

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

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|-------------------------------------|---|---------------------------------|
| In the Matter of the Dependency of: |) | |
| |) | DIVISION ONE |
| D.R.R.B.-J., DOB: 03/08/1998, |) | |
| T.H.B.-W., DOB: 08/31/2005, and |) | |
| B.M.B.-W., DOB: 03/04/2007, |) | No. 65961-8-I |
| |) | (consol. with No. 65963-4-I and |
| |) | No. 65962-6-I) |
| |) | |
| Minor Children. |) | |
| |) | |
| AMBER BULLE, |) | UNPUBLISHED OPINION |
| |) | |
| Appellant, |) | |
| |) | |
| v. |) | |
| |) | |
| STATE OF WASHINGTON, |) | |
| DEPARTMENT OF SOCIAL |) | |
| AND HEALTH SERVICES, |) | |
| |) | |
| Respondent. |) | FILED: June 13, 2011 |
| _____ |) | |

Dwyer, C.J. — Amber Bulle challenges the juvenile court’s determination that her three children, D.R.R.B.-J., T.H.B.-W., and B.M.B.-W., are dependent children pursuant to RCW 13.34.030(6)(b) and (c). After Bulle filed her notice of appeal, the juvenile court dismissed the order of dependency as to T.H.B.-W. and B.M.B.-W. We conclude that the dismissal of the order of dependency as to those children renders Bulle’s related appeal moot, and, therefore, we do not address whether the juvenile court erred by determining that T.H.B.-W. and B.M.B.-W. are dependent. Thus, we address only Bulle’s contention that the juvenile court’s finding of dependency as to D.R.R.B.-J. is not supported by substantial evidence. Because we conclude that substantial evidence supports

the juvenile court's determination, we affirm.

I

Amber Bulle is the mother of D.R.R.B.-J., age 13, T.H.B.-W., age 5, and B.M.B.-W., age 4. Her husband, Matthew Williams, is the father of T.H.B.-W. and B.M.B.-W. and the stepfather of D.R.R.B.-J.

On May 21, 2010, D.R.R.B.-J. ran away from home after an argument with her stepfather. Upon learning that D.R.R.B.-J. was at a friend's home, Bulle and her friend, Jonathon Clawson, went to that home to retrieve D.R.R.B.-J. The next day, Bulle escorted D.R.R.B.-J. to school and told the school guidance counselor that D.R.R.B.-J. had run away from home, that Bulle had spanked D.R.R.B.-J. three times when she found her daughter, and that the guidance counselor should take precautions to ensure that D.R.R.B.-J. did not run away again.

After Bulle left the school, D.R.R.B.-J. told the guidance counselor that her mother had physically abused her. The guidance counselor notified law enforcement, and D.R.R.B.-J. was placed in protective custody. Child Protective Services (CPS) investigator Alana Madrano interviewed D.R.R.B.-J. and observed that the child had swelling on her forehead and a bruise on her upper eyelid. Madrano thought that it was obvious that something had happened to the child.

Subsequently, the Department of Social and Health Services (DSHS)

arranged a family team decision meeting to develop a safety plan for the children. At that meeting, Bulle stated: “[T]his was the first time blowing on [D.R.R.B.-J.] and I feel badly I left marks.” Report of Proceedings (RP) (July 22, 2010) at 60. Bulle also acknowledged at the meeting that she was schizophrenic but had been off of her medication for years and that she had a history of violence toward siblings and pets. Bulle offered to move out of the family home so that her two younger children, T.H.B.-W. and B.M.B.-W., could remain in the home with their father. However, when Madrano visited the home unannounced the next day, she found Bulle in the home. T.H.B.-W. and B.M.B.-W. were not there. DSHS thereafter filed a dependency petition for all three children.

The juvenile court held a fact finding hearing at which D.R.R.B.-J. and Bulle gave conflicting accounts of the May 21 incident. D.R.R.B.-J. testified that, when her mother picked her up from the friend’s home to which she had run away, her mother grabbed her by the hair and pulled her out of the house. D.R.R.B.-J. further testified that Bulle had slapped her on her ear, causing both pain and a “high pitch ringing sound” and making her ear feel wet inside. RP (July 22, 2010) at 81. She also testified that her mother had punched her on her head. On the way home, D.R.R.B.-J. testified, Bulle yelled and cursed at her and continued hitting her on the head. Upon returning home, her mother head-butted her—pulling her own head backward and then catapulting it forward into

D.R.R.B.-J.'s head—three times. This was particularly painful because, D.R.R.B.-J. testified, Bulle has a metal plate in her forehead. D.R.R.B.-J. additionally testified that she had seen a doctor twice since the incident for treatment of the ear injury.

In contrast, Bulle testified that she had grabbed D.R.R.B.-J.'s shirt because D.R.R.B.-J. would not willingly leave her friend's home. Bulle acknowledged that she had grabbed her daughter's hair as well, but she testified that this was accidental, as D.R.R.B.-J.'s hair was tangled in her shirt. Bulle testified that, when she discovered that she had grabbed her daughter's hair, she "let go and readjusted [D.R.R.B.-J.'s] shirt." RP (July 22, 2010) at 18. Bulle denied physically assaulting her daughter. She testified that any marks on D.R.R.B.-J. "would be from her trying to get out of her shirt while I was holding onto her." RP (July 22, 2010) at 21. On cross-examination, Bulle explained that she and D.R.R.B.-J. had "collided heads on accident" during the incident. RP (July 22, 2010) at 31. When later questioned as to why she had earlier left this out of her testimony, Bulle responded that she had forgotten and that she has "memory issues." RP (July 22, 2010) at 48. Bulle admitted stating at the family team decision meeting that she felt badly for "blowing on" D.R.R.B.-J. RP (July 22, 2010) at 20-21. However, she asserted that this meant only that she felt badly for yelling at her daughter. Bulle denied stating that she felt badly for leaving marks on D.R.R.B.-J.

Both Williams and Clawson testified that Bulle had not physically assaulted D.R.R.B.-J. Williams testified that “while [Bulle] was verbally reprimanding [D.R.R.B.-J.] her and [D.R.R.B.-J.] had collided as they were like coming into each other.” RP (July 22, 2010) at 143. He added that Bulle immediately began to say “sorry, [D.R.R.B.-J.], I love you, that was an accident.” RP (July 22, 2010) at 143. Clawson, who had accompanied Bulle to retrieve D.R.R.B.-J. from her friend’s home, testified that Bulle had grabbed D.R.R.B.-J. and “then realized that she accidentally grabbed her by her hair and readjusted.” RP (July 22, 2010) at 121.

After the fact finding hearing, the juvenile court made its oral ruling. The court determined that the injuries observed by Madrano, the CPS investigator, were consistent with D.R.R.B.-J.’s version of the incident. The court noted that Bulle’s testimony that the mark on D.R.R.B.-J.’s head was caused by D.R.R.B.-J.’s attempt to get out of her shirt was not believable, given that no one had testified that D.R.R.B.-J. had ever attempted to do so.

Moreover, the juvenile court found unpersuasive Bulle’s testimony that her statement regarding “blowing on” D.R.R.B.-J. simply meant yelling at her. RP (Aug. 9, 2010) at 33-34. Because testimony indicated that Bulle regularly yelled at her daughter, and because Bulle stated in the family team decision meeting that it was her first time “blowing on” her daughter, the court found Bulle’s assertion to be unbelievable. Thus, the court concluded that Bulle had

assaulted D.R.R.B.-J.

The juvenile court additionally found the testimony of Clawson and Williams to be not credible. The court noted that Clawson could not have known simply from observing the event that Bulle had accidentally grabbed D.R.R.B.-J.'s hair. Thus, the court determined that Clawson was simply corroborating Bulle's story. Moreover, the court determined that Williams was attempting to protect his wife. The court noted that Williams was the only person who testified that Bulle had apologized to D.R.R.B.-J. after their heads allegedly collided by accident.

On August 10, 2010, the juvenile court entered an order of dependency finding that Bulle's three children were "dependent children" pursuant to RCW 13.34.030(6)(b) and (c).¹ The court determined that D.R.R.B.-J. had been abused and that T.H.B.-W. and B.M.B.-W. "are at risk of abuse or neglect, based upon what occurred with [D.R.R.B.-J.]" RP (Aug. 9, 2010) at 32.

Bulle appeals from the juvenile court's order of dependency.

During the pendency of this appeal, the juvenile court entered an order dismissing the dependencies of T.H.B.-W. and B.M.B.-W., and DSHS filed a motion to dismiss the appeal as to those children, contending that those portions of the appeal are moot. We address the issue of mootness in this opinion.

III

¹ The juvenile court found D.R.R.B.-J. to be dependent pursuant to both RCW 13.34.030(6)(b) and (c) and found the two younger children to be dependent pursuant only to RCW 13.34.030(6)(c).

Bulle contends that the juvenile court's finding that D.R.R.B.-J. is a dependent child pursuant to RCW 13.34.030(6)(b) and (c) is not supported by substantial evidence. We disagree.

In order for a court to declare a child dependent, it must find by a preponderance of the evidence that the child meets one of the statutory definitions of a "dependent child" set forth in RCW 13.34.030(6). In re Welfare of Key, 119 Wn.2d 600, 612, 836 P.2d 200 (1992). A "dependent child" is any 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 which present a danger of substantial damage to the child's psychological or physical development. RCW 13.34.030(6).

The court's findings in a dependency matter are reviewed under a substantial evidence standard. Key, 119 Wn.2d at 613; In re Dependency of S.S., 61 Wn. App. 488, 504, 814 P.2d 204 (1991). The appellate court does not weigh the evidence or the credibility of the witnesses. In re Dependency of M.P., 76 Wn. App. 87, 91, 882 P.2d 1180 (1994). Evidence is substantial if, viewed in the light most favorable to the prevailing party, a rational finder of fact could find the fact in question by a preponderance of the evidence. M.P., 76 Wn. App. at 90-91.

The juvenile court found D.R.R.B.-J. to be dependent pursuant to RCW 13.34.030(6)(b) and (c). Pursuant to RCW 13.34.030(6)(b), dependency is

appropriate where the child is abused or neglected. “Abuse or neglect” includes “sexual abuse, sexual exploitation, or injury of a child by any person under circumstances which cause harm to the child’s health, welfare, or safety.” RCW 26.44.020(1).² Pursuant to RCW 13.34.030(6)(c), dependency is appropriate where the child “[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.”

The conduct alleged by D.R.R.B.-J. clearly constitutes abuse as defined by the applicable statute. D.R.R.B.-J.’s testimony, her report to CPS investigator Medrano, and Medrano’s observation of D.R.R.B.-J.’s injuries support the juvenile court’s finding that D.R.R.B.-J. was abused by her mother. Although Bulle, Williams, and Clawson testified that Bulle had not physically abused D.R.R.B.-J., based upon inconsistencies in and the rehearsed nature of their testimony, the juvenile court found their testimony to be not credible. “Credibility determinations are for the trier of fact and cannot be reviewed on appeal.” State v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). Thus, we conclude that substantial evidence supports the juvenile court’s finding of dependency pursuant to RCW 13.34.030(6)(b).

² The statute defining “abuse or neglect” excludes “conduct permitted under RCW 9A.16.100.” RCW 26.44.020(1). However, the conduct alleged by D.R.R.B.-J. here is not permitted pursuant to that statutory provision. See RCW 9A.16.100 (listing both “striking a child with a closed fist” and “doing any other act that is likely to cause and which does cause bodily harm greater than transient pain or minor temporary marks” as “actions [that] are presumed unreasonable”).

The juvenile court additionally found, based upon Bulle's abuse of D.R.R.B.-J., that D.R.R.B.-J. is dependent pursuant to RCW 13.34.030(6)(c), which requires that the child "[h]as no parent, guardian, or custodian capable of adequately caring for [her], such that [she] is in circumstances which constitute a danger of substantial damage to [her] psychological or physical development." The record supports the court's finding that, due to the incident that prompted this dependency action, Bulle is incapable of adequately caring for D.R.R.B.-J. and that there is a danger of substantial damage to D.R.R.B.-J. if in Bulle's care. Thus, a dependency is also warranted pursuant to RCW 13.34.030(6)(c).

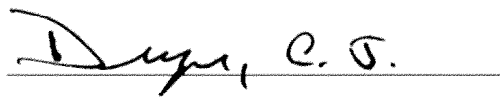
The juvenile court did not err by entering an order of dependency as to D.R.R.B.-J.

IV

We next address whether Bulle's appeal from the order of dependency as to T.H.B.-W. and B.M.B.-W. is rendered moot by the juvenile court's subsequent dismissal of those dependencies. Because we determine that it is, we do not address Bulle's contentions that those dependencies are not supported by substantial evidence and that the juvenile court's disposition order as to those dependencies constitutes an abuse of discretion.

"A case is technically moot if the court cannot provide the basic relief originally sought, or can no longer provide effective relief." Laffranchi v. Lim, 146 Wn. App. 376, 382, 190 P.3d 97 (2008) (quoting Josephinium Assocs. v. Kahli, 111 Wn. App. 617, 622, 45 P.3d 627 (2002)). Here, Bulle sought reversal of the juvenile court's order of dependency such that her children would no longer be deemed dependent. Because the dependencies of T.H.B.-W. and B.M.B.-W. have since been dismissed, this court cannot provide the relief sought by Bulle, as such relief has already been obtained.

Affirmed.



We concur:

Leach, A.C.J. Becker, J.