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NO. COA10-922

NORTH CAROLINA COURT OF APPEALS

Filed: 21 December 2010

IN THE MATTER OF:

A.H.

Wake County
No. 10 JA 79

Appeal by respondent from order entered 16 June 2010 by Judge Monica M. Bousman in Wake County District Court. Heard in the Court of Appeals 30 November 2010.

Office of the Wake County Attorney, by Scott W. Warren, Roger A. Askew, and Mary Elizabeth Smerko, for petitioner Wake County Human Services.

Susan F. Vick for guardian ad litem.

Ryan McKaig for respondent mother.

ELMORE, Judge.

Respondent mother appeals from the trial court's order adjudicating her daughter, A.H., neglected. She contends that the trial court erred in adjudicating the juvenile neglected without sufficient evidence of a risk of harm to the juvenile or any evidence of the juvenile's present living conditions. We affirm.

On 19 March 2010, Wake County Human Services (WCHS) filed a juvenile petition alleging that the minor child was neglected due to lack of proper care and supervision and to being exposed to an injurious environment. WCHS has been involved with this family for several years due to issues of improper care and supervision. A.H.

was seventeen years old at the time the juvenile petition was filed and had a history of emotional problems and disruptive behaviors. Due to these issues, A.H. has been placed out of the home on at least nine different occasions, most recently to participate in a program called Youth Focus from late November 2009 until she was discharged at the beginning of February 2010. She then went to live with respondent in Raleigh.

WCHS alleged in the juvenile petition that, in early March 2010, respondent took A.H. to Dare County and left her with A.H.'s father, who is not supposed to have contact with his daughter. A supervisor from Dare County Social Services informed WCHS that they were aware of the family history and could not approve of the child being left with her father. On 16 March 2010, A.H. called WCHS crying and stating that she wanted to go home and that she did not have her Medicaid card or her asthma medication. WCHS called respondent and requested that she pick up A.H., but respondent refused to have contact with WCHS and made threatening statements to others about what she might do to the social worker. The trial court granted WCHS non-secure custody of the juvenile by order entered 19 March 2010.

The matter came on for an adjudication hearing on 27 May 2010. Testimony was elicited from WCHS social worker Cassandra Buffaloe, respondent, WCHS child care coordinator Cheryl Boddie, Dare County DSS supervisor Nancy Huff, and guardian ad litem Susan Bruce. WCHS social worker Kim Beatty testified during the disposition phase. The trial court determined that WCHS had presented sufficient

evidence that the juvenile was neglected and ordered custody to continue with WCHS. The order was entered on 16 June 2010. Respondent appeals.

Respondent's sole argument is that the trial court erred in adjudicating the juvenile neglected because insufficient evidence was presented to support a finding of neglect. She contends that no evidence was presented regarding the juvenile's living conditions at the time the petition was filed, nor of any present harm or substantial possibility of future harm. She also asserts that neglect cannot be based upon respondent's violation of a court order not to allow A.H. to be with her father when no order was introduced into evidence. She contends that past neglect or abuse by the father, alluded to in the evidence, cannot, standing alone, support a conclusion of neglect, and that the only evidence regarding possible danger to A.H. from her father was speculative in nature. Finally, respondent challenges certain findings of fact as being unsupported by the evidence. We do not agree with respondent's contentions.

In an adjudication hearing, the allegations listed in the juvenile petition must be proven by clear and convincing evidence. N.C. Gen. Stat. § 7B-805 (2009). On appeal, therefore, this Court will review the evidence to determine whether clear, cogent, and convincing evidence exists to support the findings of fact. *In re McCabe*, 157 N.C. App. 673, 679, 580 S.E.2d 69, 73 (2003). If competent evidence exists, the findings are binding on appeal, even if evidence contrary to the findings was presented. *Id.* Finally,

"[t]he 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, he 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) (citation omitted); see also *In re A.K.*, 360 N.C. 449, 456, 628 S.E.2d 753, 757 (2006) (the trial court has "broad discretion as to which facts to consider and how much weight to accord them").

Pursuant to the Juvenile Code contained in the North Carolina General Statutes, a neglected juvenile is one who:

does not receive proper care, supervision, or discipline from the juvenile's parent, guardian, custodian, or caretaker; or who has been abandoned; or who is not provided necessary medical care; or who is not provided necessary remedial care; or who lives in an environment injurious to the juvenile's welfare; or who has been placed for care or adoption in violation of law.

N.C. Gen. Stat. § 7B-101(15) (2009). This Court has stated that 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 order to adjudicate a child neglected." *In re E.P., M.P.*, 183 N.C. App. 301, 307, 645 S.E.2d 772, 775 (2007) (quotations and citation omitted).

Here, the trial court made the following findings of fact:

4. That WCHS and other county CPS units have been involved with this teenage girl and her family for several years due to improper care and supervision. The child was at risk of harm at the time of the filing of the petition because the mother had placed the child with

the father. WCHS requested that the mother pick up the child from the home of the father where she had been placed by the mother on February 24, 2010. Dare County DSS advised WCHS that they could not authorize [A.H.]'s staying at the father's home. The mother refused to pick up her child and the petition was filed.

5. That in 2006 Dare County DSS filed a petition based on [A.H.]'s being in an injurious environment in the home of the father, who had an extensive criminal record, was involved in domestic violence in the home and was selling drugs. Custody of [A.H.] was granted to the mother, who lived in Wake County, and the father was to have no visitation with the child. That order was still in place at the time the petition was filed.

. . .

10. That the mother, [A.H.], and her other two children went to Dare County on or about February 24, 2010[,] after a fire in their Wake County home rendered the kitchen unusable and the home [un]inhabitable. The mother soon brought her two younger children back to Wake County to stay with [a] friend, but left [A.H.] at the home of the father because she believed it was more feasible for her to remain in Dare County.

11. That the mother indicated to the Guardian ad Litem for the child that she placed [A.H.] with the father because she knew that the father would beat her if she didn't behave appropriately.

12. That the father is not able to care for the child until she is at least 18 years of age due to his criminal record and history of selling drugs and pursuant to the Juvenile Custody order in Dare County.

13. That on March 16, 2010, [A.H.] called the WCHS social worker and was crying and stating that she wanted to come home. The child stated that she did not have her Medicaid card nor her asthma medicine or pump. The child

stated that she had called her mother to request that the mother come to get her or at least to send her medication. The mother did neither of these things.

14. That in March 2010, prior to the filing of this petition, a CPS supervisor from Dare County, NC[,] informed WCHS that they were aware of the family history and that they could in no way approve of the child being with the father.

15. That a WCHS social worker spoke to the mother on the phone about her willingness to pick-up [A.H.] from her father's home. The social worker tried to inform the mother of the information shared by Dare County CPS and that she needed to pick up [A.H.] from her father's home and return her to Wake County. The mother did not return the social worker's calls.

Respondent challenges findings of fact 11, 12, and 13 as being unsupported by the evidence or misleading. With regard to finding of fact 13, respondent contends that the evidence does not support a finding that respondent failed to provide A.H. with her Medicaid card or her asthma pump while she was in Dare County. Respondent points to her own testimony that the card was likely destroyed in the family's house fire and asserts that A.H. was possibly being manipulative by telling the social worker she did not have her asthma pump. She notes that A.H. told the guardian *ad litem* that her reason for wanting to return to Raleigh was to be with her boyfriend. Despite these arguments, we hold that finding 13 is fully supported by evidence from WCHS social worker Cassandra Buffaloe, who testified that, when the juvenile called her, she told Ms. Buffaloe that she did not have her Medicaid card or her asthma pump. We note that the finding of fact simply relates what

the juvenile told the social worker and does not actually establish as fact that respondent failed to provide the Medicaid card or asthma pump for the juvenile. This argument thus has no merit.

Regarding finding of fact 11 - that respondent knew the father would "beat" A.H. if A.H. did not behave - respondent contends that the finding is misleading. She argues that the testimony upon which the finding is based more accurately reflects respondent's desire to leave the juvenile with a relative who she knew would provide structure and discipline. Although respondent is attempting to characterize the testimony to cast herself in a more favorable light, we find that the testimony elicited from the guardian *ad litem* in recalling what respondent told her is accurately reflected in finding of fact 11. Therefore, this contention has no merit.

Respondent also argues that finding of fact 12 is not supported by the evidence. She points to her own testimony that, although the juvenile's father inappropriately disciplined A.H. when she was younger, his more recent actions were appropriate. Her testimony indicated that the father's extended family provided additional support. In her brief, respondent contends that no evidence was provided at the adjudication hearing of a 2006 court order that Dare County DSS asserted prohibited respondent from allowing A.H. to visit with her father. Respondent testified at the hearing that the order granting her custody of A.H. gave her the discretion to allow A.H. to have contact with the father. We are not persuaded by these arguments. Dare County DSS supervisor

Nancy Huff testified that, when custody was first granted to respondent in 2005, the trial court prohibited the father from having any visitation with A.H. because he was not cooperating with DSS and he had a history of criminal activity, substance abuse, domestic violence, and drug dealing. When WCHS asked Dare County to check on A.H. in March 2010, a Dare County social worker observed A.H. at her father's house. Dare County DSS informed WCHS that they could not approve of A.H. remaining with her father and recommended that other arrangements should be made.

In sum, after reviewing the record, we conclude that there was clear, cogent, and convincing evidence to support the trial court's findings of fact. Despite the possibly manipulative motives of the juvenile in calling the social worker from Dare County, the evidence nonetheless reflects that the father's house was determined to be an inappropriate placement for the juvenile by Dare County DSS, respondent was aware or should have been aware that the father was not supposed to have contact with the juvenile, respondent left A.H. with the father, and respondent was unwilling to go and get the juvenile upon being contacted by WCHS. The trial judge is the ultimate arbiter of the facts and may choose to accept certain evidence as credible and other evidence as not credible. *In re Hughes*, 74 N.C. App. at 759, 330 S.E.2d at 218. The trial court was well within its province to determine that testimony from certain of the witnesses was more credible than respondent's testimony. Since we find that the evidence clearly supports the

findings of fact, respondent's arguments regarding these findings are overruled.

We also conclude that the trial court's findings of fact support the adjudication of neglect. Although respondent contends that there was no evidence that the juvenile was exposed to physical harm or a substantial risk of future harm, we note that the findings of the trial court reference the father's "extensive criminal record," domestic violence in the home, and drug dealing, as well as a court-mandated prohibition against the father having any visitation with the juvenile. These findings are supported by the evidence and demonstrate a substantial risk of harm to the juvenile if she were to remain in the father's home. Not only does the father have a violent past, but he was deemed not to be an appropriate caretaker for A.H. by both DSS and a trial court in Dare County. Therefore, respondent's placement of A.H. with the father, and her refusal to respond to WCHS's concern and pick up A.H. from Dare County, placed A.H. at risk of harm. Thus, we conclude that the trial court did not err in adjudicating the juvenile neglected.

We note that the juvenile will reach the age of eighteen years on 28 December 2010; however, the adjudication of neglect may have legal consequences as to respondent's other children. See *In re A.K.*, 360 N.C. 449, 628 S.E.2d 753 (2006).

Affirmed.

Judges HUNTER, Robert C. and CALABRIA concur.

Report per Rule 30(e).