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2012 IL App (4th) 110831-U

Filed 5/9/12

NO. 4-11-0831

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

DIANE S. CLARK,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Woodford County
TRAVIS N. FOX,)	No. 11OP83
Defendant-Appellant.)	
)	Honorable
)	Charles M. Feeney,
)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Justices Appleton and McCullough concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed, concluding that the trial court did not err by entering a plenary order of protection, given that the evidence showed that the respondent sexually abused his two-year-old son.

¶ 2 In June 2011, plaintiff, Diane S. Clark, filed a verified petition for order of protection, seeking to deny defendant, Travis N. Fox, visitation as to their two-year-old son, L.F. Clark alleged that L.F. was exhibiting behavior consistent with being sexually abused after returning from visitation with Fox. Following an August 2011 hearing, the trial court granted Clark's petition.

¶ 3 Fox appeals, arguing that the trial court's (1) findings were against the manifest weight of the evidence and (2) decision to completely deny visitation was an inappropriate remedy. We disagree and affirm.

¶ 4

I. BACKGROUND

¶ 5 In June 2011, Clark filed a verified petition for order of protection, seeking to deny Fox visitation as to two-year-old L.F. Clark alleged that L.F. was exhibiting behavior consistent with being sexually abused after returning from visitation with Fox—namely, Clark included in her petition several incidents in which L.F. (1) described improper contact and (2) acted out. Shortly thereafter, the trial court entered an emergency order of protection, which the court later continued until an August 2011 hearing could be held.

¶ 6 At the August 2011 hearing on Clark's petition, Clark presented evidence that Fox had been sexually abusing L.F. during visitations. Clark testified that Fox had unsupervised visitation with L.F. beginning in April 2011. She explained that when Fox would arrive to pick L.F. up for visitation, L.F. would run away and hide, indicating that he was "scared." Clark said that when L.F. returned home from visitations he would be very introverted and upset. Clark noted that L.F. became "infatuated with butts," started grabbing his sister's "crotch," tried to pull his sister's pants down, and became aggressive. She added that L.F. would wake up in the middle of the night, yelling, "Stop it! Stop it!" One evening, Clark, after bathing L.F., was putting baby oil on L.F.'s eczema when L.F. gestured to put the baby oil on his "butthole." Clark told L.F. that he did not need it there and L.F. responded, "Daddy puts it there."

¶ 7 Clark further testified that after returning from one particular visitation, she began changing L.F.'s diaper when L.F. started bouncing up and down and "grabbing his genital area," while saying, "Daddy play nice with me." Clark added that when Fox was living with her, he (1) suggested that Clark's 13-year-old daughter should be permitted to have sexual intercourse in her bedroom, (2) was very focused on sex, and (3) had child pornography on his computer. (Clark

added that she reported the child pornography to the police.)

¶ 8 L.F.'s uncle, Duane Webb, testified that he went swimming with L.F. in July 2011. Webb helped L.F. change into his swimming suit, and when Webb went to put his own swimming suit on, L.F. tried to grab Webb's private area. When Webb told L.F. that such conduct was not appropriate, L.F. responded, "Daddy said grab that." L.F. went on to describe to Webb an incident in which "Daddy" took his clothes off and placed him in "the other room," where he "bounced up and down."

¶ 9 Deborah Simonis, a clinical social worker, testified that she began meeting with L.F. in May 2011 and "quickly noticed" that L.F.'s behavior was unusual. L.F. was very afraid of men and mimicked behavior of a child who had experienced trauma or abuse. Simonis explained that L.F.'s infatuation with "butts and genital areas" was consistent with a child who had been sexually abused. During therapy sessions with L.F., Simonis provided L.F. with a crayon and a piece of paper with the outline of a person on it. Simonis asked L.F. to show her on the paper where he had been hurt or touched. L.F. scribbled on the genital area of the person outlined on the paper. Simonis opined that Fox had sexually abused L.F.

¶ 10 Toni L. Jones, the mother of Fox's 12-year-old son, testified that Fox's relationship with their son was great. She said that their son had unsupervised visits with Fox and that he was always excited to visit his father.

¶ 11 Fox's employer, Eslyed Emara, testified that Fox had been working for him for over five years. Emara explained that Fox taught children of all ages at his fencing academy without problem or complaint.

¶ 12 Dana Foster, Fox's mother, testified that she had never witnessed Fox "spank or

yell" at L.F. and that she had never seen L.F. act afraid of Fox.

¶ 13 Fox testified that he never put baby oil on L.F.'s "butthole," only on his arms and legs for eczema. He said that L.F. did not call him "Daddy"; in fact, L.F. did not call him by any name. Fox explained that when he picked L.F. up for visits, L.F. would run to the car to get in. Fox also denied that he told Clark that her daughter should be allowed to have sex at 13 years old but recalled making a comment about such a thing after talking to a colleague. Fox acknowledged that he had pornography on his computer but that he had gotten rid of it "some time ago." He believed, however, that the pornography, including that involving children, had been downloaded by a colleague or that his computer had been hacked.

¶ 14 On this evidence, the trial court entered a plenary order of protection against Fox based upon a finding of abuse and denied Fox visitation with L.F. As part of its judgment, the court ordered (1) L.F. to undergo counseling and (2) Fox to undergo and successfully complete counseling for "child sex offense—obtain an evaluation and successfully complete any recommended treatment."

¶ 15 This appeal followed.

¶ 16 **II. FOX'S CLAIM THAT THE TRIAL COURT ERRED BY
ENTERING THE PLENARY ORDER OF PROTECTION**

¶ 17 Fox argues that the trial court's (1) findings were against the manifest weight of the evidence and (2) decision to completely deny visitation was an inappropriate remedy. We address defendant's contentions in turn.

¶ 18 **A. Fox's Claim That the Trial Court's Findings
Were Against the Manifest Weight of the Evidence**

¶ 19 Fox first contends that the trial court's findings were against the manifest weight

of the evidence. As part of his contention, Fox asserts that because the court erred by admitting the hearsay statements of L.F., those statements should not have been considered, and the remaining evidence cannot support the court's finding of abuse. We disagree.

¶ 20 Initially, we note that Fox has forfeited review of his argument because he failed to object to the hearsay testimony at trial. See *Guski v. Raja*, 409 Ill. App. 3d 686, 695, 949 N.E.2d 695, 704 (2011) (failure to contemporaneously object to hearsay testimony results in forfeiture).

¶ 21 Forfeiture notwithstanding, we conclude that the trial court's findings were not only not against the manifest weight of the evidence, its findings were entirely appropriate. " 'A finding of fact *** is against the manifest weight of the evidence where, upon review of all the evidence in the light most favorable to the prevailing party, an opposite conclusion is clearly apparent or the fact finder's finding is palpably erroneous and wholly unwarranted, is clearly the result of passion or prejudice, or appears to be arbitrary and unsubstantiated by the evidence.' " *In re Guardianship of K.R.J.*, 405 Ill. App. 3d 527, 536, 942 N.E.2d 598, 605 (2010) (quoting *Joel R. v. Board of Education of Mannheim School District 83*, 292 Ill. App. 3d 607, 613, 686 N.E.2d 650, 655 (1997)).

¶ 22 First, the records shows that L.F.'s hearsay statements identifying Fox as his abuser are reliable and corroborated; thus, had this been a proceeding under the Juvenile Court Act of 1987 (705 ILCS 405/1-1 *et seq.* (West 2010)), those statements would have been admissible under section 2-18(4)(c) of that Act (705 ILCS 405/2-18(4)(c) (West 2010)). See *In re A.P.*, 179 Ill. 2d 184, 198, 688 N.E.2d 642, 649-50 (1997) (concluding that hearsay statements of a four-year-old victim were admissible because they were reliable and corroborated). Having

concluded that L.F.'s statements were properly admitted, we turn to the evidence of abuse in this case.

¶ 23 The evidence showed that Clark, L.F.'s mother—who arguably knows L.F. best—was concerned that Fox had sexually abused L.F. based upon statements L.F. made, L.F.'s outbursts, as well as L.F.'s negative attitude. Simonis, a clinical social worker, validated Clark's concern in that regard, opining that L.F. had indeed been sexually abused by Fox. Moreover, Webb, L.F.'s uncle, described an incident in which L.F. attempted to touch his private parts, further validating Clark's concerns. For his part, Fox presented evidence that (1) he was generally a good parent as to his 12-year-old son and (2) attempted to explain away the evidence Clark presented by pointing out that (a) the child pornography in his computer appeared there of no fault of his own, (b) Clark misunderstood him when he spoke to her about allowing her 13-year-old daughter to have sex in her bedroom, and (c) L.F. was not accurately describing the incidents that occurred during his visitations. Viewing this evidence in the light most favorable to Clark, we, like the trial court, conclude that this evidence is overwhelmingly supportive of sexual abuse.

¶ 24 B. Fox's Claim That the Trial Court's Decision To Completely Deny Visitation Was an Inappropriate Remedy

¶ 25 Fox next contends that the trial court's decision to completely deny visitation was an inappropriate remedy. We disagree.

¶ 26 Section 214(b)(7) of the Illinois Domestic Violence Act of 1986 outlines the requirements for visitation when a trial court makes a finding of abuse, in pertinent part, as follows: "The court shall restrict or deny respondent's visitation with a minor child if the court

finds that respondent has done or is likely to do any of the following: (i) abuse or endanger the minor child during visitation ***." 750 ILCS 60/214(b)(7) (West 2010).

¶ 27 In this case, the trial court followed the Domestic Violence Act's directive precisely. Following its finding of abuse based upon sexual abuse, the court denied Fox visitation. The court's decision in this regard was squarely within its discretion under the plain language of the Domestic Violence Act. Accordingly, we reject Fox's contention that the court's decision to completely deny visitation was an inappropriate remedy.

¶ 28

III. CONCLUSION

¶ 29

For the reasons stated, we affirm the trial court's judgment.

¶ 30

Affirmed.