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## Recent Developments: In Re J.J.

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## RECENT DEVELOPMENT

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### ***IN RE J.J.: IN A CHILD IN NEED OF ASSISTANCE PROCEEDING, TRUTH-COMPETENCY IS NOT A PREREQUISITE TO THE ADMISSION OF A CHILD'S OUT-OF-COURT STATEMENT.***

**By: Kelly Gillett**

The Court of Appeals of Maryland held that, pursuant to Section 11-304 of the Maryland Criminal Procedure Code (“Section 11-304”), a child’s hearsay statement concerning abuse was admissible in a Child in Need of Assistance (“CINA”) hearing without a preliminary competency determination of the child. *In re J.J.*, 456 Md. 428, 456, 174 A.3d 372, 388 (2017). Further, the court held that the lower court properly admitted the child’s statements since it had “particularized guarantees of trustworthiness.” *Id.* at 456, 174 A.3d at 388.

In August 2015, a nine-year-old female, J.J., told her maternal grandmother that her father had sexually abused her. Following J.J.’s allegations, the Department of Social Services removed J.J. from her father’s home and filed a CINA petition. The Department of Social Services filed a notice of intent to introduce an audio-recording of J.J.’s statements concerning her father’s sexual abuse. The audio recording was the result of an interview with a licensed clinical social worker. A Section 11-304 hearing was held and J.J.’s statements were admitted after the court found that all thirteen statutory factors had been established. Subsequently, during the CINA proceeding, J.J. did not testify, and the court did not conduct an independent examination of J.J. to determine if her out-of-court statements had “particularized guarantees of trustworthiness.”

After the Section 11-304 hearing, the Circuit Court for Wicomico County proceeded with the CINA adjudication. During this proceeding the court held that J.J.’s out-of-court statement was admissible to prove the truth of the matter asserted because it possessed the requisite “guarantees of trustworthiness.” The court determined that, in accordance with Section 11-304(g)(1), the recording of J.J. made an examination of the child’s competency to understand the difference between truth and fabrication unnecessary. The parents of J.J. appealed to the Court of Special Appeals of Maryland, which affirmed, holding that a juvenile court is not required to determine a child’s truth competency when determining the admissibility of an out-of-court statement. The parents subsequently filed a writ of *certiorari* to the Court of Appeals of Maryland which was granted.

Three issues were presented to the court of appeals for review. *In re J.J.*, 456 Md. at 446-47, 174 A.3d at 383. First, whether a determination of a child’s competency was required prior to admitting the child’s hearsay statement at a CINA adjudication hearing. *Id.* at 446, 174 A.3d at 383.

Second, if an independent examination of J.J. was necessary to establish that she was competent. *Id.* at 447, 174 A.3d at 383. Finally, whether J.J.'s hearsay statements contained the requisite "guarantees of trustworthiness" to be admissible as required by CP § 11-304. *Id.* at 446-47, 174 A.3d 382-83.

The court began its analysis by examining the statute itself in addressing the issue of the J.J.'s competency. *In re J.J.*, 456 Md. at 449, 174 A.3d at 384. If the plain meaning of the statute is unclear, the court will look at the context of the statutory scheme to determine the General Assembly's intent. *In re J.J.*, 456 Md. at 449, 174 A.3d at 384 (2017) (citing *Phillips v. State*, 451 Md. 180, 196, 152 A.3d 712 (2017); *Brown v. State*, 454 Md. 546, 551, 165 A.3d 398 (2017)). The court of appeals explained that Section 11-304 is silent on whether the court is required to make a determination of truth-competency as a prerequisite when ruling on the admissibility of a child's hearsay statement. *In re J.J.*, 456 Md. at 449, 174 A.3d at 384. Therefore, the court considered the legislative history of the statute. *Id.*

Upon examining the legislative history of Section 11-304, the court determined that the General Assembly did not intend for the juvenile court to determine a child's truth competency. *In re J.J.*, 456 Md. at 449-50, 174 A.3d at 384. The statute had no competency requirement in place when enacted, and only one bill had been introduced that proposed adding the requirement. *Id.* at 450, 174 A.3d at 385. However, the proposed change was stricken from the bill prior to its enactment. *Id.* The court concluded that Section 11-304 was not ambiguous, and that neither the plain language of the statute, nor the legislative history required a juvenile court to determine a child's truth competency before admitting that child's hearsay statement. *Id.* Consequently, the court determined that it need not address J.J.'s truth competency. *Id.* at 452, 174 A.3d at 386.

Additionally, the court found that the foundational requirements of the statute made a competency determination irrelevant. *In re J.J.*, 456 Md. at 450-51, 174 A.3d at 385. Section 11-304 provides specific conditions that must be met before a victim child's hearsay statements can be admitted. *Id.* at 451, 174 A.3d at 385. The conditions include a finding that an examination is unnecessary, that there is corroborative evidence, and that the hearsay statement contains "particularized guarantees of trustworthiness." *Id.*

Next, applying a clearly erroneous standard of review, the court examined the statutory factors regarding the trustworthiness requirement. *In re J.J.*, 456 Md. at 452, 174 A.3d at 386. Finding an examination of J.J. unnecessary, the court was persuaded by the fact that the lower court played the audio recording of her hearsay statement, listened to testimony and arguments, and then evaluated the evidence. *Id.* at 454, 174 A.3d at 387. Moreover, the court concluded that the father's statement that he was living with J.J. provided sufficient corroborative evidence of his opportunity to commit the abuse. *Id.* Additionally, J.J.'s in-depth personal knowledge of the event and sensory detail led the court to determine that the statements had

the “particularized guarantees of trustworthiness,” satisfying the foundational requirements of the statute. *Id.*

The court then turned to the issue raised by J.J.’s parents concerning the consistent repetition of statements. *In re J.J.*, 456 Md. at 455, 174 A.3d at 387. The parents asserted that J.J.’s statements were not trustworthy because she did not repeat them consistently. *Id.* at 455, 174 A.3d at 387-88. However, the court found no such requirement in Section 11-304. *Id.* Ultimately, it held that any inconsistencies in the child’s statements went to the weight rather than admissibility of the evidence. *Id.* Thus, the juvenile court did not err in concluding that J.J.’s hearsay statement possessed the “guarantees of trustworthiness,” and properly admitted the statements into evidence. *Id.* at 455-56, 174 A.3d at 388.

In the instant case, the court of appeals held that the juvenile court did not err in concluding that J.J.’s out-of-court statement contained the guarantees of trustworthiness, and thus was admissible. The court held that Section 11-304 does not require a competency determination prior to admitting a child’s hearsay statements. In addition, the court is refusing to afford parents the right of confrontation against their child in court. This will make it easier for counsel to present statements even when the child is available. The decision affirms the judicial system’s intent to protect children from the traumatic experience of being in a court room, and having to litigate the abuse in the presence of their alleged abuser. The holding exemplifies the court’s continued efforts to put the child’s best interest above that of the parent’s in court proceedings.