FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D19-894

T.H., Mother of A.H., Minor Child,

Appellant,

v.

FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES,

Appellee.

On appeal from the Circuit Court for Leon County.
Jonathan Sjostrom, Judge.

December 4, 2020

PER CURIAM.

T.H. appeals the adjudication of her child, A.H., as dependent. Her husband, the child's biological father, consented to dependency and is not involved in the appeal. The trial court based its adjudication on a finding that T.H. had been, or was at substantial risk of imminently being, abused or neglected, and thus dependent pursuant to section 39.01(15), Florida Statutes (2018). T.H.'s sole argument on appeal is that the trial court erred by basing its findings of dependency on the mother having untreated mental health issues without also finding the existence of a "nexus" between those mental issues and the child's dependency. We reject this argument. The question here is

whether there was competent substantial evidence in the record to support the trial court's determination, and we conclude that there was.

I.

The Florida Department of Children and Families ("DCF") petitioned for dependency and alleged that T.H.'s behavior constituted abuse or neglect of T.H., or at least the behavior put the child at substantial risk of imminent abuse or neglect. If proven, this behavior would render the child dependent within the meaning of section 39.01(15), Florida Statutes. We consider the evidence presented at the adjudicatory hearing from a perspective favorable to sustaining dependency. *See T.G. v. Dep't of Child. & Fams.*, 927 So. 2d 104, 106 (Fla. 1st DCA 2006). The evidence, then, supported the following facts.

T.H. suffers from severe untreated mental health issues. She has been diagnosed with paranoid schizophrenia, anxiety, and bipolar disorder, and she has frequent hallucinations and delusions. She has been held pursuant to the Baker Act several times for erratic and sometimes-violent behavior, though she has not been "Baker Acted" since she and her husband moved to Tallahassee.

Despite T.H.'s condition, she denies having any mental issues whatsoever. T.H. took medications for about five years, but currently she considers herself cured and refuses to submit to any further treatment. She claims her psychiatrist discontinued the medication because it no longer worked. T.H. does not have a job, but she still receives income from social security payments due to her diagnoses.

Meanwhile, A.H. is a very young child with special needs. She was born prematurely at only thirty-four weeks. She has several chronic respiratory conditions, including severe asthma, chronic cough, congenital tracheal stenosis, and gastroesophageal reflux disease (GERD); and she needs medication administered regularly. A.H. has also been diagnosed with a failure to thrive, which means that she is consistently below weight recommendations for her age. She is nonverbal, only recently

started walking, and is behind on several other developmental milestones for her age.

As a result of these conditions, DCF began investigating the family. A.H. was referred to a special-needs daycare center. T.H. initially cooperated. During her visits, the child appeared healthy and initially continued to slowly gain weight. However, T.H. frequently would drop the child off with age-inappropriate foods to eat, such as sandwiches or bags of ravioli. While the daycare provided its own food when necessary, T.H. continued to bring inappropriate food, even after repeatedly being told what the child should be eating at that age. The father was not involved with A.H.'s medical care, and he did not even know she was enrolled in a daycare at the time.

There also was testimony from police. One officer had responded to a call from T.H., in which she accused neighborhood children of being witches and warlocks sending hornets to attack her child, A.H. Another time, the father called because T.H. had been poking holes in the walls with a screwdriver and covering up mirrors in an attempt to remove evil spirits from the walls. During one call for an alleged domestic violence incident, A.H. was absent from the house, and the father told police that T.H. had left the child somewhere and would not tell him where the child was.

At one point, A.H. suddenly began losing weight, which is dangerous for a child who has shown a failure to thrive. DCF initiated an emergency shelter proceeding based on T.H.'s apparent inability to appreciate the child's medical needs. The shelter petition was immediately granted, and A.H. was placed in foster care. On one occasion after A.H. had been sheltered, T.H. called police to report that her husband was a witch and had put a love spell on the walls. She took the officer into a back room and pointed at a stain on the wall, which she said was a love potion. While the officer was there, T.H. said that once she got her child back, she was going to leave with the child and not tell anyone.

Both mother and child then were referred to therapeutic counseling, and they attended several sessions together over the following month. According to the counselor, T.H. appeared to have unrealistic expectations for such a young child and repeatedly tried to make A.H. do things the child lacked the motor skills to

do. For instance, T.H. would open a container of baby food, put it in front of A.H., and then sit back and tell the child to eat. T.H. also tried to make A.H. unwrap gifts, blow bubbles, and walk on her own; and she would read the Bible to the small child and ask her questions as though she expected the child to understand and answer. T.H. did not appear to understand why the child could not do things. She also repeatedly complained that the foster mother and child-protection investigators were following her, sneaking into her home, or stealing the child's clothes. T.H. denied having any mental health diagnosis, and she would become defensive when pressed about it.

The family condition failed to improve, and T.H. refused to cooperate with any in-home safety plan. That led to DCF's dependency petition. During the proceedings, in addition to hearing the evidence just described, the trial judge observed T.H. in the courtroom exhibiting erratic and uncontrolled behaviors. Ultimately, the trial court adjudicated T.H. dependent based on abuse or neglect, or the imminence of either, pursuant to paragraphs (a) and (f) of section 39.01(15), Florida Statutes.

II.

T.H. challenges on appeal the dependency adjudication. She contends that the trial court erroneously determined her child to be dependent based entirely on her mental illness, without any evidentiary link between that illness and any harm or risk of harm to her child. To get there, however, T.H. would have us reweigh the evidence and conclude that a preponderance of the evidence did not demonstrate the necessary nexus. This is a misunderstanding of what happens on a direct appeal to this court.

Our role in an appeal is to correct any harmful error committed by the trial court "based on the issues and evidence before it." *Hillsborough Cnty. Bd. of Cnty. Comm'rs v. Pub. Emps. Rels. Comm'n*, 424 So. 2d 132, 134 (Fla. 1st DCA 1982); *see Tyson v. Aikman*, 31 So. 2d 272, 275 (Fla. 1947); *M.F.S. Land Co. v. J. Ray Arnold Cypress Co.*, 139 So. 200, 201 (Fla. 1931). We approach the trial court's dependency determination as "a mixed question of law and fact," and we will sustain it "if the court applied the correct law and its ruling is supported by competent substantial evidence in the record." *In re M.F.*, 770 So. 2d 1189, 1192 (Fla. 2000). As we

engage in this evaluation, we do not reweigh evidence. *See In re Adoption of Baby E.A.W.*, 658 So. 2d 961, 967 (Fla. 1995) (explaining that on appellate review, the court does not "reweigh the testimony and evidence given at the trial court, or substitute our judgment for that of the trier of fact"). Indeed, it is for the trial court "to evaluate and weigh the testimony and evidence based upon its observation of the bearing, demeanor and credibility of the witnesses appearing in the cause," so we will not substitute our "judgment for that of the trial court through re-evaluation of the testimony and evidence." *Shaw v. Shaw*, 334 So. 2d 13, 16 (Fla. 1976).

Rather, we simply look for whether there is evidence supporting the trial court's factual determinations that is both substantive and competent, and we make all necessary inferences from that evidence in favor of sustaining the dependency adjudication. *See T.G.*, 927 So. 2d at 106; *cf. Dunn v. State*, 454 So. 2d 641, 649 n.11 (Fla. 5th DCA 1984) (Cowart, J., specially concurring) ("The term 'competent substantial evidence' does not relate to the quality, character, convincing power, probative value or weight of the evidence but refers to the existence of some evidence (quantity) as to each essential element and as to the legality and admissibility of that evidence.").

As we conduct this review, we note the purpose of a dependency adjudication "is the protection of the child and not the punishment of the person creating the condition of dependency." § 39.501(2), Fla. Stat. (2018). A trial court may determine that a child is dependent if it finds, by a preponderance of the evidence presented at an adjudicatory hearing, that she has been "abandoned, abused, or neglected by" one or both of her parents. §§ 39.01(15)(a), 39.507(1)(b), Fla. Stat. (2018). Even without such a finding, a child still can be dependent if the trial court finds that there is "substantial risk of imminent abuse, abandonment, or neglect" by a parent. § 39.01(15)(f), Fla. Stat. Because we conclude that there was, at a minimum, sufficient evidence to support the trial court's dependency determination based on neglect and risk of neglect, the remainder of our discussion will focus on the statutory provisions that deal with these aspects of dependency.

"Neglect" occurs "when the child is deprived of, or is allowed to be deprived of, necessary food, clothing, shelter, or medical treatment," or when she "is permitted to live in an environment," such that "the child's physical, mental, or emotional health [is] significantly impaired or [is] in danger of being significantly impaired" as a result. § 39.01(50), Fla. Stat. (2018). In its final order, the trial court found credible evidence showing that A.H. had a failure-to-thrive diagnosis and developmental challenges, and that T.H.'s untreated mental illness already had interfered and would continue to interfere with her ability to adequately meet A.H.'s needs.

The trial court found credible evidence that T.H. failed to follow guidance against providing age-inappropriate foods to the child. It also found credible evidence that T.H. had age-inappropriate, unrealistic expectations about A.H.'s behaviors and ability to communicate. In addition, the trial court found credible evidence that the home was "not calm and consistent." While T.H. disagrees with where the weight of the evidence lay at the adjudicatory hearing, there was competent substantial evidence that indicated A.H. at certain points had failed to thrive as a result, especially given the evidence of A.H.'s particular vulnerabilities as a young child with special needs. All of this was cast against the backdrop of overwhelming evidence of T.H.'s serious and untreated mental illness, which manifested itself as consistently uncontrolled and erratic behavior observed not just by witnesses who testified at the hearing but also by the court itself. T.H. herself testified before the trial court that she did not need, and would not take, prescribed medications and would refuse to participate in mental health services. She also testified that she believed DCF "was following her and conspiring against her." At least two witnesses stated their concern for A.H.'s continued safety if there were no intervention. The evidence left no doubt that T.H.'s mental health contributed directly to her refusal to cooperate with DCF in its efforts at conducting an assessment and developing an in-home safety plan.

The evidentiary mosaic before the trial court, then, showed a direct connection between T.H.'s mental health and her inability to safely parent A.H. on her own, absent assistance from the State. That is, there was enough evidence independently to support a

finding of dependency based on T.H.'s current neglect. *See* § 39.01(15)(a), Fla. Stat. But there also was enough to support such a finding based on a "substantial risk of imminent" neglect by T.H. § 39.01(15)(f), Fla. Stat. We note that a parent's failure to acknowledge or treat her mental health condition or disorder may be a basis for a trial court's finding of prospective neglect. *Cf. E.M.A. v. Dep't of Child. & Fams.*, 795 So. 2d 183, 186–88 (Fla. 1st DCA 2001). For that to be the case, though, there must be a nexus between the mental illness "and the clear, certain prospect of danger to the children if they are present and alone with [the parent]" when the "inevitable next" episode occurs. *Id.* at 188; *see also B.D. v. Dep't of Child. & Fams.*, 797 So. 2d 1261, 1264 (Fla. 1st DCA 2001) (requiring "sufficient nexus between a psychiatric disorder and the likelihood that a parent will substantially impair the child(ren)'s [sic] physical, mental, or emotional health" to satisfy the "abuse, abandonment, or neglect" provisions of the dependency definition).

"The issue in prospective neglect or abuse cases is whether future behavior, which will adversely affect the child, can be clearly and certainly predicted." *E.M.A.*, 795 So. 2d at 187 (quoting *Palmer v. Dep't of Health & Rehab. Servs.*, 547 So. 2d 981, 984 (Fla. 5th DCA 1989)). The evidence here supports the trial court's clear concern—based on T.H.'s prior conduct toward A.H., her poor parenting choices and lapses, her refusal to accept any treatment for her mental illness, her erratic behavior, and her unwillingness to accept parenting services—that without immediate intervention on behalf of A.H., A.H.'s health and safety are at immediate risk. The evidence is "substantial" in that it "establish[es] a substantial basis of fact from which the fact at issue can be reasonably inferred," or to put it differently, there is "such relevant evidence as a reasonable mind would accept as adequate to support a conclusion." *De Groot v. Sheffield*, 95 So. 2d 912, 916 (Fla. 1957); *see also Dunn*, 454 So. 2d at 649 n.11 (Cowart, J., specially concurring) (explaining that "substantial" evidence is evidence that is "some (more than a mere iota or scintilla), real, material, pertinent, and relevant evidence (as distinguished from ethereal, metaphysical, speculative or merely theoretical evidence or hypothetical possibilities) having definite probative value (that is, 'tending to prove')" as to each essential matter at issue in a case). The evidence supporting the trial court's determination is

"competent" in that it was the type of evidence typically admitted in court in that type of proceeding. *See Dunn*, 454 So. 2d at 649 n.11 ("Competency of evidence refers to its admissibility under legal rules of evidence."); *cf. De Groot*, 95 So. 2d at 916. Notably, T.H. does not argue on appeal that the trial court erred by admitting objectionable evidence.

To be sure, "the legislature did not intend for trial judges to wait helplessly until the next episode occurs and the children are neglected or abused." *E.M.A.*, 795 So. 2d at 188 (noting that "[i]t's a matter of *when*, not *if*" the episodes will occur, which according to the experts could be "very soon, to the detriment of the children"). This case is precisely the type where we must defer to the trial court's assessment of the risk presented by competent substantial evidence presented at the adjudicatory hearing. Based on what was before the trial court, its decision not to wait until something more serious happened to A.H. was well within its discretion and consistent with the statutory directive that a dependency adjudication operate for "the protection of the child." § 39.501(2), Fla. Stat.

This court previously determined that evidence similar to that presented in this case to be sufficiently competent and substantial "to establish the requisite nexus between [the parent's] mental illness and the substantial prospect of imminent harm to the child." *B.D.*, 797 So. 2d at 1264. The evidence there showed that the parent indisputably had serious mental-health issues. The parent "consistently refused to acknowledge her illness" and refused to comply with directions for treatment. *Id.* The evidence showed "that the likely result of this willful pattern of non-compliance is the progressive worsening" of the parent's condition, which posed a danger to both the parent and the child. *Id.* The unrefuted evidence demonstrated that the parent "lack[ed] a sufficient grasp of reality to be a safe parent." *Id.* Unlike in *B.D.*, however, the trial court here did not hedge on or minimize the weight of the evidence in favor of dependency. *See id.* at 1264–65 (reversing dependency adjudication nonetheless, because the trial court had "characterized the evidence of dependency as 'marginal'" and remanding so the court could clarify that it had determined DCF "met its burden, by a preponderance of the evidence, to satisfy at least one of the statutory grounds for dependency").

The evidence in this case also is similar to what this court considered sufficient to uphold a finding of dependency in *E.M.A.* based on analysis that the *B.D.* opinion followed. *See E.M.A.*, 795 So. 2d at 188. In *E.M.A.* the court found useful the Fifth District's reasoning in *Richmond v. Dep't of Health & Rehab. Servs.*, 658 So. 2d 176 (Fla. 5th DCA 1995); and so do we. *See E.M.A.*, 795 So. 2d at 187. The rationale in *Richmond* was that a dependency order could be affirmed in the absence of prior abuse or neglect where evidence demonstrated that a parent's "severe mental-health problems would impact her judgment and ability to perform basic daily caretaking tasks." *E.M.A.*, 795 So. 2d at 187. In turn, a "nexus was shown between her bizarre, aberrant behavior and her inadequate caregiving skills, on the one hand, and her potential to abuse or neglect the child, on the other hand." *Id.* The court in *E.M.A.* concluded that the parent's conduct—including a refusal to take prescribed medication, refusal to get proper treatment, a refusal even to acknowledge his mental illness, and a refusal to accept intervention through case management services—made "it far more likely that his inevitable future manic episodes [would] occur sooner, [would] last longer, and [would] be more intense . . . to the detriment of the children if they are alone with [the parent]." *Id.* As in *E.M.A.*, for the trial court here, it was a question of *when*, not *if*, T.H.'s condition would place the child at risk, if it had not already. *See id.*

We then agree that there is overwhelming evidence of the mother having untreated mental health issues and being unwilling to acknowledge them or seek treatment. We also agree that, at the very minimum, the mother's behavior places the child at substantial risk of imminent neglect, if it has not resulted in neglect of A.H. already. The testimony about the mother taking the child somewhere and leaving her behind without telling the father is especially troubling, as was her statement about wanting to take the child and leave somewhere without telling anyone when she regains custody.

Taken all together, in conjunction with the mother's unwillingness to seek treatment and the child's vulnerable condition, we conclude that the trial court had sufficient evidence in the record to show a nexus between the mother's mental health issues and neglect of A.H. The mother certainly appears to

sincerely care for her child, and we do not think that she would intentionally harm her. However, we must review the evidence with deference to the trial court's factual findings here, and on those facts, it appropriately concluded that A.H. would be not be safe in the mother's care without the provision of services. The judgment of dependency is AFFIRMED.

ROBERTS, NORDBY, and TANENBAUM, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

Dwight O. Slater, Cohn Slater, P.A., Tallahassee, for Appellant.

Sarah J. Rumph, Children's Legal Services, Tallahassee; Thomasina F. Moore and Sara Elizabeth Goldfarb, Statewide Guardian ad Litem Office, Tallahassee; and Jamie Billotte Moses, Holland & Knight, Orlando; for Appellee.