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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2016-2017

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L.D.K.

v.

V.K.

**Appeal from Elmore Circuit Court
(JU-15-288.02)**

MOORE, Judge.

L.D.K. ("the mother") appeals from a judgment entered by the Elmore Circuit Court ("the circuit court") impliedly finding A.K. ("the child") dependent and awarding custody of

2160205

the child to the child's maternal aunt, V.K. ("the maternal aunt"). We affirm the circuit court's judgment.

Procedural History

The maternal aunt filed in the Elmore Juvenile Court ("the juvenile court") a petition alleging that the child was dependent. After the juvenile court entered a judgment in that action, the mother appealed to the circuit court for a trial de novo. After a trial, the circuit court entered a judgment on December 7, 2016, indicating that it had heard "testimony, ore tenus, without the record" and impliedly finding the child dependent, awarding the maternal aunt custody of the child, and awarding the mother supervised visitation with the child. On December 20, 2016, the mother filed her notice of appeal to this court.

Discussion

On appeal, the mother challenges the sufficiency of the evidence to support the circuit court's judgment. Initially, we note that, although the mother did not file a postjudgment motion, the circuit court's judgment included specific findings of fact. Therefore, no postjudgment motion was required to preserve the issue of the sufficiency of the

2160205

evidence. See New Props., L.L.C. v. Stewart, 905 So. 2d 797, 801-02 (Ala. 2004); and Rule 52(b), Ala. R. Civ. P.

We further note that, in this case, the circuit court indicated that it had heard ore tenus testimony, but the mother did not order the transcript of the trial, nor did she comply with the procedure to establish a "Statement of the Evidence or Proceedings" pursuant to Rule 10(d), Ala. R. App. P. "An appellant bears the burden of ensuring that the record contains sufficient evidence to warrant reversal." Bobo v. Bobo, 585 So. 2d 54, 56 (Ala. Civ. App. 1991). "[W]hen, as in this case, 'oral testimony is considered by the trial court in reaching its judgment and that testimony is not present in the record as either a transcript or Rule 10(d), A[la]. R. A[pp]. P., statement, it must be conclusively presumed that the testimony [was] sufficient to support the judgment." Beverly v. Beverly, 28 So. 3d 1, 4 (Ala. Civ. App. 2009) (quoting Rudolph v. Rudolph, 586 So. 2d 929, 930 (Ala. Civ. App. 1991)). Therefore, we must affirm the circuit court's judgment.

AFFIRMED.

Thompson, P.J., and Pittman and Donaldson, JJ., concur.

Thomas, J., recuses herself.