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In re Sophia M., 204 A.3d 605 (R.I. 2019)

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Family Law. *In re Sophia M.*, 204 A.3d 605 (R.I. 2019). A finding of parental abuse and neglect of a minor must be supported by facts and evidence that create reasonable inferences by clear and convincing evidence.

FACTS AND TRAVEL

On the night of December 4, 2015, Anna and Ernest placed their three-week old daughter, Sophia, in her bassinet without any signs of injury.¹ Sophia awoke in the middle of the night, and according to Ernest's testimony, Sophia's lip struck his collarbone while he was tending to her, causing her to cry for approximately five minutes.² The next morning, Anna noticed an injury to Sophia's lip; Ernest told her that Sophia hit her lip on his collarbone while he was burping her during the night.³

Later that day, while changing the infant, Anna noticed a "weird shaped" bruise on Sophia's back, a "little red bruise" on her stomach, and bruising on her upper shoulder blades.⁴ Anna took photos of the bruises and sent them to her mother, who suggested Anna call Sophia's pediatrician.⁵ Anna took her mother's advice and called the pediatrician, who advised Anna to take Sophia to the hospital.⁶ Anna testified that Ernest was initially hesitant to take Sophia to the hospital and suggested they wait until Monday morning; however, after further discussion, both parents took Sophia to Hasbro Children's Hospital (Hasbro).⁷

1. *In re Sophia M.*, 204 A.3d 605, 606 (R.I. 2019).

2. *Id.* When Sophia woke in the middle of the night, Anna asked Ernest to get up and feed Sophia and Anna returned to sleep until 7:30 A.M. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.* At trial, Ernest testified that he was initially notified only about a rash on Sophia's stomach, not bruising. *Id.* He says Anna later showed him the mark on Sophia's back, at which point Ernest told Anna to call the pediatrician and did not hesitate to take Sophia to the hospital. *Id.* at 606–07.

Sophia was admitted to the hospital, and a day later, Dr. Christine Barron, M.D. (Dr. Barron), the on-call physician at Hasbro's child protection center, conducted tests and a physical examination of Sophia.⁸ The tests yielded normal results, but the examination revealed that Sophia had "bruises of different colors" on various parts of her body.⁹ Dr. Barron was unable to determine the age of many of the bruises, but was able to categorize Sophia's stomach bruise as "acute," or showing within the last 12 to 24 hours.¹⁰ Sophia's injuries healed normally during the remainder of her hospital stay and she did not sustain any additional injuries while in the hospital.¹¹

Dr. Barron took separate statements from both parents.¹² Ernest initially told Dr. Barron that Sophia's lip injury came as the result of Sophia "crack[ing]" her head on his collarbone but could not provide an explanation as to Sophia's other injuries.¹³ Anna's story only differed as to the time in which she noticed bruising on Sophia's stomach and whether it was actually a bruise or a rash.¹⁴ Dr. Barron told both parents that their stories were inconsistent with the amount of force necessary to inflict these injuries, and three days later, Ernest changed his story and explained that Sophia's injuries occurred when Ernest was leaning over to grab Sophia's bottle out of the warmer.¹⁵ Dr. Barron claimed this story was "more probable" because it implied more force; however, Dr. Barron was concerned that Ernest changed his story only after being confronted.¹⁶

Lastly, in accordance with standard protocol, Dr. Barron reviewed the medical history for Ernest's other daughter, L.M., who

8. *Id.* at 607.

9. *Id.* Dr. Barron determined Sophie had petechia, "a small purplish spot on the body surface . . . caused by a minute hemorrhage." *Id.* at 607 n.4.

10. *Id.* Dr. Barron noted one particular bruise, on Sophia's right flank, that emerged after she moved from the emergency department to the hospital. *Id.* at 607. Dr. Barron testified that this injury did not occur during Sophia's time at the hospital and that it was not uncommon for bruises to demonstrate themselves several hours or even a day later. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.* at 608.

16. *Id.*

was three-years old.¹⁷ L.M. was brought to the hospital with unexplained bruising shortly after she was born and the mother was instructed “not to allow the father to be the sole caregiver.”¹⁸ While the Department of Children, Youth, and Families (DCYF) was never contacted in relation to L.M.’s injuries, Dr. Barron concluded that L.M.’s “injuries would be consistent with child physical abuse.”¹⁹ Dr. Barron noted significant similarities between the injuries sustained by both girls but also emphasized that she did not base her decision in Sophia’s case on the information within L.M.’s records.²⁰

Dr. Barron concluded that Sophia’s injuries were the result of “blunt force trauma” consistent with child physical abuse.²¹ Dr. Barron reported her findings to DCYF, who filed an abuse-and-neglect petition against Anna and Ernest on December 8, 2015.²² Immediately upon her release from the hospital, Sophia was placed in the care of her paternal aunt.²³ After eleven days of testimony, the Family Court trial justice found by clear and convincing evidence that Ernest and Anna physically abused Sophia.²⁴ The trial justice concluded in her ruling dated July 10, 2017, that based on Dr. Barron’s testimony, Sophia’s injuries were “sustained over a period of time.”²⁵ Sophia was then placed in DCYF custody and Anna filed a notice of appeal on July 18, 2017.²⁶

ANALYSIS AND HOLDING

The Rhode Island Supreme Court (the Court) reviewed whether there was “legally competent evidence” to support the trial

17. *Id.* at 607.

18. *Id.*

19. *Id.*

20. *Id.* at 607–08.

21. *Id.* at 608.

22. *Id.* The petition, filed pursuant to Rhode Island General Laws section 40-11-2(1), alleged (1) Anna and Ernest failed to provide Sophia a minimum degree of care; (2) Sophia was “without proper parental care and supervision”; and (3) Ernest and Anna inflicted, or allowed to be inflicted, physical injury upon Sophia. *Id.*; *see id.* at 608 n.6; *see also* 40 R.I. GEN. LAWS § 40-11-2(1).

23. *Sophia M.*, 204 A.3d at 608.

24. *Id.* at 608–09. The trial commenced on January 26, 2017 concluded on May 8, 2017, after eleven days of testimony. *Id.* at 608.

25. *Id.* at 608–09.

26. *Id.* at 609.

justice's finding of abuse or neglect as to Anna.²⁷ The Court ultimately held that under the clear and convincing standard, the evidence was insufficient to support the trial justice's finding.²⁸ In making their decision, the Court considered the trial justice's conclusions related to the length of time over which Sophia sustained her injuries, the relevance and significance of L.M.'s injuries in relation to the present case, and the trial justice's reliance on two prior Rhode Island Supreme Court decisions.²⁹

First, the Court found a lack of evidence to support the trial justice's finding that Sophia's injuries were sustained over a period of time.³⁰ The Court reasoned that the trial justice erroneously misconstrued Dr. Barron's testimony categorizing Sophia's stomach bruise as "acute."³¹ Dr. Barron's testimony did not lend itself to the conclusion that Sophia's injuries were the result of more than one instance of abuse, but rather merely explained that signs of bruising can vary in time and showed that Dr. Barron was unable to age the bruises on Sophia's body.³² Secondly, the Court found that the evidence of L.M.'s injuries was irrelevant in the case against Anna and reasoned that even if Anna were aware of the incident involving L.M., the evidence did not suggest that L.M.'s injuries were the result of physical abuse.³³

Finally, the Court distinguished the present case from two Rhode Island Supreme Court cases that the trial justice relied on in her decision.³⁴ The Court distinguished the injuries to the children in *In re Frances* and *In re Chester J.* as far more severe than those suffered by Sophia and noted the prolonged period of time over which both children suffered their injuries as compared

27. *Id.* (citation omitted).

28. *Id.* at 610.

29. *See id.* at 610–12.

30. *Id.* at 610.

31. *See id.*

32. *Id.*

33. *Id.*

34. *See id.* at 610–12; *see also In re Frances*, 505 A.2d 1380, 1382 (R.I. 1986) (affirming a finding of abuse and termination of parental rights after an eleven-month-old child was found to be in a permanent vegetative state with injuries "in various stages of healing" and mother was unable to explain any of the child's injuries); *In re Chester J.*, 754 A.2d 772, 773–74 (R.I. 2000) (affirming a decree terminating parental rights where a seven month old child suffered severe injuries that were in various stages of healing and the parents had no explanation).

to Sophia.³⁵ Lastly, and most importantly, the Court concluded that the evidence did not suggest that Anna ignored or implicitly allowed such abuse to Sophia.³⁶ The Court looked to testimony and evidence of Anna's behavior in response to seeing Sophia's injuries, such as taking photos of the injuries and showing her mother, calling Sophia's pediatrician, reporting the injuries immediately, and confronting Ernest about taking Sophia to the emergency room.³⁷ While the Court understood the trial justice's disapproval of Anna's lack of response towards her daughter's "screaming" and lack of explanation for Sophia's injuries, the Court held that the totality of the circumstances did not create a reasonable inference that Anna neglected or abused Sophia.³⁸

COMMENTARY

In the last footnote of the case, the Court highlighted its "concern" over a lack of movement towards reunification between Anna and Sophia.³⁹ At the time of the Court's decision, Sophia had been in the custody of her paternal aunt for over three years.⁴⁰ The facts are unclear as to whether Anna had contact with Sophia during this time; although irrelevant to its holding, this important policy argument should have been included in the Court's analysis.

The Court has held the best interests of the child encompass the right of a minor child to reasonable care and maintenance, freedom from abuse or neglect, and the right to be given an opportunity to spend the remainder of his or her childhood in a

35. *Sophia M.*, 204 A.3d at 611.

36. *Id.* at 612. The trial justice wrote the following in her decision:

The Rhode Island Supreme Court has held that there is no duty upon the state to discern which parent actually inflicted the abuse against the child. Allowing a parent to ignore or stand by while such abuse and neglect occurs is tantamount to the parent inflicting the abuse themselves The . . . Court has also held that termination of parental rights was justified where a parent claimed ignorance to the source of a child's serious injuries.

Id. at 610–11 (citation omitted).

37. *Id.* at 612.

38. *See id.*

39. *Id.* at 612 n.10 ("The pendency of an appeal from a finding of abuse and neglect should not be the reason for delaying efforts to reunify the child with one or both parents, should that be in the best interest of the child.").

40. *Id.*

family setting in which the child may grow and thrive.⁴¹ Until the State proves parental unfitness, the child and his parents share a vital interest in preventing erroneous termination of their natural relationship.⁴² Both Rhode Island statutes as well as prior Rhode Island Supreme Court rulings have established a responsibility for DCYF to make reasonable efforts to reunify families that are separated due to petitions alleging neglect and abuse.⁴³ While the facts do not provide information as to what actions DCYF took, if any, to reunify Sophia and Anna, the Court's comments do suggest that the fault lies with DCYF.⁴⁴

Ultimately, the Court's analysis, in the form of a single footnote, does not go far enough to acknowledge the detrimental, and potentially lasting, effects of DCYF's petition against Anna and the trial court's erroneous decision. Their inadequate commentary raises the question as to whether this is a larger issue of DCYF failing to live up to its responsibility, or if this is simply a narrow issue specific to the present case. If this is a larger issue, the Court would have been wise to put DCYF and other Family Court trial justices on notice about the potentially harmful effects of their actions. Separating parents from their children ought to be the exception, not the rule. Further, when a child is separated from his or her parents, reunification ought to be a priority for both DCYF and the courts. The Court appropriately inferred that the initial outcome of this case was especially unjust because of the unknown future impact this decision will have on Sophia and her family.⁴⁵

CONCLUSION

The Rhode Island Supreme Court, under the clear and convincing standard of proof, found that the trial justice's findings were not supported by legally competent evidence and vacated the trial justice's finding of abuse and neglect as to Anna.

Erin Ferry

41. *In re Alexis L.*, 972 A.2d 159, 165 (R.I. 2009) (internal quotations omitted).

42. *Santosky v. Kramer*, 455 U.S. 745, 760 (1982).

43. See 15 R.I. GEN. LAWS § 15-7-7(a)(3); see also *In re Kristen B.*, 558 A.2d 200, 203 (R.I. 1989).

44. See *Sophia M.*, 204 A.3d at 612.

45. See *id.* n.10.