

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of S. GALEHOUSE, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

SCOTT GALEHOUSE,

Respondent-Appellant,

and

ROBIN GALEHOUSE,

Respondent.

In the Matter of S. GALEHOUSE, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

ROBIN GALEHOUSE,

Respondent-Appellant,

and

SCOTT GALEHOUSE,

Respondent.

UNPUBLISHED
February 16, 2012

No. 306088
Montmorency Circuit Court
Family Division
LC No. 11-002717-NA

No. 306089
Montmorency Circuit Court
Family Division
LC No. 11-002717-NA

Before: FITZGERALD, P.J., and WILDER and MURRAY, JJ.

PER CURIAM.

In these consolidated child protection actions, the married respondents appeal as of right¹ from the trial court's order reflecting a jury's determination that one or more statutory grounds alleged in the petition was proved, and thus assuming jurisdiction over their teenage daughter, S.G., and requiring respondents to participate in services. Because the trial court admitted a great deal of improper and damaging hearsay testimony, we reverse and remand for further proceedings.

The preliminary hearing in a child protective proceeding is a statutory proceeding at which a court may authorize a petition requesting that the court exercise jurisdiction over a child and remove the child from his or her home. See *In re Mason*, 486 Mich 142, 154; 782 NW2d 747 (2010). "The court may authorize the petition upon a showing of probable cause that 1 or more of the allegations in the petition are true and fall within the provisions of [MCL 712A.2(b)]." MCL 712A.13a(2). See also MCR 3.965(B)(11). The court acquires subject-matter jurisdiction over the case when probable cause is established. *In re AMB*, 248 Mich App 144, 168; 640 NW2d 262 (2001).

In this case, the petition alleged that S.G. was subject to a substantial risk of harm to her mental well being and that S.G.'s home or environment was an unfit place for her to live because of neglect, cruelty, drunkenness, criminality, or depravity on the parts of respondents. The allegations included that respondent Scott Galehouse was dangerously abusive toward both respondent Robin Galehouse and S.G. and that alcohol and marijuana abuse was often tied to such abuse. The petition further alleged that Scott Galehouse once forcibly confronted S.G. at her school and humiliated her in front of her classmates and that respondents approached two of S.G.'s peers about inducing S.G. to send some sexually revealing images of herself over the Internet.

After a three-day trial, the jury concluded that one or more of the statutory grounds listed in the petition had been proved, and the trial court assumed jurisdiction over S.G. The court did not order S.G.'s removal from her home with respondents, noting that she was currently placed in residential treatment under a delinquency file. The court further ordered respondents to comply with a case service plan.

On appeal, respondents first argue that the trial court erred in allowing much hearsay testimony regarding what S.G. had told others, on the ground that S.G. was a party. We agree. This Court reviews the trial court's evidentiary rulings for an abuse of discretion. *Price v Long Realty, Inc.*, 199 Mich App 461, 466; 502 NW2d 337 (1993). A court "by definition abuses its discretion when it makes an error of law." *Koon v United States*, 518 US 81, 100; 116 S Ct 2035; 135 L Ed 2d 392 (1996).

¹ See MCR 3.993(A)(1) ("an order of disposition placing a minor under supervision of the court" is appealable as of right).

In this case, on the first day of trial, an investigator for petitioner testified about Scott Galehouse having admitted to having difficulties with his wife and that he once deliberately used his vehicle to strike and damage her vehicle in their driveway. The witness then added that S.G. “had talked about it, that . . . her mom was wanting to leave, he didn’t want her to leave, and he had damaged that vehicle.” Counsel for Scott Galehouse then objected on hearsay grounds, to which the trial court responded that S.G. “is a party,” then invited the witness to answer the question. Thereafter, many statements attributed to S.G. came into evidence.

Of particular concern is a great many statements attributed to S.G. that were put into evidence through a Child Protective Services (CPS) worker. These include assertions that S.G. reported that respondents had asked two of S.G.’s acquaintances to try to induce S.G. into sending them pictures of herself naked, that Scott Galehouse had come to S.G.’s school and “yanked her to the front of the class,” that he had pushed his wife down the stairs and physically struck her, that marijuana consumption seemed related to such domestic violence, that Scott Galehouse had prevented his wife from calling the police and leaving with the children, and that Robin Galehouse sought refuge from her husband in S.G.’s and her sisters’ bedroom.

Although the rules of evidence do not apply at the dispositional phase of a child protective proceeding, the rules do apply at the adjudicative phase, where the court decides whether to assume jurisdiction over the child. See *In re Gilliam*, 241 Mich App 133, 136-137; 613 NW2d 748 (2000), citing MCR 5.972(C)(1) and MCR 5.973(A)(4)(a). We conclude that the trial court committed legal error and thus abused its discretion, in ruling that testimony attributing statements to S.G. was admissible.

Hearsay, which is defined as an out-of-court statement that is offered to prove the truth of the matter asserted, is generally inadmissible. MRE 801(c); MRE 802. However, admissions by party opponents are not hearsay. Specifically, the exemption applies where “[t]he statement is offered *against a party* and is . . . the *party’s* own statement, in either an individual or a representative capacity.” MRE 801(d)(2) (emphasis added). In this case, although S.G. is the *subject* of the litigation, she is neither petitioner nor respondent; therefore, she is not a *party*.

And even if the child who is the subject of a child protective proceeding might be deemed a party for purposes of MRE 801(d)(2), that still leaves the question whether the statements attributed to S.G. in this instance qualified as *admissions against* her. At trial, S.G.’s interests were advanced by a guardian ad litem, who encouraged the jury to conclude that “the home was an unfit place for S.G. to reside in at the time the petition was filed,” and that “there was a substantial risk of harm to . . . her mental well-being” Accordingly, because S.G.’s guardian ad litem aligned with petitioner at trial, only S.G.’s testimony that favored respondents’ position could be considered admissions against her own position at trial. None of the statements attributed to S.G. that are at issue on appeal may be considered to favor respondents’ position.

For these reasons, the abundance of information damaging to respondents, which the CPS worker provided by way of statements attributed to S.G., was all the product of inadmissible hearsay.

“In civil cases, evidentiary error is considered harmless unless declining to grant a new trial, set aside a verdict, or vacate, modify, or otherwise disturb a judgment or order appears to

the court inconsistent with substantial justice.” *Guerrero v Smith*, 280 Mich App 647, 655; 761 NW2d 723 (2008) (internal quotation marks and citations omitted).

We cannot escape the conclusion that the allegations that erroneously reached the jury in this case was sufficiently damaging as to undermine the verdict. Through the CPS worker relaying statements attributed to S.G., the jury heard that respondents had attempted to conspire to induce S.G. into sending pictures of herself naked over the Internet, that Scott Galehouse had pushed Robin Galehouse down the stairs, that there seemed to be a link between domestic violence and marijuana consumption, and that Scott Galehouse had prevented his wife from both calling the police and leaving the home with the children. Those accounts were highly prejudicial to respondents, and because they were hearsay, respondents were unable to cross-examine the true declarant, S.G., since it was the caseworker that testified regarding these allegations.

Further, in a later dispositional hearing, the trial court opined that S.G. was not a credible witness, stating, “the basis of the substance abuse and domestic violence evidence came from [S.G.], who[m] I find to be wholly uncredible. Even [petitioner] in some of their writings found her throughout the contact period to be not credible. Unfortunately, she just can’t be believed” But statements attributed to S.G. might have seemed to gain credibility in the eyes of the jurors when they came from a CPS worker, who presumably radiated better credibility.

For these reasons, we vacate the verdict below and the trial court’s assumption of jurisdiction over S.G., and we remand this case to the trial court for further proceedings consistent with this opinion.

Because we reverse the result below over the CPS worker’s testimony concerning what S.G. had told her, we need not address respondents’ other issues on appeal other than to say that, but for a harmless evidentiary error, we see no merit in the arguments made. The error involved the admission of a statement written by a school secretary as an exhibit. The secretary testified that the document recounted an incident at S.G.’s school between S.G. and Scott Galehouse. The witness clearly admitted having some difficulty remembering the events at issue and identified the written account she prepared on the day of the incident. Thus, while a proper foundation was laid for admission of the document as an exception to hearsay as a recorded recollection, MRE 803(5) plainly states that the document’s contents should have been read into the record instead of the document itself being received. But respondents offer no argument to show why offering the document to the jurors for their perusal caused them any prejudice beyond what the effect would have been had the trial court properly restricted the document’s use to having it read into evidence. See *id.* Therefore, no appellate relief is warranted.

Reversed and remanded. We do not retain jurisdiction.

/s/ E. Thomas Fitzgerald
/s/ Kurtis T. Wilder
/s/ Christopher M. Murray