

No. 1-11-1939

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

ARTURO MUNOZ,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 07 D 7025
)	
ANDREA MUNOZ,)	Honorable
)	Veronica B. Mathein,
Defendant-Appellant.)	Judge Presiding.

JUSTICE PUCINSKI delivered the judgment of the court.
Presiding Justice Lavin and Justice Sterba concurred in the judgment.

ORDER

¶ 1 *Held:* Circuit court properly granted defendant an order of protection despite introduction of hearsay testimony where other testimony including that of plaintiff supported such an order.

¶ 2 Plaintiff Arturo Munoz appeals from an order of the circuit court of Cook County granting defendant Andrea Munoz an order of protection against Arturo based upon evidence that Arturo struck their minor child in the face with his fist. Arturo contends that the judgment should be reversed because the trial court erroneously allowed the introduction of hearsay

evidence. Andrea has not filed a brief on appeal but the state of the record is such that we may still consider the appeal on Arturo's brief alone. *People v. Cosby*, 231 Ill. 2d 262, 285 (2008).

¶ 3 Andrea and Arturo were divorced in March 2010. They had three children: J.M., age 11 at the time of the hearing at issue, A.M., age 9, and M.M., age 6. The divorce decree awarded Andrea custody of the children and Arturo received visitation rights.

¶ 4 At the hearing on this order of protection, which was pursuant to the Illinois Domestic Violence Act of 1986 (750 ILCS 60/101 et seq. (West 2010)), Andrea testified that on October 28, 2010, Arturo had the children for the day. When he brought them back to Andrea, she observed that A.M. had a bloody nose and a "busted lip." Andrea testified that when she asked A.M. what had happened, he told her Arturo had hit him in the nose for lying. When Arturo's counsel objected to this testimony about what A.M. said out of court as inadmissible hearsay, the trial court stated that this testimony was admissible as a child's explanation of an injury. Andrea obtained an emergency order of protection against Arturo on November 1, 2010, and that order was extended from time to time until the date of this hearing, March 8, 2011. Arturo was not permitted any visitation with the children during that period of time.

¶ 5 Arturo testified to his explanation of what occurred in the incident with A.M. He stated that A.M. lied to him and he was trying to discipline him. Because A.M. was looking away, he grabbed A.M.'s collar and A.M.'s lip hit Arturo's fist. Arturo also testified "You know, it just like hit him." However, Arturo later testified that he had not struck A.M. in the face with an open hand or with his fist. Arturo also testified that after his fist came into contact with A.M.'s lip, he saw blood on A.M.'s teeth and he instructed A.M. to wash it off. Subsequently, Arturo returned the children to Andrea.

¶ 6 At the conclusion of the hearing the trial court granted Andrea a two-year order of protection against Arturo which ordered him to have no contact with his three children. At a

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hearing on Arturo's motion for reconsideration, Andrea stated that she was willing to have the order terminated if Arturo attended anger management classes. However, Arturo's counsel stated that Arturo was not attending such classes but instead was seeing a therapist. Although Andrea then stated that if Arturo continued to see a therapist she was willing to have the order terminated, the trial court denied Arturo's motion for reconsideration. This appeal ensued.

¶ 7 Arturo contends that the admission of Andrea's testimony about what A.M. told her is reversible error. This was an out-of-court statement which was introduced in order to prove the truth of the matter asserted, that Arturo struck A.M. in the face with his fist, and would therefore ordinarily constitute inadmissible hearsay. *People v. Lawler*, 142 Ill. 2d 548, 557 (1991). However some courts have held that in cases involving orders of protection, a minor's prior statement concerning abuse is substantively admissible pursuant to section 606(e) of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/606(e) (West 2010)) and may be considered on the issue of granting an order of protection assuming there is corroboration. Section 606(e) provides in pertinent part that previous statements made by a child concerning allegations that the child is an abused child shall be admissible in a proceeding relating to custody or visitation, although corroboration is required. The first district (*In re Marriage of Gilbert*, 355 Ill. App. 3d 104, 112 (2004)) and the third district (*Daria W. v. Bradley W.*, 317 Ill. App. 3d 194, 200 (2000)) have so held, while the second district has instead applied section 8-2601 of the Code of Civil Procedure (735 ILCS 5/8-2601 (West 2010)), which requires the trial court to hold a hearing on the reliability of the statement before admitting it as substantive evidence (*In re Marriage of Flannery*, 328 Ill. App. 3d 602, 605-608 (2002)). Under the holding of *Gilbert*, A.M.'s prior statement concerning his injury would be substantively admissible since it was corroborated by Andrea's observation of his bloody nose and "busted lip" as well as Arturo's admission that he was responsible for A.M.'s injuries.

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¶ 8 But even assuming that A.M.'s statement should have been excluded as hearsay, the admission of hearsay evidence does not require reversal if that evidence is merely cumulative and thus harmless beyond a reasonable doubt. *People v. Yancy*, 368 Ill. App. 3d 381, 385 (2005). Stated more broadly, trial error is harmless where there is no reasonable probability that the trial outcome would have been different without that error. *People v. Hood*, 244 Ill. App. 3d 728, 734 (1993).

¶ 9 The standard of review for a trial court's decision on an order of protection is whether that decision is contrary to the manifest weight of the evidence. *Best v. Best*, 223 Ill. 2d 342, 348-49 (2006). In this case Arturo's own testimony was that his fist struck, or came into contact with, A.M.'s lip, causing bleeding, at a time when he was "disciplining" this young boy. Based upon this admission by Arturo, we find that any hearsay evidence contained in Andrea's testimony was merely cumulative. In addition to Arturo's admission of his fist striking A.M.'s lip, there was admissible testimony from Andrea that when Arturo returned A.M. from visitation, A.M. had a bloody nose and a "busted lip." There is no reasonable probability that without Andrea's testimony about A.M.'s statement, the trial court would have denied Andrea an order of protection for her three children. The trial court specifically found that the order was necessary to protect A.M. from further harm and abuse. Clearly this logic applied to the two other minor children as well. We find that the trial court's granting of the order of protection was not contrary to the manifest weight of the evidence.

¶ 10 For the reasons set forth in this order, we affirm the circuit court's granting of the order of protection.

¶ 11 Affirmed.