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NO. COA04-13

NORTH CAROLINA COURT OF APPEALS

Filed: 21 December 2004

IN THE MATTER OF
E.L.

Buncombe County
No. 02 J 291

Appeal by respondent from judgment and order entered 11 June 2003, by Judge Gary S. Cash in District Court, Buncombe County. Heard in the Court of Appeals 22 September 2004.

Charlotte A. Wade for petitioner-appellee.

Michael N. Tousey for Guardian ad Litem.

The Turrentine Group, PLLC, by Karlene Scott-Turrentine, for respondent-appellant.

McGEE, Judge.

Respondent appeals from an adjudication judgment and interim dispositional order finding that his daughter, E.L., was a neglected child. E.L.'s mother, D.L., does not appeal.

The evidence at the adjudication hearing tended to show that E.L. was born prematurely on 17 October 2001 at Mission-St. Joseph's Hospital in Asheville (Mission Hospital). Staff at Mission Hospital contacted Buncombe County Department of Social Services (DSS) on 28 October 2001 after observing "borderline abusive/aggressive behavior towards [E.L.] by [D.L.] when another family member was not present." Mission Hospital refused to

discharge E.L. until DSS became involved.

Pending an investigation, DSS entered into a protection plan with E.L.'s parents on 28 October 2001. The protection plan provided:

[D.L.] will not be left alone at any time with [E.L.]. Either the maternal grandmother . . . or the father, [respondent], agree to be responsible for [E.L.] at all times, and they will not allow [D.L.] to be alone with [E.L.]. [D.L.] is allowed to be with [E.L.] whenever she wishes, but [the maternal grandmother] or [respondent] will be present and supervising all interactions all the time.

DSS received a second report on 7 December 2001 that:

[E.L.] had been taken to the emergency room of [Mission Hospital] on [6 December 2001] because she had a fever and was vomiting. The hospital staff observed that both [D.L.] and [respondent] appeared angry and aggressive toward [E.L.] and that they were handling her in a "very rough manner." Security had to be called because the [respondent and D.L.] became combative with a doctor. [E.L.] was admitted to the hospital because of concerns about [respondent and D.L.], as opposed to the significance of [E.L.'s] illness.

DSS investigated and substantiated neglect of E.L., and placed her with D.L.'s sister, J.R. Respondent and D.L.'s visitation were not limited and they often stayed at J.R.'s home with E.L.

E.L. was removed from J.R.'s home in late February 2001. Respondent and J.R. were experiencing "increasing difficulties" and DSS "became concerned not only for the safety of [E.L.] but for the safety of [J.R.'s] children and [J.R.]." E.L. was placed with R.E. and G.E., respondent's aunt and uncle. DSS filed a petition on 27 August 2002, alleging that E.L. was a neglected child in that she

did not receive proper care, supervision, or discipline from respondent or D.L. E.L. was adjudicated a neglected child, and an interim dispositional order was entered on 11 June 2003. A final dispositional order was also entered on 11 June 2003.

I.

We note that respondent gave notice of appeal only from the 11 June 2003 adjudication judgment and interim dispositional order. As a result, several of respondent's assignments of error are not properly before this Court.

A.

Respondent assigns error to the trial court's order that respondent's visits with E.L. be limited to one hour and that respondent's home be subject to unannounced visits by DSS and E.L.'s guardian ad litem. These orders are found in the trial court's dispositional order. However, respondent only gave notice of appeal from the trial court's 11 June 2003 adjudication judgment and interim dispositional order. Rule 3 of the North Carolina Rules of Appellate Procedure provides: "The notice of appeal . . . shall designate the judgment or order from which appeal is taken[.]" N.C.R. App. P. 3(d). As our Court stated in *Johnson & Laughlin, Inc. v. Hostetler*, 101 N.C. App. 543, 546, 400 S.E.2d 80, 82 (1991), "[Rule 3(d)] is jurisdictional and cannot be waived." Furthermore, "if the requirements of [Rule 3(d)] are not complied with, the appeal must be dismissed." *Foreman v. Sholl*, 113 N.C. App. 282, 291, 439 S.E.2d 169, 175 (1994). We lack jurisdiction to review the dispositional order challenged in this assignment of

error.

B.

In his next assignment of error, respondent contends no competent evidence supports the trial court's finding, pursuant to N.C. Gen. Stat. § 7B-507(a)(1)-(2), that (1) DSS made reasonable efforts to prevent E.L. being removed from the home; (2) that removal of E.L. from the home was necessary in order to ensure E.L.'s safety; (3) that continuation of E.L. in the home would be contrary to E.L.'s welfare; and (4) that no reasonable efforts to protect E.L. were possible short of removal. These findings appear in the trial court's 11 June 2003 interim dispositional order.

Our ability to review a juvenile matter is governed by N.C. Gen. Stat. § 7B-1001 (2003):

Upon motion of a proper party as defined in [N.C. Gen. Stat. §] 7B-1002, review of any final order of the court in a juvenile matter under this Article shall be before the Court of Appeals. . . . A final order shall include:

- (1) Any order finding absence of jurisdiction;
- (2) Any order which in effect determines the action and prevents a judgment from which appeal might be taken;
- (3) Any order of disposition after an adjudication that a juvenile is abused, neglected, or dependent; or
- (4) Any order modifying custodial rights.

Our Court has held that a temporary dispositional order is not a final order and is not an order from which a party may appeal. *In*

re *Laney*, 156 N.C. App. 639, 642, 577 S.E.2d 377, 379, *disc. review denied*, 357 N.C. 459, 585 S.E.2d 762 (2003).

In *Laney*, the respondent gave notice of appeal from an adjudication of neglect and temporary dispositional order. *Id.* at 640, 577 S.E.2d at 378. We held that the temporary dispositional order was not a final order and stated: "The broad reading advocated by respondent would open the door for multiple appeals whenever adjudication orders and temporary dispositions are entered before a final disposition. The statutory language does not show that the General Assembly intended this result." *Id.* at 642, 577 S.E.2d at 379.

Since respondent's assignment of error concerns findings in the trial court's interim dispositional order, we do not review this assignment of error. Moreover, any review of the interim dispositional order would have no significance since the final dispositional order would remain in effect. *See id.* at 643, 577 S.E.2d at 380.

We recognize that the trial court, in its final dispositional order, made findings similar to those in the interim order. As stated above, respondent did not give notice of appeal from the final dispositional order and we are therefore precluded from reviewing it. We also note that at the time respondent gave notice of appeal, the final dispositional order had been entered but respondent chose not to appeal from that order.

II.

We next address respondent's contention, made throughout his

brief to this Court, that the trial court committed plain error at the adjudication hearing. Our Courts have held that the plain error rule applies only in criminal cases. *Durham v. Quincy Mut. Fire Ins. Co.*, 311 N.C. 361, 367, 317 S.E.2d 372, 377 (1984); *Wachovia Bank v. Guthrie*, 67 N.C. App. 622, 626, 313 S.E.2d 603, 606, *disc. review denied*, 311 N.C. 407, 319 S.E.2d 280, *cert. denied*, 312 N.C. 90, 321 S.E.2d 909 (1984). We have also declined to apply the plain error rule in reviewing adjudicatory orders of neglect. *In re Gleisner*, 141 N.C. App. 475, 479, 539 S.E.2d 362, 365 (2000). Therefore, we do not review respondent's assignments of error under the plain error rule.

III.

Respondent assigns error to the admission of the testimony and report of neuropsychologist Dr. Mark Hill (Dr. Hill). Dr. Hill evaluated respondent in December 1993, approximately two months after respondent suffered a traumatic brain injury in a motor vehicle accident, and almost nine years prior to the filing of the petition. At the adjudication hearing, respondent objected to the relevance of Dr. Hill's testimony and report. The trial court allowed Dr. Hill to testify and admitted his report to the extent that it corroborated his testimony.

Respondent first argues that admission of Dr. Hill's testimony and report was in error because Dr. Hill was not fully licensed, or was only newly licensed, as a neuropsychologist at the time he evaluated respondent. Respondent argues that Dr. Hill could not qualify as an expert at the time of the evaluation and that it was

therefore error for the trial court to base its findings on Dr. Hill's testimony.

At the adjudication hearing, petitioner tendered Dr. Hill as an expert in the field of neuropsychology. Respondent objected to the relevancy of Dr. Hill's testimony but failed to object to his qualifications as an expert in the field of neuropsychology. Our Supreme Court has stated:

An objection to a witness's qualifications as an expert in a given field or upon a particular subject is waived if it is not made in apt time upon this special ground, and a mere general objection to the content of the witness's testimony will not ordinarily suffice to preserve the matter for subsequent appellate review.

State v. Hunt, 305 N.C. 238, 243, 287 S.E.2d 818, 821 (1982). Since respondent did not object to Dr. Hill's testimony on the special ground of his qualifications, this assignment of error is not properly before this Court. Nevertheless, we review this assignment of error pursuant to our discretionary authority under Rule 2. N.C.R. App. P. 2.

"[W]hether a witness qualifies as an expert is exclusively within the discretion of the trial judge and is not to be reversed on appeal absent a complete lack of evidence to support [the] ruling." *State v. Howard*, 78 N.C. App. 262, 270, 337 S.E.2d 598, 603 (1985), *disc. review denied*, 316 N.C. 198, 341 S.E.2d 581 (1986). It is not necessary for an expert witness to be a licensed specialist for the expert's testimony to be admissible. *State v. Bullard*, 312 N.C. 129, 140, 322 S.E.2d 370, 376 (1984). Furthermore, it is error for a trial court to prevent an expert

witness from testifying based on a lack of clinical experience when the witness is otherwise better qualified than the trial court to render an opinion. *In re Chasse*, 116 N.C. App. 52, 59-60, 446 S.E.2d 855, 859 (1994).

The evidence presented at the adjudication hearing showed that Dr. Hill, while employed at Thoms Rehabilitation Hospital (Thoms Hospital), evaluated respondent. Dr. Hill testified that Thoms Hospital was his first employment as a licensed psychologist. Dr. Hill further testified that prior to his employment at Thoms Hospital, he completed a post-doctoral fellowship and approximately fifty neuropsychological evaluations. Dr. Hill was clearly better qualified than the trial court to give an opinion about respondent's neuropsychological condition and we cannot find that there was "a complete lack of evidence to support [the trial court's] ruling." *Howard*, 78 N.C. App. at 270, 337 S.E.2d at 603. Therefore, the trial court did not err in admitting Dr. Hill's testimony and report and making findings based on that evidence.

Respondent next contends that the trial court erred in admitting Dr. Hill's testimony and report because they were not relevant. Respondent bases his argument on the grounds that:

- a) neither the testimony nor the report were relevant to the care of the minor child who was not even born at the time the report was made;
- b) neither the testimony nor the report were relevant as to [respondent's] ability to care for the minor child; [and]
- c) Dr. Hill's assessment of [respondent's] mental state and abilities was ten-years-old.

Our Supreme Court has held that trial courts are "afforded wide latitude of discretion when making a determination about the

admissibility of expert testimony." *Bullard*, 312 N.C. at 140, 322 S.E.2d at 376. Expert testimony is admissible when the trier of fact "can receive 'appreciable help' from the expert witness." *State v. Knox*, 78 N.C. App. 493, 495, 337 S.E.2d 154, 156 (1985) (quoting 7 J. Wigmore, *Evidence* § 1923 at 29 (Chadbourn rev. 1978)).

In a neglect proceeding, "the court's primary concern must be the child's best interest." *In re Pittman*, 149 N.C. App. 756, 760-61, 561 S.E.2d 560, 564, *disc. review denied*, 356 N.C. 163, 568 S.E.2d 608 (2002), *cert. denied*, 538 U.S. 982, 155 L. Ed. 2d 673 (2003). In determining a child's best interest,

any evidence which is competent and relevant to a showing of the best interest of that child must be heard and considered by the trial court, subject to the discretionary powers of the trial court to exclude cumulative testimony. Without hearing and considering such evidence, the trial court cannot make an informed and intelligent decision concerning the best interest of the child.

In re Shue, 311 N.C. 586, 597, 319 S.E.2d 567, 574 (1984).

"The determination of whether relevant evidence should be excluded . . . 'is a matter left to the sound discretion of the trial court, and the trial court can be reversed only upon a showing of abuse of discretion.'" *State v. Golphin*, 352 N.C. 364, 434, 533 S.E.2d 168, 215 (2000), *cert. denied*, 532 U.S. 931, 149 L. Ed. 2d 305 (2001), *cert. denied*, 358 N.C. 157, 593 S.E.2d 84 (2004) (quoting *State v. Wallace*, 351 N.C. 481, 523, 528 S.E.2d 326, 352-53, *cert. denied*, 531 U.S. 1018, 148 L. Ed. 2d 498 (2000)). "Abuse of discretion occurs when the trial court's ruling is 'manifestly

unsupported by reason.'" *State v. Jones*, 357 N.C. 409, 413, 584 S.E.2d 751, 754 (2003) (quoting *State v. T.D.R.*, 347 N.C. 489, 503, 495 S.E.2d 700, 708 (1998)).

In this case, the petition alleged neglect in that E.L. did not receive proper care, supervision, or discipline from respondent. Through his testimony, Dr. Hill explained respondent's brain injury and how it may have affected respondent's ability to be "flexible in dealing with problems and in problem-solving types of tasks." Dr. Hill's report stated a concern that respondent's "cognitive and physical limitations may currently pose safety hazards in situations that demand rapid decision-making or inhibition of inappropriate impulses."

Any evidence as to respondent's ability to problem solve and deal with safety hazards was clearly relevant to his ability to properly care for E.L., who was just over ten months old at the time the petition was filed. See *In re Pittman*, 149 N.C. App. at 761, 561 S.E.2d at 564 (in a neglect proceeding, any competent and relevant evidence must be considered by trial court). Dr. Hill's testimony about respondent's injury and how it may have affected his abilities in these areas was helpful in determining respondent's ability to give E.L. proper care, regardless of the time at which respondent sustained his injury. As a result, we cannot find that the trial court's admission of Dr. Hill's testimony and report was "manifestly unsupported by reason." See *Jones*, 357 N.C. at 413, 584 S.E.2d at 754.

We also find that the fact the evaluation and report were ten

years old concerns only the weight, not the relevancy, of the evidence, which was noted by the trial court. After hearing argument regarding the relevancy of Dr. Hill's testimony and report, the trial court stated:

All right, counsel, hearing the argument and reviewing the document, at least at this point it does appear that it may be relevant information that Dr. Hill has to offer. The weight to be given to that relevant evidence may be an issue, and I would certainly let you argue that at the appropriate time. But I'm going to deny the motion to suppress this [report], and I'll let [DSS] go ahead and schedule [Dr. Hill] to appear tomorrow as [the attorney for DSS wants].

Finally, even if the admission of Dr. Hill's testimony and report was in error, it was not prejudicial. The record is devoid of any suggestion that the trial court relied on Dr. Hill's testimony in adjudicating E.L. a neglected child.

IV.

Respondent next assigns error to several of the trial court's findings of fact, arguing that no competent evidence supported these findings. When reviewing the findings in a trial court's adjudication order of neglect, "this Court examines the evidence to determine whether there exists clear, cogent and convincing evidence to support the findings." *In re McCabe*, 157 N.C. App. 673, 679, 580 S.E.2d 69, 73 (2003). If supported by clear, cogent and convincing evidence, "[a] trial court's findings of fact are deemed conclusive, even where some evidence supports contrary findings[.]" *In re Smith*, 146 N.C. App. 302, 304, 552 S.E.2d 184, 186 (2001). "The trial judge determines the weight to be given the

testimony and the reasonable inferences to be drawn therefrom. If a different inference may be drawn from the evidence, [the trial court] alone determines which inferences to draw and which to reject." *In re Hughes*, 74 N.C. App. 751, 759, 330 S.E.2d 213, 218 (1985).

Respondent assigns error to the trial court's finding that respondent bounced E.L. violently, arguing that no competent evidence supports the finding. In its adjudication judgment, the trial court found:

That regarding the time when the child was placed with [R.E. and G.E.] that on occasion [respondent] would bounce [E.L.] excessively and violently and not respond to correct his behavior even when instructed to do so by the social worker.

Respondent argues that although there was evidence that D.L. bounced E.L. violently, there was no evidence that respondent did the same. We disagree.

DSS social worker Anita Russell (Russell) testified that at respondent's visitations with E.L., Russell was concerned that respondent bounced E.L. vigorously. At the hearing, the following colloquy occurred:

[DSS ATTORNEY]: When [E.L.] cries, what does [respondent] do?

[RUSSELL]: Typically walks with [E.L.] and -- and bounces her up and down.

[DSS ATTORNEY]: Does the Department have any concerns about the bouncing that you've witnessed?

[RUSSELL]: That has not been as much the case in the last couple of months because [E.L.] is older and usually does very well at the

visits. Originally that was a big concern, and I instructed [respondent] on several occasions to make gentler motions, not to shake her so vigorously or bounce her so vigorously. And he was not able to correct that from visit to visit. It seemed to keep occurring.

We find that this testimony is clear, cogent and convincing evidence that supports the trial court's finding of fact that respondent, and not just D.L., bounced E.L. violently.

Respondent next argues that no competent evidence supported the trial court's finding of fact that during an argument between respondent and J.R., E.L. was injured, causing a "small indentation" in E.L.'s head. Again, we find that testimony at the adjudication hearing provided clear, cogent and convincing evidence to support the finding.

J.R. testified that on 5 December 2001, respondent and D.L. got into an argument. According to J.R.'s testimony, she was standing in the doorway to her home and D.L. and E.L. were behind her. Respondent tried to get through the doorway and tried to "reach through [J.R.] to get [D.L. and E.L.]." J.R. testified: "As [respondent] went to reach towards me, he pushed me. And when he pushed me, I hit [D.L.] and [E.L.'s] head at the doorknob. [E.L.] had a place in her head about like that for days." J.R. further testified that: "[The doorknob] didn't cut [E.L.]. It just made like a little indention place, just like it sunk in."

Respondent attempts to refute J.R.'s testimony by pointing to Dr. Howald's testimony that he observed no injuries on E.L. on the day following the encounter. We disagree that Dr. Howald's

testimony precludes the trial court from finding that E.L. suffered an injury as a result of the argument. As noted above, the trial court alone weighs the evidence and determines which inferences to draw from conflicting testimony. See *McCabe*, 157 N.C. App. at 679, 580 S.E.2d at 73. We find that J.R.'s testimony was clear, cogent and convincing evidence that supported the trial court's finding of fact.

Respondent next assigns as error the trial court's finding that on 6 December 2001, respondent and D.L. were "inattentive and indifferent to [E.L.] at times." Respondent argues that this finding was based on the testimony of Dr. Howald to which respondent's objection was sustained. The transcript of the adjudication hearing reads as follows:

[DSS ATTORNEY]: How did you observe -- what was the attitude that you observed for [respondent and D.L.] toward the child as you were treating her?

BY THE COURT: Doctor, as you answer this statement [sic], you can stated [sic] what you observed but not what you conclude from your observations. The question is: What did you see that you are able to state as an observation?

[DR. HOWALD]: Indifference, inattentiveness, lack of basic knowledge of ---

[ATTORNEY FOR D.L.]: Objection.

[ATTORNEY FOR RESPONDENT]: Objection.

BY THE COURT: Sustained.

Petitioner and the Guardian ad Litem argue that the trial court sustained respondent's objection only to the extent that Dr. Howald was testifying as to respondent's and D.L.'s "lack of basic

knowledge." In support of their argument, petitioner and the guardian ad litem point to the testimony that followed after Dr. Howald was qualified as an expert:

[DSS ATTORNEY]: Dr. Howald, how -- what was your observation as to how [respondent and D.L.] were reacting or interacting with this child during the time you were treating her?

[DR. HOWALD]: As I said earlier, indifferent.

[ATTORNEY FOR D.L.]: Objection.

BY THE COURT: Overruled.

In light of this subsequent testimony, we agree with petitioner and the guardian ad litem that respondent's objection was sustained only to Dr. Howald's testimony about respondent's and D.L.'s knowledge.

In addition, other evidence supports the trial court's finding that respondent and D.L. were "inattentive and indifferent" to E.L. on 6 December 2001. Medical records dated 6 December 2001 appear in the record and were relied upon by respondent at trial. The medical records state: "Poor interaction between [E.L. and] parents. [E.L.] left uncovered, laying on stretcher, put down immediately when placed in [D.L.'s] arms by staff." We find that Dr. Howald's subsequent testimony and the medical records are clear, cogent and convincing evidence to support the trial court's finding.

V.

Respondent next argues that the trial court erred in finding that E.L. was a neglected child because "on one occasion, when a social worker suggested that [respondent and D.L.] pay attention to

E.L.'s diaper, [respondent and D.L.] did not respond."

Russell testified at the adjudication hearing that during supervised visits she had "never seen [respondent or D.L.] check [E.L.'s] diaper even where there [was] a concern that she might need a diaper change. I have never witnessed them checking that or changing her diaper during these visits." Russell further testified on cross-examination that she had never suggested that respondent and D.L. pay attention to E.L.'s diaper, but that another worker had. On redirect, Russell explained: "On the one occasion that it was obvious that [E.L.] needed a diaper change, another worker was supervising at that point, and she made that suggestion to [respondent and D.L.]. And they didn't respond to it."

N.C. Gen. Stat. § 7B-101 (15) (2003) defines a neglected juvenile as one "who does not receive proper care, supervision, or discipline from the juvenile's parent[.]" The trial court's adjudication judgment contained the following pertinent findings of fact:

22. That the Court finds that over a period of months [E.L.] has received improper care so that the Court should intervene because these problems were not corrected. That the Court finds that there were occasions of neglect in caring for [E.L.] and that if taken *collectively* it amounts to the conclusion that [respondent and D.L.] have at times not provided the proper care for [E.L.].
23. That the acts of improper care as found by the Court are:
 - a) That on December 6, 2001 at the hospital both [respondent and D.L.]

appeared inattentive and indifferent to [E.L.] at times. That both [respondent and D.L.] were physically extremely rough in handling [E.L.].

- b) That regarding the time when [E.L.] was placed with [J.R.] during December of 2001 until February 28, 2002 both [respondent and D.L.] occasionally shook [E.L.] excessively when she would cry. . . . That on one occasion on December 5, 2001, when [J.R.] would not let [E.L.] go with [respondent] and an argument between [J.R. and respondent] occurred when [E.L.] was present and [E.L.] was slightly injured as a result of [respondent] shoving [J.R.].

- c) That regarding the time when [E.L.] was placed with [R.E. and G.E.] that on occasion [respondent] would bounce [E.L.] excessively and violently and not respond to correct his behavior even when instructed to do so by the social worker. That both [respondent and D.L.] have continued to hold [E.L.] excessively during visits even after having been instructed not to do so. That both [respondent and D.L.], at times, failed to check [E.L.'s] diaper when necessary during visits; that on one occasion, when a social worker suggested that [respondent and D.L.] pay attention to [E.L.'s] diaper, [respondent and D.L.] did not respond. That [respondent and D.L.] have failed to check the temperature of [E.L.'s] heated bottle of formula prior to giving the bottle to her on occasion even after having been told of the need to check the temperature.

(emphasis added).

It is clear from the trial court's order that it did not find E.L. neglected based solely on the fact that respondent failed to

pay attention to E.L.'s diaper one time. Rather, the trial court made clear in its extensive list that it was not just one act of improper care but the sum total of all of the acts of improper care that led to the finding of neglect. The trial court emphasized this in open court:

[The important issue] is over a period of months . . . had Elizabeth received improper care by her parents to such an extent that the Court should exercise its jurisdiction over the child. . . . Was there improper care given over time and was the improper care not corrected as it should have been? . . . I am going to find that there were occasions of improper care and that the *collective nature* of those occasions rises to the level of my concluding that [E.L.] did not receive proper care from [respondent and D.L.] at certain times leading up to the filing of the petition.

(emphasis added). Based on the trial court's emphasis on the "collective nature" of the acts of improper care in both its written findings and in open court, we find that the trial court did not find E.L. to be a neglected child based solely on one instance of inattention to E.L.'s diaper and we overrule this assignment of error.

VI.

In his final assignment of error, respondent contends that the trial court erred by failing to meet the statutory time frame in which an adjudicatory order of neglect must be entered. N.C. Gen. Stat. § 7B-807(b) (2003) states: "The adjudicatory order . . . shall be reduced to writing, signed, and entered no later than 30 days following the completion of the [adjudication] hearing."

In this case, the trial court adjudicated E.L. a neglected child in open court on 8 January 2003. The order was reduced to writing and entered on 11 June 2003, approximately four months beyond the thirty-day period prescribed by the statute. Respondent first argues that the delay was error due to the statutory use of the word "shall." Respondent cites *In re Wade*, 67 N.C. App. 708, 313 S.E.2d 862 (1984) for the proposition that failure to follow the mandate of the statutory use of "shall" is error. In *Wade*, we held that "[t]he statutory use of 'shall' [in N.C. Gen. Stat. § 7A-637] is a mandate to trial judges requiring them to affirmatively state that the allegations of the juvenile petition are proved beyond a reasonable doubt. Failure to follow the mandate of the statute is error." 67 N.C. App. at 711, 313 S.E.2d at 864.

We addressed an argument similar to respondent's in *In re E.N.S.*, 164 N.C. App. 146, 595 S.E.2d 167 (2004). In *E.N.S.*, the respondent assigned as error the failure of the trial court to timely enter adjudicatory and dispositional orders. *Id.* at 153, 595 S.E.2d at 171. The respondent cited "several cases in which this Court held that 'use of the language "shall" is a mandate to trial judges, and that failure to comply with the statutory mandate is reversible error.'" *Id.* at 153, 595 S.E.2d at 171. However, "none of those cases involved the untimeliness of orders, nor do the statutes at issue address the repercussions associated with untimely filing [of an order of an adjudication of neglect]." *Id.* at 153, 595 S.E.2d at 171.

Like the cases cited in *E.N.S.*, *Wade* does not involve the

untimeliness of filing an adjudication order of neglect or the repercussions of such untimeliness. As a result, *Wade* is not controlling in our present case.

Respondent also argues that the delay prejudiced him in that he was unable to begin the appellate process until there was a written order from which to appeal, and as such the trial court's adjudication judgment must be reversed. We also addressed this issue in *E.N.S.*, where we stated:

The General Assembly added the thirty-day filing requirement to these statutes in 2001. See 2001 Sess. Laws 2001-208, § 17. While we have located no clear reasoning for this addition, logic and common sense lead us to the conclusion that the General Assembly's intent was to provide parties with a speedy resolution of cases where juvenile custody is at issue. Therefore, holding that the adjudication and disposition orders should be reversed simply because they were untimely filed would only aid in further delaying a determination regarding [the juvenile's] custody because juvenile petitions would have to be re-filed and new hearings conducted.

Id. at 153, 595 S.E.2d at 172. We went on to hold that the respondent suffered no prejudice as a result of the late filing since her right to visitation and right to appeal were not affected by the untimely filings. *Id.* at 153-54, 595 S.E.2d at 172.

Based on our reasoning in *E.N.S.*, reversing the trial court's adjudication judgment in this case would only cause further delay and subject respondent and E.L. to protracted litigation. As in *E.N.S.*, respondent's right to visitation was not affected by the untimely filing.

Finally, respondent argues that he has been subjected to an

incorrect judgment and order for a longer period of time than the General Assembly intended, preventing him from parenting and bonding with E.L. As we determined above, there was no error in the trial court's finding that E.L. was a neglected child. Therefore, respondent was not subject to an incorrect judgment and order and consequently did not suffer any prejudice.

Affirmed.

Judges McCULLOUGH and ELMORE concur.

Report per Rule 30(e).