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In re Rylee A., 233 A.3d 1040 (R.I. 2020)

Alyssa M. Knappins
Candidate for Juris Doctor, Roger Williams University School of Law

Family Law. *In re Rylee A.*, 233 A.3d 1040 (R.I. 2020). The Supreme Court of Rhode Island reviews termination of parental rights by examining the record to establish whether the Family Court justice's findings are supported by legal and competent evidence. The Court declined to disturb the Family Court's ruling to terminate the respondents' parental rights to their daughter because legally competent evidence existed to support the findings of the Family Court justice by clear and convincing evidence.

FACTS AND TRAVEL

The respondents, Krystal A. (Krystal) and Shane A. (Shane), are the biological parents of Rylee A. (Rylee) who was born on October 28, 2016.[1] During Rylee's first forty days of life she suffered horrific physical abuse inflicted upon her by the respondents, her own parents.[2] On December 7, 2016, Rylee was taken to Kent Hospital and later transferred by ambulance to Hasbro Children's Hospital with a fractured femur.[3] Rylee's treating physician, Adebimpe Adewusi, M.D., under the supervision of Brett Slingsby, M.D., filed a Physician's Report of Examination requesting that Rylee be placed in state custody after Rylee's medical examination revealed signs of suspected child abuse.[4]

The hospital then placed a seventy-two-hour hold on Rylee and alerted the state Department of Children, Youth, and Families

1. *In re* Rylee A., 233 A.3d 1040, 1043 (R.I. 2020). The respondents' appeals were consolidated per court order on May 17, 2019. *Id.* at n.1. The respondents are referenced to by their first names for the sake of privacy or collectively as "respondents" as the Rhode Island Supreme Court did in its opinion. *See id.* at n.2.

2. *Id.* Rylee suffered a fractured right femur; posterior fractures to three of her ribs; bruising on the palm and fingers of her right hand, left flank, left shin, left thigh, and left forearm; and scratches on her right cheek. *Id.* Each injury was examined and diagnosed by medical child abuse experts. *Id.*

3. *Id.*

4. *Id.*

(DCYF) of the suspected child abuse.[5] Two days later, DCYF filed a "neglect and abuse petition" in the Family Court in accordance with Rhode Island General Laws section 40-11-7.[6] A no-contact order that prevented respondents from having any contact with Rylee was put in place.[7] DCYF then filed a second petition in Family Court to "involuntarily terminate the parental rights of the respondents in accordance with Rhode Island General Laws section 15-7-7(a)(2)(ii)."[8] The petitions were merged and proceeded to trial on September 7, 2017; the trial concluded in December of 2017.[9]

During trial, various medical professionals and DCYF workers testified.[10] First, Dr. Slingsby, an "expert in the area of general pediatrics and child abuse pediatrics," testified that he was the supervisor of Dr. Adewusi who conducted a full medical examination of Rylee and prepared the initial medical report.[11] Dr. Slingsby testified that he and Dr. Adewusi discussed Rylee's condition and medical records and that he gave signed approval of the report Dr. Adewusi prepared.[12] Dr. Slingsby also testified that on the following day he examined Rylee himself and observed various "patterned" injuries that he concluded were "generally

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5. *Id.*

6. *Id.* "Both parents [were] convicted of cruelty or neglect in the Family Court in violation of G.L. 1956 § 11-9-5." *Id.* at n.3.

7. *Id.*

8. *Id.* Rhode Island General Laws section 15-6-7(a)(2)(ii), titled Termination of parental rights, states in relevant part:

> (a) The court shall, upon a petition duly filed by a governmental child placement agency or licensed child placement agency after notice to the parent and hearing on the petition, terminate any and all legal rights of the parent to the child, including the right to notice of any subsequent adoption proceedings involving the child, if the court finds as a fact by clear and convincing evidence that:
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> (2) The parent is unfit by reason of conduct or conditions seriously detrimental to the child, such as, but not limited to, the following:
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> . . . .
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> (ii) Conduct toward any child of a cruel or abusive nature.

15 R.I. GEN. LAWS § 15-6-7(a)(2)(ii) (1956).

9. *In re Rylee A.*, 233 A.3d at 1043–44.

10. Dr. Adewusi no longer worked at Hasbro at the time of the hearing, had moved out of state, and did not testify at the trial. *Id.* at 1044 n.5.

11. *Id.*

12. *Id.*

caused by an object and [were] 'not something we see from falls or babies bumping into things.'"[13] Dr. Slingsby further testified that, on December 21, he and Dr. Adewusi "conducted a follow-up skeletal survey of Rylee, which revealed posterior rib fractures to three of Rylee's ribs."[14] Dr. Slingsby noted that the most common cause of posterior rib fractures is compression or squeezing of the rib cage.[15] Lastly, Dr. Slingsby "concluded, to a reasonable degree of medical certainty, that the bruises and fracturs of Rylee's posterior ribs and femur were inflicted by physical child abuse."[16]

Next, Joshua Cottle, a child protective investigator assigned to Rylee's case, testified that a DCYF history check revealed that Shane had been flagged as a convicted sex offender and perpetrator.[17] During the investigation, Cottle had interviewed the respondents separately.[18] According to Cottle, Krystal was "very emotional during the interview" and stated that "Shane, her husband, did not live at home and that she was Rylee's sole caretaker."[19] Next, Cottle interviewed Shane who repeated most of what Krystal said and added that he did not stay overnight at Krystal's residence.[20]

Officer Samuel Maldonado, who was assigned to investigate Rylee's case, testified that he interviewed the respondents at the police station.[21] Officer Maldonado testified that during the interview Krystal admitted that Shane would stay at her house overnight while Shane stated he would always leave the home at night.[22] Further, Officer Maldonado testified that Krystal stated she did not know how Rylee's injuries occurred but did offer possible

13. *Id.* Dr. Slingsby further testified that such an injury could not have occurred by a child jumping on Rylee's leg or by an adult rolling onto Rylee while sleeping. *Id.*

14. *Id.* Dr. Slingsby noted that an injury like this had occurred at least seven days prior to the survey. *Id.*

15. *Id.* at 1045.

16. *Id.*

17. *Id.*

18. *Id.*

19. *Id.*

20. *Id.*

21. *Id.*

22. *Id*. at 1046.

explanations.[23] One explanation was that another child, Maddison, who had been jumping on the bed where Rylee slept, may have fallen on her.[24] Officer Maldonado testified that, when he spoke with Dr. Adewusi, the doctor told him none of Krystal's explanations were plausible.[25] Finally, Officer Maldonado testified that Krystal continued to insist that Rylee was never left unattended.[26]

Additionally, Sergeant Richard Brown, a police officer of the West Greenwich Police Department, testified that Shane told him that Shane and Krystal were Rylee's only caretakers and were the only people who had access to Rylee.[27] Moreover, Brown stated that Krystal admitted that Shane would stay overnight at Krystal's house even though it was a violation of his sex-offender status.[28] According to Sergeant Brown, Shane thought Rylee's injuries were caused by a spider bite or by the three-year-old child who was jumping in the bed with Rylee.[29]

Pamela McLaughlin, a DCYF caseworker, also testified at trial.[30] McLaughlin stated that Rylee "had bonded with her foster family and had not suffered any broken bones since being removed from the custody of [r]espondents" and that "she believed it was in Rylee's best interest to be adopted by her foster family."[31]

Both respondents testified at trial. Shane explained he was "convicted of first-degree child molestation in 2004 and received a fifteen-year sentence, with four years to serve."[32] Shane further testified that, on December 7, 2016, the respondents and Rylee went to Krystal's mother's house and when they arrived, Rylee was sleeping in her carrier so Shane placed Rylee on a bed, and then left

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23. *Id.* Krystal offered possible explanations for the injuries, including the carrier, while changing her diaper, the car seat, or even rolling on top of Rylee while they slept. *Id.*

24. *Id.*

25. *Id.*

26. *Id.* As a result of this investigation, both respondents were arrested and charged with child cruelty or neglect. *Id.*

27. *Id.*

28. *Id.*

29. *Id.*

30. *Id.*

31. *Id.* at 1047.

32. *Id.*

the room to have a cigarette.[33] Shane testified that, while outside, he heard crying from the bedroom and found Maddison jumping on the bed next to Rylee.[34] Shane said he "did not see [Maddison] jump on Rylee" and thought Rylee was crying because she needed a diaper change.[35] Next, Krystal took the stand and testified, contrary to Sergeant Brown's testimony, that Shane had never stayed overnight at her house.[36] She also testified that during the days leading up to the incident, Rylee was "fussy"' and Krystal believed that was due to a growth spurt.[37] Krystal further testified that "Shane did not mention that Maddison had been jumping on the bed with Rylee until after they had left Hasbro."[38]

A licensed psychologist, Joanne Doucette, Ed.D., testified on behalf of the respondents.[39] Doucette claimed that Krystal was no longer suffering from bipolar disorder and that Krystal told her that she and Shane went hiking with Rylee on December 7, 2016, and that, when they arrived home after the hike, they noticed a red mark that they believed was a spider or tick bite.[40] Dr. Doucette concluded that "neither Krystal nor Shane was at risk for perpetrating physical child abuse and that Shane was 'a very low risk for reoffending as a sex offender.'"[41] However, "[t]he Family Court justice found that respondents 'were the only people who had access, care and control of Rylee during the period of time that the bruises and fractures and injuries were inflicted.'"[42]

The Family Court justice rejected the argument that Maddison could have caused Rylee's injuries because neither of the

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33. *Id.*
34. *Id.*
35. *Id.*
36. *Id*.
37. *Id.*
38. *Id.* at 1048.
39. *Id.* Dr. Doucette prepared separate reports for each respondent and testified that she relied on various documents in the creation of the reports. *Id.* However, the record was unclear as to which documents were used in preparation of the reports. *Id.*
40. *Id.* Dr. Doucette's report failed to mention that the respondents went on a hike with Rylee. *Id.*
41. *Id.* at 1049.
42. *Id.* The Family Court issued a comprehensive seventy-two-page decision that reviewed the testimony and exhibits. *Id.* The decision included thirty-four findings of facts. *Id.*

respondents saw this occur.[43] The Family Court justice also found the respondents' testimony uncredible and gave "no weight or consideration to the reports and opinion expressed by Dr. Doucette" because "her information [was] incomplete, inaccurate, and illogical based on all of the information presented at trial."[44] However, the justice gave "great weight" to Dr. Slingsby's testimony.[45] Thus, the Family Court concluded that DCYF proved by clear and convincing evidence that the respondents were "unfit by reason of conduct or conditions seriously determinantal to the child, in that [respondents] ha[ve] committed or allowed to be committed, conduct toward [their] child, Rylee [A.] of a cruel and abusive nature," and, therefore, it was in the best interest of Rylee to terminate the respondents' parental rights.[46] The petition to terminate respondents' parental rights was granted and the respondents appealed.[47]

ANALYSIS AND HOLDING

The Supreme Court of Rhode Island "reviews termination of parental rights rulings by examining the record to establish whether the Family Court justice's findings are supported by legal and competent evidence;" such findings "are entitled to great weight, and [the Supreme Court] will not disturb them unless they are clearly wrong or the trial justice overlooked or misconceived material evidence."[48] On review, the Rhode Island Supreme Court sought to resolve two issues: (1) whether the Family Court justice had erred in admitting into evidence the medical report prepared by Dr. Adewusi; and (2) whether DCYF had proven by clear and convincing evidence that respondents were unfit parents.

A. *Evidentiary Rulings*

First, the Court analyzed whether the Family Court erred in admitting into evidence the medical report that was prepared after

43. *Id.*
44. *Id.*
45. *Id.*
46. *Id.*
47. *Id.*
48. *Id.* (quoting *In re* Violet G., 212 A.3d 160, 166 (R.I. 2019)).

Rylee was admitted to Hasbro.[49] At trial, the respondents objected to the admission of the medical report on hearsay grounds.[50] On appeal, the Supreme Court rejected this argument and determined that the medical report was admissible under Rules 803(4) and 803(6) of the Rhode Island Rules of Evidence.[51] The Court reasoned that "Rule 803(4) provides an exception for statements made for purposes of medical diagnosis or treatment, including information about past or present conditions, history, and causation" and "[t]he proponent of the evidence must lay a proper foundation establishing that the statements in the record were made for purposes of medical diagnosis or treatment."[52]

The Court noted that when statements are made "merely to assign fault" they are inadmissible hearsay; however, the Court found that the medical report "directly pertained to the medical diagnosis and treatment of Rylee" and therefore was not made merely to assign fault.[53] Moreover, Dr. Slingsby testified at trial that he had "personal knowledge of all information contained in the medical report" and the medical report itself stated that Dr. Slingsby was "in agreement with the above note."[54] Thus, the Court concluded that the medical report pertained to the diagnosis and treatment of Rylee and, therefore, qualified under the medical-diagnosis exception to the rule against hearsay; consequently, the Family Court justice did not abuse her discretion in admitting the report.[55]

B. *Termination of Parental Rights*

The Court next turned to the issue of whether the Family Court justice erred in determining that the respondents were unfit parents. Before a court may terminate parental rights, "the Family Court justice must find that the parent is unfit"[56] A parent is deemed unfit "by reason of conduct or condition seriously

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49. *Id.* at 1050.
50. *Id.*
51. *Id.*
52. *Id.* at 1050 (citing R.I. R. EVID. 803(4); *id.* cmt.; State v. Watkins, 92 A.3d 172, 188 (R.I. 2014)).
53. *Id.* at 1050–51 (quoting State v. Veluzat, 578 A.2d 93, 96 (R.I. 1990)).
54. *Id.* at 1051.
55. *See id.*
56. *Id.* (citing *In re* Violet G., 212 A.3d 160, 166 (R.I. 2019)).

detrimental to the child;" such conduct includes "[c]onduct toward any child of a cruel or abusive nature."[57] Further, "[i]f a Family Court justice determines that a parent is unfit under § 15-7-7, 'the best interests of the child outweigh all other considerations'" and such determination is "entitled to great weight and will not be disturbed on appeal unless it is clearly wrong or the trial justice misconceived or overlooked material evidence."[58]

Here, the Family Court justice had determined the parents were unfit, pointing to the evidence that they could not provide any plausible explanation as to how their daughter obtained her injuries—the only plausible explanation would be that the respondents caused the injuries.[59] The Supreme Court determined that the Family Court justice gave great weight to the testimony of Dr. Slingsby, who testified that Rylee's injuries were caused by abuse.[60]

The respondents argued that there was a lack of clear and convincing evidence that their conduct toward Rylee was "cruel or abusive" and further argued that the Family Court justice erred because "Dr. Adewusi did not testify at trial and therefore was not subject to cross examination, in violation of their due process rights."[61] The respondents relied on the Rhode Island Supreme Court's decision in *In re Adrina T.*, where the Court vacated a Family Court decree terminating the parental rights of the respondent mother due to insufficient evidence that the mother abused and neglected her child because of conflicting medical evidence.[62] Here however, the Court rejected the respondents' argument and explained that the respondents' reliance on the decision in *In re Adrina T.* was misplaced.[63] The Court noted that it would "not call into question the reliability or credibility of Dr.

57. *Id.* at 1051–52 (citing 15 R.I. GEN. LAWS §§ 15-7-7-(a)(2), 15-7-7-(a)(2)(ii)).

58. *Id.* at 1052 (quoting *In re* Brian A.T., 146 A.3d 866, 873 (R.I. 2016)).

59. *Id.*

60. *Id.*

61. *Id.*

62. *Id.* (citing *In re* Adrina T., 162 A.3d 659 (R.I. 2017)). In *In re Adrina T.*, the Rhode Island Supreme Court reasoned that "there was conflicting medical evidence presented at trial . . . that 'left it unclear whether Adrina's injury was inflicted as a result of abuse or merely accidental in nature.'" *Id.* at 1053 (quoting *In re Adrina T.*, 162 A.3d at 670).

63. *Id.*

Adewusi's medical testimony; rather, [it] merely acknowledged that the record contained inconsistencies concerning the medical testimony presented at trial that were overlooked by the Family Court justice."[64]

The Rhode Island Supreme Court then turned to the respondents' argument that the Family Court justice overlooked material evidence concerning Dr. Slingsby testimony that the injuries could have occurred at the same time.[65] The Court relied on *In re Frances* and *In re Chester*.[66] In both cases the Court affirmed termination of parental rights, holding that it was reasonable for the trial justice to do so where parents are unable or unwilling to provide a plausible explanation for their child's injuries.[67] According to the Court in *In re Chester,* the "state is not required to prove which parents *actually* inflicted the abuse against the child."[68] Where the evidence is so overwhelming, the trial justice cannot ignore the reasonable inferences that can be drawn from the evidence.[69]

Like in *In re Frances* and *In re Chester*, here, there were reasonable inferences to be drawn from the evidence to support the findings of the Family Court justice that there was clear and convincing evidence of child abuse.[70] First, both respondents acknowledged that they were the sole caregivers of Rylee and never used a babysitter or left Rylee unsupervised.[71] Additionally, although Dr. Slingsby "acknowledged that Rylee's injuries 'could' have been inflicted at the same time, it was his unequivocal opinion that the injuries were inflicted by different mechanisms, indicating that they were not inflicted at the same time or by a single blow."[72]

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64. *Id.*
65. *Id.*
66. *See id.*
67. *Id.* (citing *In re* Chester J., 754 A.2d 772, 776–78 (R.I. 2000); *In re* Frances, 505 A.2d 1380, 1384–85 (R.I. 1986)).
68. *Id.* at 1053–54.
69. *Id.* (quoting *In re Chester J.*, 754 A.2d at 777–78)).
70. *Id.* 1054.
71. *Id.*
72. *Id.* Doctor Slingsby's testimony was given "with the requisite degree of positiveness" and such expert testimony "is admissible and issues relative to the weight of the evidence are left to the fact-finder." *Id.* (quoting Riley v. Stone, 900 A.2d 1087, 1092 (R.I. 2002)).

The Court also reasoned that the respondents were untruthful about certain facts at various times.[73] Moreover, the respondents failed to tell anyone about the possibility of Maddison jumping on Rylee.[74] Krystal argued that the Family Court justice "overlooked or misconceived the video of her interview with police" and that the video shows that Krystal was "cooperative and consumed with grief, horror, and yearning to be reunited with her child."[75] Although it was unclear what weight the Family Court justice gave the video, the Court noted that the justice had access to the video and referenced it in her opinion and, in any event, determined that the probative value of the video held no reversible error considering the fact that the Family Court justice observed Krystal testify at trial.[76] The Rhode Island Supreme Court determined that the Family Court justice's findings were sufficiently supported by clear and convincing evidence.[77]

COMMENTARY

The Court affirmed the Family Court justice's decision to terminate the parental rights of Rylee's biological parents, Krystal and Shane, in order to protect Rylee's well-being.[78] The Rhode Island Supreme Court consistently stressed that a parent's right should be terminated if the parent is deemed unfit and if such termination would be in the best interest of the child. There is no single objective rule in determining when parental rights should be terminated, and, therefore, the Court has closely examined the facts in each case.

Moreover, the Court recognized the importance of the medical diagnosis or treatment exception to the rule against hearsay in child abuse cases. The respondents alleged that Dr. Adewusi's medical report was hearsay and, therefore, inadmissible under Rhode Island Rules of Evidence Rule 801(c).[79] The Court applied the hearsay exception created to admit statements made for

73. *Id.* For example, whether Shane spent the night at Krystal's house and whether he took Rylee to Dunkin' Donuts alone. *Id.*

74. *Id.*

75. *Id.*

76. *Id.*

77. *Id.* at 1054–55.

78. *Id.* at 1055.

79. *Id.* 1050; *see* R.I. R. EVID. 801.

purposes of medical diagnoses or treatment which includes statements about the cause of the injuries.[80]

Here, the medical statements, although hearsay, fell into the medical diagnosis exception because the report was made in response to Rylee's medical treatment. As the Court noted, "the rationale behind the medical-diagnostic exception is that 'a person will presumably be truthful to a physical from whom he expects to receive medical attention.'"[81] Having the knowledge of the cause of Rylee's injuries is pertinent to a medical diagnosis and treatment plan needed to fully assess Rylee's injuries. Generally, statements of fault are inadmissible hearsay under the medical diagnostic exception. But, in scenarios like this, courts are routinely more lenient in admitting evidence of hearsay when dealing with child abuse for public policy reasons. If courts were not lenient in this regard, many cases of child abuse or neglect would go unpunished because there would be less evidence of such behavior.

Throughout the Court's opinion, substantial weight is placed on the best interest of the child. Both Rhode Island statutes and previous Rhode Island Supreme Court decisions have continuously found that the best interest of a child outweigh all other considerations. Here, the respondents' failure to proffer a plausible explanation of Rylee's injuries and the inconsistencies in their statements to various officials, coupled with the various medical testimonies and records, the Family Court justice had clear and convincing evidence that remaining in the care of the respondents was not in Rylee's best interest.

Lastly, the Court was mindful of the "significance of severing the bond between parent and child."[82] However, the Court also noted that it is in "the best interest of children to have a safe and nurturing environment in which to live, learn and grow."[83] Here, it was in Rylee's best interest to terminate the respondents' parental rights. As Pamela McLaughlin noted in her testimony, Rylee had not suffered any injuries since being placed with her foster family and had bonded with them.[84] Because Rylee was

80. *In re Rylee A.*, 233 A.3d at 1051.
81. *Id.* at 1050 (citing State v. Pina, 455 A.2d 313, 315 (R.I. 1983)).
82. *Id.* at 1055 (quoting *In re* Alexis L., 972 A.2d 159, 170 (R.I. 2009)).
83. *Id.* (citing *In re Alexis L.*, 972 A.2d at 170).
84. *Id.* at 1047.

thriving in her new home, it made sense that returning Rylee to an environment of abuse would not be in her best interest. Thus, the Court terminated the respondents' parental rights.

CONCLUSION

The Rhode Island Supreme Court determined that the Family Court justice's findings were based on clear and convincing evidence and were not clearly wrong. The Court noted that it will generally not disturb the findings of a lower court "unless they are clearly wrong, or the trial justice overlooked or misconceived material evidence."[85] Therefore, the Family Court's judgment to terminate the respondents' parental rights to their daughter, Rylee, was affirmed.[86]

Alyssa M. Knappins

85. *Id.* at 1049 (quoting *In re* Violet G., 212 A.3d 160, 166 (R.I. 2019)).
86. *Id.* at 1055.