

FOURTH DIVISION  
November 13, 2014

1-13-3691

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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<i>In re</i> MARRIAGE OF	)	Appeal from the
	)	Circuit Court of
JOAN MINICK,	)	Cook County.
	)	
Petitioner-Appellant,	)	
	)	
and	)	No. 06 D 11753
	)	
JAMES LATZKE,	)	Honorable
	)	Mark Lopez,
Respondent-Appellee.	)	Judge Presiding.

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JUSTICE HOWSE delivered the judgment of the court.  
Presiding Justice Fitzgerald Smith and Justice Epstein concurred in the judgment.

**ORDER**

¶ 1 *Held:* The judgment of the circuit court of Cook County which denied the amended petition to modify custody is reversed; the trial court abused its discretion when it denied petitioner's request to continue the proceedings to permit a psychiatrist who treated the minor to testify where such testimony would aid the trial court in determining the best interests of the child.

¶ 2 In October 2007, petitioner, Joan Minick, filed a petition for dissolution of marriage against respondent, James Latzke. The parties' minor child, M. L., was born July 31, 2005. In 2010, the circuit court of Cook County entered its judgment granting the petition for dissolution of marriage. The judgment granted James sole custody of M. L. and granted Joan visitation.

¶ 3 In January 2013, Joan filed a *pro se* petition to modify custody and in May 2013 filed a *pro se* amended petition. Joan sought sole custody of M. L. with visitation for James. Joan supported the petition with, *inter alia*, a report by Dr. Peter Nierman, a psychiatrist who treated M. L. James filed a response to the petition. Joan did not subpoena Dr. Nierman for the hearing.

¶ 4 The trial court proceeded to conduct a hearing. At the hearing, Joan presented a printout of an electronic mail from Dr. Nierman stating he could not be in court for the hearing because he would be out of the country that day and that it would be possible for him to appear in court after his trip. Joan orally requested that Dr. Nierman be allowed to testify but the trial court found that there was no subpoena served on Dr. Nierman and therefore no subpoena to continue to another hearing date. Based on Joan's statements at the hearing and the prior custody order, the trial court denied the petition to modify.

¶ 5 Joan filed a *pro se* motion to reconsider the order denying her amended petition to modify custody. The trial court held a hearing on the motion to reconsider. Counsel represented Joan at the hearing on the motion to reconsider. Following the hearing, the trial court denied Joan's motion to reconsider. For the following reasons, we reverse and remand for further proceedings on the amended petition to modify custody.

¶ 6

## BACKGROUND

¶ 7 In May 2010 the trial court entered a written memorandum and order in the dissolution proceedings. This court has already addressed those proceedings and affirmed the trial court's judgment awarding sole custody of M. L. to James.

¶ 8 The trial court found, in pertinent part, that Joan was more concerned with limiting James' parenting time with M. L. and restricting the parent child relationship than what is truly in M. L.'s best interest. The trial court found the most significant issue Joan raised was her belief that James sexually abused M. L. in Fall 2008. The Illinois Department of Children and Family Services (DCFS) made two separate and independent investigations in November 2008 and March 2009 and found no evidence of abuse. DCFS reported the allegations unfounded. Two pediatricians examined M. L. and found there was no physical or sexual abuse. Dr. Grossman, who was appointed as an evaluator, found there was no evidence of either sexual or physical abuse and that it appeared very unlikely that M. L. was the victim of any kind of abuse. The trial court found that "[a]pparently, [Joan] now believes [James] did not sexually abuse [M. L.] \*\*\*. The court held it was "convinced that [M. L.] was never sexually abused by anyone, especially [James.]"

¶ 9 The trial court ruled that it was in the best interests of M. L. to award James sole custody and that James and Joan share approximately equal parenting time. (Joan has M. L. 55% of the time.) Joan appealed that decision to this court. This court recounted the trial court's discussion of the factors the court must consider in making a custody determination in light of the evidence at the hearing. This court found that the manifest weight of the evidence supported the trial court's findings regarding what was in M. L.'s best interest.

¶ 10 In May 2013 Joan filed her amended *pro se* petition for modification of custody, which is the subject of this appeal. The petition asked that sole custody be awarded to Joan and that James be granted visitation. The petition also sought statutory child support. Joan alleged facts that had allegedly arisen since the trial court's May 2010 custody judgment. Joan's amended petition to modify custody alleged that since the trial court entered its custody judgment, M. L. has expressed to Joan and to James that she (M. L.) wants Joan to make her decisions, to spend more time with Joan, and to attend Joan's local school. The amended petition also alleged M. L. has said that she does not feel that James knows how to take care of her, does not care about her feelings, and ignores her questions. The petition alleged that James does not attend to M. L.'s hygiene and cited examples including not washing M. L.'s hair or brushing her teeth. Joan made allegations about the condition and location of James' home and the fact he does not involve M. L. in activities.

¶ 11 The amended petition also alleged multiple reports to DCFS since the May 2010 judgment that James showered with M. L. and slept in the same bed with her and that M. L. had complained about these behaviors. Joan alleged M. L. has described James' erection. The petition alleged that one such report followed an interview of M. L. by forensic child psychiatrist Dr. Peter Nierman. The petition alleged M. L. made similar reports about showering to 2 other individuals. Dr. Nierman prepared a report of his private interview of M. L. Dr. Nierman's report, dated June 14, 2012, stated, in part, as follows:

1. M. L. told Dr. Nierman that she sometimes showered with her father.
2. M. L. stated that sometimes her father lets her shower by herself and other times he is in the shower and she goes in to join him.

3. M. L. described seeing her father's penis both erect and not erect.

4. M. L. reported that her father sometimes sleeps with her in her bed.

¶ 12 Dr. Nierman's first report includes a cover letter which states, in part, that "I am not in a position to offer an opinion conclusively but I feel the courts should be willing to allow a further review of the matter of [M. L.'s] custody recommendations and joint parenting agreement. I have rarely encountered a child of this age who could so clearly articulate her concerns with the parenting arrangement to which she has been made subject." Dr. Nierman concluded he believes "a full legal assessment of this matter is critical to this child's long term ability to adapt and adjust to life's circumstances."

¶ 13 Joan also attached to the amended petition Dr. Nierman's report, dated June 19, 2012, of a follow up interview he conducted with M. L. In the report of the follow up interview Dr. Nierman wrote, in part, as follows:

1. M. L.'s statements suggested she had recently showered with her father.

2. M. L. stated what she really feels is that she spends too much time with her father and she would like to spend more time with her mother.

3. M. L. stated she feels like it is just too much time and that she does not have fun when she is with her father.

4. M. L. feels that her father does not know quite so well or how to take care of her.

5. M. L. felt that she was big enough to be able to wash herself and wash her own hair.

6. M. L. said she did not want him in her bed because she was a big girl and did not feel like he needed to be there in order for her to go to sleep.

7. M. L. felt that she would like to sleep in her own bed at her father's house and that she would like to take her own showers and clean herself the way she does when she is at her mother's house.

¶ 14 Dr. Nierman wrote that it was not clear whether any sexual or sexualized behavior had taken place between M. L. and her father. Dr. Nierman wrote that M. L. never stated that she touched her father and never stated that her father seemed to be in any way gratified or titillated as a result of these episodes where she had showered with him or gone to bed with him. Dr. Nierman's second report also states that: "She also stated that she would like her mother to stop hitting her, and she stated that she would like to spend more time with her mother and less time with her father because she feels like her father is not capable of taking care of her as well as her mother." In both interviews M. L. described incidents of spanking by Joan. In his second report Dr. Nierman found that M. L. described spankings and not a reportable offense and did not describe anything abusive with respect to her mother's actions.

¶ 15 Dr. Nierman's second report found that M. L. was "facing a perplexing world in which the disparities in her caretaking seem to be significant to the point that it evokes anxiety. The child directs discussion to matters of clothing, declothing, and nudity far too nonchalantly. \*\*\* [M. L.] also clearly expressed that her father could not take care of her as well as her mother. This sentiment, along with the other compiled data in this evaluation, begs that this case be reviewed at the level of the joint-parenting agreement currently enforced

that gives [M. L.'s] father 45% of the week.” Dr. Nierman wrote in the second report as follows:

“Because the risk of potential sexual abuse is high and the ability to discern whether abuse or grossly inappropriate behavior did not occur in this case is not at a sufficient level of certainty-I telephoned and reported the father to [DCFS] for further investigation. I believe this child has been subjected to behavior that is variant and inappropriate. I believe this child must be protected \*\*\* minimally, limits should be put in place and services should be offered to help this child receive the parenting that would serve her best interests.”

¶ 16 At the hearing on Joan’s amended petition to modify custody on August 1, 2013, the trial court cautioned Joan that because she faced a high burden, “if you’re going to tell me that he’s not sharing information of whatever sort, that’s not really going to do it.” The trial court found the fact that 3 years elapsed since the May 2010 custody judgment alone was a substantial change in circumstances. Joan argued James did not take M. L. to doctor appointments and that she (Joan) had taken M. L. to her doctor appointments. Joan informed the court she also attached a psychiatrist’s report to the amended petition to modify custody. Joan stated “he would be here today, but he’s out of the country.” Joan continued:

“I’d very much like you to be able to ask him any questions that you might like as well as for Jim to ask him any questions. And, again, he would be here today if it weren’t for that he’s out of

the country until the 5th. And he suggested \*\*\* that he's in the past had conference calls in chambers and has attested to his findings and answered any questions \*\*\*."

¶ 17 The trial court asked Joan if she had subpoenaed Dr. Nierman to appear at the August 1 hearing and she replied she had not. The following exchange then occurred:

“THE COURT: Okay. So you're--he just would have voluntarily walked in here other than being out of the county?

MS. MINICK: Yes

THE COURT: Okay.

MS. MINICK: And he says that--

THE COURT: I find that hard to believe ma'am, that any professional would take their time from their practice to voluntarily come to this court. Generally they have to be subpoenaed, and there has to be some professional fees paid for them to be here.

MS. MINICK: Well, yes. It's all--It's a brief e-mail if you'd like to see it.

THE COURT: Yeah.

MS. MINICK: It's stated right here (indicating). He says that it's possible in the two weeks after my trip--he returns August 5--Tuesdays or Friday mornings I can generally make myself available. And he says, sometimes the judge will allow

for a statement to be done in chambers over the phone. If not, he says, I can come to provide testimony; I'll need to submit a bill to account for my time. So he definitely will come to court.

THE COURT: Fine. What else besides you taking the child to all his [*sic*] appointments--medical appointments?"

¶ 18 Joan proceeded to argue her petition to the trial court recounting the allegations in the petition. The trial court halted her argument and issued its ruling on the petition stating "You've had an opportunity to articulate the reasons you believe that there should be a change of custody. And in post-decree, my starting point is always a party's judgment for dissolution of marriage." The trial court took judicial notice of the May 2010 judgment and stated its knowledge of Joan's appeal of that judgment. The trial court read passages from the May 2010 judgment which explained the thinking at the time the May 2010 judgment was entered; after doing so, the court stated that it would "further make more of a record \*\*\* based on the parties' judgment." The trial court proceeded to read portions of the May 2010 judgment pertaining to custody. When noting Joan's prior allegations that James sexually abused M. L. and that DCFS and Dr. Grossman found no basis for those allegations, the court stated as follows:

"These are very serious allegations, ma'am. And so when you come here now and you start verbalizing all these things that he's doing wrong, I have to take it with a grain of salt, because even the trial court found James to be more credible in his testimony than you were.

And the bottom line is that because you have 50 percent of the time, all those, what you consider deficiencies, \*\*\* I have not heard one word that you've been prohibited in any way from \*\*\* doing those things.

\* \* \*

So you are--you are as involved as a parent can be, but the court has already found that you can't co-parent. And so that is not going to change from--at this point in time. The fact that you have litigated non-stop in post-decree reinforces that fact, that you two can't co-parent even \*\*\* three years after the judgment was entered.”

¶ 19 The trial court informed Joan that the reasons stated in the May 2010 judgment were “the foundation for why [the court] made \*\*\* findings that the child's best interest was with your ex.” The trial court ruled:

“The bottom line is the child is still attending school regularly. They're [*sic*] doing fine in school. Because of your efforts, the child is getting to the doctors' appointments and dental appointments. So the child's needs are met. You talk about not washing her hair. The child's with you half the time. You wash her hair if it's an issue. Just because--the reason it's sole custody is because you can't co-parent, and I don't believe

you ever will co-parent because you don't have it within you two to interact appropriately.

But the judge made his determination. By presiding over your post-decree litigation and also considering what you're telling me today, even though the substantial change in circumstances since May of 2010 is the child is now three years older, all the child's needs are being met, and I find no basis to change the custody determination. So your motion for change of custody is denied, ma'am."

¶ 20 Joan stated that she would "appreciate it if you would--if you would hear the psychiatrist." The following exchange then occurred:

"THE COURT: Ma'am, today is your trial date. You need to bring in your witnesses. That's why I asked you whether you subpoenaed them. If you subpoenaed them and he was unavailable because he was out of town or whatever, I would enter and continue the subpoena to another date, but you didn't do that. I find it hard to believe that any professional would just voluntarily take a day or a morning off of his practice and walk in here voluntarily without being paid for his time, and that's what you want me to believe, and I don't believe it.

MS. MINICK: Your Honor, I have written proof of that. It's right here in the e-mail (indicating). I can give you that.

THE COURT: Ma'am, he may be--and if you subpoenaed him the way you're required to, then I might do something with that. But as of this point in time, those kind of documents you're submitting from a third party are hearsay, and they are not admissible because they're from a third party, and there's no way that anybody can cross-examine him on those-- whatever your representations are."

The trial court then continued pending financial issues to another court date.

¶ 21 Joan filed a motion to reconsider the order denying her amended petition to modify custody. Joan was represented by counsel at the hearing on the motion to reconsider. Joan's counsel argued the trial court should reconsider its prior ruling and allow Joan to bring in her expert and requested a hearing on the allegations raised in the petition. Counsel also requested the court appoint a guardian for M. L. and conduct an *in camera* hearing with the child. The trial court denied the motion to reconsider stating, in part, "[t]he fact that I denied a motion for another witness to come in, if I believed that there was something credible to substantiate that, I would certainly do so. I didn't believe it." Joan's counsel asked if the court's credibility determination as to Joan was based on the allegations and findings in the 2010 judgment.

¶ 22 The trial court commented that all of the parties' post-judgment litigation had been before the same trial judge and he continued: "I have gone through this a number of times. And I find that there's no basis for any risk of harm to the child." The trial court discussed

the current allegations and stated “And mom obviously, she’s aware she needs more than that so that’s where I get these allegations of endangerment. And I don’t believe them.”

¶ 23 The trial court’s written order denying the motion to reconsider the judgment denying the amended petition to modify custody states that the order is final and can be appealed immediately.

¶ 24 This appeal followed.

¶ 25 ANALYSIS

¶ 26 Joan argues the trial court erred in refusing to continue the hearing on her amended petition to modify custody to permit Dr. Peter Nierman to testify. She also argues that regardless of Dr. Nierman’s testimony, the trial court erred in refusing to modify custody because the change in circumstances requiring modification was un rebutted. James did not file a brief in this court within the time allowed by Supreme Court Rule 343 (eff. July 1, 2008). On October 10, 2014, this court ordered this case be taken for consideration on the record and Joan’s brief only. “In the appellate court, reversal is not automatic when the appellee fails to file a brief.” *Brzowski v. Brzowski*, 2014 IL App (3d) 130404, ¶ 15. “[I]f the record is simple and the claimed errors are such that the court can easily decide them without the aid of an appellee’s brief, the court of review should decide the merits of the appeal.” *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976).

¶ 27 1. Nature of the Proceeding

¶ 28 The decision regarding custody is within the trial court’s discretion. *In re Marriage of Knoche and Meyer*, 322 Ill. App. 3d 297, 307 (2001). “The court shall not modify a prior custody judgment unless it finds by clear and convincing evidence, upon the basis of facts that



manifest abuse of that discretion. [Citation.]” *In re Marriage of Knoche & Meyer*, 322 Ill. App. 3d at 308. “An abuse of discretion will be found where the court applied the wrong legal standard. [Citation.]” (Internal quotation marks omitted.) *Rockford Police Benevolent & Protective Ass’n, Unit No. 6 v. Morrissey*, 398 Ill. App. 3d 145, 154 (2010). “Motions for a continuance \*\*\* must be considered in light of the diligence shown by the movant.

[Citation.] \*\*\* In determining whether a [movant] has exercised the required diligence, the court must consider [the] duty to make a reasonable attempt to secure witnesses.” *In Interest of Johnson*, 48 Ill. App. 3d 370, 373 (1977). The court will also consider whether the movant makes an offer of proof to the substance of the witness’ testimony, whether a claim of prejudice is advanced, and whether a contention is made that the witness is necessary to the moving party’s case. See *Id.*

¶ 32 For the following reasons, we hold that the trial court abused its discretion when it failed to continue the hearing on Joan’s amended petition to modify custody to permit Dr. Peter Nierman to testify. We reject Joan’s argument that the allegations in the petition and the fact M. L. is three years older warrants a change in custody. Rather, we remand to the trial court to conduct a hearing on the petition at which Joan may call witnesses, including Dr. Nierman, who may be subject to cross-examination by James, prior to rendering a decision on whether to grant or deny Joan’s petition.

¶ 33 3. Joan’s Right to a Continuance

¶ 34 We hold that the trial court applied the wrong legal standard to Joan’s request to continue the hearing on the amended petition to modify custody and therefore its ruling constitutes an abuse of discretion. We find that the trial court applied the wrong legal

standard to the extent the trial court refused to grant a continuance because Joan failed to act diligently in securing Dr. Nierman's presence at the hearing in that she failed to subpoena him.

¶ 35 Dr. Nierman's email, which on its face was hearsay, is competent evidence of Joan's efforts to secure Dr. Nierman's testimony. *In re Charles W.*, 2014 IL App (1st) 131281, ¶ 35 (testimony about an out-of-court statement which is used for a purpose other than to prove the truth of the matter asserted in the statement is not hearsay). At the hearing on the amended petition to modify custody the trial court expressed skepticism over what it perceived to be Joan's claim that Dr. Nierman would testify in court without a subpoena and without being paid a professional fee. Joan directed the trial court's attention to Dr. Nierman's email explaining that he would be willing to testify and that he would bill her for his fee. Dr. Nierman's email does not state that he would only testify if subpoenaed to testify.

¶ 36 The email demonstrated Joan made an effort to secure Dr. Nierman's presence at the hearing and explained why Joan did not subpoena Dr. Nierman—she believed he did not require her to and would have testified voluntarily. Generally, if a witness is willing to testify voluntarily no subpoena is required. See Ill. Sup. Ct. R. 327 (eff. July 1, 2005); *Lisowski v. MacNeal Memorial Hospital Ass'n*, 381 Ill. App. 3d 275, 285 (2008) ("This rule provides that the missing witness of one party can be compelled by another party to appear and testify at trial"); *White v. Lambert*, No. 09-CV-293, 2011 WL 691983, at \*6 (S.D. Ill. Feb. 18, 2011) ("Defendants' witnesses prison employees appeared voluntarily. Judge Proud correctly observed that subpoenas were not required").

¶ 37 Joan, acting *pro se*, reasonably failed to anticipate that the trial court would not grant her a continuance in the absence of a subpoena where she was not mandated to issue a subpoena. Moreover, the email helped to allay one of the trial court's primary concerns about Joan's claim that Dr. Nierman would testify on her behalf when she explained her belief--through the email--that he would indeed charge her a fee for that service. We find that Joan made a reasonable attempt to secure Dr. Nierman as a witness and the denial of her request for a continuance was an abuse of discretion.

¶ 38 We also hold that the trial court abused its discretion in ruling on the request for a continuance when it failed to consider that Joan established the substance of Dr. Nierman's testimony and that his testimony was necessary to her petition. *In Interest of Johnson*, 48 Ill. App. 3d at 373. When the trial court ruled that it would deny Joan's motion and she implored the court to hear the psychiatrist, the court responded that had Joan subpoenaed Dr. Nierman, it would continue the subpoena to another date and again expressed disbelief Dr. Nierman would have testified without a subpoena. The trial court stated that if Joan had subpoenaed Dr. Nierman it might "do something with that" but "as of this point in time, those kind of documents you're submitting from a third party are hearsay, and they are not admissible because they're from a third party, and there's no way that anybody can cross-examine him on those \*\*\*."

¶ 39 The trial court was correct that Dr. Nierman's reports, themselves, were hearsay. *Morris v. Milby*, 301 Ill. App. 3d 224, 233 (1998). Nonetheless, "[a] defendant seeking a continuance to secure the presence of witnesses must make an offer of proof of that proposed testimony. [Citation.]" (Internal quotation marks omitted.) *Almodovar v. Lent*, 238 Ill. App.

3d 279, 282 (1992). We construe the reports as an offer of proof as to what Dr. Nierman's testimony would be had he been present to testify, and the trial court should have considered Dr. Nierman's reports for that limited purpose. See *Bafia v. City International Trucks, Inc.*, 258 Ill. App. 3d 4, 7 (1994) ("The purpose of an offer of proof is to inform the trial court, opposing counsel, and a court of review of the nature and substance of the evidence sought to be introduced.") (Internal quotation marks omitted.).

¶ 40 We believe that Dr. Nierman's reports informed the trial court of the nature and substance of the testimony Joan asked for extra time to present and Joan adequately demonstrated the importance of Dr. Nierman's testimony to her petition to modify custody. Dr. Nierman's reports indicate he would testify to his professional evaluation of M. L. and her statements to him as a result of that evaluation. In addition to the allegations of inappropriate behavior with M. L., the allegations in Joan's petition included that M. L. wants more parenting time with Joan and believes that James cannot parent her as well as Joan can. These were disclosed as topics of Dr. Nierman's testimony through his written report. According to the report, M. L. is experiencing anxiety from at least perceived disparities in her caretaking and she has expressed that her father cannot take care of her as well as her mother.

¶ 41 The trial judge certainly has a great deal of familiarity with the parties and Joan's attempts at obtaining custody, which it may consider it making its credibility determinations. *In re Estate of Wilson*, 238 Ill. 2d 519, 555 (2010) ("An assessment of a party's credibility as a witness based on the evidence presented in the course of the proceedings is a matter 'which is clearly within the purview of the trial court' "). However, the trial court applied an

incorrect legal standard when it considered Joan's credibility when it denied the continuance and failed to consider the proposed substance of Dr. Nierman's testimony. As a result, all of the available evidence of the best interests of the child was not before the court. One way courts learn the child's preferences is through admission of the child's hearsay statements through the testimony of professional personnel. *In re Marriage of Hefer*, 282 Ill. App. 3d 73, 76 (1996). M. L.'s preferred caretaker, if proven, is entitled to some consideration. *Patton v. Armstrong*, 16 Ill. App. 3d 881, 882 (1974) ("Although not binding on the court, it was proper for the court to consider the preference of the child"). Further, the child's mental condition is necessarily a material issue. See *In re Marriage of Cohen*, 189 Ill. App. 3d 418, 423 (1989). "The best interests and welfare of children necessitate that full advantage should be taken of psychiatric evaluations and opinions in custody cases, particularly where emotional problems are apparent." *Id.* at 424.

¶ 42 Joan cites *Hinton v. Searles*, 53 Ill. App. 3d 433, 439 (1977), for the proposition that the court should only determine the issues on a motion to modify custody after a full and plenary hearing and inquiry. Although *Searles* is not directly controlling of this appeal, that court's rationale is instructive. The issue in *Searles* was "the relevance of the full faith and credit doctrine as it relates to child custody matters." *Searles*, 53 Ill. App. 3d at 437. In *Searles*, the error was that "the trial court limited its discretion after hearing all testimony and the evidence." *Id.* at 442. The *Searles* court held that the trial court was "free from a mandatory application of the full faith and credit doctrine" and "had the duty to consider all facts and circumstances which related to the well-being of the children." *Id.* at 440. The *Searles* court reasoned as follows:

“The overriding consideration of the trial court is the welfare of the children. Regardless of the nature of the proceedings, the rights of the parents must be subservient to the well-being and interest of the children. In addition, a determination of these issues must be made only after a full and plenary hearing and inquiry. As stated in *Boone v. Boone*, 150 F.2d 153, 154 (1945):

‘If the pleadings and evidence revealed a situation which required action, it was the duty of the court to act in behalf of these children and for their protection, regardless of anything previously said or done by any court. Our function under such circumstances is, only to review the question whether the trial court properly exercised its discretion with a view to the present welfare of the children.’ ” *Searles*, 53 Ill. App. 3d at 439.

¶ 43 Dr. Nierman’s report revealed a potential situation requiring action. Joan’s prior allegations against James were not fanciful, as found by the court-appointed evaluator. Joan’s current allegations may have had support from a medical professional. We find that any prejudice to James’ right to a speedy resolution of Joan’s petition is far outweighed by the necessity of making the best interest of the child the courts’ paramount concern. *In re C.B.*, 248 Ill. App. 3d at 176.

¶ 44 Joan established the availability, with a short continuance, of evidence in support of the current allegations in her petition of the type courts rely on to determine the child's best interests. The trial court abused its discretion when it refused to continue the proceedings to permit Dr. Nierman to testify. Accordingly, the trial court's judgment denying Joan's oral motion to continue the hearing on her amended petition to modify custody to permit Dr. Peter Nierman to testify is reversed and the cause is remanded for further proceedings on the amended petition.

¶ 45 CONCLUSION

¶ 46 For the foregoing reasons, the circuit court of Cook County's judgment is reversed and the cause remanded for further proceedings consistent with this order.

¶ 47 Reversed and remanded.