



ORIGINAL

NOT FOR OFFICIAL PUBLICATION

IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION IV

IN THE MATTER OF R.F., Alleged)
Deprived Child:)

HOYT FLEETING,
Appellant,

vs.

STATE OF OKLAHOMA,
Appellee.

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COURT OF CIVIL APPEALS
STATE OF OKLAHOMA

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Case No. 121,356

APPEAL FROM THE DISTRICT COURT OF
CANADIAN COUNTY, OKLAHOMA

HONORABLE BOB W. HUGHEY, ASSOCIATE DISTRICT JUDGE

AFFIRMED

Greg Wilson
WILSON LAW FIRM, OLLC
Shawnee, Oklahoma

For Appellant

Lory Dewey
ASSISTANT DISTRICT ATTORNEY
El Reno, Oklahoma

For Appellee

OPINION BY GREGORY C. BLACKWELL, PRESIDING JUDGE:

Appellant Hoyt Fleeting appeals the court's order adjudicating his minor child as deprived on the ground of threat of harm. After review, we find competent evidence in the record to support the district court's order and affirm.

BACKGROUND

Mr. Fleeting and his ex-wife, Raven Benson, have been engaged in a highly contentious custody dispute over their minor child, R.F., since she was a year old.¹ Most of their litigation concerns allegations that Mr. Fleeting has sexually abused the child. R.F. has been forensically interviewed at least three times. The parties agree that “quite a few referrals” have been made to DHS about sexual abuse.² However, all referrals have been unsubstantiated by DHS after full investigations.

As a part of his divorce and custody proceeding with Ms. Benson, Mr. Fleeting was asked to submit to a psychological evaluation by Dr. Richard Kishur. Dr. Kishur’s report indicates that Mr. Fleeting’s sexual interests were non-deviant. However, during the evaluation Mr. Fleeting was asked about his sexual history and if he had ever abused a child. Mr. Fleeting denied ever engaging in sexual activity with a child. Despite his denial to Dr. Kishur, the record contains evidence that Mr. Fleeting molested his stepsister when he was sixteen or seventeen, and the stepsister was eight years old. Because Mr. Fleeting did not disclose this information to Dr. Kishur, he was asked to submit to another psychological evaluation by Dr. Linda Evans in August 2022.

¹ R.F. was born in May 2014, the couple filed for divorce in 2015, and this appeal was filed in 2023. R.F.’s custody has now been at issue for the past seven years.

² According to the state, there have been twenty-two referrals to DHS regarding Mr. Fleeting’s sexual abuse. *Response Brief of Appellee*, pg. 1. While this exact number is not reflected in the record, when asked by the state’s attorney if there had been quite a few referrals placed to DHS about the sexual abuse issue, Mr. Fleeting answered, “Yes, ma’am.” Tr. 62.

After the evaluation, Dr. Evans diagnosed Mr. Fleeting with major depression and generalized anxiety disorder. She also noted there was some indication that Mr. Fleeting has borderline personality disorder and antisocial disorder; however, there was insufficient evidence to prove either with 100% certainty. Additionally, she noted that Mr. Fleeting suffers from a traumatic brain injury sustained while he was injured during military service. Mr. Fleeting is considered by the Veteran's Administration ("VA") to be 100% disabled.³

On August 23, 2022, the state filed a petition in Canadian County alleging the child was deprived. The state later amended its petition on January 4, 2023. In its amended petition, the state alleged that Mr. Fleeting did not provide proper care necessary for the well-being of the child, that Mr. Fleeting poses a threat of harm to his child, that Mr. Fleeting and his ex-wife are still embroiled in a custody battle in which she continues to allege he is sexually abusing the child while he maintains she is coaching the child, that Mr. Fleeting is an unfit parent due to mental instability, and that it is in the best interests of the child that she be adjudicated deprived. Mr. Fleeting contested the state's allegations in the amended petition and requested a trial.

The trial on the amended petition was held on April 12, 2023. The state called Dr. Evans and Mr. Fleeting to testify. At the conclusion of the trial, the court adjudicated R.F. deprived and continued her as a ward of the court.

³ As a result of his disability, Mr. Fleeting is unable to work. Tr. 68. Mr. Fleeting reported that the last time he was able to work was four or five years ago. *Id.*

Specifically, the court found that the state had met its burden to prove threat of harm. Mr. Fleeting appeals.

STANDARD OF REVIEW

Although “[t]he State must support the allegations in a petition seeking the adjudication of a child as deprived by a preponderance of the evidence,” we will affirm the trial court’s order declaring a child deprived if the trial court’s findings are supported by competent evidence. *In re J.D.H.*, 2006 OK 5, ¶ 4, 130 P.3d 245, 247. Competent evidence is that “which is relevant and material to the issue to be determined.” *City of Oklahoma v. Lindsey*, 1976 OK 48, ¶ 14, 549 P.2d 81, 83 (citing *Jos. A. Coy Co. v. Younger*, 1943 OK 160, ¶ 5, 136 P.2d 890, 892).

ANALYSIS

On appeal, Mr. Fleeting alleges that the state has failed to meet its burden to show that R.F. is a deprived child. The state alleged in its amended petition that Mr. Fleeting posed a threat of harm to his child and that his home was unfit due to neglect.⁴ After the conclusion of testimony and evidence at trial, the court found that:

⁴ The Oklahoma Children’s Code defines threat of harm as: “any real or threatened physical, mental, or emotional injury or damage to the body or mind that is not accidental including, but not limited to, sexual abuse, sexual exploitation, neglect, or dependency.” 10A O.S. 1-1-105(34). Further, neglect is defined as:

- (1) the failure or omission to provide any of the following:
 - (a) adequate nurturance and affection, food, clothing, shelter, sanitation, hygiene, or appropriate education,
 - (b) medical, dental, or behavioral health care,
 - (c) supervision or appropriate caretakers *to protect the child from harm or threatened harm* of which any reasonable and prudent person responsible for the child’s health, safety or welfare would be aware, or

[T]he State met its burden as it relates to threat of harm, due to the molestation, or alleged molestation of his stepsister in 2000. At least, there was enough evidence that he received what he said was a year and a half of counseling over that. Father killing the family puppy. Features of borderline personality disorder, an antisocial disorder, based on those, I am going to find that the State has met its burden.

Tr. 107. Additionally, in its order issued after the hearing, the court found that the adjudication of the child was in the best interest of the child.

Upon review, we hold that the court's findings are supported by competent evidence. First, the state presented evidence Mr. Fleeting was required as a part of his divorce case to undergo a psychological evaluation, administered by Dr. Richard Kishur. Mr. Fleeting did not report any history of childhood sexual abuse to Dr. Kishur. Dr. Kishur's report reads that Mr. Fleeting "clearly and repeatedly stated that he has never engaged in any sexual activity with any child." Tr. *Exhibit 1*, pg. 1. However, there was evidence that Mr. Fleeting molested his stepsister when he was a teenager, and she was eight. Mr. Fleeting denied the molestation at trial; however, the state presented evidence that suggests Mr. Fleeting was convicted of the molestation and was required to go to treatment as a result of the conviction.⁵ Regardless of whether the incident resulted in

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- (d) special care made necessary for the child's health and safety by the physical or mental condition of the child,
 - (2) the failure or omission to protect a child from exposure to any of the following:
 - (a) the use, possession, sale, or manufacture of illegal drugs,
 - (b) illegal activities, or
 - (c) sexual acts or materials that are not age- appropriate, or
 - (3) abandonment.

10A § 1-1-105(49)(a) (emphasis supplied).

⁵ Dr. Evans testified that Mr. Fleeting was hospitalized and received treatment for his molestation of the child. Tr. 23. She also testified that during his evaluation, Mr. Fleeting

conviction, Mr. Fleeting concealed the event from Dr. Kishur because he did not think it was relevant or important,⁶ even though the sole purpose of his evaluation with Dr. Kishur was so he could be screened for sexual deviancy as it relates to the sexual abuse of children.

In addition to his failure to disclose the molestation incident, Dr. Kishur reported that Mr. Fleeting was guarded and defensive during the assessment. Dr. Kishur noted Mr. Fleeting may have been attempting to convince the evaluator that he had no sexual problems. Mr. Fleeting was even defensive about expressing a current interest in sex which, according to Dr. Kishur, can suggest an attempt to "look good" sexually.⁷

Further, Mr. Fleeting was asked to complete a separate psychological evaluation by Dr. Linda Evans because he did not disclose the molestation incident to Dr. Kishur. She recalled that she asked Mr. Fleeting directly if he had molested his sister and it was her impression that initially he told her that he had. Tr. 23. However, she testified that in a subsequent session he denied molesting his stepsister. *Id.* More specifically, in her report, she writes that Mr.

told her initially that the molestation did not happen, but his mother's attorney told him to plead guilty. *Id.*

⁶ When asked by the state's attorney if Mr. Fleeting thought that Dr. Kishur needed to know about the prior instance of sexual molestation, he answered that he did not believe it was important. Tr. 64. Further, the attorney asked, "You were in the midst of a custody dispute. The heart of the allegations have been sexual abuse. And a prior allegation of sexual abuse, you thought he didn't need to know about?" Mr. Fleeting responded, "It didn't come to my mind." *Id.*

⁷ As discussed below, Mr. Fleeting was asked to complete a separate evaluation by Dr. Linda Evans. Dr. Evans also noted that Mr. Fleeting attempted to minimize sex related problems in his self-disclosure. Tr. *Exhibit 1*, pg. 3. She reported that for the Sexual Adjustment Inventory completed by Mr. Fleeting, the "Sex Item Truthfulness Scale" was in the medium risk range (40 to 69th percentile range) at 69%. *Id.*

Fleeting indicated to her that his mother's attorney told him to admit to the molestation. When Dr. Evans asked Mr. Fleeting if he was guilty of touching his stepsister, he "indicated that he did, in fact, touch her genitals." Tr., *Exhibit 1*, pg. 4. She noted that Mr. Fleeting also acknowledged that he molested his stepsister when completing the Sexual Adjustment Inventory.

Additionally, both Dr. Evans and Mr. Fleeting testified that he received treatment, although the length of time of treatment is unclear,⁸ as a result of the molestation. Dr. Evans stated that Mr. Fleeting's failure to disclose the incident to Dr. Kishur caused her grave concern, because the sole purpose of the evaluation with Dr. Kishur was to affirm if he had a propensity towards sexual molestation. While Dr. Evans could not state that the result of Dr. Kishur's assessment would have changed had he known about the incident, she acknowledged that such a disclosure would affect any determination about Mr. Fleeting's propensity for molestation.⁹

The state presented evidence regarding Mr. Fleeting's traumatic brain injury¹⁰ and other psychological diagnoses. According to trial testimony, Mr. Fleeting is considered 100% disabled by the VA. Tr. 67. Dr. Evans stated that

⁸ Counsel for the state asked Mr. Fleeting how long he received treatment for molesting the child, and Mr. Fleeting responded that it was "probably a year" or a "year and a half." Tr. 65. Later, when asked if he could have gone to treatment for six months, as opposed to a year, Mr. Fleeting testified that it was possible. Tr. 79.

⁹ Dr. Kishur determined that Mr. Fleeting did not have a sexual propensity towards molestation; however, as described above he did not have all of the pertinent information regarding Mr. Fleeting's sexual history in making that determination.

¹⁰ Dr. Evans testified that once someone experiences a traumatic brain injury it can change their personality, often times making them more "gruff" or quick to anger than they were before the injury.

even though Mr. Fleeting was cordial and pleasant during their meeting, his testing indicated that he can be “abrasive” and “gruff.” Further, Dr. Evans found that Mr. Fleeting has depression, recurrent and severe, and a generalized anxiety disorder, likely from PTSD. Tr. 17. She stated that Mr. Fleeting also had features of borderline personality and antisocial personality, but they were not sufficient enough to warrant a diagnosis of either disorder. *Id.*

The state also presented evidence regarding a violent incident in which Mr. Fleeting slit the throat of a family puppy.¹¹ According to testimony at trial, Mr. Fleeting and his ex-wife had been fighting, he was sleep deprived, she was complaining about the dog, and, in a fit of rage, he killed it in the backyard. Tr. 71. Dr. Evans testified that this event with the dog was not disclosed to her during her evaluation of Mr. Fleeting. Tr. 21. She stated that killing the dog “was an extreme act and might indicate some underlying pathology I had not witnessed or documented. It caused me grave concern. I would have been happier had he mentioned it, and we could have discussed it. It could have lent more credibility to the borderline personality features or antisocial features that did not materialize into a diagnosis.” *Id.*

Neither Dr. Kishur nor Dr. Evans had the full picture regarding Mr. Fleeting’s past when making their diagnoses. While none of the several DHS referrals regarding Mr. Fleeting’s alleged sexual abuse were substantiated, we

¹¹ We note here that this event occurred in 2012, before R.F. was born. However, one of Mr. Fleeting’s other children was in the house at the time of the event. Tr. 22, 81.

note that it is clear Mr. Fleeting withheld pertinent information regarding past sexual abuse and violent acts.

On review, the evidence presented regarding the sheer number of referrals and investigations completed by DHS, Mr. Fleeting's prior molestation and failure to disclose it to Dr. Kishur, Mr. Fleeting's display of violence with a family dog and failure to disclose that incident to Dr. Evans, and evidence presented regarding diagnosis of traumatic brain injury, depression, and anxiety coupled with features of borderline personality and antisocial disorders, constituted competent evidence sufficient to support a finding that Mr. Fleeting posed a threat of harm to R.F., and that the deprived adjudication was therefore proper.

As a second proposition of error, Mr. Fleeting contends that the trial court failed to make any specific finding that the deprived adjudication was in the best interest of the minor child. While the trial judge did not use this precise formulation in his oral remarks at trial, he did make a specific finding as to best interests in his written order. We find this sufficient. *See Hedges v. Hedges*, 2002 OK 92, ¶17, 66 P.3d 364, 371 ("A trial judge's statements in announcing the post-decree order do not constitute her 'findings of fact' and will not be considered to vary the order whose terms are to be measured solely by the recorded journal entry." (emphasis removed)).

AFFIRMED.

FISCHER, J., and HUBER, J., concur.

December 15, 2023