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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-376

Filed 07 February 2023

Onslow County, No. 19 JRI 2

MICHAEL AZEVEDO, Petitioner,

v.

ONSLOW COUNTY DEPARTMENT OF SOCIAL SERVICES, Respondent.

Appeal by petitioner from order entered 20 September 2021 by Judge Sarah C. Seaton in Onslow County District Court. Heard in the Court of Appeals 19 October 2022.

*Edward Eldred for petitioner-appellant.*

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

ZACHARY, Judge.

This is the second appeal arising out of Michael Azevedo’s (“Father”) placement on the “Responsible Individuals List in the Central Registry” maintained by the North Carolina Department of Health and Human Services (“DHHS”). After careful review of the trial court’s order on remand, we affirm.

***Background***

The full background of this appeal is set forth in *Azevedo v. Onslow Cty. DSS* (*Azevedo I*), 278 N.C. App. 148, 858 S.E.2d 629, 2021 WL 2425905 (unpublished). We recite here the facts relevant to the appeal currently before us.

Father and his wife, Alisha Azevedo (“Mother”), are the parents of two minor children, “Tara” and “Zee.”<sup>1</sup> *Id.* at \*1. In March 2018, Father and Mother separated. *Id.* Mother initially “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.” *Id.* Mother then moved into a camper located on a friend’s property. *Id.* “After Thanksgiving 2018, Tara moved in with Mother, and in January 2019, Zee moved in with Mother as well.” *Id.*

On 5 January 2019, the Onslow County Department of Social Services (“DSS”) initiated an investigation into Father’s reported abuse of Tara and Zee. *Id.* “At the time of the investigation, Tara was 15 years old and Zee was 10 years old.” *Id.*

As part of DSS’s investigation, Lauren Rockwell—a child and family examiner and forensic interviewer—conducted interviews with Zee, Tara, Mother, Father, and several family acquaintances and neighbors. *Id.* Ms. Rockwell also “conducted various psychological tests on the children, which revealed that Tara indicated concerns for bulimia, and significant concerns for obsessive-compulsive and depressive symptoms.

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<sup>1</sup> To protect the identities of the juveniles, we refer to them by the pseudonyms to which the parties agreed.

She determined that Zee indicated significant concerns for issues regarding anger, aggression, depression, and possible post-traumatic stress.” *Id.* at \*3.

After conducting these interviews and tests, Ms. Rockwell “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.” *Id.*

“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.” *Id.* Thereafter, 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.” *Id.*

Father’s petition came on for hearing in Onslow County District Court on 27 January 2020. *Id.* In an order entered on 2 March 2020, the trial court concluded as a matter of law that Zee and Tara had been abused 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.” *Id.* at \*4. Father filed written notice of appeal on 31 March 2020. *Id.*

In *Azevedo I*, this Court determined that it was “unable to conclude whether

the trial court correctly found that Father abused Tara and Zee” because the order failed to specify whether the relevant facts constituted 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).” *Id.* at \*6. This Court remanded the order “for the entry of additional findings of fact[.]” *id.*, instructing that “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[.]” *id.* (citation omitted).

Upon remand, the trial court entered an order on 20 September 2021. Relying upon the existing record, the court made several findings of fact regarding the children’s emotional harm, and concluded that Zee and Tara had “suffered emotional abuse by” Father. Accordingly, the court directed that Father’s name “be maintained on the Responsible Individuals List in the Central Registry.” Father timely filed written notice of appeal.

### ***Discussion***

On appeal, Father argues that the trial court erred by concluding that he was eligible for inclusion on the Responsible Individuals List on the basis of the abuse of his children “because the findings fail to establish [that] the children suffered ‘serious

emotional damage[,]’ ” as defined by N.C. Gen. Stat. § 7B-101(1)(e) (2021). We disagree.

*I. Standard of Review*

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). “If supported by competent evidence, the trial court’s findings are binding on appeal even if the evidence would also support contrary findings.” *In re F.C.D.*, 244 N.C. App. 243, 246, 780 S.E.2d 214, 217 (2015). Additionally, “[w]here no exception is taken to a finding of fact by the trial court, the finding is presumed to be supported by competent evidence and is binding on appeal.” *Patron*, 250 N.C. App. at 381, 792 S.E.2d at 858 (citation omitted).

We review the trial court’s conclusions of law de novo. *Id.* “Whether a child is abused or neglected is a conclusion of law, which we review only to determine whether it is supported by the findings of fact.” *In re M.M.*, 272 N.C. App. 55, 72, 845 S.E.2d 888, 900 (2020).

*II. Analysis*

Our Juvenile Code defines a “responsible individual,” in relevant part, as a “parent, guardian, custodian, [or] caretaker . . . who abuses or seriously neglects a juvenile.” N.C. Gen. Stat. § 7B-101(18b). 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.’ ” *F.C.D.*, 244 N.C. App. at 250–51, 780 S.E.2d at 220 (quoting N.C. Gen. Stat. § 7B-311(b) (2013)).

A county DSS director may place an individual on the Responsible Individuals List if: “(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[.]” *id.* at 251, 780 S.E.2d at 220; and (2) “[t]he court determines that the individual is a responsible individual as a result of a hearing on the individual’s petition for judicial review[.]” N.C. Gen. Stat. § 7B-311(b)(2).

An individual may contest the director’s determination by petitioning for judicial review in district court. *Id.* § 7B-323(a). At the judicial review hearing, “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).

DSS may prove that a juvenile is abused by establishing, *inter alia*, that a parent, guardian, custodian, or caretaker “[c]reates or allows to be created serious emotional damage to the juvenile[.]” *Id.* § 7B-101(1)(e). “Serious emotional damage” in this context “is evidenced by a juvenile’s severe anxiety, depression, withdrawal,

or aggressive behavior toward himself or others[.]” *Id.* A formal psychiatric diagnosis is not required to establish serious emotional damage pursuant to N.C. Gen. Stat. § 7B-101(1)(e). *See In re A.M.*, 247 N.C. App. 672, 675–76, 786 S.E.2d 772, 775–76 (2016) (upholding an abuse determination based on serious emotional damage under § 7B-101(1)(e) where the trial court found that the abused child exhibited “hopelessness” and “withdrawal” due to the mother’s direction of “foul and abusive language” toward the child, despite the fact that the child had not received a clinical diagnosis of psychological harm).

In the instant case, the trial court made the following findings of fact relevant to its abuse determination:

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].

. . . .

c. [Father] admitted that in the summer of 2018 he held his daughter, [Tara,] down on the floor at his home. At that time, she was fourteen years old.

d. [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]

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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.

- e. [Tara] indicated that [Father] had issues with his temper and that he would kick doors, break doors, knock holes in the walls of the home, and knock down doors.
- f. [Tara] had stated that [Father] has pinned her down, hit her in the head, hit her in the throat, spit in her face, thrown things at her, and that he would get on top of her with his full body weight.
- g. [Tara] has stated that [Father] has put his knee on her head.
- h. [Tara] has stated that when [Father] pins her down she cannot breathe.
- i. That, based on the family and child evaluation completed by Lauren Rockwell, the Court finds that because of the history of violence in this family, specifically by [Father] in the presence of [Tara], she has been emotionally harmed. This emotional harm has presented itself as obsessive-compulsive disorder and depressive symptoms.
- j. The Court finds that the way [Father] would hold [Tara] down, one incidence of which occurred when she was fourteen years old, were tantamount to torture. The Court finds that the actions, specifically the holds, were emotionally abusive to [Tara].
- k. [Zee] has stated [Father] yells and screams at him and



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calls him bad names, including Little S. . . .

- l. [Zee] has stated [Father] holds his hands over [Zee]’s nose and mouth, so he is unable to breathe.
- m. [Zee] has stated [Father] has pulled the hair from his head.
- n. [Zee] has stated that [Father] has punched walls in his home and broken the television, kicked the door to his own bedroom and broken the door.
- o. [Zee] has stated that [Father] has tried to choke him and has put duct tape over his mouth.
- p. That the continued name-calling, belittling, and degrading speech, and humiliation directed towards [Zee] is emotional abuse and that emotional abuse has presented itself in the actions of [Zee] in that he has a problem with anger and aggression. That he also has signs of depression, he meets the criteria of PTSD, he has anxiety, he has ADHD, he has a diagnosis of oppositional defiance disorder, and intermittent explosive disorder. That the continued history of emotional abuse toward [Zee] has led to those diagnoses and has manifested itself in those diagnoses.
- q. That [Father] is domineering and controlling and has anger management issues.

Father initially asserts that findings 6(i) and 6(p) are unsupported by competent evidence because “[t]here was simply no ‘serious emotional damage’ in this case.” Specifically, Father contends that “[t]he evidence does not support a finding that Tara had ‘obsessive-compulsive disorder.’ The evidence was that Tara had *symptoms* of both obsessive-compulsive disorder and depression.” He further contends that “as to Zee, the bulk of the trial court’s finding is not supported by

competent evidence in that it is based on an evaluation done on Zee in 2015.”

However, Father’s argument construes N.C. Gen. Stat. § 7B-101(1)(e) too narrowly. With regard to Tara, the trial court found that the emotional damage inflicted by Father “presented itself as obsessive-compulsive disorder and depressive symptoms[,]” and competent evidence supported this finding. Ms. Rockwell—“an expert in the field of psychology with a specialty in child and family evaluation”—testified that her interview of Tara exposed “significant concerns for depressive symptoms[,]” Further, Ms. Rockwell’s report, which was admitted into evidence at the hearing, stated that Tara’s testing “reveal[ed] concern for OCD[,]” which Ms. Rockwell recommended “should be addressed.” The fact that the trial court found that Tara experienced “emotional harm” based on her symptoms of depression and obsessive-compulsive disorder without “a formal psychiatric diagnosis” does not render this finding unsupported by competent evidence, as N.C. Gen. Stat. § 7B-101(1)(e) “imposes no such requirement” to establish serious emotional damage. *A.M.*, 247 N.C. App. at 676, 786 S.E.2d at 775. Accordingly, we conclude that competent evidence supported the trial court’s findings regarding Tara’s emotional damage.

Concerning Zee, Ms. Rockwell testified that while in 2015 Zee “was diagnosed with ADHD, oppositional defiant, and intermittent explosive disorder[,]” he was also administered a “trauma symptom checklist” in April 2019 that “reflected significant elevations for issues surrounding anger and aggression, depression, and possible post-traumatic stress.” The trial court found that Zee had problems with anger,

aggression, and anxiety; showed signs of depression; met the criteria of post-traumatic stress disorder; had attention-deficit hyperactivity disorder; and was diagnosed with oppositional defiance disorder and intermittent explosive disorder. Assuming without deciding that the trial court improperly incorporated the diagnoses from the 2015 evaluation into its finding, the remaining mental health issues found by the trial court, constituting the majority of finding 6(p), are sufficiently supported by competent evidence. Thus, “the bulk of the trial court’s finding” regarding Zee’s mental health issues was not based on the 2015 evaluation, as Father contends, but rather on the examination performed by Ms. Rockwell in 2019. Thus, we conclude that competent evidence supported the trial court’s findings regarding Zee’s emotional damage.

Furthermore, the trial court’s findings as to the children’s emotional harm meet N.C. Gen. Stat. § 7B-101(1)(e)’s definition of “serious emotional damage.” The court’s findings regarding (1) Tara’s emotional harm, evinced by her “obsessive-compulsive disorder and depressive symptoms[,]” and (2) Zee’s “emotional abuse[,]” manifesting as his post-traumatic stress disorder and problems with anger, aggression, and depression, adequately establish that the children suffered “severe anxiety, depression, withdrawal, or aggressive behavior toward [themselves] or others[.]” N.C. Gen. Stat. § 7B-101(1)(e). “Although the findings of fact do not track the specific language used in [N.C. Gen. Stat.] § 7B-101(1)(e), we nevertheless find them sufficient” to support a determination of abuse “based on serious emotional

damage.” *A.M.*, 247 N.C. App. at 676, 786 S.E.2d at 776.

Father next argues that the trial court erred by concluding that he abused Zee and Tara because “[a]n abuse conclusion cannot be based on conduct alone. There must be a causal connection between conduct and ‘severe emotional damage[.]’ ”

In the instant case, the trial court’s findings appropriately delineated a causal connection between Father’s conduct and the emotional harm suffered by Tara and Zee. Regarding Tara, the court’s finding of fact explaining that Tara had been emotionally harmed “because of the history of violence in this family, specifically by [Father]” is supported by competent evidence. Ms. Rockwell’s report provided a statement from Tara concerning the effect of Father’s behavior on her mental health: “It made it a lot worse. . . . I’ve had some problems, but this definitely made it worse. Since I’ve been at my mom’s, I’ve had some breakdowns but nothing like what I’ve had before, ever.” Moreover, the trial court found that Father’s disciplinary measures, specifically pinning Tara down, “were emotionally abusive” and “were tantamount to torture.” These findings, unchallenged by Father on appeal and therefore binding, *Patron*, 250 N.C. App. at 381, 792 S.E.2d at 858, further support the finding regarding Father’s behavior and Tara’s emotional damage.

Similarly, the court found that “the continued name-calling, belittling, and degrading speech, and humiliation directed towards [Zee] is emotional abuse[.]” which “led to [his] diagnoses and . . . manifested itself in those diagnoses.” Competent evidence supported this finding: Zee was diagnosed with “issues surrounding anger

and aggression, depression, and possible post-traumatic stress” in 2019, just a few months after Zee stopped living with Father. In addition, Ms. Rockwell’s report included a statement by Zee that living with Father made him feel “[r]eally, really sad” and that he felt “a lot safer” staying with Mother instead of Father.

Ms. Rockwell’s opinion testimony at the hearing further bolstered the trial court’s findings regarding causality. She testified that she “made the finding of emotional abuse because of several concerns” regarding Father’s actions, including “[t]he spurning, the terrorizing, the level of parental alienation and the social isolation[.]” Ms. Rockwell also testified that the behaviors “that primarily were being committed by [F]ather” after he and Mother separated were troubling for the children’s mental health.

In sum, Ms. Rockwell’s report, the expert opinion testimony, and the fact that the children’s emotional issues worsened after living primarily with Father supported the court’s determination that Father’s behavior was emotionally abusive, resulting in emotional damage to the children.

As competent evidence supported the findings detailing Father’s “history of violence” and “continued history of emotional abuse[.]” we conclude that the trial court’s findings sufficiently established a causal link between Father’s conduct and the emotional harm to Tara and Zee. Thus, the trial court appropriately concluded that Father abused the children, and properly directed DSS to place Father on the Responsible Individuals List. *Id.*

***Conclusion***

The trial court's order directing DSS to place Father on the Responsible Individuals List is supported by the court's conclusion that Father abused the children, which is supported by its findings of fact regarding the serious emotional damage that Father inflicted upon the children. These findings in turn are supported by competent evidence. Accordingly, we affirm the trial court's order.

AFFIRMED.

Judges TYSON and HAMPSON concur.

Report per Rule 30(e).