IN THE UTAH COURT OF APPEALS

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T.C.,	)	MEMORANDUM DECISION
	)	(Not For Official Publication)
Petitioner and Appellant,	)	
	)	Case No. 20070573-CA
v.	)	
	)	
	)	F I L E D
Department of Human Services, Division of Child and Family Services,	)	(September 5, 2008)
	)	
	)	2008 UT App 324
Respondent and Appellee.	)	

Third District Juvenile, West Jordan Department, 516178
The Honorable Christine Decker

Attorneys: Elizabeth Hunt and Earl Xaiz, Salt Lake City, for Appellant
Mark L. Shurtleff and John M. Patterson, Salt Lake City, for Appellee

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Before Judges Greenwood, Davis, and McHugh.

McHUGH, Judge:

T.C. (Father) appeals the juvenile court's denial of his petition to remove or reverse the Division of Child and Family Services' substantiation of the allegation of sexual abuse of T. (Son). See generally Utah Code Ann. § 78-3a-320 (2006) ("Upon the filing with the court of a petition . . . informing the court . . . that the division has made a supported finding that a person committed a severe type of child abuse . . . the court shall [] make a finding of substantiated, unsubstantiated, or without merit . . . ."). [1] Father argues there was insufficient evidence to support the court's ruling. We "review the juvenile court's factual findings based upon the clearly erroneous standard." In re E.R., 2001 UT App 66, ¶ 11, 21 P.3d 680; see also Utah R. Civ. P. 52(a). Because of the highly deferential nature of our review and the relatively low standard of proof, we

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[1]This section has since been amended and renumbered. See Utah Code Ann. § 78A-6-323 (Supp. 2008).

hold that the evidence presented was sufficient to support the juvenile court's ruling. Accordingly, we affirm.

Father highlights, and we have reviewed, several of the more troublesome aspects of the evidence presented in the juvenile court, including Son's limited ability to discern the difference between truth and lies as evidenced in Son's recorded interview with Detective Holdaway; Son's history of inappropriate sexual comments and activities; Son's repeated changes in his allegations of abuse, which inconsistently included him sodomizing Father, him being sodomized by Father, and Father's participation in oral sex; Son's inconsistent descriptions of the duration and number of abusive events, ranging from twice within the past few years to repeatedly since the time Son was a baby; Son's statements regarding Father's girlfriend and her daughter; the girlfriend's direct refutation of at least a portion of Son's testimony; the timing of Son's allegations in relation to Father's petition to be granted custody of Son, thereby switching the obligation to pay child support to Son's Mother (Mother); and the response by other family members, including Mother's acquiescence to Father's three-day vacation with Son after Son allegedly told Mother of Father's abuse.

Nevertheless, there is also evidence supporting the juvenile court's ruling. For example, Son was unable to comprehend vaginal sex after repeated explanations but clearly understood anal sex;[2] Son consistently associated physical pain with the anal penetration he alleged; and Son, although recanting some of his prior statements, insisted "[Father] really did it to me." Moreover, some of the inconsistencies Father highlights may be attributed to Son's disabilities. Son, who was seventeen at the time of trial, functions at a first grade academic level and has difficulty answering direct questions. See generally State v. Wilcox, 808 P.2d 1028, 1033 (Utah 1991) ("If we were to hold that . . . no offense could be charged because the alleged victim is too young to testify with certainty concerning the times, dates, or places where the abuse occurred, we would leave the youngest and most vulnerable children with no legal protection.").

Furthermore, the finding that Father primarily challenges on appeal is supported by the record. Father contests the juvenile court's finding that "[w]hile [Son] was not consistent in all the details, he has been consistent in stating that his Father put his thing (penis) in [Son]'s butt and that it hurt." As noted, several of Son's statements conflicted or changed. However, Son's claim that he was sodomized at least once by Father

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[2]The record includes a picture drawn by Son showing where Father had allegedly inserted his penis.

remained constant even when Son subsequently met with therapists, and those therapists found Son's testimony credible.

We acknowledge that the weight of the evidence in support of and conflicting with the trial court's conclusion is quite even and that under any other standard of proof it would likely be insufficient. See generally In re Z.D., 2006 UT 54, ¶ 40, 147 P.3d 401 ("It is also appropriate when evaluating whether a result was 'clearly erroneous' for the reviewing court to consider the standard of proof the prevailing party below was required to meet."). Unlike a criminal conviction, however, the standard of proof required for substantiation was merely a preponderance of the evidence. See Utah Code Ann. § 62A-4a-101(28) (2006).[3] A preponderance of the evidence is met if the trier of fact concludes that it is more likely than not that the allegations are true. See State v. Archuleta, 812 P.2d 80, 82-83 (Utah Ct. App. 1991). Essentially, Father

> invites us to re-weigh the evidence on a preponderance scale, in hopes that we might conclude that it did not preponderate toward a finding that he [abused Son]. We decline such invitation. . . . [I]n the trial court, the State must prove to the satisfaction of the trial judge that it is more likely than not, i.e., by a preponderance, that [Father abused Son]. Then, on appeal, we review the evidence, not on a preponderance scale, but simply to determine if the trial court's finding is against the clear weight of the evidence.

State v. Martinez, 811 P.2d 205, 208 n.4 (Utah Ct. App. 1991) (reviewing trial court's finding that the defendant violated his probation).

When reviewing the juvenile court's findings on appeal, we defer to both its unique expertise and its greater ability to assess the credibility of witnesses. The juvenile court "is given a 'wide latitude of discretion as to the judgments arrived at' based upon not only the court's opportunity to judge credibility firsthand, but also based on the juvenile court judges' 'special training, experience and interest in this field, and . . . devoted . . . attention to such matters.'" In re E.R., 2001 UT App 66, ¶ 11, 21 P.3d 680 (omissions in original)

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[3]This section has since been amended. However, the relevant provision remained the same. Compare Utah Code Ann. § 62A-4a-101(28) (2006) with id. § 62A-4a-101(32) (Supp. 2008).

(quoting In re F.D., 14 Utah 2d 47, 376 P.2d 948, 951 (1962)). This case was complicated by the communication difficulties and behavioral problems caused by Son's disabilities. The juvenile court has specialized training and experience in evaluating child testimony and expert testimony related to child sexual abuse. It is, therefore, appropriate for us to defer to that court's conclusion that the evidence tipped the scales in favor of a finding of substantiation. Accordingly, we cannot say the juvenile court's ruling with respect to Son's allegation of this specific type of abuse was clearly erroneous.

"The mere fact that we could reach a different result than the juvenile court on the same evidence does not justify setting aside the juvenile court's findings." In re S.L., 1999 UT App 390, ¶ 23, 995 P.2d 17 (internal quotation marks omitted); see also In re Z.D., 2006 UT 54, ¶ 33 ("An appellate court must be capable of discriminating between discomfort over a trial court's findings of fact--which it must tolerate--and those that require the court's intercession. It must forebear disturbing the 'close call.'"). "The doctrine that shapes and guides judicial review is that it is not within the province of an appellate court to substitute its judgment for that of a front line fact-finder . . . ." In re Z.D., 2006 UT 54, ¶ 24. Accordingly, we affirm.

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Carolyn B. McHugh, Judge

WE CONCUR:

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Pamela T. Greenwood,
Presiding Judge

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James Z. Davis, Judge