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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

D.V.,)	Appeal from the Circuit Court
)	of Winnebago County.
Plaintiff-Appellant,)	
)	
v.)	No. 12-MR-542
)	
RICHARD H. CALICA, Acting Director)	
of the Department of Children and Family)	
Services, and THE DEPARTMENT OF)	
CHILDREN AND FAMILY SERVICES,)	Honorable
)	Eugene G. Doherty,
Defendants-Appellees.)	Judge, Presiding.

PRESIDING JUSTICE BURKE delivered the judgment of the court.
Justices McLaren and Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held:* The agency's denial of plaintiff's request to expunge an indicated finding of sexual molestation was not against the manifest weight of the evidence, as the agency was entitled to credit the victim's testimony over plaintiff's.

¶ 2 Plaintiff, D.V., appeals the trial court's judgment upholding an order of the Department of Children and Family Services (the agency) that denied his request for the expungement of an indicated report of child abuse. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On June 3, 2009, the agency entered on the central register an indicated report of abuse for sexual molestation, based on an investigation of allegations made by D.V.'s step-granddaughter, J.T. D.V. filed a request to expunge the report, and a hearing was held.

¶ 5 Evidence at the hearing showed that J.T. was born in 1995. She lived with her father and brother. When J.T. was six, the family lived with J.T.'s paternal grandmother, S.V., and D.V. (the grandparents) for approximately seven months. They then moved into a trailer home that S.V. financed for them. J.T. had good grades in school and never had any disciplinary referrals. J.T. and her brother spent two weekends per month at the grandparents' home. S.V. traveled for work and was away 50 to 60% of the time. In 2009, after attending a school assembly where a motivational speaker talked about who children could turn to when sexual abuse happened, J.T. told her best friend that D.V. sexually abused her, and the friend convinced J.T. to tell the school counselor.

¶ 6 J.T. testified that D.V. began sexually abusing her when she was around age 11. She said that D.V. would fondle her breasts and vagina and penetrated her vagina with one or more fingers. He would also lick, suck, or bite her breasts, and would kiss her or attempt to kiss her. D.V. would do this almost every time she went to the grandparents' house over a period of 18 months to two years. She estimated that there were 20 to 30 total incidents. J.T. did not report the incidents, because she feared that she would not be believed, would be disowned by her family, and would lose everything. However, J.T. said that she told her brother about the abuse.

¶ 7 J.T. could remember three particular incidents in detail. She said that the first occurred in 2006 at a summer family event at the grandparents' home. J.T. went inside to get something, and D.V. followed her. While in the hallway, D.V. put his hands up J.T.'s shirt, touched her breasts, and tried to kiss her. He then pulled her shirt up and began to kiss her breasts. He put

his hand inside her pants and touched and penetrated her vagina. J.T. tried to push D.V. away and fight him off. The incident ended when D.V. received a phone call and J.T. was able to break away.

¶ 8 The second incident occurred in January 2009, after J.T. accompanied D.V. on a trip to the veterinarian. J.T.'s brother was supposed to go as well, but he did not. J.T. went anyway because she wanted to become a veterinarian. After the appointment, they stopped at the grandparents' home and J.T. mentioned that when she was younger she wanted to pierce her navel. D.V. said that he wanted to see J.T.'s navel, and she refused. He then pushed her against the kitchen counter, held her hands over her head, and pulled up her shirt. The incident ended when J.T. fought off D.V. and stated that she wanted to go home. J.T. hurt her knees in the incident, and her father later took photographs of the knee injuries.

¶ 9 In the third incident, J.T. and her brother had fallen asleep in the living room of the grandparents' home. J.T. woke up and found her pants around her ankles and D.V. standing over her. He asked if she wanted him to touch her vagina or do anything with it. J.T. said no, pulled up her pants, and went over to lie next to her brother. J.T. also mentioned a fourth incident, in which she was lying in bed at the grandparents' home, and D.V. placed a pillow over her head and touched her.

¶ 10 Nurse Lori Thompson performed a medical examination of J.T. after the abuse was reported. The examination was inconclusive as to whether sexual abuse occurred, but the alleged incidents would not have left medical evidence. Thompson stated that the photographs of J.T.'s knee injuries seemed to corroborate her description of hurting them on the kitchen counter. Thompson found J.T.'s accounts of the incidents to be consistent and she believed that J.T. was being truthful.

¶ 11 J.T.'s brother told an agency investigator that he once saw D.V. grab J.T.'s breasts. He said that J.T. attempted to kick D.V. away. She asked her brother for help and then started giggling when D.V. began tickling her. J.T.'s brother also told the investigator that J.T. told him about the abuse but that he did not report it to anyone. J.T.'s brother did not testify at the hearing.

¶ 12 Detective Bob Juanez investigated the matter. He testified about J.T.'s descriptions of the incidents to him. Those descriptions generally were consistent with J.T.'s own testimony. Juanez stated that he believed that J.T. was telling the truth and that she became very emotional while discussing the incidents.

¶ 13 J.T.'s father testified that he believed that she was telling the truth about the abuse. After J.T. reported the abuse, S.V. told J.T.'s father that he should get J.T. to recant or she would make sure that his children were taken away. S.V. also stopped paying for J.T.'s cell phone. D.V. posted a notice on the trailer stating that they would have to vacate the trailer in five days if the rent was not paid. There was evidence that J.T.'s father was behind on payments for the property.

¶ 14 D.V. did not return phone calls made by the agency during its investigation. When Juanez asked D.V. to come to the police department for an interview, D.V. initially agreed but then failed to do so. D.V. cancelled the interview and rescheduled it so that his attorney could be present. He refused to take a polygraph test. During his interview, D.V. denied the allegations. When he discussed the trip to the veterinarian, he omitted that he and J.T. stopped at his house after the appointment, until Juanez mentioned it. Criminal charges were filed against D.V., but he was never convicted. It is not clear from the record whether those charges were dismissed or he was acquitted.

¶ 15 D.V. testified and denied the allegations. He also denied or contradicted various details of the events that J.T. described. He said that, the day before he was contacted by the agency, J.T. called him and asked him to buy her an iTunes card and asked if she could go to a bar with him to watch the Super Bowl. He said that he acted in accordance with his attorney's advice at the police interview, that he answered all questions posed to him, and that he did not lie.

¶ 16 S.V. testified that J.T. was an untruthful child and S.V. did not believe that D.V. abused her. S.V. said that, in 2008, J.T. was upset with her father and begged to live with her and D.V. J.T. was very unhappy, was always angry with her father and brother, and did not want to live with them.

¶ 17 Various other witnesses also testified for D.V., stated that they did not believe J.T., and said that she had a reputation for dishonesty. For example, J.T.'s aunt, Christi, testified that J.T. was starved for attention. Christi also said that she had caught J.T. in numerous lies and that, once caught, J.T. would not back off of the lie. Christi had never seen J.T. appear uncomfortable around D.V. and did not think that D.V. abused her.

¶ 18 J.T.'s great-uncle, great-aunt, and great-grandmother all testified about J.T.'s good relationship with D.V. and their belief that she was untruthful. A family friend testified that it would be difficult for a person to be sexually abused in the hallway of the grandparents' house during a party. Finally, J.T.'s sister, Brittany, testified that she had known D.V. since she was young and that he never behaved inappropriately toward her. Brittany believed that J.T. was untruthful and made up stories.

¶ 19 The administrative law judge (ALJ) issued a recommendation to deny expungement. The ALJ found that J.T. was very credible, noting that J.T. was very direct, looked at D.V. when she testified, never wavered in her statements about D.V.'s actions, and was consistent in her story.

The ALJ further noted that J.T. had received many benefits from her grandparents and wanted to live with them at one time, but had lost everything by making her outcry. The ALJ found that D.V. was not credible, noting that, when J.T. testified, he was not comfortable and squirmed in his seat. The ALJ also found that D.V. was inconsistent when he testified. The ALJ rejected arguments for reasons why J.T. might lie, finding that they made no sense.

¶ 20 The agency director adopted the recommendation, and D.V. appealed. The trial court, in order to protect J.T.'s identity, granted D.V.'s request to proceed anonymously. The trial court affirmed, finding that the agency's decision was not against the manifest weight of the evidence. D.V. appeals.

¶ 21

II. ANALYSIS

¶ 22 D.V. contends that the agency's decision was against the manifest weight of the evidence. The agency disagrees and also asks us to strike D.V.'s brief based on a variety of shortcomings.

¶ 23 We deny the request to strike the brief. However, we pause to admonish D.V.'s counsel about two particular problems with the brief. We first note that, instead of citing to the record on appeal as required by Illinois Supreme Court Rule 341(h)(7) (eff. Feb. 6, 2013), counsel cited to the page numbers assigned by the agency in its answer on administrative review, giving the impression that counsel did not review the actual record when preparing the brief. More troublesome, counsel included documents in the appendix to the brief that named the parties despite the fact that D.V. moved in the trial court to proceed anonymously and the trial court granted the motion to protect J.T.'s identity. Regardless, despite these concerns, instead of striking the brief, we decide the appeal on the merits.

¶ 24 Under section 7.7 of the Abused and Neglected Child Reporting Act (Act) (325 ILCS 5/7.7 (West 2012)), the agency is required to maintain a central register of all cases of suspected

child abuse or neglect reported under the Act. The agency investigates all reports and classifies them as “ ‘indicated,’ ” “ ‘unfounded,’ ” or “ ‘undetermined.’ ” 325 ILCS 5/7.12 (West 2012); *Slater v. Department of Children & Family Services*, 2011 IL App (1st) 102914, ¶ 23. A report is “indicated” when an investigation determines that credible evidence of the alleged abuse or neglect exists. 325 ILCS 5/3 (West 2012).

¶ 25 A subject of an indicated report may request the agency to amend the record of the report or remove the record of the report from the central register. 325 ILCS 5/7.16 (West 2012). If the agency does not do so, the subject of the report has the right to an administrative hearing before an ALJ to determine whether the record of the report should be amended or removed. *Id.* The agency has the burden of proof in justifying the refusal to amend or remove the record, and it must prove that a preponderance of the evidence supports the indicated finding. *Slater*, 2011 IL App (1st) 102914, ¶ 24. After the hearing, the director of the agency receives the ALJ’s recommendation and may accept, reject, amend, or return the recommendation. *Id.* The director’s decision is the final administrative decision. *Id.*

¶ 26 Judicial review of the director’s decision is governed by the Administrative Review Law (735 ILCS 5/3-101 *et seq.* (West 2012)). 325 ILCS 5/7.16 (West 2012). “In the case of an administrative review action, we review the findings of the ALJ during the administrative hearing and not the decision of the circuit court.” *Slater*, 2011 IL App (1st) 102914, ¶ 28.

¶ 27 “The propriety of the agency’s findings of fact will be upheld unless they are against the manifest weight of the evidence.” *Id.* ¶ 30. “An administrative agency’s factual findings are against the manifest weight of the evidence only when the opposite conclusion is clearly evident.” *Clarcor, Inc. v. Hamer*, 2012 IL App (1st) 111674, ¶ 26.

¶ 28 In an appeal of an administrative determination, it is not the appellate court's function to reevaluate witness credibility or resolve conflicting evidence. See *Morgan v. Department of Financial & Professional Regulation*, 374 Ill. App. 3d 275, 287 (2007). "The ultimate conclusion as to whether a witness testifies truthfully is a determination left exclusively to the trier of fact." *Id.* at 288-89.

¶ 29 Here, D.V. argues primarily that J.T. was not credible. In doing so, he points to various weaknesses in the allegations (such as the low probability that he could abuse her in the hallway during a party without being seen), J.T.'s friendly behavior toward D.V., minor inconsistencies in the ALJ's findings of fact, and the witnesses who testified that J.T. was not a truthful person. However, the ALJ, who observed and heard the witnesses, specifically found J.T. to be credible and D.V. to lack credibility. Those findings were based on evidence provided by J.T. and others who stated that they believed her, along with the fact that a portion of J.T.'s allegations were corroborated by her brother to an agency investigator. D.V. does not provide any case law to support his arguments that the ALJ acted inappropriately in determining credibility. Neither "this court nor the circuit court can reweigh the evidence or the determination of the credibility of the witnesses, which is to be made by the agency." *Doe v. Department of Children & Family Services*, 265 Ill. App. 3d 907, 911 (1994). The ALJ was free to accept J.T.'s version of the facts and reject that of D.V. Further, minor inconsistencies in the ALJ's factual findings do not refute that there was sufficient evidence in the record to determine that J.T. was truthful and that abuse occurred. The opposite conclusion is not clearly evident from the record. Thus, the agency's determination was not against the manifest weight of the evidence.

¶ 30

III. CONCLUSION

¶ 31 The agency's determination was not against the manifest weight of the evidence. Accordingly, the judgment of the circuit court of Winnebago County is affirmed.

¶ 32 Affirmed.