

FILED: May 2, 2012

IN THE COURT OF APPEALS OF THE STATE OF OREGON

In the Matter of
J. L. C., a Youth.

STATE OF OREGON,
Petitioner-Respondent,

v.

J. L. C.,
Appellant.

Petition Number
08JD483

Linn County Circuit Court
J040068

A142575

Carl H. Brumund, Judge.

Argued and submitted on August 06, 2010.

Christa Obold-Eshleman argued the cause and filed the brief for appellant.

Harry B. Wilson, Assistant Attorney General, argued the cause for respondent. With him on the brief were John R. Kroger, Attorney General, and Jerome Lidz, Solicitor General.

Before Brewer, Presiding Judge, and Haselton, Chief Judge, and Duncan, Judge.*

BREWER, P. J.

Affirmed.

*Brewer, P. J., *vice* Armstrong, J.

1 BREWER, P. J.

2 In this juvenile delinquency proceeding, youth appeals from a judgment
3 finding her within the jurisdiction of the juvenile court based on conduct that, if
4 committed by an adult, would constitute the crime of harassment, ORS 166.065.¹ Youth
5 argues that the juvenile court's determination that she had committed harassment when
6 she pushed her mother was erroneous because the state had failed to establish the
7 culpable mental state required by ORS 166.065, namely, that youth had intended to
8 harass or annoy mother. Youth argues that she pushed mother in order to escape physical
9 punishment and, thus, did not act with the requisite culpable mental state. In the
10 alternative, youth argues that evidence of her intent to escape punishment could not, as a
11 matter of law, establish that she intended to harass or annoy mother.²

12 Our review is governed by ORS 19.415(3)(b),³ which provides that "the
13 Court of Appeals, acting in its sole discretion, may try the cause anew upon the record or
14 make one or more factual findings anew upon the record." Youth has not requested *de*

¹ As pertinent here, ORS 166.065 provides:

"(1) A person commits the crime of harassment if the person intentionally:

"(a) Harasses or annoys another person by:

"(A) Subjecting such other person to offensive physical contact[.]"

² We reject youth's second assignment of error without discussion.

³ The notice of appeal in this case was filed after the effective date of the 2009 amendments to ORS 19.415(3). Or Laws 2009, ch 231, § 3.

1 *novo* review, and we decline to conduct such a review. Accordingly, we review the
2 juvenile court's legal conclusions for errors of law, but we are bound by its findings of
3 historical fact unless there is no evidence to support those findings. *Ball v. Gladden*, 250
4 Or 485, 487-88, 443 P2d 621 (1968); [Dept. of Human Services v. C. Z.](#), 236 Or App 436,
5 442, 236 P3d 791 (2010). Where findings on disputed issues of fact are not made but
6 there is evidence supporting more than one possible factual finding, we presume that the
7 juvenile court decided the facts consistently with its ultimate legal conclusion. *C. Z.*, 236
8 Or App at 442. We state the facts consistently with that standard.

9 Youth entered mother's kitchen as mother was baking a cake. Mother and
10 youth began to argue about who would finish the cake; as the argument escalated, mother
11 testified that she tried to walk behind youth, and youth "grabbed me by the arms and
12 pushed me really hard, and I hit a kitchen chair and the corner of my table." Youth
13 testified that, during the argument, mother had "got up in my face and I got scared
14 because I was afraid that she was gonna put me on the ground,⁴ and so I pushed her out of
15 my way so that I could leave." Youth testified that, when she touched mother, she had
16 not intended to "harm or annoy her." In closing argument, youth argued that the state had
17 failed to prove that she had intended to harass or annoy her mother:

18 "The allegation in the petition is that my client intentionally harassed
19 or annoyed her mother. That she did so with a particular purpose. It seems
20 pretty clear to me that when you listen to these two people testify, one is

⁴ Youth testified that, on prior occasions, mother had restrained her by putting her on the ground and sitting on her. Mother acknowledged, during cross-examination, that she had done so on one prior occasion.

1 still hurt by the situation and doesn't have any animosity, the other
2 continues to exhibit some animosity and some anger. And it was pretty
3 clear to me from watching the demeanor, that my client's testimony about
4 the anger that was exhibited by her mother was accurate.

5 "Mother admitted she was mad, admitted she got in her daughter's
6 face, admitted she was threatening, and my client had reason to be
7 concerned about her safety and simply wanted to leave the kitchen and did
8 touch her mother and pushed her in order to leave. I think that's an
9 appropriate reaction from a 16 year old, almost 17 year old, to avoid an
10 altercation. She wanted to cool off, and she did go to her room and cool
11 off.

12 "I don't think the state's proved its case."

13 The juvenile court took jurisdiction of youth, finding that, if it had been
14 committed by an adult, her conduct would have constituted harassment under ORS
15 166.065. The court explained:

16 "There's a difference between what the law provides and what might
17 be wise. The law provides that a parent is privileged to use reasonable
18 physical force to control a child. It may not be wise to use that force
19 against a 16 year old child, but the law provides that a parent has that right.
20 And the law does not provide that a child has the right to use physical force
21 to resist that exercise of privilege[d] force by the parent.

22 "So, based on that premise, jurisdiction is taken. The state's proved
23 its case."

24 Youth made no further argument after the juvenile court announced its determination.

25 On appeal, youth concedes that her act of touching mother was "offensive
26 physical contact." However, she argues that the state presented no evidence that she had
27 intended to harass or annoy mother by subjecting her to that contact. Youth advances
28 two possible views of the juvenile court's statement set out above. First, youth argues
29 that the statement amounted to a finding of fact that she acted with the intent to resist

1 physical punishment by mother and that her act had been wrongful because she was not
2 privileged to resist mother. That finding, youth contends, necessarily means that the
3 juvenile court found that she had not intended to harass or annoy mother. Alternatively,
4 youth argues that, if the juvenile court implicitly found that she acted with the intent to
5 harass or annoy mother, such a finding was impermissible because intent to harass or
6 annoy cannot be proved by evidence of resistance to parental physical discipline.

7 The state reads the juvenile court's statements differently. It argues that
8 "the juvenile court's statement describes the law; it is not a finding. In fact, the juvenile
9 court did not make an explicit finding that youth possessed the requisite intent."

10 Accordingly, the state argues, "this court should 'presume that the facts were decided in a
11 manner consistent with the ultimate conclusion.'" (Quoting *Ball*, 250 Or at 487).

12 Because the juvenile court found youth to be within its jurisdiction for having engaged in
13 conduct amounting to harassment under ORS 166.065, the state reasons, we should
14 presume that it found that youth acted with the intent to harass or annoy mother because
15 there is evidence in the record to support such a finding.

16 We begin with youth's alternative argument, which we reject because youth
17 failed to preserve it before the juvenile court. An issue is preserved for appellate review
18 if the trial court had the opportunity to "identify its alleged error with enough clarity to
19 permit it to consider and correct the error immediately, if correction is warranted." [State](#)
20 [v. Wyatt](#), 331 Or 335, 343, 15 P3d 22 (2000). Here, as set out above, youth argued to the
21 juvenile court that the state had not "proved its case" because it failed to adduce evidence

1 that she had intended to harass or annoy mother. Youth did not address the juvenile
2 court's oral statement with respect to youth's lack of legal privilege to resist mother's
3 discipline, and youth made no further argument after the court took jurisdiction of her.
4 Accordingly, youth failed to alert the juvenile court to the argument she makes before
5 this court: that evidence of resistance to parental physical discipline cannot, as a matter
6 of law, be evidence of intent to harass or annoy. It follows that that argument is not
7 preserved for our review.

8 We turn, then, to the parties' competing interpretations of the juvenile
9 court's oral statement. As noted, youth argues that the statement constituted a factual
10 finding that she had intended to resist mother's punishment, and the state argues, to the
11 contrary, that it was not a finding of fact at all, but merely a statement of the juvenile
12 court's view of the law. As noted, in taking jurisdiction of youth, the juvenile court
13 explained that

14 "[t]here's a difference between what the law provides and what might be
15 wise. The law provides that a parent is privileged to use reasonable
16 physical force to control a child. It may not be wise to use that force
17 against a 16 year old child, but the law provides that a parent has that right.
18 And the law does not provide that a child has the right to use physical force
19 to resist that exercise of privilege[d] force by the parent.

20 "So, based on that premise, jurisdiction is taken. *The state's proved*
21 *its case.*"

22 (Emphasis added.) We agree with the state that the juvenile court's statement regarding
23 legal privileges was not inconsistent with the predicate factual finding underlying the
24 court's ultimate decision: namely, that youth's actions demonstrated her intent to harass

1 or annoy mother.

2 As the state correctly points out, the evidence in the record is sufficient to
3 support *both* a finding that youth intended to harass or annoy mother *and* a finding that
4 youth intended to resist mother's punishment. The juvenile court, in taking jurisdiction of
5 youth on the ground that she had engaged in conduct constituting harassment, necessarily
6 found that that evidence proved youth's intent to harass or annoy mother. Regardless of
7 whether that same evidence might also demonstrate some other intent on the part of
8 youth, we must "presume that the juvenile court decided the facts consistently with its
9 ultimate legal conclusion." *C. Z.*, 236 Or App at 442.

10 Affirmed.