



granted temporary custody of R.H., and she was placed into foster care. On October 29, 2009, the State filed a motion to admit child hearsay evidence pursuant to (735 ILCS 5/8-2601 (West 2008)). In that motion, the State alleged that R.H., who was under 13 years of age, had made certain out-of-court statements describing and complaining about acts of sexual abuse. The State asserted that the "time, content, and circumstances" of the out-of-court statements provided "sufficient safeguards of the reliability of the statements" and that either the child would testify or the State would present corroborative evidence of the acts which were the subject of the statements.

On August 9, 2010, the State filed a second amended petition for wardship, alleging that R.H. was abused pursuant to sections 2-3(2)(i), (2)(ii), and (2)(iii) of the Act (705 ILCS 405/2-3(2)(i), (ii), (iii) (West 2010)) and that she was neglected pursuant to section 2-3(1)(b) of the Act (705 ILCS 405/2-3(1)(b) (West 2010)).

On August 19, 2010, counsel for R.H.'s mother sent a letter to the State's Attorney assigned to the case, notifying the State that she intended to use Mark Tobin as an expert witness. In the letter, Sherry's attorney notified the State as follows:

"Mr. Tobin's opinion is that there are too many discrepancies in [R.H.'s] testimony and unwillingness [*sic*] to testify to make her a credible witness. Further, her past psycho-educational history (from first grade to present) presents significant impairments in her ability to recall, formulate and communicate effectively."

On August 20, 2010, Sherry filed a "Motion for Order for a Complete Psychological Evaluation" of R.H., based upon Sherry's attorney's conversation with "psychological expert Mark Tobin" who indicated what he considered to be a "glaring deficiency" in R.H.'s previous evaluations. Sherry requested the court to order a "complete psychological evaluation with a total battery of testing" because R.H.'s "mental condition" and her "ability to recall or tell the truth" were at issue.

On August 24, 2010, the State filed a response to Sherry's motion for a psychological examination of R.H., arguing that "Illinois law expressly prohibits the Court from ordering a mental examination of a sex victim" and citing section 115-7.1 of the Code of Criminal Procedure of 1963 (725 ILCS 5/115-7.1 (West 2010)) and *People v. Wheeler*, 151 Ill. 2d 298, 312-13, 602 N.E.2d 826, 833 (1992). The State requested that the court deny Sherry's motion for a psychological evaluation of R.H. Also on August 24, 2010, the State filed a motion *in limine* to exclude any reference to Mark Tobin's review of reports and a motion to exclude in which it requested that R.H. be allowed to testify outside her mother's presence.

The trial court conducted the adjudicatory and dispositional hearing on the State's second amended petition on September 21 and 22, 2010. At the beginning of the first day of the hearing, the court heard arguments on the parties' pretrial motions. The court denied Sherry's motion for a psychological evaluation of R.H. The court granted the State's motion to prohibit references to Tobin's reviews of reports but clarified that Tobin could testify if his testimony did not exceed the court's ruling. The court granted the State's motion to allow R.H. to testify outside her mother's presence and ruled that Sherry could confer with her attorney after R.H.'s direct testimony and before her cross-examination by Sherry's attorney.

The following evidence was presented to the trial court in the evidentiary phase of the adjudicatory hearing. R.H. was born on December 12, 1997, and she was 12 years old and in the seventh grade at the time of the hearing. R.H.'s father had no contact with R.H. and did not participate in the trial court proceedings or in this appeal. R.H.'s stepfather, Danny, did not participate in the trial court proceedings or in this appeal. Sherry has been a member of the United States Air Force (Air Force) since approximately 1996. In December 2001, Sherry married Danny, and they were still married and living together in Belleville, Illinois, at the time of the hearing. Danny is also a member of the Air Force. When Sherry was deployed overseas after R.H.'s birth, R.H. often stayed with Sherry's mother, Brenda D., at

her home in upstate New York. In October 2007, Sherry was deployed to Iraq. Sherry left R.H. alone in Danny's custody from October 2007 until December 2007, when he took her to stay with Brenda, as Sherry had previously arranged.

Brenda testified that close to the end of March 2008, R.H. came home after school and began her homework but stopped and said, "I might as well tell you." When Brenda asked R.H. what she wanted to tell her, R.H. said, "Daddy makes me suck him, and he licks me." When Brenda asked R.H. if she had told Sherry about it, R.H. told her she had not. Brenda reported that R.H. explained that she had not told her mother about the abuse because Danny made her mother so happy. In a videotaped interview of R.H. by Elizabeth Liszewski, a caseworker for the St. Clair County Child Advocacy Center, which was played during the adjudicatory hearing, R.H. said that she told her grandmother about the abuse because she was afraid it would happen again. Brenda testified that R.H.'s statement about the abuse "was out of the blue." Brenda called Sherry, who was still stationed in Iraq, and told her what R.H. had said, and R.H. talked to Sherry as well. Sherry told Brenda she would return to the United States as soon as possible. Brenda testified that Sherry did not arrive in New York until the middle of May 2008 and that Sherry had been in Illinois with Danny for two weeks before that.

Sherry testified that her mother called her on April 8, 2008, with the information about the abuse of R.H.; that she was not cleared to leave Iraq until early May 2008; that she arrived at Scott Air Force Base (Scott), where she was stationed on May 8, 2008; that she did not get permission to leave Scott until May 19, 2008; and that she flew to New York on May 20, 2008. Sherry admitted that Danny stayed with her in Illinois before she flew to New York. At some time after Sherry arrived in New York, Sherry and R.H. took a drive in the car. While Sherry drove, she recorded her 1½-hour conversation with R.H. on an audio CD that was admitted into evidence and played during the adjudicatory hearing. Sherry testified

that she recorded her conversation with R.H. in order to be sure what R.H. said and in order to provide an accurate account to R.H.'s counselor in the future. Sherry admitted that she did not record any of her conversations with Danny. In her testimony at the adjudicatory hearing, R.H. said that she did not know that her mother was tape-recording their conversation while they were in the car in New York. Sherry testified that R.H. was upset during at least a part of the taped conversation, that R.H. was uncomfortable talking about the abuse, but that she had R.H. call Danny to discuss the abuse while they drove in the car. Sherry told R.H. that she, Danny, and R.H. would deal with the situation as a family by getting family counseling after they moved to Texas, which was supposed to occur in November 2008. During the taped conversation in the car, Sherry had R.H. "pinky swear" that she would not tell anyone else about the abuse. During that car ride, Sherry asked R.H. if someone other than Danny had committed the abuse, and she asked R.H. if she knew what color Danny's pubic hair was. During cross-examination, Sherry admitted that her questioning of R.H. was designed to point out the discrepancies in R.H.'s allegations.

Sherry testified that she was trying to protect R.H. from Brenda. Sherry admitted that Brenda went on vacation while Sherry was staying in New York with R.H. and that, while Brenda was gone, Danny came to Brenda's house and stayed with R.H. and Sherry for about five or six days. Sherry stated that she did not leave R.H. alone with Danny during that visit. Sherry testified that, while Danny was staying in New York with her and R.H., the three of them went for a car ride in order to talk about R.H.'s allegations of abuse as a family and to plan what they were going to do.

In July 2008, Sherry and R.H. returned to Illinois, and Danny lived with them when he was not assigned elsewhere. Sherry testified that, when Danny was with her and R.H. in Illinois, she did not leave R.H. alone with Danny.

Chiquita Adams, an investigator for DCFS, testified that DCFS received a hotline

report on September 24, 2008, regarding sexual abuse by Danny against R.H. As a part of that investigation, Liszewski interviewed R.H. on September 30, 2008, and again on November 13, 2008, and both interviews were recorded and played for the trial court. At the time of those interviews, R.H. stated that she was living with Sherry and Danny. At the beginning of the first interview, R.H. said that she did not want to talk about "it" because she might get herself or someone else in trouble, that she had talked about "it" with Sherry and Danny, that she did not want "it" to happen again, and that her mother and Danny had promised that "it" would not happen again.

R.H. described Danny's abuse as beginning when she was in the first or second grade. At the time of the interviews, she was in the fifth grade. She described the places she lived and the rooms in which the abuse occurred. During the two interviews, R.H. described the abuse as consisting of Danny placing his penis, which she referred to as a "hot dog," inside her mouth. She said that Danny forced her to do that even though she fought him "with words," that he showed her what to do by guiding her with his hands, and that he stood with his pants down to his knees as she sat on a couch during the abuse. She stated that Danny told her the acts would make her happy but that they actually made her angry. She also described acts in which Danny made her touch his penis with her hands and in which he puts his hands underneath her clothing on her vagina, which she referred to as a "split onion." She said that her mother was always gone out of the country when these things happened. She said that she had told Danny she did not want the abuse to happen anymore and that he had said that it would not happen again but that the abuse continued anyway. She also described times when Danny was "mean" to her. She related one incident in which he locked her in her room for two to three days and gave her food to eat by shoving it under her door. She thought she was in first grade when he locked her in her room. She described other incidents in which he made her sit in the bathtub with her clothes on as he dumped food onto her as

punishment for not eating. She said that her mother was at work when the food incidents happened, that she told her mother about the incidents, and that those incidents stopped after she told Sherry. She also said that Danny had punished her by whipping her with a belt, both over and under her clothes.

R.H. said that she had talked to her grandmother, Brenda, about Danny's abuse. She said that it made Brenda sad and angry at Danny and that made R.H. sad. She said that she had talked to Sherry and Danny about the abuse and that their reaction was "calm." She said that Sherry told her to keep the information about the abuse "locked up in a box" and not to tell anyone else about it if they asked. R.H. said that Sherry did not want anyone else to know about it, that everything would be okay, and that they would get it all sorted out. At the second interview, R.H. said that she did not want her mother to be sad that Danny might be going away but that she was mad at Danny.

At the evidentiary hearing, R.H. testified, outside the presence of her mother, that what she said in the taped interviews with Liszewski was the truth.

Angel Santos-Juen, a foster care case manager for Catholic Social Services, testified that she had been the case manager for R.H. and Sherry since November 2008 and that she had set up the service plan for Sherry. Santos-Juen said that Sherry complied with the service plan in the beginning but had to stop participating in February 2010 just before her military trial began. Sherry was convicted by a military tribunal on March 17, 2010, for not protecting R.H. Sherry's military judgment was admitted into evidence and showed that, on March 17, 2010, Sherry was found guilty by a military tribunal of the following: (Charge 1) between April and September 2008, "while responsible for the care of [R.H.], a child under the age of 16 years, endanger[ed] the mental health, physical health, safety and welfare of said [child] by continuing to allow Staff Sergeant Danny \*\*\* access to said child after becoming aware of alleged long-term sexual abuse, and that such conduct constituted

culpable negligence," and (Charge 2) between 2003 and 2006, Sherry had knowledge that Danny had committed sodomy with R.H., who was under 12 years old at that time, and between April and September 2008, discussed the acts of sodomy with R.H. in Danny's presence, instructed R.H. not to tell anyone except herself and Danny about the unwanted sexual touching, and provided false information that Danny was receiving treatment through the Air Force, "in order to prevent punishment" and to provide comfort to Danny and to assist him. Sherry's punishment for the charges consisted of 105 days of confinement, forfeiture of \$1,000 pay per month for three months, and "reduction to the grade of E-5."

After Sherry served her term of confinement, she did not restart any of the requirements of her service plan, including parenting classes and counseling. Her commanding officer entered a "No-Contact Order" on April 27, 2010. That order was to remain in effect until the conclusion of Danny's military trial, which was set to begin in July 2010, or until the commanding officer rescinded it. Under the terms of the no-contact order, Sherry was ordered to "refrain from any contact" with R.H. "via in-person contact, telephone contact, through electronic or written mail, through a third-party, or in any manner whatsoever." By letter dated August 20, 2010, Sherry's attorney notified Santos-Juen of "[Sherry's] belief that presently meeting with [Santos-Juen] would be considered a violation" of the no-contact order. Sherry had not resumed participating in her service plan as of the hearing in September 2010. Sherry had not received any communication from anyone in the military to verify her belief that contact with Santos-Juen or other Catholic Social Services workers through parenting classes or counseling would violate the no-contact order.

Santos-Juen testified that she had observed Sherry's interaction with R.H. during supervised visitation and that their interaction was good and appropriate. She stated, however, that from the beginning of Sherry's involvement with Catholic Social Services, she had been adamant that Danny did not commit the offenses of which R.H. accused him and

that she had maintained her relationship with Danny throughout the case. Also, Santos-Juen testified that R.H. had not wavered or changed her story over the two years the case had been opened. Sherry testified that she loved R.H., that she wanted R.H. to return home to her, and that she believed she was looking out for her daughter's best interests, but that she still did not believe R.H.'s allegations against Danny.

Sherry called Mark Tobin as an expert witness. After Tobin testified about his education and experience, the State objected to his testimony on the ground that it was irrelevant to the issues before the court. Sherry's attorney responded, arguing that Tobin's testimony was relevant to the issue of R.H.'s competence to testify, even though the court had just ruled that R.H. was competent to testify. Sherry's attorney also contended that Tobin's testimony would aid the court in deciding how much weight to give R.H.'s testimony. The court sustained the State's objection and found Tobin's testimony irrelevant.

At the close of the evidence on the State's petition for adjudication, the trial court found that R.H. was sexually abused by her stepfather, Danny, that R.H. had disclosed those offenses, but that Sherry had failed to protect R.H. The court found the allegations of the State's second amended petition to be proved by a preponderance of the evidence but made no finding on the issue of Sherry's parental unfitness.

After granting the State's petition for adjudication, it proceeded to hear evidence concerning the appropriate disposition. Santos-Juen testified that R.H. was very happy and well-adjusted in her current foster home, which was suitable for all of her educational and physical needs. R.H. had been living with her current foster parents for almost two years and had told Santos-Juen that she wanted to visit her grandmother Brenda in New York but that she wanted to continue to live with her foster parents. Santos-Juen testified that, if DCFS was granted custody of R.H., the appropriate disposition would be for R.H. to stay in her current foster placement. She recommended a permanency goal of return home in 12

months.

R.H. testified again, this time outside the presence of both her mother and her grandmother because Brenda had intervened in the juvenile case and had filed a petition for custody of R.H. R.H. told the court that she wanted to continue to live with her current foster parents because they felt more like parents to her than anyone else. She stated that she wanted to visit Brenda in New York on holidays and over most of her summer break from school. She said that she did not really want to see her mother and that she was upset with Sherry because Sherry knew what Danny was doing to her but Sherry did not do anything about it and did not protect her. For the first time, R.H. testified that her mother knew about the abuse for about one year before she tape-recorded their conversation in New York.

After hearing Brenda's evidence in support of her petition for custody, the court determined that it was in R.H.'s best interest for her to be made a ward of the court. The court found that, for reasons other than finances, Sherry had been unwilling to care for R.H. and that placement with Sherry would be contrary to R.H.'s health, safety, and best interests. The court found that the State had proved the allegations of its petition for adjudication by a preponderance of the evidence, granted the petition, and awarded custody to DCFS, with Sherry's visitation to be supervised and monitored by DCFS if the military's no-contact order was lifted. The court ordered that R.H. would have no visitation with Danny until he had engaged in services. The court granted Brenda visitation and telephone contact with R.H. at DCFS's discretion. This appeal followed.

## ANALYSIS

### (A) Sufficiency of the Evidence

Adjudicatory proceedings under section 2-18(1) of the Act (705 ILCS 405/2-18(1) (West 2010)) are civil proceedings, and findings of abuse and neglect need to be supported only by a preponderance of the evidence. *In re A.P.*, 179 Ill. 2d 184, 204, 688 N.E.2d 642,

652 (1997). "The circuit court's finding on whether abuse or neglect occurred will not be disturbed on appeal unless contrary to the manifest weight of the evidence." *In re A.P.*, 179 Ill. 2d at 204, 688 N.E.2d at 652. A court of review gives deference to the trial court's findings of fact because the trial court is in the best position to observe the conduct and the demeanor of the parties and the witnesses, to assess their credibility, and to weigh the evidence. *In re Sharena H.*, 366 Ill. App. 3d 405, 415, 852 N.E.2d 474, 482 (2006).

In this case, the State alleged, *inter alia*, neglect due to an injurious environment (705 ILCS 405/2-3(1)(b) (West 2010)) and abuse due to Danny's sexual abuse (705 ILCS 405/2-3(2)(iii) (West 2010)). We find sufficient evidence to support both allegations.

Sherry argues that the evidence did not show that she failed to protect R.H. after she learned of R.H.'s allegations against Danny. She points out that, after she learned about the allegations, she left Iraq and came to New York as soon as she could and did not allow R.H. to be alone with Danny. She claims that she never forced R.H. to change her story and argues that the "only discussion about the allegations with all three individuals present was a discussion where it was decided that they would face the allegations and deal with it as a family." Sherry notes that she complied with her service plan until her military trial began and the no-contact order was entered.

We first consider the State's allegation that R.H. was neglected pursuant to section 2-3(1)(b) of the Act, which provides that neglected minors include those that are subject to an injurious environment. 705 ILCS 405/2-3(1)(b) (West 2010). In *In re Gabriel E., Jr.*, the court found the minor children to be neglected due to an injurious environment. *In re Gabriel E., Jr.*, 372 Ill. App. 3d 817, 867 N.E.2d 59, 61 (2007). There, the court defined neglect as the failure to exercise the care that circumstances justly demand, whether the failure is a willful or an unintentional disregard of parental duty. *In re Gabriel E., Jr.*, 372 Ill. App. 3d at 822, 867 N.E.2d at 64. The court noted that the term "injurious environment"

is an amorphous concept that includes the breach of a parent's duty to ensure a safe and nurturing shelter for his or her children. *In re Gabriel E., Jr.*, 372 Ill. App. 3d at 822-23, 867 N.E.2d at 64. The terms "neglect" and "injurious environment" do not have fixed and measured definitions but take their content from the particular circumstances of each case, and each case is to be decided *sui generis* on the basis of its unique facts. *In re Gabriel E., Jr.*, 372 Ill. App. 3d at 823, 867 N.E.2d at 65.

In the case at bar, there was ample evidence to support the trial court's finding that R.H. was neglected due to an injurious environment. Even if Sherry had no reason to suspect Danny of any improper conduct with R.H. before Brenda's call to Iraq, she was put on notice of the abuse in early April 2008. Throughout the next two years and five months, Sherry refused to believe R.H., continued to believe Danny, and continued to live with Danny and remain married to him. Sherry has maintained her disbelief in her daughter and her belief in and marriage to her husband despite being convicted in military court for the same allegations as those in this case, despite having R.H. removed from her home and placed into foster care, and despite having only supervised visitation with R.H. and then no visitation with her after the military's no-contact order was issued. Sherry placed R.H. in danger of both physical harm and emotional harm by forcing her to talk to Danny about the allegations over the phone and in the car, by forcing her to stay in the same house with him while in New York and when they got back to Illinois, and by telling her that she should not tell anyone else about the abuse. In her testimony and in her statements to DCFS and Catholic Social Services workers, Sherry did not question Danny's denial of the abuse but adamantly disbelieved R.H.'s detailed allegations of Danny's long-term sexual abuse. Sherry's behavior has demonstrated her failure to exercise the care that the circumstances have justly demanded. See *In re Gabriel E., Jr.*, 372 Ill. App. 3d at 822, 867 N.E.2d at 64.

In a related argument, Sherry argues that she did not neglect R.H. because she made

reasonable efforts to protect R.H. from harm and attempted to correct the reason for her removal. Sherry points out that she encouraged Danny to enter into a military no-contact order and to move out of the house she shared with R.H., even though the evidence at the hearing was that Danny and Sherry continued to live together after R.H. informed Sherry of the abuse, after R.H. was taken into temporary custody, and at the time of the hearing. Whatever Sherry's intentions might have been are of no consequence compared to the evidence of what actually occurred. Sherry also notes that she complied with all the elements of her service plan until her military trial and the entry of the no-contact order. Sherry confuses compliance with a service plan with protecting her daughter. Regardless of Sherry's compliance with the service plan, there is ample evidence to support a finding that she failed to protect her daughter by accusing her of lying, by admonishing her not to tell anyone else about the abuse, by forcing her to recount the allegations of abuse to the abuser, by forcing her to spend time with the abuser after telling others about the abuse, and by continuing to live with the abuser through the date of the hearing. The evidence supports the court's determination that R.H. was neglected.

Additionally, the State presented ample evidence in support of its allegation that R.H. was abused due to Danny's sexual abuse. R.H.'s detailed allegations about the nature of the sexual abuse, when and where and how it occurred, the absence of her mother when it occurred, and how it made her angry toward Danny have not wavered since she first reported them. Significantly, R.H. has always alleged that the sexual abuse began when she was in the first or second grade and that it continued until she was in the fifth grade and finally told her grandmother and then her mother what Danny had done. She told Sherry that Danny sexually abused her when Sherry was out of the country and left R.H. alone with Danny. Sherry chose not to believe her daughter but instead chose to force her daughter to confront the abuser and to live with him until DCFS finally intervened and took temporary custody

of R.H. The trial court's finding of abuse is not against the manifest weight of the evidence.

(B) Admission of Minor's Previous Statements

Sherry next argues that the court erred by admitting the two videotaped interviews of R.H. with Liszewski because her ability to cross-examine R.H. was limited by the scope of the State's direct examination. Sherry acknowledges that section 2-18(4)(c) of the Act controls the admissibility of the tape-recorded interviews. That section provides as follows:

"Previous statements made by the minor relating to any allegations of abuse or neglect shall be admissible in evidence. However, no such statement, if uncorroborated and not subject to cross-examination, shall be sufficient in itself to support a finding of abuse or neglect." 705 ILCS 405/2-18(4)(c) (West 2010).

This section makes a child's previous statements relating to abuse or neglect admissible as an exception to the hearsay rule. *In re R.M.*, 307 Ill. App. 3d 541, 549, 718 N.E.2d 550, 555 (1999) ("Though out-of-court statements are generally inadmissible hearsay, the \*\*\* Act provides an exception for the admission of out-of-court statements made by minors pertaining to abuse or neglect."). Once admitted, the trial court may rely on the statements as the *only* proof of the abuse if the minor who made the statement is available for cross-examination *or* the minor's hearsay statement is corroborated. *In re A.P.*, 179 Ill. 2d at 196, 688 N.E.2d at 649.

Sherry's argument, that she was precluded from properly cross-examining R.H. due to the State's limited questioning of R.H. on direct examination, is meritless. First, the statute does not require the State to question the minor in any particular manner but only that she must be available for cross-examination if her statement is not corroborated. Additionally, Sherry does not assert that she was precluded from asking any particular questions during her cross-examination of R.H. but only that, generally, she was limited by the scope of the direct examination. In the State's case in chief, R.H. testified about her interviews with Liszewski,

stated that she was honest with Liszewski about the abuse, and related that what she said then was still the truth. The court allowed the videotape of that interview to be played for the court over Sherry's objection on the grounds of hearsay, that the statements were not sufficiently corroborated, and that R.H. was not competent to testify. R.H. also identified the audiotape Sherry made while she and R.H. were in the car in New York. Sherry objected to that tape on the same bases, and the trial court admitted that tape as well over Sherry's objections.

During Sherry's attorney's cross-examination of R.H., he asked her questions about the timing of the abuse, to which she testified she did not remember dates and months. Sherry's attorney asked R.H. about the tape-recorded conversation with Sherry while they were in New York. Sherry's attorney asked R.H. about her interviews with Liszewski. R.H. testified that some of her statements to Liszewski about the consequences of telling a lie were different than her testimony in court. R.H. explained, "I said the same stuff but in different words." Sherry's attorney then told the court that he would resume further questioning of R.H. after the audiotape and videotapes were played.

After the audiotape and videotapes were played, the State recalled R.H. as a witness. Sherry's attorney again cross-examined R.H., asking her questions about her memory of the dates of the interviews with Liszewski, whether R.H. had watched the videotapes before her testimony in court, and whether she remembered what was asked and what her responses were in those interviews. The attorney asked R.H. about the time she spent in New York with her grandmother while her mother was in Iraq and whether R.H. talked to Sherry in April 2008 after her grandmother called Sherry. The attorney asked R.H. about her mother's statement that R.H. should keep her allegations against Danny locked up in a box and R.H.'s understanding of what her mother meant by that statement. The attorney questioned R.H. about the other times she had stayed with her grandmother while Sherry was stationed

overseas, about her grandmother's boyfriend, Andy, and whether Andy ever stayed overnight while R.H. was at her grandmother's house. The attorney asked R.H. about the car ride with Sherry while they were in New York, whether Sherry had questioned R.H. about the possibility that she was abused by someone other than Danny, and whether Danny had stayed with her and Sherry in New York. R.H. testified on cross-examination that, during the taped conversation in the car with Sherry, R.H. also talked with Danny over the telephone and told him that she was mad at and upset with him. The attorney questioned R.H. about her classes, grades, and school friends, about her foster homes after she was removed from Sherry's custody, about her supervised visitation with Sherry, and about the homes she lived in with Sherry and Danny after their marriage. Sherry's attorney questioned R.H. about Danny locking her in her room, when that occurred, what food he gave her to eat, and the amount of space between the bottom of the door to her room and the floor. The record refutes Sherry's argument that she was limited in the scope of her cross-examination of R.H.

Sherry also argues that the State failed to provide sufficient corroborative evidence of R.H.'s out-of-court statements and that, as a result, "the hearsay testimony's admittance was against the manifest weight of the evidence." We repeat that the out-of-court statements were admissible under section 2-18(4)(c) but that those statements alone could not support an adjudication of abuse or neglect unless R.H. was subject to cross-examination *or* the State presented evidence to corroborate those statements. 705 ILCS 405/2-18(4)(c) (West 2010). Since Sherry's attorney was able to cross-examine R.H., it is irrelevant whether her out-of-court statements were corroborated.

(C) Motion *In limine* to Bar Expert Witness Testimony

Sherry finally argues that the trial court abused its discretion by granting the State's motion *in limine* to bar her expert witness, Mark Tobin, from testifying. Sherry contends that Tobin had extensively reviewed the complete records of R.H.'s statements and should have

been allowed to testify regarding whether she was competent to testify. The State responds that Tobin's opinions would have been on the subject of R.H.'s credibility. The record supports the State's argument. In August 2010, Sherry's attorney notified the State that "Tobin's opinion is that there are too many discrepancies in [R.H.'s] testimony" for her to be a credible witness. In Tobin's report, he opined that R.H.'s statements lacked credibility and that her "past psycho-educational history" presented significant impairments in her ability to recall and communicate effectively. In a motion for continuance filed on August 20, 2010, Sherry alleged that Tobin's opinion was that "no improprieties took place" between Danny and R.H., that R.H. was confusing Danny with another person, and that Tobin believed that it was "necessary and appropriate for the court to order a complete psychological evaluation" of R.H.

Before the adjudicatory hearing, the State filed a motion *in limine* to bar any reference to Tobin's reports or opinions, arguing that the court was prohibited from granting Tobin's request that R.H. be subjected to a complete mental evaluation (see 725 ILCS 5/115-7.1 (West 2010)) and that R.H.'s credibility and her ability to testify truthfully were issues for the court and not proper subjects of expert testimony. Before the evidentiary phase of the adjudicatory hearing, the trial court considered the parties' pretrial motions. The court ruled that psychological evaluations of sexual abuse victims are prohibited, and it granted the State's motion to bar any references to Tobin's report or his review of R.H.'s records. However, the court ruled that Tobin was not barred from testifying unless he violated the order *in limine*. The court stated that, if Sherry called Tobin as a witness, the court would determine the relevance of any information he was asked to provide at that time. Before Tobin's testimony, the court ruled R.H. competent to testify. Sherry called Tobin as a witness, and the State objected to his testimony on the ground that it was not relevant. Sherry's attorney responded to the objection by claiming that Tobin would testify about

R.H.'s competence to testify and that he would provide information about how much weight the court should give to her testimony. The trial court sustained the State's objection.

Under these circumstances, the trial court did not abuse its discretion in barring Tobin's testimony. "A trial court should allow expert testimony only if (1) the proffered expert has knowledge and qualifications uncommon to laypersons that distinguish him as an expert; (2) the expert's testimony would help the jury understand an aspect of the evidence that it otherwise might not understand, without invading the province of the jury to determine credibility and assess the facts of the case; and (3) the expert's testimony would reflect generally accepted scientific or technical principles." *People v. Simpkins*, 297 Ill. App. 3d 668, 681, 697 N.E.2d 302, 310 (1998). In *People v. Wilson*, 246 Ill. App. 3d 311, 320, 615 N.E.2d 1283, 1288 (1993), the court ruled that the trial court had not abused its discretion by prohibiting a defense expert from testifying "about the problems that child victims of sex abuse have remembering and describing these [incidents]." The court in *Wilson* found, "[T]he proffered testimony (1) would not have provided the jury with much-if any-information beyond the knowledge of an average layperson[] and (2) would have severely impinged on the province of the jury to determine credibility and assess the facts of the case." *Wilson*, 246 Ill. App. 3d at 320, 615 N.E.2d at 1288. Similarly, in the case at bar, the court did not abuse its discretion by granting the State's motion *in limine* or by sustaining the State's objection to the relevance of Tobin's testimony because his proffered testimony would not have provided the court with any information beyond the judge's knowledge but would have severely impinged upon the court's province as the fact finder to determine credibility and assess the facts of the case.

#### CONCLUSION

For all the reasons stated, we affirm the trial court's order and remand for further proceedings.

Affirmed; cause remanded.