IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED

DEPARTMENT OF CHILDREN AND FAMILIES,

Appellant,

v.

Case No. 5D21-1228
LT Case No. 2020-DP-120

LISA MANNERS,

Appellee.
_____/

Opinion filed September 30, 2021

Appeal from the Circuit Court
for Citrus County,
Peter M. Brigham, Judge.

Rachel Batten, of Children's Legal Services,
Brooksville, for Appellant, Department of Children and Families.

No Appearance for Appellee.

WOZNIAK, J.

The Department of Children and Families ("DCF") appeals an order dismissing its Verified Petition for Injunction to Prevent Child Abuse or Domestic Violence Pursuant to Section 39.504, Florida Statutes (2020) ("Petition"). We find merit in DCF's argument that the trial court

misinterpreted the plain language of section 39.504(3), Florida Statutes (2020), and therefore erred during the final injunction hearing by not considering the Child's hearsay statements made to investigators and medical experts identifying the individual who caused his injuries. Accordingly, we reverse the trial court's order and remand for a new final injunction hearing.

Background

DCF's Petition alleged that Lisa Manners, the paramour of the Child's mother, severely beat the Child on several occasions, leaving him with black eyes, cuts, scratches, and swelling. The Petition further alleged that the Child, seven years old at the time, has special needs diagnoses but was able to clearly communicate to the Child Protection Team[1] that Manners caused the injuries and that he was afraid of her and did not feel safe. On the same day DCF filed its Petition, the trial court found reasonable cause for the issuance of a temporary injunction based on the Petition's allegations and noticed the final injunction hearing. The court also appointed an attorney ad litem to represent the Child's interests. After being rescheduled six times, the final injunction hearing was held in April 2021.

[1] Child Protection Teams are established pursuant to section 39.303, Florida Statutes (2020).

During the final injunction hearing, the trial court heard testimony from four witnesses: Richard Hough, William Bonner, Nancy Day, and Cindy Harrell. Mr. Hough, the Child's grandfather, testified that he had observed the Child with black eyes and blood coming from his ears. When DCF's counsel asked Mr. Hough if the Child had told him how he got the injuries, the trial court sustained Manners' hearsay objection.

Mr. Bonner, a clinical case manager with the University of Florida Child Protection Team whom the trial court accepted as an expert in the field of forensic interviews of children, testified about his forensic interview of the Child. He explained the steps he had taken to build a rapport with the Child and assess the Child's ability to be truthful, and he opined that the Child understood the difference between the truth and a lie and was reliable. Mr. Bonner had also observed apparent injuries to the Child's head during the interview. The trial court sua sponte excluded as hearsay any testimony from Mr. Bonner about the Child's responses to the truth/lie qualification questions underlying Mr. Bonner's opinion. The court noted that it did not believe section 39.504(3) permitted the court to consider hearsay.

Ms. Day, a nurse practitioner with the University of Florida Child Protection Team accepted by the trial court as an expert pediatric nurse practitioner, testified that she is responsible for performing medical

evaluations on children. Ms. Day had conducted a medical examination of the Child and observed physical injuries, including redness behind both ears, an abrasion on the back of his ear, and extensive bruising on his buttocks extending down onto his upper thigh. She opined that the injuries to the ears and buttocks were highly indicative of abuse. When DCF's attorney asked Ms. Day if she had made any findings or conclusions as to how the Child sustained his injuries, Manners objected on speculation and hearsay grounds. The trial court permitted the Child's statements to Ms. Day as to the mechanism of his injuries for purposes of medical diagnosis under section 90.803(4), Florida Statutes (2020), but not as to who caused the injuries because no hearsay exception would apply.

Ms. Harrell, the child protective investigator on the case, testified about her interviews with the Child, the Child's relatives, and the Child Protection Team and about the Child's injuries. Although Ms. Harrell testified that Manners had caused the injuries to the Child, the trial court sustained Manners' objection on speculation and hearsay grounds and stated that it would ignore the testimony. At the conclusion of the hearing, the trial court orally granted Manners' motion to dismiss DCF's petition.

After the trial court issued a short order reflecting its oral rulings at the hearing, DCF filed a Motion for Rehearing, asserting that the trial court erred

in not allowing testimony as to any statements the Child had made during his forensic interview and medical examination because courts have broad discretion to consider such hearsay under section 39.504(3). The trial court did not issue a ruling on the Motion for Rehearing, but later issued its Order Dismissing the Department of Children and Families Verified Petition for an Injunction to Prevent Child Abuse or Domestic Violence. This order reflects that the trial court would not allow the parties to introduce the Child's statements in the record under section 39.504(3).[2]

Standard of Review

Generally, an appellate court "will not overturn a trial court's ruling on admissibility of evidence absent abuse of discretion by the trial court." *Cruz v. State*, 320 So. 3d 695, 714 (Fla. 2021) (citing *Dessaure v. State*, 891 So. 2d 455, 466 (Fla. 2004)). However, a court's discretion "is limited by rules of evidence and the applicable law." *Martin v. State*, 207 So. 3d 310, 319 (Fla. 5th DCA 2016) (quoting *Horwitz v. State*, 189 So. 3d 800, 802 (Fla. 4th DCA 2015)). Because this issue involves a question of statutory interpretation, we

[2] The order also reflected that the trial court did not allow the Child's statements under section 90.803(23), Florida Statutes (2020), the child hearsay exception. Although DCF argues on appeal that the trial court erred in this regard, we do not find it necessary to address this issue given our holding on the trial court's interpretation of section 39.504(3).

review the question de novo. *See Statewide Guardian ad Litem Program v. A.A.*, 171 So. 3d 174, 177 (Fla. 5th DCA 2015).

Analysis

Section 39.504 governs the issuance of injunctions to prevent child abuse. Subsection (1) states that

> if there is reasonable cause, [a trial court may] issue an injunction to prevent any act of child abuse. Reasonable cause for the issuance of an injunction exists if there is evidence of child abuse or if there is a reasonable likelihood of such abuse occurring based upon a recent overt act or failure to act.

§ 39.504(1), Fla. Stat. (2020). As the trial court did here, a court may issue a temporary injunction based on verified pleadings or evidence, and the temporary injunction is to remain in place until the final injunction hearing is held. § 39.504(2), Fla. Stat. (2020).

Critical to the instant case is the language of section 39.504(3) that guides a court as to what evidence it may consider during the final injunction hearing:

> At the hearing, the court may base its determination on a sworn petition, testimony, or an affidavit and may hear all relevant and material evidence, including oral and written reports, to the extent of its probative value <u>even though it would not be competent evidence at an adjudicatory hearing</u>. . . .

§ 39.504(3), Fla. Stat. (2020) (emphasis added). DCF argues that the plain language of section 39.504(3) indicates that an injunction hearing is not an

adjudicatory hearing, and therefore the trial court may consider evidence at the injunction hearing that would not otherwise be competent evidence at an adjudicatory hearing, including hearsay evidence. We agree. A court may consider hearsay evidence in a Chapter 39 injunction hearing to the extent of its probative value, that is to the extent it is relevant and material to the case.

In interpreting statutes, Florida courts "follow the 'supremacy-of-text principle'—namely, the principle that '[t]he words of a governing text are of paramount concern, and what they convey, in their context, is what the text means.'" *Ham v. Portfolio Recovery Assocs., LLC*, 308 So. 3d 942, 946 (Fla. 2020) (quoting Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 56 (2012)). In the context of Chapter 39, entitled "Proceedings Relating to Children," section 39.01(4), Florida Statutes (2020), defines an "adjudicatory hearing" as "a hearing for the court to determine whether or not the facts support the allegations stated in the petition in dependency cases or in termination of parental rights cases." *Id.* (emphasis added). Notably, this definition does not include Chapter 39 injunction proceedings.

Because Chapter 39 injunction hearings are not adjudicatory proceedings, they are unaffected by the general proscription against the

consideration of hearsay evidence in adjudicatory hearings found in section 39.809(3), which implicates section 90.802, the rule against hearsay. *See* § 39.809(3), Fla. Stat. (2020) (requiring an adjudicatory hearing be conducted by a judge, without a jury, "applying the rules of evidence in use in civil cases"); § 90.802, Fla. Stat. (2020) ("Except as provided by statute, hearsay evidence is inadmissible."). Indeed, section 39.504(3) expressly permits the consideration of relevant and material evidence that would not be competent, i.e., admissible, at an adjudicatory hearing. *See Lonergan v. Est. of Budahazi*, 669 So. 2d 1062, 1064 (Fla. 5th DCA 1996) ("Competency of evidence refers to its admissibility under legal rules of evidence." (quoting *Dunn v. State*, 454 So. 2d 641, 649 n.11 (Fla. 5th DCA 1984) (Cowart, J. concurring specially))).

Our conclusion that section 39.504(3) permits consideration of hearsay evidence in Chapter 39 injunction proceedings is bolstered by the interpretation given to almost identical language found in other provisions of Chapter 39 and the Florida Rules of Juvenile Procedure relative to non-adjudicatory proceedings. For example, Florida Rule of Juvenile Procedure 8.010(g)(2), which governs non-adversarial detention hearing procedures, provides that the court may hear all relevant and material evidence "to the extent of its probative value, even though it would not be competent at an

adjudicatory hearing." Analyzing this language as it appeared in rule 8.050(f), the predecessor version of rule 8.010(g)(2), the First District Court of Appeal concluded that the rule "provides that hearsay evidence may be admitted and may be relied upon to the extent of its probative value." *State v. I.B.*, 366 So. 2d 186, 187 (Fla. 1st DCA 1979). Likewise, recognition of the admissibility of hearsay in the context of disposition hearings per the nearly identical language of section 39.408(2) (allowing consideration of relevant and material evidence "even though not competent in an adjudicatory hearing") is well settled. *See, e.g.*, *In Interest of A.D.J.*, 466 So. 2d 1156, 1162 (Fla. 1st DCA 1985) (observing section 39.408(2) authorizes the consideration of relevant and material evidence that would not be competent in an adjudicatory hearing; stating, "Although some of the evidence received over objection was inadmissible under the Florida Evidence Code, it was not error to receive that evidence under section 39.408(2) since it had *some probative value*"); *see also C.J. v. Dep't of Child. & Fams.*, 968 So. 2d 121, 122 (Fla. 4th DCA 2007) (recognizing that "a trial court has broad evidentiary discretion to rely upon hearsay in" shelter hearings; holding admission of hearsay at adjudicatory hearing was, however, error).

The plain language of section 39.504(3) expressly allows courts to consider evidence at Chapter 39 injunction hearings that would not otherwise

be competent at adjudicatory hearings, provided it is relevant and material. The Child's hearsay statements in this case met that standard. Thus, the trial court's blanket refusal to consider the Child's statements relating the identity of his abuser was error. This refusal essentially tied DCF's hands and thwarted its ability to show who caused the Child's injuries, and the record indicates that the trial court dismissed DCF's petition due to a lack of this very evidence. Accordingly, we reverse the order of dismissal and remand for a new final injunction hearing in accordance with this opinion.

REVERSED and REMANDED for new hearing.

COHEN and SASSO, JJ., concur.