



of Victim A.S., committed a sexual offense against her in that he rubbed her breasts for his own sexual gratification.

¶ 4 On March 17, 2011, the trial court entered an adjudicatory order finding that Victim A.S. had been sexually abused as defined by section 2-3(2)(iii) of the Act (705 ILCS 405/2-3(2)(iii) (West 2010)) in that the respondent rubbed the minor's breasts for his sexual gratification on or between May 1, 2010, and June 30, 2010. On April 6, 2011, the trial court entered an order of disposition finding that it was in the best interests of the minors to make them wards of the court because of the court's finding that the respondent committed a sexual offense against Victim A.S. The trial court made a finding that the minor children's mother was fit, able, and willing to care for the minor children and placed custody and guardianship of the minors with their mother.

¶ 5 On appeal, the respondent first argues that the evidence was insufficient to support a finding of abuse. Abuse occurs when a parent commits a sex offense, as defined in the Criminal Code of 1961, against a minor in the same household as the parent. 705 ILCS 405/2-3(2)(iii) (West 2010). The State alleged that between the dates of May 1, 2010, and June 30, 2010, the respondent committed a sexual act against the minor Victim A.S. when he rubbed Victim A.S.'s breasts for the purpose of the respondent's sexual gratification. Under the Act, this would constitute aggravated criminal sexual abuse in violation of section 11-1.60(b). 720 ILCS 5/11-1.60(b) (West 2010). The State was required to prove this allegation of abuse by a preponderance of the evidence. *In re B.H.*, 389 Ill. App. 3d 316, 319 (2009). The preponderance of the evidence standard means that the allegations of abuse are more probably true than not. *In re Ch. W.*, 408 Ill. App. 3d 541, 552 (2011).

¶ 6 The circuit court has wide discretion at the adjudicatory hearing, and its decision will not be disturbed on review unless it is manifestly unjust or palpably against the manifest weight of the evidence. *In re B.H.*, 389 Ill. App. 3d at 319. A finding is against the manifest

weight of the evidence only if the opposite conclusion is clearly evident. *In re R.R.*, 409 Ill. App. 3d 1041, 1045 (2011). This court accords significant deference to the factual findings of the circuit court because that court is in a superior position to observe witnesses, assess credibility, resolve conflicts in the evidence, and weigh the evidence. *In re M.W.*, 386 Ill. App. 3d 186, 196 (2008).

¶ 7 Victim A.S., 16 years of age, testified that on a date in May 2010, the respondent, her father, entered her bedroom and laid in bed with her. Victim A.S. was wearing pajamas, a t-shirt, and a bra. The respondent initially talked to Victim A.S. about his work, when he began to touch her and made sexual comments, saying that he was "getting wet" and asking Victim A.S. if it was ok for him to take out his penis. Victim A.S. had her back to the respondent. Initially, he was rubbing her back, but then he began to rub her breasts, one at a time, and then rubbed around her waistline in the upper pubic region. According to Victim A.S., while the respondent was making sexual comments to her, he was "messing with hisself [sic]." Victim A.S. testified that this took place for 30 minutes. While fondling Victim A.S., the respondent asked if she had "shaved" and told her about a woman he knew who shaved her vagina. He commented that he had seen her naked while she was getting out of the shower and noticed that she had a "bush." He told Victim A.S. that she needed a "bush hog." Victim A.S. testified that she wanted to get away from the respondent but physically could not. The respondent also commented that he and Victim A.S.'s mother had not had sex for a while and that the respondent was really wanting it.

¶ 8 The State's burden at the adjudicatory hearing was not a high one; the State had to prove abuse by a preponderance of the evidence. The circuit court chose to find that Victim A.S. had been abused by the respondent. This evidence was more than ample for the State to meet its burden. The circuit court was in the best position to view the witnesses and observe Victim A.S. personally to assess her credibility, regardless of inconsistencies in her

testimony argued by the respondent.

¶ 9 Next on appeal, the respondent argues that the circuit court abused its discretion by continuing the proceedings. The respondent argues that a hearing set for February 3, 2011, was continued although no party had filed a motion 10 days prior to the hearing as required by section 2-14(c). 705 ILCS 405/2-14(c) (West 2010). Another continuance was granted when the State requested that the proceedings be recessed after the testimony of several witnesses because he had to be in another county for the beginning of a jury trial.

¶ 10 The petition for adjudication was filed on December 14, 2010. The mother and the respondent were both served on December 15, 2010. The adjudicatory hearing was initially set for February 3, 2011. At this point, 49 days had elapsed since the service of process. On that date, the attorney for the mother had become ill and was unable to appear at the hearing. The State noted that while he was ready to begin, it would be error to begin the proceedings in the absence of the mother's counsel. Over the respondent's objection, the proceedings were continued until February 9, 2011.

¶ 11 On February 9, 2011, 55 days had elapsed since the service of process. The special prosecutor was ready to proceed but admonished the court that if the proceedings were still ongoing at 11 a.m., he would request a continuance because he had to be in another county for the beginning of jury selection. The proceedings began and the State called Victim A.S., Jeff McElroy, the respondent, and Trooper David Kieffer. The State then requested that the court continue the proceedings at that point. The respondent objected and noted that only one continuance was allowed by statute and that it had been used the prior week. The prosecutor argued that he had attempted to have another member of his office handle the hearing but no one was available. Counsel for Victim A.S.'s mother then joined the request for a continuance arguing that she needed additional time to review the State's discovery materials. The trial court concluded that section 2-14(b) permitted the court to grant a

continuance when necessary to ensure a fair hearing. The court took into account the difficulties expressed by the prosecutor and counsel for Victim A.S.'s mother, and the court concluded that a continuance would not jeopardize or infringe upon the best interests of the minors. The proceedings were then continued until March 16, 2011. On March 16, 2011, 91 days had elapsed since service of process.

¶ 12 Pursuant to section 2-14(b) (705 ILCS 405/2-14(b) (West 2010)), an adjudicatory hearing must be commenced, not held, within 90 days of the date of the service of process. Section 2-14(b) allows the circuit court to delay the proceedings once they are commenced in order to ensure a fair hearing. 705 ILCS 405/2-14(b) (West 2010). If any of the continuances were properly granted, then any challenge to the timeliness of the hearing must by necessity fail as a continuance tolls the time for hearing. 705 ILCS 405/2-14(c) (West 2010). In evaluating the propriety of a continuance, this court defers to the discretion of the circuit court. *In re K.O.*, 336 Ill. App. 3d 98, 104 (2002).

¶ 13 In the instant case, the first continuance was granted for one week because counsel for the mother was ill and could not make it to the proceedings. The respondent's claim that no one filed a motion to continue prior to 10 days fails because it is impossible for an attorney to presume that they will know in excess of 10 days that they will become ill and not be able to attend proceedings. Furthermore, a matter can be continued either on motion of the party, which implicates the 10-day requirement, or on the court's own motion for good cause shown. Here, on the court's own motion, a continuance was granted because counsel for the mother was unable to attend. The court believed that the proceedings in the absence of the mother would have been in error. Certainly this constitutes good cause. Finally, a substitute counsel for the mother could not be produced or adequately prepared.

¶ 14 Turning to the continuance requested by the special prosecutor, the court saw need to delay the proceedings because of the special prosecutor's need to leave for a jury trial in

another county and his inability to find a replacement and the mother's counsel's complaint that she did not have adequate time to review the discovery materials. Under these circumstances, it would seem a stay in the proceedings would be necessary to ensure a fair hearing. The respondent argues that such delays could be error; however, the respondent has failed to show any prejudice as a result.

¶ 15 The respondent next argues that he was denied a fair adjudicatory hearing because the proceedings were "adversarial." According to the respondent, the purpose of the adjudicatory hearing was to make a determination of what would be in the best interest of the minors, not a custody case in which the proceedings became highly adversarial in nature. In support of his argument, the respondent points to many objections raised by the State. Yet, the respondent has not cited any cases or authority in which a respondent is denied a fair hearing because the State objected to evidence or questions it perceived to be against rules of evidence.

¶ 16 Section 1-5(1) provides that "although proceedings under this Act are not intended to be adversary in character, [the parties have] the right to be represented by counsel." 705 ILCS 405/1-5(1) (West 2008). The use of the term "adversary" in this context of the right to counsel has particular meaning in criminal cases. While the character of the proceedings are not intended to be adversarial, it is evident that proceedings can become contested hearings where the court is required to weigh competing versions or arguments and make a decision. The parties have the right to counsel, to present evidence, to cross-examine witnesses, and to examine pertinent court documents. The State raised many objections to Victim A.S.'s testimony relating to hearsay and improper admission of evidence. The State also raised an objection during the testimony of Michael D.S.'s mother. These objections included the applicability, scope, and necessary foundation for the veracity opinion testimony. However, it was the respondent who chose to introduce the character testimony,

and his entire case was hinged on the credibility of Victim A.S. The respondent argued that his own daughter was lying.

¶ 17 Next on appeal, the respondent argues that the trial court improperly denied his attempt to introduce into evidence that he has a truthful character, where no opinion or reputation evidence was offered attaching his character for truthfulness. Illinois Rule of Evidence 608 states, "The credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, but subject to these limitations: (1) the evidence may refer only to character for truthfulness or untruthfulness, and (2) evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence or otherwise." Ill. R. Evid. 608 (eff. Jan. 1, 2011).

¶ 18 The respondent argues that the State attacked his truthful character because of questions that were asked of A.S. The record reveals that A.S. testified that she would not believe the respondent sexually abused Victim A.S. unless the respondent himself admitted to the act. The principal basis for the respondent's claim of error here is that the proceedings constituted an inherently "he-said, she-said" situation, and furthermore that A.S. had been asked about her father's truthfulness. Federal courts have consistently held that contradicted testimony does not constitute an attack on the character of truthfulness. See *United States v. Jackson*, 588 F.2d 1046, 1055 (5th Cir. 1979); *United States v. Danehy*, 680 F.2d 1311, 1314 (11th Cir. 1982); *Perkins v. United States*, 315 F.2d 120, 123 (9th Cir. 1963); *Kauz v. United States*, 188 F.2d 9, 10 (5th Cir. 1951).

¶ 19 In response, the State asserts that it did not attack the respondent's truthful character and that, at best, as noted by the trial court, A.S.'s testimony was that the respondent was telling the truth when he denied any misconduct. Accordingly, without any actual attack by opinion, reputation, or other evidence on the respondent's character for truthfulness, we cannot hold that the trial court abused its discretion.

¶20 Finally, on appeal the respondent argues that the trial court's order adjudicating Victim A.S. and A.S. be made wards of the court with custody granted to their mother was an abuse of discretion. According to the respondent, because the mother L.S. was a fit parent, there was no need to adjudicate the minors wards of the court.

¶21 A dispositional hearing was held on April 6, 2011, at which Wendy Evans, a caseworker for Lutheran Child and Family Services (hereinafter LCFS), testified that at that time, supervised visits were taking place between A.S. and the respondent. There had not been any visitation between Victim A.S. and the respondent. Linda Stover, who conducted the sex offender assessment, felt that visitation between Victim A.S. and the respondent was not appropriate until there was an "apology session" and several individual sessions prior to visitation. Evans also indicated that sex offender treatment was needed for the respondent and that he was registered for treatment.

¶22 The disposition report indicated that L.S. provided appropriate care and discipline and had been able to ensure both Victim A.S. and A.S.'s attendance at counseling. L.S. had also been attending counseling and expressed a willingness to pursue additional counseling. With respect to the minors, Victim A.S. had been receiving counseling and was involved in extracurricular activities and felt hurt that neither her father nor his family had made any effort to see how she is doing. A.S. was also attending counseling and had appropriate visitation with her father. She was also active in extracurricular activities with her mother's encouragement. LCFS opined that the minor children should remain with their mother because she was able to provide a stable home and appropriate care. In the dispositional order, the court ordered that the parents comply with the directives set forth by the Department of Children and Family Services and comply with an aftercare plan.

¶23 The standard of review of a circuit court's wardship determination is whether the circuit court abused its discretion. *In re M.P.*, 408 Ill. App. 3d 1070, 1073 (2011). The

single most important consideration is the best interest of the children. *In re Ashley K.*, 212 Ill. App. 3d 849, 879 (1991). In assessing best interests, a circuit court should consider all matters bearing on the minor's welfare. *In re Violetta B.*, 210 Ill. App. 3d 521, 534 (1991).

¶ 24 In the instant case, the respondent was found to have sexually abused one of his daughters. He was required to complete sex offender treatment and counseling. There was no visitation between the respondent and Victim A.S. or any communication from the respondent's family members with Victim A.S. In the instant case, it was not an abuse of discretion of the court to order the minor children wards of the court to ensure the counseling and visitation needs are closely monitored and enforced.

¶ 25 For the foregoing reasons, the judgment of the circuit court of Wayne County is hereby affirmed.

¶ 26 Affirmed.