

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**IN THE INTEREST OF: S.F.M.D.,
RESPONDENT**

**JUVENILE OFFICER,
RESPONDENT**

vs.

**F.D. (FATHER),
APPELLANT**

**R.R. (MOTHER),
APPELLANT**

DOCKET NUMBER WD77071 (Consolidated with WD77104)

DATE: OCTOBER 14, 2014

Appeal from:

The Circuit Court of Jackson County, Missouri
The Honorable Justine E. Del Muro, Judge

Appellate Judges:

Division Three: Gary D. Witt, P.J., Joseph M. Ellis, J. and Thomas H. Newton, J.

Attorneys:

Edward E. Moore, for Respondent Juvenile Officer

Aristotle N. Rodopoulos, for Appellant F.D. (Father)

Meredyth A. Vick, for Appellant R.R. (Mother)

MISSOURI APPELLATE COURT OPINION SUMMARY

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**IN THE INTEREST OF: S.F.M.D., RESPONDENT
JUVENILE OFFICER, RESPONDENT**

v.

**F.D. (FATHER), APPELLANT
R.R. (MOTHER), APPELLANT**

WD77071 (Consolidated with WD77104)

Jackson County, Missouri

Before Division Three Judges: Gary D. Witt, P.J., Joseph M. Ellis, J. and Thomas H. Newton, J.

Father and Mother appeal from a judgment entered by the Circuit Court of Jackson County assuming jurisdiction over their minor child, S.F.M.D., concluding that S.F.M.D. was in need of care and treatment, and taking custody of S.F.M.D. The Juvenile Officer had alleged that S.F.M.D. was without proper care, custody and support because Mother neglects him. In support of that ultimate factual finding, the Juvenile Officer asserted that S.F.M.D. suffered rib fractures while in Mother's care and that Mother was unable to explain when and how those fractures occurred. As to Father, the Juvenile Officer alleged that S.F.M.D. was without proper care, custody and support because Father abuses and neglects him. In support of that ultimate factual finding, the Juvenile Officer alleged that on one occasion Father hit mother in the head with brass knuckles, that on one occasion Father punched Mother while she was holding S.F.M.D., that Father has a history of violence and criminal action that impairs his parenting ability, and that S.F.M.D. had sustained rib fractures while in Father's care. After hearing the evidence, the trial court entered a finding that there was an extremely high likelihood that the rib fractures occurred while S.F.M.D. was in his parents' custody and that the evidence generally sustained the allegations of the Juvenile Officer. The court ordered that S.F.M.D. be placed in the custody of the Children's Division for placement in licensed placement.

REVERSED AND REMANDED.

Division Three holds:

- (1) When a court finds that a child falls within the parameters of § 211.031.1(1), § 211.181.1 requires that the court make findings of fact upon which it exercises jurisdiction over the child.
- (2) The sole factual finding made by the court in this case was that there was an extremely high likelihood that S.F.M.D. suffered broken ribs while in the

custody of Father and Mother. Such a finding is not sufficient, in and of itself, to establish that Father and/or Mother abused or neglected the child. There were no findings in the judgment, or allegations in the Juvenile Officer's petition, that either parent caused the rib injury; was aware of the injury; could have done anything to prevent the injury; should have sought medical treatment for the injury; or needed to, but failed to, take steps to avoid a similar injury in the future. Likewise, the Juvenile Officer's allegation that Mother was unable to explain when or how the rib fractures occurred, without more, is insufficient to establish that she abused or neglected the child.

(3) Even if we view the averments found to have been proven as factual findings adopted by the family court, such findings would be insufficient to support a finding of abuse or neglect. For the instance with the brass knuckles or Father's "history of violence and criminal action" to constitute abuse or neglect, more specific findings would be required, as the averments found to be proven establish no connection between those acts and the welfare of S.F.M.D. The fact that Father punched Mother while she was holding S.F.M.D. might well be sufficient to support a finding of neglect or abuse on the part of Father but, from the judgment rendered, this Court cannot know if the family court did or would have found abuse or neglect based on that fact alone.

(4) Furthermore, the fact that Mother was a victim of domestic violence on two occasions in the two days immediately before the child was placed in protective custody does not establish that she was neglectful in her parenting of S.F.M.D. Likewise, the fact that the father of her child has a history of violence and/or criminal acts at some point in his past does not establish that Mother was neglectful.

(5) Certainly, evidence was presented that might support additional findings that could support an ultimate finding of neglect on the part of Mother, especially if she is found to be insistent on continuing to live with and expose S.F.M.D. to an abusive or violence prone Father. The evidence could also support additional findings bolstering the ultimate finding of abuse and neglect on the part of Father beyond the singular instance of striking Mother while she held the child. Because the family court failed to satisfy its statutory obligation under § 211.181 to enter specific factual findings supportive of its finding that S.F.M.D. was in need of care and treatment, this Court cannot know what specific facts were found to exist and cannot meaningfully review the family court's judgment. The failure to make the mandatory statutory findings requires this court to reverse and remand the case so that the family court may enter a judgment complying with the dictates of the law.

(6) The trial court did not err in admitting into evidence the testimony of a nurse practitioner regarding the existence of the rib fractures, the potential age of those fractures, and possible causes of such fractures.

(7) While the trial court properly admitted Mother's Petition for Order of Protection that she had filed against Father as substantive evidence against Mother, who, by signing the petition, is deemed to have admitted the averments contained therein, the petition could not be considered against Father as substantive evidence of the truth of the matters asserted therein. That said, the averments in the petition could most certainly be utilized to impeach the testimony by Mother, to the extent her testimony is contrary thereto, and used against Father in that manner.

Opinion by Joseph M. Ellis, Judge

Date: October 14, 2014

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