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FIFTH DIVISION
March 25, 2011

IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

IN THE INTEREST OF DANALIA L. and DENIM S.,)	Appeal from the
)	Circuit Court of
Minors-Respondents-Appellants,)	Cook County
)	
(THE PEOPLE OF THE STATE OF ILLINOIS),)	
)	
Petitioner-Appellee,)	No. 09 JA 00605-606
)	
v.)	
)	
DELYSSA S. and LONQUENTIN R.,)	Honorable
)	Mary L. Mikva,
Respondents-Appellees.)	Judge Presiding.

JUDGE EPSTEIN delivered the judgment of the court.
Justices Joseph Gordon and Howse concurred in the judgment.

ORDER

Held: After holding a hearing, pursuant to *In re J.J.*, 142 Ill. 2d 1 (1991), the circuit court determined it was in the best interests of the minors, their family, and the community to grant the State's motion to dismiss the petitions for adjudication of wardship. The ruling was not an abuse of discretion where: (1) a follow-up investigation showed the minor's injury was accidental; (2) there was no nexus between the minor's injury and the parents' conduct of smoking marijuana; and (3) evidence of the parents' participation and progress in services was properly excluded as irrelevant.

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After a hearing, the circuit court granted the State's motion to dismiss the petitions for adjudication of wardship of minors-respondents, Danalia L. and Denim S. The Public Guardian appealed. We affirm.

I. BACKGROUND

Danalia L. and Denim S. are the minor children of Respondent, Delyssa S. Jerry B. is Delyssa S.'s boyfriend and the minors' caretaker. Respondent, Lonquentin R. is Denim's father. Danalia's father is unknown

On July 7, 2009, Delyssa S. and Jerry B. were visiting Jerry B.'s cousin in Indiana. Delyssa S. was upstairs washing dishes and watching the cousin's children. Jerry B. was downstairs in the basement with two-month-old Danalia, who was in a rocker. When Jerry B. noticed the rocker was broken, he removed Danalia. He placed her on a stack of three pillows while he fixed the rocker. He left to go to the washroom and when he returned, Danalia was on the floor, crying. Delyssa S. and Jerry B. took Danalia to Methodist Hospital in Gary, Indiana, where she was admitted and diagnosed with a left clavicle fracture and bruising to her left cheek.

On July 14, 2009, an Illinois Department of Children and Family Services (DCFS) investigator had a telephone conversation with the admitting physician who purportedly said Danalia's injury had been inflicted and was inconsistent with Jerry B's explanation. On July 24, 2009, DCFS took protective custody of both minors. The State filed petitions for adjudication of wardship for both Danalia and Denim, pursuant to section 2-3(2)(ii) of the Juvenile Court Act of 1987 (the Act) (705 ILCS 405/2-3(2)(ii) (West 2008)), alleging they were at substantial risk of physical injury other than by accidental means. The circuit court granted temporary custody of

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the minors to the DCFS guardianship administrator.

On June 17, 2010, the State sought to voluntarily dismiss the petitions without prejudice because the factual basis underlying the petitions was incorrect. The State's follow-up investigation had disclosed opinions from three medical doctors, including the admitting physician, that Jerry B.'s explanation of Danalia accidentally falling off the pillows was *not* inconsistent with her injuries. The admitting physician stated she never told the DCFS investigator that Danalia's type of injury was inconsistent with Jerry B.'s explanation. The Public Guardian objected to the dismissal and claimed that assessments performed after the case came into the system showed the parents needed services including treatment for their marijuana use. After being granted leave by the circuit court, the Public Guardian filed supplemental petitions for adjudication of wardship, based on Delyssa S.'s and Jerry B.'s marijuana use. The supplemental petitions alleged that the minors were neglected pursuant to sections 2-3(1)(a) (not receiving proper care) and 2-3(1)(b) (in an injurious environment) of the Act, and that they were abused pursuant to section 2-3(2)(ii) of the Act (at substantial risk of physical injury other than by accidental means).

On September 23, 2010, and October 1, 2010, the circuit court held a hearing on the State's motion to dismiss its petitions and the Public Guardian's supplemental petitions, pursuant to *In re J.J.*, 142 Ill. 2d 1 (1991) (*J.J.* hearing). The court excluded as irrelevant any evidence regarding the current situation or the parents' participation and progress in services, but allowed the Public Guardian to make offers of proof.

At the close of the evidence, and after hearing arguments, the court found there was no

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basis for proceeding on either the State's petitions or the Public Guardian's supplemental petitions. The court found no evidence of deliberate abuse and no nexus between the parents' marijuana use and the care of the children. The court further stated that a consideration of the best interest factors did not require that the court deny the State's motion to dismiss.

On October 1, 2010, the circuit court: (1) granted the State's motion to dismiss the petitions and the supplemental petitions for adjudication of wardship based on the showing that it was in the minors' best interests; (2) ordered that legal custody of the minors' would stand in the mother, Delyssa S.; (3) ordered the proceedings closed; and (4) denied the Public Guardian's motion for a stay. The Public Guardian appealed.

On October 12, 2010, this court entered an order granting the Public Guardian's emergency motion for a stay, reinstating the case, and reinstating DCFS's temporary custody, pending resolution of this appeal.

II. ANALYSIS

The purpose of a *J.J.* hearing is to allow the circuit court to consider the merits of the State's motion to dismiss a petition alleging abuse of a minor, and determine if dismissal is "in the best interests of the minor, the minor's family, and the community." *In re J.J.*, 142 Ill. 2d at 9.

A. Standard of Review

We review the circuit court's decision to grant the State's motion to dismiss the petitions for adjudication of wardship for an abuse of discretion. *In re J.J.*, 142 Ill. 2d at 11. A trial judge's decision to admit or exclude evidence is also reviewed under an abuse of discretion

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standard. *In re D.T.*, 212 Ill. 2d 347, 356 (2004). A trial court abuses its discretion when its ruling is arbitrary or fanciful or “ ‘where no reasonable person would take the view adopted by the trial court.’ ” [Citation.]” *Blum v. Koster*, 235 Ill. 2d. 21, 36 (2009).

B. Whether the Circuit Court Abused Its Discretion in Dismissing the Petitions for Adjudication of Wardship In View of the Evidence of the Parents’ Use of Marijuana

In the instant case, after its additional investigation showed no factual basis for the allegations in its petitions, the State determined it would not be able to meet its burden of proof in an adjudicatory hearing. See *In re N.B.*, 191 Ill. 2d 338, 343 (2000) (a circuit court must dismiss the State’s petition for adjudication of wardship if the State fails to prove the allegations of abuse, neglect or dependence by a preponderance of the evidence in the adjudicatory hearing). The Public Guardian has conceded “this case likely would not have been brought to the Court’s attention if the facts stated in the People’s motion to dismiss were known at the time the case was screened into the system.” The Public Guardian asserts, however, the evidence of the parents’ marijuana use would have been sufficient to support a finding of neglect based on an injurious environment.

The Illinois Supreme Court has explained that although a court may not approve of a parent’s conduct, the conduct alone will not support a finding of abuse or neglect where there is no showing that the conduct subjected the child to harm. *In re N.B.*, 191 Ill. 2d 338, 353 (2000). Here, the trial court considered the evidence regarding Delyssa S.’s and Jerry B.’s use of marijuana.

During the *J.J.* hearing, Toni Dunlap, an assessor from the Juvenile Court Assessor’s Program, testified that she assessed Jerry B. and Delyssa S. Jerry B. told her he had smoked

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marijuana on the day Danalia was injured, but claimed he “was not high” at the time Danalia was injured. Delyssa S. told her she smoked marijuana daily, but the only problem related to her use of marijuana was that it prevented her from enrolling in school. On cross-examination by the Public Guardian, Ms. Dunlap testified that both Delyssa S. and Jerry B. had missed their drug treatment appointments. Thereafter, the Public Guardian made an offer of proof that Ms. Dunlap would further testify regarding Delyssa S.’s and Jerry B.’s eligibility for, and need for, drug treatment services. In its case in chief, the Public Guardian presented testimony from several other witnesses who had completed assessments of either Delyssa S., Jerry B., or Lonquentin R. These witnesses testified regarding marijuana use by all three individuals. The Public Guardian presented offers of proof for these witnesses, all of whom would have further testified to the need for drug treatment or other services by Delyssa S., Jerry B., or Lonquentin R.

With regard to the evidence of the parents’ marijuana use, the circuit court cited *In re N.B.* as “one of many cases that stands for the proposition that you must show a nexus between the conduct and the care of the children.” The court found that there was no evidence “admissible or not admissible at trial” that showed any nexus between the parents’ conduct and any harm to the children, nor was it shown that the marijuana use created an injurious environment. We conclude that the trial court’s ruling was not an abuse of discretion.

C. Did the Circuit Court Abuse Its Discretion When It Excluded Evidence Regarding the Current Situation and the Parents’ Participation and Progress in Services

The Public Guardian argues that the circuit court abused its discretion in excluding evidence of the current status of the family and the parents’ participation and progress in services. The Public Guardian contends that the “best interests” determination required in a *J.J.*

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hearing necessitates a full-fledged hearing and a consideration of the factors listed in section 405/1-3(4.05) of the Act (705 ILCS 405/1-3(4.05)(West 2009). The circuit court acknowledged the “best interests” language in *In re J.J.* but noted that the court did not provide guidelines as to how the circuit court should make that determination. The court concluded that its determination of whether the dismissal of a State’s petition “is in the best interests of the minor, the minor’s family, and the community” did not require the court to conduct an inquiry as to whether the parents could benefit from services.

The circuit court expressed concerns that the assessments of the parents were performed by service providers whose viewpoints may have been distorted by the information they had received that Danalia’s injuries had been inflicted intentionally. The court also noted that parents are assured that their pre-adjudication participation in services will not in any way be used against them. The court believed it would be contrary to that assurance to sustain a petition the State sought to dismiss, based on the parents’ participation in services. We agree. The possible benefit to a parent from services is not relevant to a finding of abuse or neglect. *In re Kenneth D.*, 364 Ill. App. 3d 797, 805 (2006) (the test for admissibility of post-petition evidence depends on whether it is relevant to the allegations in the petition); *In re S.W.*, 342 Ill. App. 3d 445, 451 (2003) (mother’s subsequent participation in services was not relevant to the allegations of the petition).

The circuit court also stated, for the record, that the statutory best interest factors (see 705 ILCS 405/1-3(4.05) (West 2009)) did not require the court to deny the State’s motion to dismiss the petitions. As the court explained:

“I don’t believe there is a risk, notwithstanding the parents’ youth, which I am aware of; their lack of education, which I am aware of; [or] their poverty, which I am aware of. I don’t believe that any of that suggests that there’s a risk to the physical safety or welfare of these children. I believe that the development of the children’s identity, their long-term sense of attachment, their need for permanence, and most definitely – and this is one of the best interest factors – the risks attendant to entering and being in foster care, all suggest that the best interest factors do not necessitate that the State proceed on the petition which they have determined is not an appropriate petition to proceed on.”

Thus, although the court here disagreed with the Public Guardian as to the scope of the “best interests” determination in a *J.J.* hearing, had the court considered the evidence submitted by the Public Guardian’s offers of proof, the court would have reached the same result. The circuit court’s ruling was not an abuse of discretion; it cannot be said that its ruling was arbitrary or fanciful or that “no reasonable person would take the view adopted by the trial court.” *Blum v. Koster*, 235 Ill. 2d. at 36.

III. CONCLUSION

We conclude that the circuit court did not abuse its discretion in granting the State’s motion to dismiss the petitions, and the supplemental petitions, for adjudication of wardship of the minors, Danalia L. and Denim S. The circuit court adequately considered whether dismissal was in the best interests of the minors, the minors’ family, and the community. We affirm the judgment of the circuit court of Cook County.

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Affirmed.