellant Lane Beanblossom

Tabitha McNulty, Arkansas Commission for Parent Counsel, for separate appellant
Rebecca Beanblossom.

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appellee.

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