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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0870**

In the Matter of the Welfare of:
A. E. L., Jr.

**Filed February 11, 2013
Affirmed
Crippen, Judge***

Ramsey County District Court
File No. 62-JV-12-14

Lori Swanson, Attorney General, St. Paul, Minnesota; and

John Choi, Ramsey County Attorney, Peter R. Marker, Assistant County Attorney, St. Paul, Minnesota (for respondent State of Minnesota)

David W. Merchant, Chief Appellate Public Defender, Susan J. Andrews, Assistant Public Defender, St. Paul, Minnesota (for appellant A.E.L., Jr.)

Considered and decided by Connolly, Presiding Judge; Worke, Judge; and Crippen, Judge.

UNPUBLISHED OPINION

CRIPPEN, Judge

Appellant A.E.L., Jr. challenges a district court's adjudication of delinquency for first- and second-degree criminal sexual conduct, arguing that the evidence is insufficient

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

because the adjudication relies on the complainant's hearsay statement to a nurse that appellant sexually assaulted her. We affirm.

FACTS

In juvenile court proceedings, the petitioner charged appellant with one count of first-degree criminal sexual conduct in violation of Minn. Stat. § 609.342, subd. 1(a) (2010), and one count of second-degree criminal sexual conduct in violation of Minn. Stat. § 609.343, subd. 1(a) (2010). Both counts allege that appellant engaged in sexual behavior with six-year-old T.B. in the early morning hours of January 2, 2012. At trial, the petitioner presented the testimony of three witnesses: T.B.; appellant's grandmother; and Sara Wirkkala, a nurse case manager at Midwest Children's Resource Center (MCRC) who met with T.B. the morning of the incident. Recordings of appellant's in-custody statements to the police and T.B.'s interview with Wirkkala were received into evidence. The district court adjudicated appellant's delinquency on both counts, and this appeal follows.

DECISION

In determining whether the evidence is legally sufficient to sustain the district court's delinquency adjudication, we evaluate the record and the legitimate inferences from the record in the light most favorable to the court's finding. *In re Welfare of S.A.M.*, 570 N.W.2d 162, 167 (Minn. App. 1997). The evidence must be sufficient to permit the fact-finder, given the presumption of innocence, to reach a guilty verdict, and a reviewing court must assume that the fact-finder believed the state's witnesses and disbelieved any evidence presented by the defense. *Dale v. State*, 535 N.W.2d 619, 623 (Minn. 1995);

see also In re Welfare of L.B., 404 N.W.2d 341, 345 (Minn. App. 1987) (applying same standard in a juvenile-delinquency proceeding).

Appellant argues that the evidence is insufficient to support the district court's adjudication because the only evidence of sexual contact came from Wirkkala's testimony, in which she repeated the allegations of sexual conduct that T.B. had made to her. Appellant's argument may imply the assertion that Wirkkala's testimony is inadmissible hearsay, but appellant raised no objection to Wirkkala's testimony at trial. His argument on the sufficiency of the evidence alludes to the weight of evidence other than the child's statements to Wirkkala. A party's failure to challenge admissibility of evidence at trial generally precludes a later challenge to the admissibility of the evidence on appeal. *State v. Patterson*, 587 N.W.2d 45, 52 (Minn. 1998). An appellate court will only review such evidence if the admission was plain error. *Id.*

The first prong of the plain-error test is whether there was error. *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998). Minnesota's hearsay rules bar out-of-court statements from being introduced to prove the truth of the matter asserted unless a recognized exemption or exception applies. Minn. R. Evid. 801-807. One such exception allows for the admission of out-of-court statements "made for purposes of medical diagnosis or treatment." Minn. R. Evid. 803(4). A child's statements to medical professionals concerning sexual abuse may fall under this exception when "the evidence suggests that the child knew she was speaking to medical personnel and that it was important she tell the truth." *State v. Salazar*, 504 N.W.2d 774, 777 (Minn. 1993).

Wirkkala testified that there is medical treatment for being sexually abused and described the medical procedure for the interview. She testified that the interview took place at MCRC's clinic following a referral from an emergency-room doctor approximately 45-60 minutes after T.B.'s arrival at the emergency room. The interview covered medical history, social history, and a physical examination. And Wirkkala told T.B. that she is a nurse and explained to T.B. the importance of being truthful during the interview. These facts establish that T.B.'s statements to Wirkkala were for medical diagnosis and were admissible as substantive evidence, and there was no plain error. *See Griller*, 583 N.W.2d at 740 (holding that plain error necessarily requires existence of error).

The testimony of a single witness may be sufficient to sustain an adjudication of delinquency. *See State v. Miles*, 585 N.W.2d 368, 373 (Minn. 1998) (“[A] conviction may rest on the testimony of a single credible witness.”). Appellant challenges the weight of evidence other than the child's earlier statement, but only to suggest that the evidence is insufficient in itself to sustain the conviction. Because the record contains substantive evidence of sexual contact between appellant and T.B., including the child's statement and corroborating evidence, the evidence is sufficient to sustain the adjudication of delinquency. *See L.B.*, 404 N.W.2d at 345 (defining standard of review for sufficiency-of-the-evidence claims in juvenile-delinquency proceedings).

Affirmed.