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SIXTH DIVISION
November 14, 2014

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

IN THE INTEREST OF C.W.,	)	Appeal from the
	)	Circuit Court of
Minor and Respondent-Appellant,	)	Cook County.
)	
(The People of the State of Illinois,)	
	)	No. 12 JA 1205
Petitioner-Appellee,	)	(1-13-3279)
)	
v.)	
)	
Brenda L., Anteriose W., and Doris W.,	)	Honorable
	)	Bernard J. Sarley,
Respondents-Appellees).	)	Judge Presiding.

IN THE INTEREST OF A.R., and E.R.,	)	Appeal from the
	)	Circuit Court of
Minors and Respondents-Appellants,	)	Cook County.
)	
(The People of the State of Illinois,)	
	)	Nos. 13 JA 748 & 13 JA 749
Petitioner-Appellee,	)	(1-13-3335)
)	
v.)	
)	
Angelica A., and Vicente R.-N.,	)	Honorable
	)	Bernard J. Sarley,
Respondents-Appellees).	)	Judge Presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Justices Hall and Rochford concurred in the judgment.

ORDER

¶1 *Held:* The juvenile court did not abuse its discretion when it entered protective orders that allowed counsel, upon signing an acknowledgement, to receive copies of recorded interviews with the victims of child sexual abuse, barred counsel from copying the recordings without leave of court, and required counsel to return all copies after adjudication, disposition or any appeal.

¶2 In this consolidated interlocutory appeal, the Cook County Public Guardian challenges the protective orders entered by the juvenile court in the case of C.W. and the case of A.R. and E.R., who are minors represented by the Public Guardian in juvenile court child protection proceedings involving allegations of sexual abuse. The protective orders were entered on the motions of the Cook County State's Attorney and over the Public Guardian's objections. The protective order concerning A.R. and E.R., who are sisters, and the protective order concerning C.W. were entered by the same judge on the same day, and the cases were consolidated on appeal.

¶3 The protective orders concerned C.W.'s, A.R.'s and E.R.'s recorded forensic interviews, or victim sensitive interviews (VSIs), which were conducted by an interviewer with expertise in interviewing child sex abuse victims and were stored on DVDs. The protective orders enjoined counsel from, *inter alia*, (1) copying the VSIs without leave of court; (2) keeping copies of the VSIs after disposition, final appeal or case closure; and (3) receiving copies of the VSIs unless counsel and counsel's agents and expert witnesses signed acknowledgments agreeing to be bound by the protective orders.

¶4 On appeal, the Public Guardian contends there was no valid reason for the protective orders and asks this court to vacate the protective orders in their entirety. In the alternative, the Public

Nos. 1-13-3279 & 1-13-3335 (consol.)

Guardian asks this court to remand these consolidated cases back to the juvenile court with instructions to modify the orders to allow full access for the agents of the Public Guardian and for the Public Guardian to retain copies of his clients' VSIs in his files.

¶5 For the reasons that follow, we hold that the juvenile court did not abuse its discretion in entering the protective orders in these matters.

¶6 I. BACKGROUND

¶7 C.W. was born in February 2002. Her parents are respondent Brenda L. and respondent Anteriose W., and her paternal grandmother, respondent Doris W., was her legal guardian. C.W. came to the attention of the Department of Children and Family Services (DCFS) in November 2012, due to allegations that her father sexually abused her. As part of the DCFS investigation, a forensic interviewer with expertise in interviewing child sex abuse victims conducted a VSI with C.W. at the Chicago Children's Advocacy Center (CCAC). The CCAC recorded the VSI and stored it on a DVD. The assigned DCFS investigator, a Chicago Police Department Detective, and a member of the Cook County State's Attorney's Office observed the VSI from behind a one-way glass/mirror.

¶8 Thereafter, the State filed a petition for adjudication of wardship, alleging that C.W. was abused and neglected, and the Public Guardian was appointed as C.W.'s attorney and guardian *ad litem*. An additional VSI was conducted at the CCAC with C.W. due to an allegation that she was sexually assaulted by a male friend of her legal guardian, respondent Doris W. C.W.'s case progressed through the system and, in July 2013, the State's Attorney informed the parties that it had received DVDs of C.W.'s VSIs and would make them available to all parties for inspection. When the Public Guardian requested a copy of the VSI, the State refused to make copies of the VSI and, in August 2013, moved the juvenile court for a protective order regarding C.W.'s VSIs.

¶9 Initially, the court denied the State's motion for a protective order, stating that the provisions of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/1-1 *et seq.* (West 2012)), obviated the need for entry of a protective order and the parties were already obligated to keep the discovery and information in this case confidential. However, the State moved the court to reconsider that ruling in September 2013, and the court, on October 18, 2013, granted the State's request for a protective order, finding that it was in the best interests of C.W. Revisions were made to the protective order to allow expert witnesses, DCFS clinicians and C.W.'s therapist to view the VSIs. On October 18, 2013, the court entered the protective order, which ordered the State to tender to the attorney for each party one copy of the recorded VSI, subject to eight restrictions.

¶10 First, the VSI:

"shall not be exhibited, shown, disclosed or displayed to any person or used in any fashion by any party to this action except in a judicial proceeding or as may be directly necessary in the preparation of the defense of this action."

However, the child's therapist or a DCFS clinician may, in the course of providing therapeutic services to the child, view the DCFS attorney's copy of the VSI without supervision.

¶11 Second:

"No copies of the [VSI] shall be made by counsel for any party except as may be directly necessary in the preparation of the defense of this case. Counsel for all parties shall obtain leave of court prior to making any copies of the [VSI]. At the conclusion of this case, counsel for all parties shall account for any copies."

¶12 Third, all copies of the VSIs must be returned to the Cook County State's Attorney's Office within 10 days of any attorney's withdrawal from the case, within 30 days of the completion of the dispositional hearing, or within 30 days of the completion of all appeals.

¶13 Fourth: "The parties may personally review the discovered materials only in the direct presence and under the direct supervision of counsel."

¶14 Fifth, no party, including a *pro se* litigant, may personally be given a copy of the VSI to retain in his possession.

¶15 Sixth, the protective order shall apply to any party, attorney of any party, translator for any party, investigator, expert witness, agent or representative of any party.

¶16 Seventh, a copy of the protective order shall accompany any copy made of the VSIs and the recipient shall sign an acknowledgment that he has read the order and agrees to be bound thereby.

¶17 Eighth, any violation of the protective order may result in sanctions by the court, including contempt, and may be punishable by state or federal law.

¶18 The Public Guardian stated that he would not sign the acknowledgment. The attorney for respondent Doris W. stated his objection to the protective order but signed the acknowledgment in order to receive the VSIs. The Public Guardian filed a notice of interlocutory appeal of the protective order and subsequently moved the court to stay the trial proceedings pending the outcome of the appeal. The juvenile court and this court denied the Public Guardian's stay requests.

¶19 Meanwhile, the case of sisters A.R. and E.R., which also involved allegations of sexual abuse of a minor and discovery issues concerning VSIs, had progressed through the system. A.R. and E.R. were born in August 2005 and February 2007, respectively. Their parents are Angelica

Nos. 1-13-3279 & 1-13-3335 (consol.)

A. and Vincente R.-N. In 2011, DCFS investigated reports of child abuse against Vincente R.-N., and a VSI with A.R. was conducted at the CCAC. Later, in August 2013, DCFS received an allegation that Vincente R.-N. sexually molested A.R., and another VSI with A.R. was conducted at the CCAC and recorded. Thereafter, DCFS took protective custody of the sisters, and the State filed petitions for adjudication of wardship, alleging the sisters were neglected and abused and that A.R. was sexually abused. The Public Guardian was appointed as the sisters' attorney and guardian *ad litem*.

¶20 At an October 15, 2013 status hearing, the State informed the court that it had one DVD of A.R.'s VSI. The Public Guardian, attorneys for the parents, and DCFS requested copies of A.R.'s VSI, and the State asked the court to order the distribution of the VSI with a protective order. The matter was continued so the Public Guardian could file a written objection to the entry of a protective order.

¶21 On October 18, 2013, after hearing argument, the court found that the issuance of a protective order would not infringe on the parties' abilities to prepare their cases and would serve the minors' best interests. The court stated that if there was a specific request to view the VSI outside of trial purposes, the parties could request the court for access and the court would consider the matter at that time and in accordance with the best interests of the child. The court had further discussions with counsel concerning A.R.'s 2011 VSI, E.R.'s 2013 VSI, and the hiring of a translator because the VSIs were conducted in Spanish. The protective order encompassed both A.R.'s and E.R.'s VSIs and was nearly identical to the protective order entered in C.W.'s case.

¶22 The Public Guardian filed a notice of interlocutory appeal of the protective order and subsequently moved the court to stay the juvenile court proceedings pending the outcome of the appeal. The juvenile court and this court denied the Public Guardian's stay requests. In

Nos. 1-13-3279 & 1-13-3335 (consol.)

November 2013, this court granted the Public Guardian's motion to consolidate the case involving C.W. (No. 1-13-3279) with the case involving A.R. and E.R. (No. 1-13-3335).

¶23 II. ANALYSIS

¶24 The Public Guardian argues that the protective orders unreasonably and improperly enjoined and prohibited him from full access to the VSIs and that, even if properly entered, the protective orders should be modified to allow full access for agents of the Public Guardian, and should allow the Public Guardian to retain copies of his clients' VSIs. Respondent Brenda L. has filed a response appellate brief that adopts the arguments raised in the Public Guardian's brief and opposes the protective order as it applies to all parties.

¶25 A. Jurisdiction

¶26 This court has jurisdiction to entertain the Public Guardian's appeal of the juvenile court's interlocutory protective orders pursuant to Illinois Supreme Court Rule 307(a)(1) (eff. Feb. 26, 2010), which permits interlocutory appeals from orders granting or denying injunctive relief. Courts look to the substance, not the form, of an order to determine if it is injunctive in nature, and Illinois courts have broadly construed the meaning of the term "injunction" in Rule 307(a)(1). *Skolnick v. Alzheimer & Gray*, 191 Ill. 2d 214, 221 (2000). "An injunction is a judicial process operating in personam and requiring [a] person to whom it is directed to do or refrain from doing a particular thing." (Internal quotation marks omitted) *Id.* "[A]n interlocutory order circumscribing the publication of information is reviewable as an interlocutory injunctive order, pursuant to Rule 307(a)(1)." *Id.* at 221-22 (trial court's order denying the motion to modify the protective order and restricting public access to pleadings was in the nature of injunctive relief).

¶27 B. Juvenile Court's Discretion to Issue the Protective Orders

¶28 The considerable discretion trial courts have to supervise the course of discovery as the court deems appropriate also extends to the entry of protective orders. *Id.* at 223. Illinois Supreme Court Rule 201(c)(1) (eff. July 1, 2002) provides that the court may "make a protective order as justice requires, denying, limiting, conditioning, or regulating discovery to prevent unreasonable annoyance, expense, embarrassment, disadvantage, or oppression." The parameters of protective orders are entrusted to the trial court's discretion, and a reviewing court will alter the terms of a protective order only if no reasonable person could adopt the view taken by the trial court. *Id.* at 224. "The nature of a protective order depends on the facts of the particular case,*** [and] the trial court is in the best position to weigh the competing needs and interests of the parties affected by a protective order." *Hall v. Sprint Spectrum L.P.*, 368 Ill. App. 3d 820, 823 (2006).

¶29 The Public Guardian contends he could not sign the protective orders without failing in his duty to protect his clients' present and future interests. The Public Guardian argues this court should vacate the protective orders because they unreasonably and improperly enjoin and prohibit his full access to his clients' VSIs. Specifically, he contends the Illinois Supreme Court Rules grant him full access to his clients' VSIs as their court-appointed attorney and guardian *ad litem*. He also contends the record does not demonstrate that justice required entry of the protective orders because sufficient protection was provided by statute and court rules, the protective orders lacked specificity and clarity, the State never offered good cause or a valid reason for the protective orders, and criminal law should not be applied to a civil proceeding.

¶30 This court considered these same legal issues in *In re Daveisha C.*, 2014 IL App (1st) 133870, and determined that the trial court did not abuse its discretion when it entered an almost

identical protective order that allowed counsel to receive a DVD copy of the VSI but barred counsel from copying the DVD without leave of court, and required the return of the DVD and any copies after adjudication, disposition, and any appeal. This court rejected the Public Guardian's argument that he could not sign the protective order without failing in his duty to protect his clients' present and future interests. First, this court noted that even if the Public Guardian chose not to sign the acknowledgment and get his own copy of the recorded VSI, he could still, as a less favored alternative, go to the State's Attorney's Office prior to trial and view the DVD. *Id.* ¶31. Further, the protective order did not deny the Public Guardian full access to the VSI and, thus, was not contrary to Illinois Supreme Court Rule 201(b)(1) (eff. Jan. 1, 2013), which provides for full disclosure of any relevant matter, and Illinois Supreme Court Rule 907(b) (eff. July 1, 2006), which provides a child's attorney and guardian *ad litem* access to all relevant documents. *Id.* ¶32. Although the protective order denied the Public Guardian full control of the VSI, the question of control was squarely an issue for the trial court to decide in the context of a motion for a protective order. *Id.* ¶34. This court rejected as irrelevant the Public Guardian's argument that the State failed to show good cause or a valid reason for the protective order, noting that there was no suggestion there that any party intended to abuse the discovery process. *Id.* ¶36.

¶31 This court also rejected the Public Guardian's claim that the trial court's protective order was an abuse of discretion because certain provisions of the Act and the Illinois Rules of Professional Conduct provided sufficient protection for the VSI. *Id.* ¶¶43, 51. First, this court found that section 1-5(6) of the Act (705 ILCS 405/1-5(6) (West 2012)), which closes juvenile court proceedings to the general public, did not offer protection for the minor's VSI outside the context of the juvenile court hearing. *Id.* ¶39. Second, section 1-7 of the Act (705 ILCS 405/1-7 (West 2012)), which provides for the confidentiality of law enforcement records relating to minors

Nos. 1-13-3279 & 1-13-3335 (consol.)

who have been arrested or taken into custody, did not apply here because the VSI was not a law enforcement record. *Id.* ¶40. Third, section 1-8 of the Act (705 ILCS 405/1-8 (West 2012)), which restricts the inspection and copying of juvenile court records, would not protect discovery documents like the VSIs because juvenile court records include only what has actually been entered into the court record. *Id.* ¶41. Moreover, the Act, unlike the protective order, lacks the safeguard of a sanction for any violation of its confidentiality provisions. *Id.* ¶42.

¶32 Fourth, this court also found unavailing the Public Guardian's arguments concerning: Rule 1.6(a) of the Illinois Rules of Professional Conduct (Ill. R. Prof. Conduct (2010) R. 1.6(a) (eff. Jan. 1, 2010)), which forbids a lawyer from revealing information relating to the representation of a client; paragraph 16 in the comments of that Rule (*Id.*, Committee Comments, ¶ 16 (eff. Jan. 1, 2010)), which states that attorneys must act competently to safeguard information related to their representation against inadvertent or unauthorized disclosure by the attorney or other person subject to the attorney's supervision; and Rule 1.9 (Ill. R. Prof. Conduct (2010) R. 1.9 (eff. Jan. 1, 2010)), which requires attorneys to keep confidential any information relating to their representation even after the juvenile court proceedings close. This court considered the sensitive nature of the VSIs and noted that only lawyers are bound by the cited Rules, the VSIs can easily be copied and distributed, and the Public Guardian offered no information about any precautions its office would take to protect the VSIs. *Id.* ¶¶46-47. While recognizing the importance of the exchange of pretrial discovery, this court also stressed that courts must guard against the re-victimization of child victims. *Id.* ¶51. Ultimately, this court concluded that the protective order was appropriate based on the facts and did not impede the parties' ability to prepare for trial. *Id.* ¶53.

¶33 Finally, the Public Guardian complained that the protective order lacked specificity and clarity because it contained some language that was more suitable for a criminal rather than a civil proceeding, and it neither referred to the date of the minor's VSI nor specified the media format of the recording. This court, however, concluded that the alleged defects were of no consequence and offered no reason to vacate or modify the protective order. *Id.* ¶57.

¶34 We adopt the rationale of *In re Daveisha C.* and see no reason to depart from its holding in the instant case. In accordance with Rule 201(c)(1), the court may issue a protective order to prevent unreasonable annoyance or embarrassment. By the plain terms of Rule 201(c)(1), the State, in order to receive the protective order, does not have to show that a party failed or would likely fail to adequately safeguard the VSI DVDs. Furthermore, it cannot be disputed that, unlike a transcript, these VSI DVDs are uniquely susceptible to copying and distribution on the Internet and the images of these child victims recounting the details of their sexual abuse would be of prurient interest particularly to pedophiles. The protective orders at issue here are necessary and reasonable to control this sensitive material and limit the risk that one of the multiple copies of these VSIs could be misplaced, improperly discarded with a closed case file, or otherwise intentionally or inadvertently made public. We cannot say the juvenile court's ruling was arbitrary, fanciful, or unreasonable or that no reasonable person would take the view adopted by the juvenile court. Therefore, we find that the juvenile court did not abuse its discretion in granting the Cook County State's Attorney's requests for protective orders under Rule 201(c).

¶35 The Public Guardian also argues that criminal law should not be applied to a civil proceeding. The Public Guardian states that the minors in this civil proceeding have the right to receive discovery and be represented by counsel, and the Public Guardian should be able to keep a copy of the VSI for his file because, even though a criminal defendant does not have a right to

physical possession of discovery, the court can mandate, pursuant to Illinois Supreme Court Rule 415(c) (eff. October 1, 1971), that sensitive discovery material shall remain in the criminal defense attorney's exclusive custody and only be used to prepare his side of the case subject to such other terms and conditions as the court may provide. This argument lacks merit; the record is clear that the juvenile court correctly applied the law concerning the issuance of protective orders in the context of a civil proceeding.

¶36 C. Modification of the Protective Orders

¶37 The Public Guardian argues that even if the protective orders were properly entered, they are overbroad and should be modified to allow full access for agents of the Public Guardian and to allow the Public Guardian to permanently retain copies of the VSIs. The Public Guardian contends the current language of the protective orders requires him to obtain prior court approval before disclosing the VSIs to a consulting expert, which would apprise the other litigants of the Public Guardian's trial strategy and encroach on attorney work product. The Public Guardian also contends that keeping copies of his clients' VSIs would assist him in the future in advocating for services for his clients or other members of their families.

¶38 A reviewing court will alter the terms of a protective order only if no reasonable person could adopt the view taken by the circuit court. *Skolnick*, 191 Ill. 2d at 224. In *In re Daveisha C.*, 2014 IL App (1st) 133870, ¶65, this court found that the same limitations on the copying and retention of the VSI were necessary to protect the minor's best interests. Specifically, this court found that the language of the protective order allowed the Public Guardian's office to share its copy with other Public Guardian employees and expert witnesses in preparation for trial, and leave of court was required only if the attorney sought to make a new copy to give to the expert. *Id.* ¶61. Furthermore, any concern about requiring the State to retain a VSI after the disposition hearing

Nos. 1-13-3279 & 1-13-3335 (consol.)

could be clarified by motion. *Id.* ¶64. In addition, the Public Guardian's concerns about the disclosure of consultants, work product and expert witnesses are already addressed by the rules and statutes governing discovery.

¶39 We find no reason to depart from the rationale and determination made by this court in *In re Daveisha C.* that the juvenile court did not abuse its discretion by finding that the protective order's limits on copying and retaining the VSI were necessary to protect the minor's best interests.

¶40 III. CONCLUSION

¶41 The Public Guardian has failed to demonstrate that an abuse of discretion occurred in granting the protective orders. Accordingly, the orders of the juvenile court granting the Cook County State's Attorney's requests for protective orders are affirmed.

¶42 Affirmed.