

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING  
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL  
OF FLORIDA  
SECOND DISTRICT

In the Interest of S.S. and H.S., children. )  
\_\_\_\_\_)  
E.S., )  
Appellant, )  
v. )  
DEPARTMENT OF CHILDREN AND )  
FAMILIES and GUARDIAN AD LITEM )  
PROGRAM, )  
Appellees. )  
\_\_\_\_\_)

Case No. 2D19-1897

Opinion filed December 27, 2019.

Appeal from the Circuit Court for Collier  
County; Christine Greider, Judge.

Toni A. Butler of Alderuccio & Butler,  
LLC, Naples, for Appellant.

Meredith K. Hall of Children's Legal  
Services, Bradenton, for Appellee  
Department of Children and Families.

Thomasina F. Moore, Statewide Director  
of Appeals, and Sara Elizabeth Goldfarb,  
Senior Attorney, Statewide Guardian ad  
Litem Office, Tallahassee, for Appellee  
Guardian ad Litem Program.

CASANUEVA, Judge.

E.S. (the Mother) appeals an order adjudicating her children, S.S. and H.S. (the Children), dependent. The order adjudicated the Children dependent with findings as to both the Mother and M.S. (the Father). We reverse the order adjudicating the Children dependent as to the Mother.<sup>1</sup>

On the morning of January 20, 2019, and in response to emergency calls placed by the Mother, a corporal with the Collier County Sheriff's Office contacted the parents at a local gas station. The corporal spoke with the Mother, who made several bizarre statements. Fearing that without intervention the parents may be a harm to themselves or the Children, law enforcement officers on the scene determined that the parents needed to be evaluated and observed under the Baker Act.<sup>2</sup> As the parents were being placed in separate patrol cars, a child protective investigator (CPI) arrived. The Mother made statements to the CPI that were similar to the statements she had made to the corporal.

The Department of Children and Families (the Department) sheltered the Children from the parents due to mental health and substance abuse concerns and filed a single petition for dependency as to both parents. At the adjudicatory hearing on the dependency petition, which took place in March 2019, the Department attempted to present evidence of the parents' alleged substance abuse through drug test results

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<sup>1</sup>The Father separately appealed the order adjudicating the Children dependent. See M.S. v. Dep't of Children & Families, 44 Fla. L. Weekly D2817a, \_\_\_ So. 3d \_\_\_, 2019 WL 6222884 (Fla. 2d DCA Nov. 22, 2019). In M.S., we also reversed the order adjudicating the Children dependent as to the Father. Id.

<sup>2</sup>See §§ 394.451–.47892, Fla. Stat. (2018).

obtained at various facilities. In each instance, the trial court sustained hearsay objections. No evidence of substance abuse was admitted, the Department conceded that the evidence admitted at the adjudicatory hearing was insufficient to establish substance abuse, and the trial court properly rejected substance abuse as a basis for adjudicating the Children dependent.

During the adjudicatory hearing, it became clear that the Department was proceeding on the portions of the petition for dependency that sought an adjudication of dependency based on prospective abuse and prospective neglect. Ultimately, the Department relied exclusively on a theory of prospective abuse or prospective neglect due to either or both parents' mental health.

At the adjudicatory hearing, the corporal and the CPI testified about the statements that the parents had made to them in January 2019. The Mother told the corporal that magnets were being placed underneath and in the family's home, which were influencing and knocking down trees in the yard. The Mother, who had been holding her younger child at the time she spoke to the corporal, also made statements to him indicating that the child's face was distorting, that the child's eyes were not right, and that she was concerned that the neighbor had gotten into the child's head. The Mother told the CPI that there were magnets in the family's home, that she thought that the younger child had been harmed by the magnets, that the neighbors were out to get them, and that the neighbors were trying to steal the babies. The Mother told the CPI she was being framed.

The Mother testified at the adjudicatory hearing. She did not recall speaking to the corporal. She denied speaking about magnets with any other law

enforcement officers who had been on the scene. She further testified, "We didn't say that there was magnets under the home." When asked whether she had expressed any concerns about the younger child to law enforcement officers at the gas station, she testified that her only concern had been that she had wanted the child to eat—they had been at the gas station since 7:00 a.m. that morning and the child had not been able to eat.

In its order adjudicating the Children dependent, the trial court stated that the parents' behavior, "although bizarre, is not in itself sufficient to support a determination that a parent suffers from mental health problems that would pose a threat of abuse, neglect, or harm to the [C]hildren." The trial court then made several factual findings, including that (1) both the corporal and the CPI testified about the parents' bizarre concerns and their visual perceptions about the Children's faces being distorted and (2) neither parent recalled these observations or statements when they testified at the adjudicatory hearing. The trial court determined that the parents' inability to recall these observations or statements when they testified at the adjudicatory hearing in March 2019 was sufficient to support a finding that the Children were exposed to imminent neglect on January 20, 2019. The trial court then explained that "the findings that support an adjudication of dependency relate specifically to statements that the parents made regarding a potential medical emergency to the [C]hildren (that their faces were distorted) and their inability to recall either their observations or statements that they made to law enforcement regarding their observation."

Unlike in the Father's related appeal, see M.S. v. Dep't of Children & Families, 44 Fla. L. Weekly D2817a, \_\_\_ So. 3d \_\_\_, 2019 WL 6222884 (Fla. 2d DCA Nov. 22, 2019), there is evidence to support the trial court's factual findings with respect to the Mother's inability to recall, at the adjudicatory hearing, the observations she made during the January 2019 incident and the statements she made to law enforcement regarding those observations. However, those factual findings did not support a determination that the Children were at substantial risk of imminent harm from abuse or neglect, see § 39.01(2), (15)(f), (50), Fla. Stat. (2018), due to the Mother's mental health. Although it was undisputed that the Mother had been "Baker Acted" as a result of the January 2019 incident, no evidence was introduced concerning whether she was even diagnosed with a mental health disorder. Simply put, no evidence was presented to establish a substantial risk of imminent harm to the Children from abuse or neglect by the Mother due to her mental health. Accordingly, we reverse the order adjudicating the Children dependent as to the Mother.

Reversed.

SLEET and LUCAS, JJ., Concur.