An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

NO. COA11-1052
NORTH CAROLINA COURT OF APPEALS

Filed: 7 February 2012

IN THE MATTER OF:

S.P. Nash County
No. 11 JA 9

Appeal by respondent-father from order entered 9 May 2011 by Judge William G. Stewart in Nash County District Court. Heard in the Court of Appeals 23 January 2012.

Jayne B. Norwood, for petitioner-appellee Nash County Department of Social Services.

Pamela Newell, for guardian ad litem.

Levine & Stewart, by James E. Tanner, III, for respondent-appellant father.

MARTIN, Chief Judge.

Respondent-father appeals from an order adjudicating his daughter, S.P. ("Sally"), a neglected juvenile and ordering placement with friends of the family. We affirm.

Sally, born in August 1997, lived with her mother and her mother's husband, whom she thought was her father, until the

summer of 2010 when he went to prison. Sally's biological father began regularly visiting her mother shortly thereafter, and around Labor Day of 2010, the father moved into their home. Sally was soon told, and DNA testing confirmed, that he was her biological father. Sally was also told that her father had served time in prison for murder.

On 23 September 2010, the Edgecombe County Department of Social Services (ECDSS) received a report alleging improper discipline and substance abuse by Sally's parents. That same day, social worker Hope Bethea went to the family's residence to conduct an assessment and noticed red and blue marks on the back of Sally's right leg. When asked about the marks, Sally told Ms. Bethea that her mother had beaten her with a belt. After Ms. Bethea expressed concern about Sally's safety, mother agreed to allow Sally to stay with family friends, Mr. and Mrs. P.

The investigation into Sally's neglect case was subsequently transferred to Nash County Department of Social Services (NCDSS) when parents moved into a motel in Nash County. On 24 January 2011, NCDSS filed a juvenile petition alleging that Sally was a neglected juvenile. The trial court conducted an adjudication and dispositional hearing on 17 March 2011. In an order filed 9 May 2011, the trial court concluded that Sally

was a neglected juvenile in that she did not receive proper care, supervision or discipline from her parents. Father appeals.

"The role of this Court in reviewing a trial court's adjudication of neglect and abuse is to determine '(1) whether the findings of fact are supported by "clear and convincing evidence," and (2) whether the legal conclusions are supported by the findings of fact[.]'" *In re T.H.T.*, 185 N.C. App. 337, 343, 648 S.E.2d 519, 523 (2007), (quoting *In re Gleisner*, 141 N.C. App. 475, 480, 539 S.E.2d 362, 365 (2000)), *aff'd as modified*, 362 N.C. 446, 665 S.E.2d 54 (2008). "If such evidence exists, the findings of the trial court are binding on appeal, even if the evidence would support a finding to the contrary." *Id.*

Father's sole argument on appeal is that the trial court erred when it concluded that Sally was a neglected juvenile. We disagree.

A neglected juvenile is one who "does not receive proper care, supervision, or discipline from the juvenile's parent, guardian, custodian, or caretaker." N.C. Gen. Stat. § 7B-101(15) (2009). To adjudicate a juvenile neglected, "there

[must] be some physical, mental, or emotional impairment of the juvenile or a substantial risk of such impairment as a consequence of the failure to provide 'proper care, supervision, or discipline.'" *In re Safriet*, 112 N.C. App. 747, 752, 436 S.E.2d 898, 901-02 (1993) (citations omitted). The allegations in a petition alleging abuse, neglect, or dependency shall be proved by clear and convincing evidence. N.C. Gen. Stat. § 7B-805 (2009).

In adjudicating Sally to be a neglected juvenile, the trial court made findings of fact, which are unchallenged here, that tend to show the following: Sally is afraid of her father. After observing his demeanor when he gets mad and his controlling nature, she is concerned he might harm her mother.

On the day Ms. Bethea came to her home, Sally admits she was "mouthy" to her mother. Sally stated that she heard her father tell her mother that she should slap Sally, and if she did not do so, he would. Mother then hit Sally with a belt several times, leaving long red marks and a blue "U"-shaped mark on her leg. Ms. Bethea saw these marks and attempted to photograph Sally's injuries, but father refused to allow her to do so. Mother admitted that in the past, her now-imprisoned husband prevented her from using physical discipline, but that

she told Sally that "things are going to be different now" prior to this incident.

While investigating, Ms. Bethea also saw alcohol in the home and noted that the parents seemed to be under the influence of alcohol. Sally stated that she was afraid to remain in the home if her father was going to stay there. Consequently, Ms. Bethea suggested that father leave the home. Father refused and mother stated that father was her source of support in staying clean and that if anyone should leave, it should be Sally. Ms. Bethea inquired about a family Sally could stay with during the pendency of the investigation. Mother suggested Mr. and Mrs. P, parents of one of Sally's friends, with whom she had stayed in the past. With the permission of Mr. and Mrs. P, Sally went to stay with them. Although parents dispute this account of events, the district court found that Ms. Bethea's description of the events coincided with Sally's description, and that Sally is a credible witness.

After Sally left the home, respondent and mother were evicted from the residence and moved two more times, ultimately ending up at the Holiday Motel in Nash County, where they shared a room with one double bed. At one point prior to the adjudication, mother showed up at Mr. and Mrs. P's house and

told Sally that she was leaving father. However, she returned to live with father that night.

Mother admitted to Ms. Bethea on the day of the discipline incident that she was a recovering cocaine addict who has been diagnosed with bipolar disorder, which is currently untreated. She is also on probation at this time for larceny of construction materials. Father admitted that he was convicted of murder in 1989 and served time in prison until 1993. Father was also previously convicted of assaulting two of his other children and his ex-wife, and has been convicted of two DWI's.

DSS prepared a case plan with parents to address their substance abuse and mental health issues, and to encourage and require them to attend parenting classes. During this time, however, parents failed to address their substance abuse or mental health issues and they did not attend the parenting classes. Rather, parents focused only on giving custody to Mr. and Mrs. P. Moreover, father was uncooperative with regards to mother's visitation with Sally and acted aggressively towards Ms. Bethea several times throughout the investigation.

Clear and convincing evidence exists in the record to support the district court's uncontested findings of fact with regard to the incident of improper discipline and the general

lack of proper care in the household. Parents have failed to address the concerns of DSS with regard to their mental health and substance abuse issues and have failed to follow the case plan created by DSS. Furthermore, there is clear and convincing evidence that Sally exhibits an emotional impairment. Within a period of a few weeks, Sally was told that her mother's husband was not her father, her biological father moved into her home, and she found out he was previously convicted of murder. Sally herself admits she is afraid of her father, worries about her mother's safety, and does not want to remain in the home. These findings of fact support the district court's conclusion that Sally is a neglected juvenile.

Affirmed.

Judges BRYANT and McCULLOUGH concur.

Report per Rule 30(e).