

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of the Dependency of:
C.R.M.,
D.O.B.: 07/11/2011,

Minor Child,

TIA CUSICK,

Appellant,

v.

STATE OF WASHINGTON,
DEPARTMENT OF CHILDREN,
YOUTH, AND FAMILIES,

Respondent,

DIVISION ONE

No. 80006-0-1

UNPUBLISHED OPINION

DWYER, J. — Tia Cusick appeals the trial court’s order finding that her son, C.R.M., was a dependent child. Cusick argues that insufficient evidence supports the dependency. We conclude that substantial evidence supports the findings of fact, and that the findings of fact support the conclusion of law that C.R.M. is a dependent child. We affirm.

I

Tia Cusick is the mother of C.R.M., born in July 2011. Cusick and C.R.M. lived with Cusick’s parents in their home. Cusick has battled substance abuse

issues for many years. She was charged with driving under the influence (DUI) four times between 2007 and 2012. She lost her nursing job because she failed a urinalysis test and was accused of diverting medications. She completed several chemical dependency treatment programs between 2007 and 2017 but could not maintain her sobriety.

On July 29, 2018, multiple witnesses called 911 to report concerns about Cusick's erratic and unsafe driving on I-90 with C.R.M. in the car. A driver attempted to slow Cusick's car by using his own car to block her. He saw Cusick's car collide with a retaining wall as she drove onward. Cusick eventually arrived at a QFC, where witnesses reported that she was behaving strangely. Police arrested Cusick for DUI and reckless endangerment of C.R.M. She pleaded guilty to DUI and received a suspended sentence with mandatory conditions, including treatment. After entering her plea, her blood test results came back positive for cocaine, methamphetamine, and oxycodone.

On August 16, 2018, the Department of Children, Youth, and Families (the Department) filed a dependency petition alleging both abuse and neglect of C.R.M. and the absence of a parent or guardian adequately capable of caring for C.R.M.¹ The petition referenced the details of Cusick's most recent DUI, as well as her prior DUIs, her history of substance abuse issues, and her denial of current drug use.

¹ The court entered an agreed dependency petition as to C.R.M.'s father on October 26, 2018. He is not a participant in this appeal.

Upon Cusick's release from custody, she began chemical dependency treatment at Integration of Knowledge and Resources for Occupational Needs (IKRON). There, she was diagnosed with major depressive disorder, recurrent mild and generalized anxiety disorder, alcohol abuse disorder, cocaine use disorder, and opiate use disorder. The initial recommendation was for relapse prevention, but due to her history it was modified to intensive outpatient treatment. Despite providing several urinalysis tests that came back positive for prescription medications, Cusick graduated from intensive outpatient treatment in January 2019 and moved to relapse prevention.

A six-day bench trial on the dependency petition took place in March 2019. The court heard testimony from six witnesses.

Cusick testified that she is a "good mom" who will do anything it takes to be with her child. She asserted that she actively sought recovery and demonstrated progress and commitment by attending all meetings, never missing a urinalysis test, asking for help, and listening to other people's point of view. She admitted to her substance abuse struggle and the negative impact it has had on her life. She described how treatment provided her with skills and resources for recovery and improved her ability to cope with negative emotions. And she credited her substance abuse counselor with helping her make significant progress.

However, when asked about her erratic driving on July 29, 2018, Cusick continued to maintain that it was due to a panic attack. She admitted that she used cocaine and oxycodone two days prior but denied having used any

substances or feeling impaired by any substances on the day of the incident.

Cusick acknowledged that she had several urinalysis test results during treatment that came back positive for prescription opioids but asserted that these results were fully consistent with her properly prescribed medications.

Sergeant Samuel Copeland interacted with Cusick at the QFC where she was arrested on July 29, 2018. He testified that, based on his training and experience, Cusick exhibited behaviors consistent with her being under the influence of narcotics. He said that Cusick attributed her behaviors to anxiety.

Deputy Justin Dear testified that he encountered Cusick at Swedish Hospital in Issaquah, where she had been taken for a blood draw following her arrest. Dear testified that Cusick spontaneously admitted using cocaine two days prior and asked whether it would still be in her system. He further testified that, on the previous day, he had been dispatched to a Safeway store where staff attempted to prevent Cusick from driving away with C.R.M. because she appeared to be “drunk or high on something.”

Iris Sepe was the recovery services supervisor at IKRON who supervised Cusick’s chemical dependency assessment and served as her primary clinician. She testified that Cusick “made incredible progress” in treatment and believes Cusick “is very sincere about her recovery, and about changing her life.” Sepe testified that Cusick was “one hundred percent” in compliance with her treatment, despite having positive urinalysis tests for prescription medications in October 2018, November 2018, and February 2019. Sepe explained that a positive test for a verified prescription medication is within compliance. Sepe believed these

results did not constitute noncompliance because Cusick had been transparent about all of her prescriptions, did not try to hide any prescriptions, and notified her in a timely manner when she obtains a prescription.

Although Cusick had two urinalysis test results in September 2018 that came back “diluted,” possibly as a result of drinking large amounts of water to affect the result, Sepe testified that such results are not considered positive at IKRON. Sepe testified that she typically informs medical providers and prescribers about the substance abuse history of individuals in treatment but acknowledged that she did not speak with Cusick’s doctors about her opioid prescriptions in November 2018 or February 2019. She also testified that opiate abuse “really hasn’t been the focus of most of our sessions.”

Sepe acknowledged that she was not fully aware of Cusick’s substance abuse history, as she did not conduct the initial assessment. She did not know that Cusick had a history of amphetamine stimulant use or that she lost her nursing license for diverting methadone. She thought Cusick had a prescription for oxycodone at the time of her most recent DUI, but no such prescription was listed on Cusick’s assessment. Regarding Cusick’s DUI on July 29, 2018, Sepe stated that “it sounds like she was having a panic attack and her anxiety was overwhelming.” She felt that Cusick had taken full responsibility for the incident.

Megan Socea, the assigned social worker for C.R.M.’s case, opined that C.R.M. should be found dependent due to ongoing concerns about prescription medication abuse. Socea was concerned about Cusick’s history of prior DUIs, her claim that she was not under the influence on July 29, 2018, and her diluted

and positive urinalysis test results. She also expressed concern that Sepe was not fully aware of Cusick's substance abuse history, that treatment was not sufficiently focused on her substance use, and that her prescription medications had not been properly verified and excused. Socea opined that Cusick was "maintaining [her] sobriety to complete things or check the boxes or go through the motions" in order to get her son returned to her care.

Jacqui Hammond, the court appointed special advocate (CASA), also opined that the court should find C.R.M. dependent. Hammond testified that C.R.M. and his mother are highly bonded and attached, and that she had no concerns about the interactions she observed during home visits. However, Hammond expressed concerns about the short length of time Cusick had been sober in relation to her long history of DUIs and substance abuse, particularly where Cusick had several positive urinalysis test results during treatment and failed to notify Hammond about her new prescriptions. Hammond was also concerned about Cusick's comment that she would not use drugs again unless her parents have C.R.M. Hammond believed C.R.M. was at risk of serious harm without court involvement.

The trial court entered an order of dependency supported by findings of fact and conclusions of law. The court entered the following challenged findings of fact:

8. Ms. Sepe testified she was aware of some of Ms. Cusick's background and history including her five charged prior DUIs and treatment history but she was not aware of other information including use of her alcohol during her pregnancy with [C.R.M.], her prior position and discharge as a nurse for a positive UA for methadone and Drug Diversion and she was not aware of Ms.

Cusick's most recent urinalysis results being positive for opiate in February 2019 or the positive result for opiates and hydromorphone in October 2018.

12. Ms. Cusick's concerning urinalysis results since being in treatment at IKRON included a positive UA for hydromorphone 10/9/18, a positive UA for valium on 11/8/18 which was post-surgery in November 2018, a positive UA for valium and morphine in 11/13/18 over one week post surgery. There was no explanation from the mother or her C.D.P. on why she had a positive for morphine on 11/13/18 but not 11/8/18, and an additional positive result for hydromorphone in February 2019. Ms. Cusick testified that she also had a prescription and took codeine cough medicine in January 2019 due to her having pneumonia.

13. Ms. Sepe testified that Ms. Cusick made great progress and was committed to her recovery. Ms. Sepe did not have any concerns about Ms. Cusick's prescriptions, which indicated the presence of opiates in four of the last five months of her substance abuse treatment at IKRON. Ms. Sepe testified she did not inquire with any medical professionals as to what they knew about Ms. Cusick's substance abuse treatment or why they were prescribing such medication because she had no basis to question the need for the prescriptions.

48. The Court found the State/Department has met its burden by a preponderance establishing that [C.R.M.] has experienced negligent treatment or maltreatment by his mother due to her failure to act and the cumulative effects of a pattern of conduct, behavior or an action that evidences a serious disregard and consequences of such magnitude as to constitute a clear and present danger to [C.R.M.]'s health, welfare or safety.

49. The State/Department has met its burden by a preponderance of the evidence establishing that [C.R.M.] has no parent, guardian or custody [sic] capable of adequately caring for him such that he is in circumstances, which constitute a danger of substantial damage to his psychological or physical development.

The court made numerous other unchallenged findings. It found that although Cusick was "sincere," and much of what she said was corroborated by other witnesses, her belief that she was not impaired on July 29, 2018 or that she does not have an issue with prescription opiate medications was contrary to the

evidence. It found the testimony of Socea and Hammond credible and that Cusick's and Sepe's explanation of the July 29, 2018 incident was not credible. It further found that "Ms. Cusick's pattern of behavior establishes a very concerning history of abuse and it puts current concerns into proper context." Cusick appeals.

II

Cusick argues that insufficient evidence supports the trial court's finding of dependency. We disagree.

A

"Dependency proceedings are designed to protect children from harm, help parents alleviate the problems that led to intervention, and reunite families." In re Dependency of P.H.V.S., 186 Wn. App. 167, 181, 339 P.3d 225 (2015). Unlike a parental termination proceeding, a dependency hearing is "a preliminary, remedial, nonadversary proceeding' that does not permanently deprive a parent of any rights." In re Welfare of Key, 119 Wn.2d 600, 609, 836 P.2d 200 (1992) (quoting In re Dependency of A.W., 53 Wn. App. 22, 30, 765 P.2d 307 (1988)).

A "dependent child" is a child who (a) has been abandoned, (b) is abused or neglected, or (c) has no parent, guardian, or custodian capable of adequately caring for the child, such that the child is in circumstances that constitute a danger of substantial damage to the child's psychological or physical development. RCW 13.34.030(6). To find a child dependent, the State must prove by a preponderance of the evidence that the child meets the statutory

definition of dependency under RCW 13.34.030(6). In re Dependency of E.L.F., 117 Wn. App. 241, 245, 70 P.3d 163 (2003). Preponderance of the evidence means “more likely than not to be true.” In re Dependency of M.S.D., 144 Wn. App. 468, 478, 182 P.3d 978 (2008).

In evaluating a claim of insufficiency of the evidence in a dependency proceeding, we determine whether substantial evidence supports the trial court’s findings of fact and whether those findings of fact support the trial court’s conclusions of law. In re Dependency of C.M., 118 Wn. App. 643, 649, 78 P.3d 191 (2003). Evidence is substantial if, viewed in the light most favorable to the prevailing party, a rational trier of fact could find the fact proved by a preponderance of the evidence. E.L.F., 117 Wn. App. at 245. We do not weigh the evidence or make witness credibility determinations. In re Welfare of C.B., 134 Wn. App. 942, 953, 143 P.3d 846 (2006). We treat unchallenged findings of fact as verities on appeal. In re Interest of J.F., 109 Wn. App. 718, 722, 37 P.3d 1227 (2001).

B

We address, in turn, the evidence supporting each of the two statutory bases on which the trial court found C.R.M. dependent.

RCW 13.34.030(6)(b) provides that a child may be declared dependent if he is abused or neglected as defined in chapter 26.44 RCW. “Abuse or neglect” is defined, in pertinent part, as “the negligent treatment or maltreatment of a child by a person responsible for or providing care to the child.” RCW 26.44.020(1). “Negligent treatment or maltreatment” is further defined as “an act or a failure to

act, or the cumulative effects of a pattern of conduct, behavior, or inaction, that evidences a serious disregard of consequences of such magnitude as to constitute a clear and present danger to a child's health, welfare, or safety."

RCW 26.44.020(18).

Cusick argues that the Department failed to prove that C.R.M. is presently neglected as required by RCW 13.34.030(6)(b) because at the time of trial she had been sober for eight months and had demonstrated an ability to properly care for C.R.M. while living at home with her parents. She further contends that the evidence does not support a finding that she disregarded "consequences of such magnitude as to constitute a clear and present danger to" C.R.M. See RCW 26.44.020(18).

However, when a court is evaluating whether there exists a "clear and present danger[,] . . . evidence of a parent's substance abuse as a contributing factor to negligent treatment or maltreatment shall be given great weight." RCW 26.44.020(18). Cusick points to Sepe's testimony that she was sincere in her efforts to recover and fully compliant with treatment. But Sepe was often unable to explain inconsistencies in Cusick's positive test results, was not fully aware of Cusick's substance abuse history, and did not always follow up with Cusick's medical providers regarding her prescriptions. In unchallenged findings, Socea and Hammond both expressed concern regarding Cusick's unexplained positive test results, Sepe's oversight, and Cusick's commitment to sobriety. The court found their testimony credible. And Cusick does not challenge the court's finding that her explanation of the July 29, 2018 incident was not credible.

Moreover, a parent's past history is a factor that may be weighed in evaluating the current risk to a child. See In re Dependency of Brown, 149 Wn.2d 836, 841-42, 72 P.3d 757 (2003). Cusick's past history included five DUI charges, losing her nursing license for drug diversion, drinking during her pregnancy with C.R.M., and multiple relapses following treatment. And the court, in an unchallenged finding, determined that "Ms. Cusick's pattern of behavior establishes a very concerning history of abuse and . . . puts current concerns into proper context." Ample evidence supports the court's finding of neglect.

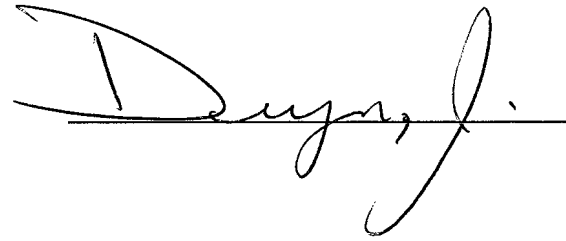
C

RCW 13.34.030(6)(c) provides that a child may be declared dependent if he "[h]as no parent, guardian, or custodian capable of adequately caring for the child, such that the child is in circumstances which constitute a danger of substantial damage to the child's psychological or physical development." Dependencies based on RCW 13.34.030(6)(c) do not require a finding of parental unfitness; the provision allows for "consideration of both a child's special needs and any limitations or other circumstances which affect a parent's ability to respond to those needs." In re Dependency of Schermer, 161 Wn.2d 927, 944, 169 P.3d 452 (2007). There are no specific factors the court must consider when determining whether a parent is capable of adequately parenting a child. Schermer, 161 Wn.2d at 952. Rather, the inquiry is highly fact specific. Schermer, 161 Wn.2d at 952. The statute "does not require proof of actual harm, only a 'danger' of harm." Schermer, 161 Wn.2d at 951.

In challenging this finding, Cusick notes that she and C.R.M. are deeply bonded, that her parenting assessment recommended no services other than to remain in treatment, and that Socea and Hammond expressed no concerns with her parenting apart from substance use. She further asserts that this finding is based solely on the July 29, 2018 incident, which she characterizes as one lapse of judgment in eight years of parenting. She contends that there is no evidence her drug use negatively affected her parenting outside of this isolated incident.

There is no question that Cusick loves her child, that they are bonded, and that she is a capable parent when sober. But the record is replete with evidence that ongoing court intervention is necessary to ensure that C.R.M. remains safe. This includes Cusick's substance abuse history, her continued insistence that her most recent DUI resulted from a panic attack, and concerns regarding her commitment to sobriety. If Cusick were to repeat her past behaviors, C.R.M. could suffer severe consequences. The Department does not need to "stay its hand until actual damage to the endangered child has resulted." In re Welfare of Frederiksen, 25 Wn. App. 726, 733, 610 P.2d 371 (1979). Ample evidence supports this finding.

Affirmed.



A handwritten signature in cursive script, reading "Dwyer, J.", written over a horizontal line.

WE CONCUR:



Two handwritten signatures in cursive script, "Leach, J." and "Appelwick, J.", written side-by-side over a horizontal line.