

IN THE NEBRASKA COURT OF APPEALS

In re Interest of Ashlyn G., )  
a child under 18 years of age. )  
)  
State of Nebraska and )  
Jean Rhodes, Guardian Ad Litem, )  
)  
Appellees, )  
)  
v. )  
)  
Milly H., )  
)  
Appellant. )

No. A-11-1015

**MEMORANDUM OPINION  
AND  
JUDGMENT ON APPEAL**

**FILED**

MAY 07 2012

MOORE, CASSEL, and PIRTLE, Judges.

CASSEL, Judge.

CLERK  
NEBRASKA SUPREME COURT  
COURT OF APPEALS

INTRODUCTION

Milly H. appeals from the order of the county court, sitting as a juvenile court, adjudicating her daughter, Ashlyn G., under Neb. Rev. Stat. § 43-247(3)(a) (Reissue 2008), arguing that the court improperly admitted hearsay evidence and that there was insufficient evidence to adjudicate Ashlyn under that subsection. We find that the juvenile court did erroneously admit some hearsay evidence, but determine that it was harmless error because there was sufficient properly admitted evidence to support the judgment. Because there was adequate evidence for adjudication even without considering the evidence erroneously admitted, we affirm the decision of the juvenile court.



## BACKGROUND

Milly is the biological mother of Ashlyn, who was born in March 2002. Ashlyn's biological father is not a party to these proceedings. Ashlyn was removed from Milly's home on July 1, 2011, upon suspected sexual assault by her stepfather, Kenneth H. At the same time, the State filed a petition in the county court for Box Butte County, Nebraska, sitting as a juvenile court, alleging that Ashlyn was a child under § 43-247(3)(a). Milly denied the allegations.

On October 31, 2011, the juvenile court held a hearing on the petition. The evidence focused on the events of June 28 and 29, which led to Milly's arrest for child abuse and Kenneth's arrest for sexual assault on a child, and the specific allegations of sexual assault of Ashlyn.

The testimonies of Brett Campbell, one of Milly's neighbors, and Aaron Tiensvold, one of Milly's friends, established the events of June 28, 2011, as follows: On the evening of June 28, Ashlyn said something to Milly and Campbell about Kenneth "touching her leg" and "touching her inappropriately." At the time, Ashlyn was residing in an apartment with Milly and Kenneth, and her older sister, Brittany W., was staying there for an extended visitation session. Kenneth was not present at the time of Ashlyn's statement, but arrived at the apartment later that night. Upon Kenneth's

arrival, Campbell and Tiensvold took him to Campbell's apartment, where Kenneth stayed until the next morning. Campbell and Tiensvold spent the night in Milly's apartment to "[k]ind of watch over Milly and the kids." No one called the police that night.

Brittany testified that the following afternoon, she found Kenneth in the apartment with Milly when she came home from work on break. Ashlyn was playing outside. Brittany went to talk to James Hood, another one of Milly's neighbors and one of Brittany's coworkers, about working the rest of her shift because of "what had happened." Brittany stated that she told Hood that Kenneth "was touching Ashlyn in wrong ways" and that Hood subsequently called the police.

Hood's testimony confirmed that Brittany asked him to work for her on June 29, 2011. When the State asked him what specifically Brittany had told him, Milly's attorney objected on the ground of hearsay before Hood had the chance to respond. The juvenile court ruled that the testimony would be received "not for the truth" but for the sole purpose of explaining "what [Hood] did." Then, the State asked Hood a second time what Brittany said to him, and Hood was allowed to respond. Because Milly assigns error to the court's decision to allow this testimony, we include Hood's complete answer:

[Brittany] told me that her stepdad had touched her sister. And I said, "What do you mean?" And she told me that he touched her in the wrong way, and that's when I said, "Well, where's he at?" And she told me that he was down in the apartment. And my response was, "Why is he in the apartment? Why isn't he in jail?" And she said she didn't know.

. . . .

. . . And I asked her, "Well, what's going on," you know, I mean, "Is your mom gonna call the cops?" She said, "I don't know." I said, "Well, what is gonna happen," you know. "Well, I don't know." She said, "Hold on a minute," and she dialed -- she put her phone on speakerphone and she called her mom. And her mom answered and she said, "Mom, I'm up here at James's and I told him what happened, because I'm trying to get him to go into work for me." And she's like, "What do you mean?" She said, "Well, I told him what had happened, what [Kenneth] had done." And she said, "Mom, he wants to talk to you." And she pointed the phone towards me and she said, "Go ahead." I said, "Ma'am, she told me what had happened and I'm just wondering why -- why is he not in jail, why is he still at the apartment?" And she told me that he had called an officer that morning and told the officer what he had done, and the officer, I guess, had told him to seek counseling, and he was supposed to go to counseling in an hour. And my response was that it had to have been a lie. I said, there's no officer in the world, I believe, that would hear a man tell an officer that, and the officer would send them back home to go seek counseling. And she went on about it, and I told her, "Well, you know, that's your own daughter. I don't know why you're not calling the law enforcement to take care," you

know, "to protect your daughter." And she said, "Well, he's gonna go to counseling." And I said, "This just can't be true," you know. So I told Brittany, I said, "Brittany, just hang up the phone." She hung up the phone and I said, you know, I'm sorry, I hope I didn't cause any problems with your family or whatnot, but the cops have to be called. So I called the police.

Hood testified that after he called the police, Kenneth went to Hood's apartment and said, "[Hood], I'm sick in the head. I know it's not right what I did, but please don't call the cops. I don't want to go to jail.'" Hood then took Kenneth outside and waited with him until the police arrived.

Two officers with the Alliance Police Department responded to the call on June 29, 2011. Sergeant Jerry Lotspeich testified that upon arriving at the apartment building, he found Kenneth waiting outside. Lotspeich stated that "[w]hen I approached [Kenneth], he told me he had molested his little daughter." Lotspeich then took Kenneth to the police department for further questioning, after which Lotspeich arrested Kenneth for sexual assault on a child.

During the hearing, Milly's attorney objected to Lotspeich's testimony regarding what Kenneth told him in the interview on hearsay grounds. The court overruled the objection and allowed Lotspeich to testify as to what Kenneth said.

Because Milly now assigns error to the admittance of this evidence, we quote the relevant interaction in full:

Q. And what did he tell you then?

[Milly's attorney]: Your Honor, that will be hearsay.

[Attorney for the State]: It's admission by a party, Your Honor.

THE COURT: It may well be an admission against interest. There's no jury; we'll just see what it is. So, at least for now, overruled. We'll see what it turns out to be.

Q. (By [Attorney for the State]) What did he tell you?

A. He told me that he had touched his daughter.

Q. Did he go into any specific detail about what he'd done?

A. He put the left hand -- the palm of his left hand on his crotch and rubbed like he was rubbing a circular motion and said that he'd done that twice.

Q. Did you ask him any questions about where this had happened?

A. Yes, he said it happened in their apartment . . . . That's the apartment building where we'd gone. And he said it was their couch in their living room.

[Milly's attorney]: Your Honor, I'm going to renew my hearsay objection and move that that testimony regarding what [Kenneth] said be stricken.

THE COURT: Well, overruled. I think it's an admission against interest.

[Attorney for the State]: It's under 27-804(2)(c), "A statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject him to civil or

criminal liability or to render invalid a claim by him against another, that a reasonable man in his position would not have made the statement unless he believed it to be true."

THE COURT: Yes, that's the exception I had in mind, yes.

[Attorney for the State]: Yes. Thank you.

THE COURT: Overruled.

At trial, Ashlyn testified that Kenneth "started doing this stuff when I was little" and that he "shoved his wiener in mine" on at least two separate occasions. When asked to identify what she meant by "wiener," Ashlyn marked the penis on a diagram of the male body. She identified "mine" as the genital area on a diagram of the female body. According to Ashlyn, Kenneth "shoved his wiener in mine" one time when she was alone with Kenneth in his truck. She testified that he "shoved his wiener in mine again" another time while she was in the bathtub. Ashlyn stated that she told Milly about both of these incidents as soon as they occurred.

Investigator Colleen Busch testified to interviewing Ashlyn at the police department on June 29, 2011, after Hood called the police. From the interview, Busch ascertained that Kenneth began touching Ashlyn in 2010 and that it "continued on" until the most recent incident a few days prior to the interview. According to Busch, Ashlyn told her that Milly actually "'caught

him'" inappropriately touching Ashlyn at least once. Busch stated, "[Ashlyn] had said when her mom woke up, she saw it. . . . I asked her what she meant by that, and she said, 'Him pushing into me.'" Busch also testified that Ashlyn talked about the specific incidents in the truck and bathtub and that Ashlyn "spontaneously mentioned that she had told her mother." Based on information gleaned from Ashlyn's interview, Busch arrested Milly for child abuse.

Busch also testified to the results of a medical examination performed on Ashlyn on July 1, 2011. Busch did not perform the examination, but was present to photograph and document any injuries. During Ashlyn's examination, Busch observed "[s]ome injuries to Ashlyn's vaginal area and the legs leading to her vaginal area."

The nurse practitioner who performed the examination testified that "[t]here was some bruising on the inside of [Ashlyn's] legs . . . and there was a fissure, or a tear, in the anal area. But, otherwise, everything else looked fairly normal." Specifically, the nurse practitioner observed a "fresh" anal tear, "some anal dilatation," which indicated that "there has been some kind of penetration," and "a couple of notches within the vaginal hymen that could indicate old trauma." These indicated to the nurse practitioner that "[t]here was some trauma," although she could not tell how recently the trauma



occurred. The nurse practitioner testified that there were "no acute injuries" in the vaginal area and that she was unable to determine whether there had been vaginal penetration.

Following the evidentiary portion of the hearing, the juvenile court adjudicated Ashlyn pursuant to § 43-247(3)(a). In so ruling, the court explained:

I'm convinced, by at least a preponderance of the evidence, that during the course of the sexual molestation by [Kenneth] -- which I believe beyond any question took place -- that [Ashlyn] disclosed . . . something to her mother, and her mother didn't follow up on that in a way that didn't prevent something further from happening. . . . And under these circumstances and this evidence, as I view it, I'm convinced by a preponderance of the evidence that [Ashlyn] was in a situation in that home where the care necessary for health, morals, or well being was not being provided, and she was in a situation dangerous to her life or limb or injurious to her health or morals.

Milly timely appeals. Pursuant to authority granted to this court under Neb. Ct. R. App. P. § 2-111(B)(1) (rev. 2008), this case was ordered submitted without oral argument.

#### ASSIGNMENTS OF ERROR

Milly alleges, restated, that the juvenile court erred (1) in admitting the testimony of Hood as to what Brittany told him on June 29, 2011, (2) in admitting the testimony of Lotspeich as to what Kenneth told him on June 29, and (3) in finding that

there was sufficient evidence to adjudicate Ashlyn under § 43-247(3)(a).

#### STANDARD OF REVIEW

Apart from rulings under the residual hearsay exception, an appellate court reviews for clear error the factual findings underpinning a trial court's hearsay ruling and reviews de novo the court's ultimate determination to admit evidence over a hearsay objection. *State v. Draganescu*, 276 Neb. 448, 755 N.W.2d 57 (2008).

An appellate court reviews juvenile cases de novo on the record and reaches its conclusions independently of the juvenile court's findings. *In re Interest of Elizabeth S.*, 282 Neb. 1015, 809 N.W.2d 495 (2012).

#### ANALYSIS

##### *Hood's Testimony as to Brittany's Statements.*

Milly objected to Hood testifying to statements made by Brittany on June 29, 2011, on the ground that such statements were hearsay. The juvenile court overruled the objection and allowed Hood to testify to what Brittany told him for the limited purpose of explaining Hood's actions and not for the truth of what Brittany said.

Milly assigns error to this ruling, arguing that Hood's testimony was "clearly hearsay" because Hood "was allowed to testify as to what [Brittany] had told him about what Brittany

had heard from [Milly] about what [Ashlyn] had disclosed to [Milly]." Brief for appellant at 15. She also argues that Hood's testimony was irrelevant.

Turning to the hearsay argument first, we begin by noting that Milly incorrectly characterizes the portion of Hood's testimony to which she objected in her brief. Her description of Hood's testimony indicates that Brittany's statements to Hood were actually restatements of what Ashlyn told to Milly, who in turn told it to Brittany. While this is an accurate description of how Brittany received the information she conveyed to Hood about Kenneth's inappropriate touching of Ashlyn, it is an inaccurate representation of the content of her statements to Hood. As conveyed in Hood's testimony, Brittany's statements to him were phrased as statements of fact and not as restatements of what Milly had told her. For example, Hood testified that Brittany told him "that her stepdad had touched her sister," not that her mom told her that her stepdad had touched her sister. Thus, we are not dealing with hearsay within hearsay, as Milly implies in her brief, but with a single level of hearsay.

The admission of evidence at an adjudication hearing is governed by the Nebraska Evidence Rules, Neb. Rev. Stat. §§ 27-101 to 27-1103 (Reissue 2008, Supp. 2009, & Cum. Supp. 2010). See, Neb. Rev. Stat. § 43-279 (Reissue 2008); *In re Interest of J.S., A.C., and C.S.*, 227 Neb. 251, 417 N.W.2d 147 (1987). Under

the evidence rules, to be hearsay, a statement must be "offered in evidence to prove the truth of the matter asserted." § 27-801(3). Therefore, because the juvenile court admitted Brittany's statements for a purpose other than their truth, Hood's testimony as to what she told him did not constitute hearsay. The juvenile court did not err in overruling Milly's hearsay objection.

On appeal, Milly also argues that Hood's testimony as to what Brittany told him should not have been admitted because it was irrelevant. But Milly did not raise a relevancy objection in the juvenile court, and "[a]n issue not presented to or passed on by the trial court is not appropriate for consideration on appeal." *Robinson v. Dustrol, Inc.*, 281 Neb. 45, 56, 793 N.W.2d 338, 346 (2011). Furthermore, because "[a]n objection, based on a specific ground and properly overruled, does not preserve a question for appellate review on any other ground," *Christian v. Smith*, 276 Neb. 867, 881, 759 N.W.2d 447, 461 (2008), Milly's hearsay objection was not sufficient to preserve the issue of relevancy for appeal. Therefore, we do not consider Milly's argument that Hood's testimony as to what Brittany told him was irrelevant.

This assignment of error lacks merit.

*Lotspeich's Testimony as to Kenneth's Statements.*

Milly objected to Lotspeich's testifying to statements made by Kenneth during the June 29, 2011, interview on the ground that such statements were hearsay. The juvenile court overruled the objection and, relying upon § 27-804(2)(c), allowed Lotspeich to testify to what Kenneth told him. Milly now assigns this ruling as error. Under the Nebraska Evidence Rules, this testimony should not have been admitted.

Section 27-804(2)(c) provides that a statement is not excluded by the hearsay rule if two conditions are satisfied. First, the statement must be one that

was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject him to civil or criminal liability or to render invalid a claim by him against another, that a reasonable man in his position would not have made the statement unless he believed it to be true.

§ 27-804(2)(c). Second, the declarant must be unavailable as a witness. See § 27-804(2). The burden to establish a declarant's unavailability is on the party seeking to introduce the evidence under § 27-804, and the determination of whether a witness is unavailable to appear at trial and give testimony is within the discretion of the trial court. *Worth v. Kolbeck*, 273 Neb. 163, 728 N.W.2d 282 (2007).

In the instant case, the juvenile court did not make an explicit finding that Kenneth--the declarant of the statements sought to be introduced--was unavailable as a witness. However, as such a finding is a prerequisite for application of the hearsay exception in § 27-804(2)(c), the court's decision to apply this exception necessarily incorporated an implicit finding that Kenneth was unavailable.

As the party seeking to admit Kenneth's statements to Lotspeich, the State bore the burden of proving Kenneth's unavailability as a witness, a burden it blatantly failed to meet. Under § 27-804(1), a witness is considered unavailable for purposes of this section when he

(a) [i]s exempted by ruling of the judge on the ground of privilege from testifying concerning the subject matter of his statement; or

(b) [p]ersists in refusing to testify concerning the subject matter of his statement despite an order of the judge to do so; or

(c) [t]estifies to lack of memory of the subject matter of his statement; or

(d) [i]s unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or

(e) [i]s absent from the hearing and the proponent of his statement has been unable to procure his attendance by process or other reasonable means.

The State did not adduce a single piece of evidence in an attempt to prove that Kenneth was unavailable for any of these reasons. Indeed, the State provided no explanation for Kenneth's absence at the hearing or its failure to call him as a witness.

The Nebraska Supreme Court has stated that "[i]t is elementary that as a prerequisite to the availability of this exception the proponent of the hearsay evidence . . . make some showing that the declarant . . . is unavailable as a witness." *State v. Bothwell*, 218 Neb. 395, 396, 355 N.W.2d 506, 507 (1984). Therefore, because the State failed to produce any evidence that Kenneth was unavailable for one of the statutory reasons, the juvenile court abused its discretion in determining that Kenneth was unavailable for purposes of § 27-804(2).

Because the juvenile court abused its discretion in finding that Kenneth was unavailable, it necessarily follows that it was error for the court to apply § 27-804(2)(c), which relies upon the finding of unavailability of the declarant. The juvenile court should not have overruled Milly's hearsay objection based on § 27-804(2)(c).

*Harmless Error and Adjudication.*

Having found that the juvenile court should not have allowed Lotspeich to testify to what Kenneth told him during the interview on June 29, 2011, we must now determine whether this erroneous admission of evidence is reversible error. The

erroneous admission of evidence in a bench trial is not reversible error if other relevant evidence, properly admitted, sustains the trial court's necessary factual findings; in such case, reversal is warranted only if the record shows that the trial court actually made a factual determination, or otherwise resolved a factual issue or question, through the use of erroneously admitted evidence. *In re Estate of Mousel*, 271 Neb. 628, 715 N.W.2d 490 (2006). Thus, to determine whether there is reversible error in the instant case, we must consider whether there was sufficient properly admitted evidence to sustain the juvenile court's finding that Ashlyn was a child within § 43-247(3)(a). In so doing, we also address Milly's final assignment of error, which similarly requires us to determine whether there was sufficient evidence for the adjudication.

Before reviewing the evidence adduced at trial to determine whether it was sufficient to sustain the judgment, we note that the juvenile court adjudicated Ashlyn pursuant to § 43-247(3)(a). Under that section, the juvenile court has jurisdiction over a juvenile

who is homeless or destitute, or without proper support through no fault of his or her parent, guardian, or custodian; who is abandoned by his or her parent, guardian, or custodian; who lacks proper parental care by reason of the fault or habits of his or her parent, guardian, or custodian; whose parent, guardian, or custodian neglects or



refuses to provide proper or necessary subsistence, education, or other care necessary for the health, morals, or well-being of such juvenile; whose parent, guardian, or custodian is unable to provide or neglects or refuses to provide special care made necessary by the mental condition of the juvenile; or who is in a situation or engages in an occupation dangerous to life or limb or injurious to the health or morals of such juvenile . . . .

§ 43-247(3)(a).

When announcing its judgment, the juvenile court stated that it found Ashlyn to be "in a situation dangerous to her life or limb or injurious to her health or morals" because she was being sexually assaulted by Kenneth and because "her mother didn't follow up on that in a way that didn't prevent something further from happening." The Nebraska Supreme Court has consistently held that a juvenile is within § 43-247(3)(a) if he or she has been subjected to sexual assault, sexual abuse, or inappropriate sexual contact by a parent or stepparent. See, e.g., *In re Interest of B.R. et al.*, 270 Neb. 685, 708 N.W.2d 586 (2005); *In re Interest of Brian B. et al.*, 268 Neb. 870, 689 N.W.2d 184 (2004); *In re Interest of D.P.Y. and J.L.Y.*, 239 Neb. 647, 477 N.W.2d 573 (1991); *In re Interest of R.R.*, 239 Neb. 250, 475 N.W.2d 518 (1991); *In re Interest of K.L.C. and K.C.*, 227 Neb. 76, 416 N.W.2d 18 (1987); *In re Interest of R.A. and V.A.*, 225 Neb. 157, 403 N.W.2d 357 (1987), *overruled on other*

grounds, *State v. Jacob*, 242 Neb. 176, 494 N.W.2d 109 (1993); *In re Interest of W.C.O.*, 220 Neb. 417, 370 N.W.2d 151 (1985). Indeed, we have observed that “[i]n cases involving sexual abuse of a child by a parent, such abuse has been universally condemned and held to be sufficiently detrimental, justifying either intervention by the State under § 43-247 or termination under [Neb. Rev. Stat.] § 43-292 [(Cum. Supp. 2010)].” *Joyce S. v. Frank S.*, 6 Neb. App. 23, 39, 571 N.W.2d 801, 812 (1997), *disapproved on other grounds, Betz v. Betz*, 254 Neb. 341, 575 N.W.2d 406 (1998). As such, our inquiry is whether there was sufficient properly admitted evidence to support the court’s finding that Kenneth sexually assaulted Ashlyn.

In order to review the evidence properly received at trial, we must first ascertain exactly what portions of Lotspeich’s testimony were erroneously admitted. A party who fails to make a timely objection to evidence waives the right on appeal to assert prejudicial error concerning the evidence received without objection. *State v. Harris*, 263 Neb. 331, 640 N.W.2d 24 (2002). Therefore, because Lotspeich testified to some statements made by Kenneth prior to Milly’s objection and because that testimony was received without objection, those statements were properly before the juvenile court. However, pursuant to Neb. Rev. Stat. § 25-1141 (Reissue 2008):

Where an objection has once been made to the admission of testimony and overruled by the court it shall be unnecessary to repeat the same objection to further testimony of the same nature by the same witness in order to save the error, if any, in the ruling of the court whereby such testimony was received.

Accordingly, any of Kenneth's statements to which Lotspeich testified after Milly's objection would be of the "same nature" as the statements to which Milly objected, are covered by her objection, and should have been excluded. With this understanding, we now summarize the other evidence in support of the juvenile court's finding that Ashlyn was a child within S 43-247(3)(a) because she had been sexually assaulted by Kenneth.

The evidence before the juvenile court was that Kenneth confessed to "molesting" Ashlyn. Before Milly made an objection to Lotspeich's testimony, the officer testified that Kenneth told him that "he had molested his little daughter." Lotspeich testified that when he inquired as to which of Kenneth's two daughters he meant, Kenneth "said it was Ashlyn." This testimony was received without objection. Hood also testified that on June 29, 2011, Kenneth said, "[Hood], I'm sick in the head. I know it's not right what I did, but please don't call the cops. I don't want to go to jail.'" This statement was also received without objection.

Ashlyn's testimony also showed that Kenneth sexually assaulted her. Ashlyn testified at trial that Kenneth "shoved" his penis into her genital area on at least two distinct occasions. She also testified that he "does this stuff" to her "[a] lot." Another time, she stated, "He keeps doing the stuff to me . . . ." This is consistent with Busch's determination that Kenneth's inappropriate touching of Ashlyn happened over an "extended period of time." Based on her interview of Ashlyn, Busch--a law enforcement officer trained in investigating child abuse and assault--testified, "In my mind, there is no doubt she has been sexually assaulted."

The evidence from Ashlyn's medical examination also supported a finding that Ashlyn had been sexually assaulted. The examination revealed "bruising near her vaginal area," a "fresh" anal tear, "anal dilatation," and "notches within the vaginal hymen." The nurse practitioner who performed the medical examination testified that these symptoms indicated "some kind of penetration" to the anus and "some trauma" to the vaginal area, although she was unable to determine when either the penetration or trauma occurred.

Ashlyn testified that she told Milly about what Kenneth did to her at least twice and that Milly confronted Kenneth, telling him "[t]o knock it off." According to Busch, Ashlyn told her that Milly actually saw Kenneth "'pushing into me.'" Busch

testified that it was her opinion that Milly knew the sexual abuse was happening. Brittany testified that Milly did not call the police even when Kenneth returned to the apartment on June 29, 2011, after Ashlyn announced to Milly and the neighbor that Kenneth had been "touching" her. And in the recording of Milly's interview with the police, she admitted that she "didn't think nothing about it" when Ashlyn told her that Kenneth had been "touching" her. Indeed, Milly said that she thought "we got it handled" and that "[w]e had it all under control until he did that," referring to Hood calling the police.

On this record, we find that there was more than sufficient properly admitted evidence for the juvenile court to find that Ashlyn had been sexually assaulted by Kenneth and that Milly did not adequately prevent such assault from occurring. At an adjudication hearing, the State must prove the allegations warranting adjudication by a preponderance of the evidence. See *In re Interest of Cornelius K.*, 280 Neb. 291, 785 N.W.2d 849 (2010). We believe the State met this burden, even without considering the erroneously admitted portions of Lotspeich's testimony. Therefore, the juvenile court's erroneous admission of Lotspeich's testimony as to what Kenneth told him during the June 29, 2011, interview was harmless error and the juvenile court properly adjudicated Ashlyn under § 43-247(3)(a).

## CONCLUSION

The juvenile court did not err in overruling Milly's objection to Hood's testimony as to what Brittany told him because Brittany's statements were not offered for their truth and were thus not hearsay. On the other hand, the court did err in overruling Milly's hearsay objection to Lotspeich's testimony as to Kenneth's statements because the State failed to produce any evidence that Kenneth was unavailable as a witness under § 27-804. However, because there was sufficient properly admitted evidence to sustain the juvenile court's adjudication of Ashlyn under § 43-247(3)(a), this was harmless error. Having found that there was sufficient evidence to sustain the adjudication of Ashlyn and that there was not reversible error, we affirm the decision of the juvenile court.

AFFIRMED.