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IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-276

No. COA20-526

Filed 15 June 2021

Onslow County, No. 19 JRI 2

MICHAEL AZEVEDO, Petitioner,

v.

ONslow COUNTY DEPARTMENT OF SOCIAL SERVICES, Respondent.

Appeal by petitioner from order entered 2 March 2020 by Judge Sarah C. Seaton in Onslow County District Court. Heard in the Court of Appeals 27 April 2021.

Edward Eldred for petitioner-appellant.

No brief filed on behalf of respondent-appellee Onslow County Department of Social Services.

ZACHARY, Judge.

¶ 1 Petitioner-Appellant Michael Azevedo (“Father”) appeals from an order determining that he “is a responsible individual and his name should be maintained on the Responsible Individuals List in the Central Registry” maintained by the North Carolina Department of Health and Human Services (“DHHS”). After careful review, we remand to the trial court for the entry of additional findings of fact.

I. Background

¶ 2 Father and his wife, Alisha Azevedo (“Mother”), are the parents of two minor

AZEVEDO V. ONSLOW CTY. DSS

2021-NCCOA-276

Opinion of the Court

children, “Tara” and “Zee.”¹ In March 2018, Mother and Father separated. At first, Mother lived in her truck or with a friend, and Tara and Zee resided with Father in the family home, where Mother saw the children every day. Mother then began living in a camper on a friend’s property while she looked for work. After Thanksgiving 2018, Tara moved in with Mother, and in January 2019, Zee moved in with Mother as well.

¶ 3 On 5 January 2019, the Onslow County Department of Social Services (“DSS”) opened an investigation into Father’s reported abuse of the children. At the time of the investigation, Tara was 15 years old and Zee was 10 years old. DSS social worker Trumanda Raines referred the matter to psychologist Lauren Rockwell, a child and family examiner and forensic interviewer, to prepare a Child and Family Evaluation. As part of her investigation, Ms. Rockwell conducted interviews with Zee, Tara, Mother, Father, and several family acquaintances and neighbors.

¶ 4 The evidence adduced at the hearing upon Father’s petition for judicial review, held on 27 January 2020, tended to establish the following facts regarding Father’s actions:

¶ 5 Mother recounted Father’s history of violence toward both her and the children. She told Ms. Rockwell that Father has pushed her down and hit her in front

¹ To protect the identities of the juveniles, we refer to them by pseudonyms agreed to by the parties.

of the children, and that Father was regularly violent:

One time, he threw an entire fish tank at me. He will pick up pictures and throw them. Every door in the house, he's broken doors off the hinges. He has punched holes in the doors. He's kicked the doors. The kitchen cabinets are messed up because of that.

Tara similarly reported that when the family lived together, Father

would have temper fits where he would like to break everything in the house and yelling and screaming. . . . [H]e broke everything in the house. He broke doors, TV's, there are holes in the walls, there are doors that have been knocked off, and the kitchen cabinets, all of that.

¶ 6

Tara and Mother additionally described the incident that precipitated the DSS investigation. In January 2019, Tara was struck by a car while riding her bicycle. After both parents arrived at the scene of the accident, Father began “yelling and screaming” at Mother, “saying that it was [Mother’s] fault and that he was going to punch [Mother] in the face.”

¶ 7

Regarding Father’s general conduct and demeanor, Tara told Ms. Rockwell that Father “constantly pin[ned] us down. He hit[me] around the throat, hit[me] in the head, he d[id] all kinds of stuff like that. . . . Everything just sets him off. He will call me a bitch mostly, but he calls me all kinds of cuss names.” She elaborated:

[H]e would spit in my face. He would grab the closest thing that he could do and throw it at me. He said that he would take me and ground my head into the ground, and he would get on top of me and put his body weight on top of me. . . . He put his knee on my head or he would hold my

head down to the ground. . . .

If you try to defend yourself, it just gets worse and he will say things as he escalates. One time, he said, “I’m going to crush your skull” and put more pressure on my head. . . . He puts his hands and knee on my head and says that. . . . He grabs you by the throat. He does that all of the time.

¶ 8 Tara further reported that Father would pull both of his children’s hair, squeeze their necks, and hit them with a belt. She also said that on one occasion, Father threw a 2x4 wooden board at her, hitting her leg, while during another incident, he was “in a rage” and bent her eyeglasses.

¶ 9 In recounting an incident when Father was driving her and Zee to visit family near Charlotte for Thanksgiving, Tara told Ms. Rockwell:

He just flipped out in the car and he pulls the car over to the side of the road. I mean, while we are d[r]iving there, in the middle of the highway, pulls the car over and comes around and he grabbed me, and he pinned me down in the car. . . . He got in the car and pinned me down in [t]here. He held my head down and he said that he was going to kill himself. . . .

I can’t breathe when he holds me down. It doesn’t feel good.

¶ 10 Father also discussed this Thanksgiving incident during his interview with Ms. Rockwell:

At Thanksgiving, we were going to see my family in Matthews, North Carolina. My daughter was just acting so mean and my son, she was just being mean. She had these rice cakes that her mom had sent for her to eat and she

wouldn't share them with my son.

....

She was kicking him because she wanted it and I was like, "You guys stop it." I finally get fed up because there are rice cakes flying all over the back seat and I stop the car and I get out and I bear hug her. No, I did not take her out of the car and throw her to the ground but I bear hug her and then, I get the bag of rice cakes and I throw them out of the car, so you might as well write that on your paper there too, that I'd get in trouble for littering because I threw that out there and she tried to fishhook me and I was like oh, do your little jujitsu moves. Go ahead. She was spitting and she was upset but I held her down . . . [t]o get her to calm down.

....

They were just fighting and going on and on. It forced me to pull over to the road and she was kicking my legs when I opened the door. That's when I bear hugged her and told her to stop. She was screaming about the rice cakes and finally, I put my son up in the front seat. I never grabbed her by the hair. Her body never left the vehicle.

¶ 11 Mother, Tara, and Zee also reported physical violence by Father toward Zee.

Mother saw handprints on Zee's throat. Zee reported that his dad hit him "a lot" and left bruises on his arms. Zee elaborated:

He grabs my hair and then he holds his hands over my nose and my mouth. He pulled hair out of my head. He pulled my hair out. . . .

He calls me names. I don't want to say them. . . . It's the S word. He calls me a little S. . . .

He broke the TV in the living room. He's punched

walls. Like, he punched my bedroom door and he took off his door to his bedroom because he kicked it so hard and he broke it.

¶ 12 Zee told Ms. Rockwell that Father “tried to choke me too. . . . He put his hand over my mouth and nose, and I couldn’t breathe. Sometimes, he squeezes [my wrists] really hard and it hurts really bad. . . . He took duct tape and put it across my mouth one time.” Zee also reported that Father has pinched the back of his neck with his finger and thumb and hit Zee with a belt “on the butt and the back[.]” In addition, a family friend spoke of seeing Father once hit Zee with a kayak oar because, in Father’s words, Zee “would probably do something anyway in the future. . . . [T]his is for what [Zee is] going to do[.]” She said that Father was “[a]lways pushing and hitting” Zee.

¶ 13 In addition, Zee told Ms. Rockwell that he believes that Father left him alone in the house at night: “He has a girlfriend and when I was asleep, he and his girlfriend would go out. . . . I would wake up and he was gone. I couldn’t find him in the house, and he wouldn’t come back until 3 or 4 am.” The Azevedos’ next-door neighbor reported that he recalled several occasions in which Father’s car was missing from the driveway at night and was still gone the following morning when the neighbor awoke for work around 6:30 a.m.

¶ 14 Several neighbors corroborated Mother’s and the children’s reports to Ms. Rockwell of violence by Father. One neighbor spoke of hearing yelling and screaming

AZEVEDO V. ONSLOW CTY. DSS

2021-NCCOA-276

Opinion of the Court

at the Azevedo home, and of seeing Father chase Zee out of the house and throw things at him. Another neighbor reported that she could hear Father screaming at the children from her home three houses down from the Azevedo residence.

¶ 15 Ms. Rockwell conducted various psychological tests on the children, which revealed that Tara indicated concerns for bulimia, and significant concerns for obsessive-compulsive and depressive symptoms. She determined that Zee indicated significant concerns for issues regarding anger, aggression, depression, and possible post-traumatic stress. Ms. Rockwell also reviewed previous psychological evaluations of Zee, which revealed diagnoses of unspecified anxiety, attention deficit hyperactivity disorder, oppositional defiant disorder, and intermittent explosive disorder.

¶ 16 As a result of the interviews and tests conducted by Ms. Rockwell, she determined that the children suffered likely physical abuse and significant emotional abuse by Father, as well as neglect, forms of inappropriate and improper discipline, and poor supervision. She prepared a report detailing her investigation, findings, and assessment.

¶ 17 On 22 April 2019, Father received notice that the director of DSS determined that Father had abused and seriously neglected his children, and intended to add Father's name to the Responsible Individuals List. On 29 April 2019, Father filed a petition seeking judicial review of the director's determination that he had abused

and seriously neglected his children and the decision to include his name on the Responsible Individuals List.

¶ 18 On 27 January 2020, a hearing was held before the Honorable Sarah C. Seaton in Onslow County District Court. Ms. Rockwell and social worker Trumanda Raines testified for DSS, and the trial court admitted Ms. Rockwell's report into evidence at the hearing. Father testified regarding an incident with Tara that occurred during the summer of 2018:

[Tara and Zee] started to fight. And again, [Tara]'s kicking him in between the legs, like -- he's crying. I go up to [Tara], and then she tried to kick me, like, in between the legs, and she spit on me, you know. Maybe a knee-jerk reaction, you know, I kind of went like this, and I slapped her shoulder. I knew where I was going -- like, I knew -- like, I wasn't trying to hit her, like, in the face, but that's okay. Trying to kick me in between the legs and you spit in my face, you know. Was I a little mad? Yes. I'm human. But I wasn't trying to beat her up or nothing violent like that.

And then she was trying to, like, come at me, and then I think, oh, yeah, she tried to kick me in between the legs, spit on me, and then she tried to kick me in between, like, the legs again. That's when I just bear-hugged her for her to stop, you know, and -- you know, and then she's like moving around, so I put her on the ground. I didn't slam her down. I'm just holding her down for a little while, and I told her that, "Hey, when you calm down, I'm gonna let you go." Oh, like, "I'm gonna let you go." And then that's all it was. And then I would have to even separate, like, the kids.

¶ 19 On 2 March 2020, the trial court entered an order concluding as a matter of

law that Zee and Tara had suffered abuse by Father, and that Father was a “responsible individual” as defined by N.C. Gen. Stat. § 7B-101(18a) (2019). The trial court therefore ordered that Father’s name should be maintained on the Responsible Individuals List in the Central Registry. Defendant filed written notice of appeal on 31 March 2020.

II. Jurisdiction

¶ 20 Jurisdiction lies with this Court pursuant to N.C. Gen. Stat. §§ 7A-27(b)(2) and 7B-323(f).

III. Analysis

¶ 21 Father argues that the findings of fact entered by the trial court do not support a conclusion of law that he abused Tara and Zee, and that the trial court therefore erred in so concluding. We conclude that the trial court’s findings are inadequate to enable full appellate review, and accordingly, we remand the matter for the entry of additional findings of fact.

A. Standard of Review

¶ 22 We review a trial court’s order directing a county DSS to place an individual on the Responsible Individuals List for “whether the findings of fact are supported by competent evidence, and whether the legal conclusions are supported by the findings of fact.” *In re Patron*, 250 N.C. App. 375, 381, 792 S.E.2d 853, 858 (2016). We review the trial court’s conclusions of law de novo. *Id.*

¶ 23 In orders regarding placement on the Responsible Individuals List, the trial court must include in its findings of fact “a specific statement of the facts on which the rights of the parties are to be determined, and those findings must be sufficiently specific to enable an appellate court to review the decision and test the correctness of the judgment.” *Id.* at 384, 792 S.E.2d at 860 (quoting *Quick v. Quick*, 305 N.C. 446, 451, 290 S.E.2d 653, 657 (1982)). In addition, “[t]he trial court must, through processes of logical reasoning, based on the evidentiary facts before it, find the ultimate facts essential to support the conclusions of law.” *In re H.J.A.*, 223 N.C. App. 413, 416, 735 S.E.2d 359, 362 (2012) (citation and internal quotation marks omitted).

B. Responsible Individuals List

¶ 24 Our General Statutes define a “responsible individual” as a “parent, guardian, custodian, [or] caretaker . . . who abuses or seriously neglects a juvenile.” N.C. Gen. Stat. § 7B-101(18a). DHHS “maintains a registry of responsible individuals and ‘may provide information from this list to child caring institutions, child placing agencies, group home facilities, and other providers of foster care, child care, or adoption services that need to determine the fitness of individuals to care for and adopt children.’” *In re F.C.D.*, 244 N.C. App. 243, 250–51, 780 S.E.2d 214, 220 (2015) (quoting N.C. Gen. Stat. § 7B-311(b) (2013)).

¶ 25 A county director of DSS may place an individual on the Responsible Individuals List if:

AZEVEDO V. ONSLOW CTY. DSS

2021-NCCOA-276

Opinion of the Court

(1) the individual is given notice pursuant to N.C. Gen. Stat. § 7B-320 that he or she has been identified as a responsible individual by a director of a county department of social services in conjunction with an investigative assessment of abuse or serious neglect; and (2) “the court determines that the individual is a responsible individual as a result of a hearing on the individual’s petition for judicial review.”

Id. at 251, 780 S.E.2d at 220 (quoting N.C. Gen. Stat. § 7B-323(b) (2013)).

¶ 26 An individual may contest the director’s determination by petitioning for judicial review in district court. N.C. Gen. Stat. § 7B-323(a). At a hearing upon the individual’s petition for judicial review, “the director shall have the burden of proving by a preponderance of the evidence the abuse or serious neglect and the identification of the individual seeking judicial review as a responsible individual.” *Id.* § 7B-323(b).

¶ 27 When determining whether DSS has proved abuse by a preponderance of the evidence, courts turn to the definitions provided by N.C. Gen. Stat. § 7B-101:

(1) Abused juveniles. -- Any juvenile less than 18 years of age . . . whose parent, guardian, custodian, or caretaker:

- a. Inflicts or allows to be inflicted upon the juvenile a serious physical injury by other than accidental means;
- b. Creates or allows to be created a substantial risk of serious physical injury to the juvenile by other than accidental means;
- c. Uses or allows to be used upon the juvenile cruel or grossly inappropriate procedures or cruel or grossly inappropriate devices to modify behavior;

.....

e. Creates or allows to be created serious emotional damage to the juvenile; serious emotional damage is evidenced by a juvenile's severe anxiety, depression, withdrawal, or aggressive behavior toward himself or others[.]

N.C. Gen. Stat. § 7B-101(1)(a)–(c), (e).

¶ 28

In the instant case, the trial court made the following pertinent findings of fact:

6. That [DSS] met its burden to show by a preponderance of the evidence the correct determination of abuse or serious neglect by [Father] and naming [Father] as a Responsible Individual, as required under N.C. Gen. Stat. §7B-311(b) and 7B-320, in that:

a. Lauren Rockwell, expert witness concluded that the juveniles [Zee] and [Tara] have been victims of abuse and neglect by [Father].

b. [Tara] attacked [Father] by attempting to kick him in the genitals and spit on his face. That [Father] admitted to swinging towards [Tara]. That [Father] admits to holding down [Tara]. That at that time, she would have been fourteen years old.

c. [Father] admitted that in that same year around Thanksgiving, he travelled with both minor children to a relative's residence in the western part of North Carolina. That during said trip, [Tara] became physically aggressive towards [Zee]. That [Father] attempted to stop the conflict orally, but the conflict continued. That [Father] pulled the vehicle over to the side of the road, exited the vehicle, and approached the rear passenger door where [Tara] was seated. That [Father] opened the rear passenger door; that [Tara] kicked at the door; that [Tara] was flailing in the back seat; that [Father] held [Tara]

until she stopped flailing; and that [Father] and both juveniles continued their trip and Thanksgiving visit without further issue.

¶ 29 Father argues on appeal that a portion of finding of fact 6.b was unsupported by the evidence, that finding of fact 6.a is merely a recitation of the hearing testimony, and that the remaining findings of fact do not support the conclusion that he abused his children. Because we conclude that the trial court’s order is inadequate to enable full appellate review, we do not address all of Father’s arguments. We must remand the order to the trial court for the entry of additional findings of fact.

¶ 30 As explained above, abuse may be proved in several ways. A parent, guardian, custodian, or caretaker abuses a juvenile by, *inter alia*, “[i]nflict[ing] or allow[ing] to be inflicted upon the juvenile a serious physical injury by other than accidental means”; “[u]s[ing] or allow[ing] to be used upon the juvenile cruel or grossly inappropriate procedures or cruel or grossly inappropriate devices to modify behavior”; or “[c]reat[ing] or allow[ing] to be created serious emotional damage to the juvenile[.]” *Id.* Facts that are sufficient to establish abuse by inflicting a serious injury under § 7B-101(1)(a) might not sufficiently establish abuse by, for example, creating serious emotional damage under § 7B-101(1)(e). *See In re H.H.*, 237 N.C. App. 431, 435, 767 S.E.2d 347, 349–50 (2014) (distinguishing between conduct that constitutes abuse by the infliction of a serious physical injury and conduct that “constitutes abuse by the use of cruel or grossly inappropriate procedures” (citation and internal

quotation marks omitted)), *overruled on other grounds by In re B.O.A.*, 372 N.C. 372, 831 S.E.2d 305 (2019).

¶ 31 For example, our Court has upheld an abuse determination based on serious emotional damage under § 7B-101(1)(e) where the trial court found that, despite the fact that the child had not received a clinical diagnosis of psychological harm, the abused child exhibited “hopelessness” and “withdrawal” as a result of the “foul and abusive language” that the mother directed toward the child. *In re A.M.*, 247 N.C. App. 672, 676–77, 786 S.E.2d 772, 776 (2016). In contrast, our Court has upheld an abuse determination based on inflicting a serious physical injury where the parents “spank[ed]” the child, resulting in a “dark, six-inch bruise[that] lasted well over one week[.]” *In re L.T.R. & J.M.R.*, 181 N.C. App. 376, 382–83, 639 S.E.2d 122, 126 (2007).

¶ 32 Here, the trial court found as fact that Father “admit[ted] to holding down” Tara on two occasions and to “swinging towards” her, but the trial court did not specify whether it found these facts to constitute abuse by inflicting serious injury under § 7B-101(1)(a), by creating a substantial risk of injury under subsection (1)(b), by using grossly inappropriate procedures to modify behavior under subsection (1)(c), or by creating serious emotional damage under subsection (1)(e). The trial court must “find . . . the specific ultimate facts sufficient for the appellate court to determine that the judgment is adequately supported by competent evidence.” *H.J.A.*, 223 N.C. App. at 416, 735 S.E.2d at 362 (citations and internal quotation marks omitted). Absent

such findings, we are unable to conclude whether the trial court correctly found that Father abused Tara and Zee.

¶ 33 On remand, “the trial court shall rely upon the existing record, but may in its sole discretion receive such further evidence and further argument from the parties as it deems necessary and appropriate to comply with the instant opinion.” *Heath v. Heath*, 132 N.C. App. 36, 38, 509 S.E.2d 804, 805 (1999).

IV. Conclusion

¶ 34 For the foregoing reasons, we remand the order to the trial court for the entry of additional findings of fact consistent with this opinion.

REMANDED.

Chief Judge STROUD and Judge TYSON concur.

Report per Rule 30(e).