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**IN THE
COURT OF APPEALS OF INDIANA**

J.M.O. on behalf of S.H.O., a minor child,)
Appellant,)
vs.)
J.C.D.,)
Appellee.)

No. 07A01-0910-CV-478

J.M.O. on behalf of S.H.O., a minor child,)
Appellant,)
vs.)
D.H.M.,)
Appellee.)

APPEAL FROM THE BROWN CIRCUIT COURT
The Honorable Judith A. Stewart, Judge
The Honorable Douglas Van Winkle, Magistrate
Cause Nos. 07C01-0906-PO-0341 and 07C01-0906-PO-0342

July 16, 2010

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

J.M.O. (“Mother”) appeals the Brown Circuit Court’s order denying her Petitions for Protective Orders against her child’s father, J.C.D. (“Father”), and his fiancée, D.H.M. Mother raises the following dispositive issue: whether the trial court’s findings of fact and conclusions of law are sufficient. Concluding that the trial court erred when it failed to enter complete findings of fact and conclusions of law, we reverse and remand for proceedings consistent with this opinion.

Facts and Procedural History

Mother and Father are the biological parents of S.H.O., who was born on January 19, 2005. Father is engaged to marry D.H.M. On May 1, 2009, S.H.O began a weekend visit with Father and D.H.M. When S.H.O. was returned to Mother on May 3, 2009, S.H.O. complained of pain while urinating. Mother examined S.H.O. and observed that S.H.O. had severe abrasions on her inner thighs and vaginal area.

Mother took S.H.O to the emergency room, and then to her pediatrician on the following day. S.H.O. had previously seen her pediatrician on April 27, 2009, and the injuries were not present on that date. S.H.O.’s pediatrician observed “significant abrasion to [S.H.O.’s] inner thighs, her inner buttock area, and she had bruising to the perineum.” Tr. p. 79. S.H.O.’s pediatrician believed that the injuries occurred twenty-four to forty-eight hours prior to her examination.

The Indiana Department of Child Services (“the DCS”) initiated an investigation after receiving information about S.H.O.’s injuries. S.H.O. told the DCS investigator that her Father, D.H.M. and D.H.M.’s son touched her on her “vaginal area and buttocks . . . more than one time at the house in the bedroom.” Ex. Vol., Petitioner’s Ex. C. Mother

told the investigator that S.H.O. acts out sexually when she returns from weekend visits with her Father and D.H.M. Id.

Father told the DCS investigator that he noticed S.H.O. was walking funny when he picked her up on May 1. Father stated that S.H.O. “pooped her pants” and her soiled underwear looked like it had been worn for several days. Id. Father observed that the abrasions were almost bleeding. Tr. p. 134. Father gave S.H.O. a bath and put diaper rash cream on the abrasions. Father indicated that he had no knowledge of how the injuries to S.H.O. occurred. Further, Father stated that it was common for S.H.O. to be soiled when Father picked her up for visitation. D.H.M. told the DCS investigator that she had no knowledge of S.H.O.’s injuries as she did not observe them.

After concluding its investigation, the DCS substantiated the allegations of abuse or neglect against Father and D.H.M. Father appealed the finding, and the DCS file was submitted to Dr. Hibbard, a “Child Protection Team physician at IU Medical Center.” Ex. Vol., Respondent’s Ex. 1. After reviewing documents “that were received pertaining to the assessment,” the doctor concluded that S.H.O.’s injuries were not indicative of signs of abuse. Id. “Dr. Hibbard stated that she had just seen a 14 year old that had the same rash injury and this child had spent a day at a water park and the rash was from her shorts rubbing against her legs.” Id. Further, the doctor stated that the injury was caused by the child’s legs rubbing together. Id. Finally, the doctor ruled out the injury to the perineum “as a non-specific finding due to the fact that the child could injure this area herself by accident.” Id.

On June 12, 2009, Mother filed petitions for protective orders against Father and D.H.M. That same day an ex parte order for protection was issued. The petitions were consolidated for a hearing and heard together on August 21, 2009. At the hearing, Mother proceeded pro se and filed a motion for findings of fact and conclusions of law. The trial court denied Mother's petitions and dismissed the ex parte order of protection after finding:

- a. [J.O.] is the mother of [S.H.O.] and [J.C.D.] is the father of said child, having established paternity pursuant to a paternity affidavit.
- b. [D.H.M.] is [Father's] fiancée.
- c. The petitioner and [S.H.O.] live in Nashville, in Brown County Indiana and the respondents live in Camby, Indiana.
- d. The petitioner did not prove by a preponderance of evidence that respondents attempted to cause [S.H.O.] physical harm.
- e. The petitioner did not prove by a preponderance of evidence that respondents caused physical harm to [S.H.O.]
- f. The petitioner did not prove by a preponderance of evidence that respondents placed [S.H.O.] in fear of physical harm.
- g. The petitioner did not prove by a preponderance of evidence that respondents committed a sex offense against [S.H.O.].
- h. The petitioner did not prove by a preponderance of evidence that respondents represent a credible threat to the safety of the petitioner or [S.H.O.].

Appellant's App. pp. 24. Mother now appeals.

Discussion and Decision

Before evidence was admitted at the hearing on Mother's petitions for protective orders, Mother filed a motion requesting findings of fact and conclusions of law. Trial Rule 52(A) provides in pertinent part: "In the case of issues tried upon the facts without a jury or with an advisory jury, the court shall determine the facts and judgment shall be

entered thereon pursuant to Rule 58. Upon its own motion, or the written request of any party filed with the court prior to the admission of evidence, the court in all actions tried upon the facts without a jury or with an advisory jury . . . shall find the facts specially and state its conclusions thereon.” Further, Trial Rule 52(A) “is a method for formalizing the ruling of the trial court, providing more specific information for the parties, and establishing a particularized statement for examination on appeal.” Mitchell v. Mitchell, 695 N.E.2d 920, 923 (Ind. 1998).

On appeal, Mother argues that the trial court’s findings of fact and conclusions of law were inadequate because the findings “give absolutely no insight into the reasoning, theory, or legal basis for the trial court’s ruling. . . . These ‘findings’ are unquestionably insufficient to satisfy the mandates of” Rule 52(A). Appellant’s Br. at 18. Father agrees that the findings in this case “do not provide any factual or legal basis upon which [the court] determined the legal right of the parties.” Appellee’s Br. at 5.

When a party makes a written request for findings to the court prior to the admission of evidence, the trial court is required to make complete findings of fact. Lee’s Ready Mix and Trucking, Inc. v. Creech, 660 N.E.2d 1033, 1039 n.5 (Ind. Ct. App. 1996) (citing Dahnke v. Dahnke, 535 N.E.2d 172, 175 (Ind. Ct. App. 1989)). Such findings should contain all of the facts necessary for a judgment for the party in whose favor conclusions of law are found. Erb v. Erb, 815 N.E.2d 1027, 1030 (Ind. Ct. App. 2004) (citation omitted).

The trial court’s findings in this case are wholly insufficient. The trial court did not make any factual findings discussing the evidence relied upon in reaching its decision

to dismiss Mother's petition for protective orders against Father and D.H.M.¹ We therefore agree with the parties that this case should be remanded to the trial court with instructions to enter complete findings of fact and conclusions of law.

Reversed and remanded for proceedings consistent with this opinion.

RILEY, J., and BRADFORD, J., concur.

¹ In her Appellant's Brief, Mother also argues that the trial court abused its discretion when it admitted Dr. Hibbard's opinion that S.H.O.'s injuries were not indicative of abuse because the doctor's expert opinion testimony was not subject to cross-examination. Because the trial court failed to make factual findings, we are unable to determine whether the court relied on Dr. Hibbard's opinion in reaching its decision. Accordingly, we will not address this issue in light of our decision to remand this case to the trial court to enter the findings required by Trial Rule 52(A).