ATTORNEY FOR APPELLANT

Lisa Diane Manning
Plainfield, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Caroline G. Templeton
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

Richard A. Means II,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff.

July 27, 2022

Court of Appeals Case No. 21A-CR-2570

Appeal from the Hendricks Superior Court

The Honorable Rhett Stuard, Judge

Trial Court Cause No. 32D02-2002-F5-17

Pyle, Judge.

Statement of the Case

[1] In this interlocutory appeal, Richard Means, II, ("Means") appeals the trial court's order granting the State's motion in limine.[1] Means specifically argues that the trial court abused its discretion in granting the State's motion. Concluding that the evidentiary issue raised by the State in its motion is not ripe for our review, we dismiss the appeal.

[2] We dismiss.

Facts

[3] In November 2019, E.H.'s ("E.H.") daycare provider noticed that E.H., who is the son of Means' girlfriend, had bruises on both of his legs and a handprint on his buttocks. The daycare provider reported the injuries to the Department of Child Services ("DCS"), which filed a petition alleging that E.H. was a child in need of services ("CHINS"). The trial court held a hearing on the CHINS petition in January 2020. After hearing the evidence, the trial court issued a January 2020 order ("the CHINS order"), which concluded as follows:

> The Court being duly advised now finds that it has not been proven by a preponderance of the evidence that [E.H.] is a [CHINS] at the conclusion of the Fact Finding [hearing].
>
> DCS did prove by a preponderance of the evidence that [E.H.] was battered on or about 11/08/2019. [E.H.] was less than two

[1] Although the State did not file a written motion in limine, its request that the trial court exclude evidence at Means' upcoming trial is akin to a motion in limine. We, therefore, treat it as such.

> (2) years old and it is unreasonable for anyone to spank, smack or hit [E.H.] with such force to leave the red marks and bruises that [E.H.] received. Excessive force was used. The injuries were not accidental.
>
> Marion County DCS failed to investigate the [daycare] staff as possible perpetrators. Marion County DCS did not interview the daycare workers who had care of [E.H.] on 11/08/2019. Based on the evidence presented, the Court finds that the preponderance of the evidence supports the likelihood that someone at the daycare battered [E.H.]

(Ex. Vol. at 3).

[4] The following month, February 2020, the State charged Means with Level 5 felony battery resulting in bodily injury to [E.H.], who was less than fourteen years of age. The charge was based on the same injuries that had led to the filing of the CHINS petition.

[5] During a July 2021 pre-trial conference, the State told the trial court that "there [was] one question . . . in the case[.]" (Tr. Vol. 2 at 18). Specifically, the State explained that "[its] guess [was] that the defense want[ed] [the CHINS order] to come in to the case and [the] State want[ed] it to stay out." (Tr. Vol. 2 at 18). The trial court agreed to hear argument on the issue at the next pre-trial conference.

[6] During the September 2021 pre-trial conference, the State presented the trial court with the CHINS order. The State also asked the trial court to exclude the CHINS order from evidence at Means' upcoming trial. The State specifically argued that it would "absolutely provide different evidence at the trial tha[n]

may have been presented at that [CHINS] hearing." (Tr. Vol. 2 at 24). According to the State, "law enforcement in [the criminal] case [had done] much more investigation into the day care facility th[a]n [had been] done by the Marion County DCS officials." (Tr. Vol. 2 at 24). Means asked the trial court to admit the CHINS order into evidence at his upcoming trial. According to Means, the CHINS order showed that someone else could have committed the crime.

[7] The trial court told the parties that it would take the issue under advisement and that the parties had until the end of the week if they wanted to "submit anything." (Tr. Vol. 2 at 27). Both parties submitted notices of authority in support of their respective positions.

[8] In September 2021, the trial court issued an order granting the State's motion in limine and concluding that the CHINS order would not be admissible at Means' upcoming trial. The trial court specifically concluded that the CHINS order's "finding that someone at the daycare likely battered [E.H.] [was] a legal conclusion that invade[d] the jury's duty to determine the outcome of this case on the facts presented to them at a trial held in their presence." (App. Vol. 2 at 83).

[9] At Means' request, the trial court certified its order for interlocutory appeal, and this Court's motions panel accepted jurisdiction of the interlocutory appeal.

Decision

[10] At the outset, we note that Means first argues that the doctrine of collateral estoppel bars the State "from prosecuting [him] in the criminal court because the issues have already been litigated by the State in the juvenile court." (Means' Br. 7). However, "[o]ur scope of review in interlocutory appeals is limited to the interlocutory order on appeal." *DuSablon v. Jackson County Bank*, 132 N.E.3d 69, 76 (Ind. Ct. App. 2019), *trans. denied*. Here, the trial court's order did not address the application of the collateral estoppel doctrine to the facts of this case. Accordingly, we will not address it either. *See id*. (explaining that interlocutory appeals "are not vehicles through which one may attack the trial court proceedings as a whole and without regard to the order on appeal[]").

[11] We further note that although our motions panel accepted jurisdiction of this interlocutory appeal, "[i]t is well established that we may reconsider a ruling by our motions panel." *Wise v. State*, 997 N.E.2d 411, 413 (Ind. Ct. App. 2013). "More specifically, we have the authority to reconsider our motions panel's initial ruling on a motion to accept interlocutory jurisdiction." *Id*. We exercise that authority in this case.

[12] We now turn to Means' argument that the trial court abused its discretion when it granted the State's motion in limine and determined that the CHINS order would not be admissible at his upcoming trial. "For instructive purposes it should be noted at this point that it is not the office of a motion in limine to obtain a final ruling upon the ultimate admissibility of evidence[.]" *Lagenour v.*

State, 268 Ind. 441, 450, 376 N.E.2d 475, 481 (Ind. 1978). Rather, the purpose of a motion in limine is "to prevent the proponent of potentially prejudicial matter from displaying it to the jury, making statements about it before the jury, or presenting the matter to a jury in any manner *until the trial court has ruled upon its admissibility in the context of the trial itself*." *Id*. (emphasis added).

[13] Further, "[g]enerally a denial of a motion in limine does not amount to error by the court since it is not a final action that causes prejudice to the defendant." *Harris v. State*, 480 N.E.2d 932, 936 (Ind. 1985) (italics omitted). Rather, "[e]rror, if any, occurs when the challenged evidence is improperly admitted and objection is made at trial." *Id*. If the trial court errs by admitting evidence, the exclusion of which was sought by the motion in limine, then the error is in admitting the evidence at trial in violation of an evidentiary rule, not in denying the motion in limine. *Francis v. State*, 758 N.E.2d 528, 533 (Ind. 2001).

[14] Here, Means asks us to review the trial court's *preliminary* determination regarding the admissibility of the CHINS order at Means' upcoming trial. We conclude that this issue is simply not ripe for our review. We will be in a superior position to decide this issue after a trial has been held and the trial court has made a *final* determination regarding the admissibility of the CHINS order. Because we conclude that this issue is not ripe for review, we dismiss Means' appeal.

[15] Dismissed.

Robb, J., and Weissmann, J., concur.