

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA14-825
NORTH CAROLINA COURT OF APPEALS

Filed: 31 December 2014

IN THE MATTER OF:

S.T., Q.T., T.P., C.G.,
D.P., G.G.

Guilford County
No. 13 JA 434-439

Appeal by respondent-father from adjudication order entered 26 March 2014 and disposition order entered 28 April 2014 by Judge Tabatha Holliday in Guilford County District Court. Heard in the Court of Appeals 3 December 2014.

Robert W. Brown, III, for petitioner-appellee.

Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, L.L.P., by Jackson Wyatt Moore, Jr. and Lauren H. Bradley, for Guardian ad litem-appellee.

Robert W. Ewing, for respondent-appellant.

ELMORE, Judge.

Respondent-father appeals from an order adjudicating S.T. and Q.T. as abused, neglected, and dependent juveniles and a subsequent dispositional order decreeing that S.T. and Q.T.

remain in the legal and physical custody of the Guilford County Department of Social Services (petitioner) and relieving petitioner's obligation to make reasonable efforts to reunify S.T. and Q.T. with respondent-father. After careful consideration, we affirm both orders.

I. Facts

On 16 November 2013, S.T. and Q.T.'s¹ mother (the mother) called 911 to report an assault and possible rape. She had been beaten, burned, and her hair was shaved against her will. While the mother initially stated that she was assaulted by unknown individuals, she later admitted that respondent-father was her attacker. The mother also refused, at first, to allow the police officers into her home. When the mother finally gave the officers consent to search her residence, they found respondent-father asleep on a bed next to a pile of the mother's hair, an iron, a jar of salsa that had been purportedly used to assault the mother, a razor blade, drop cords, a lamp, and several red stains consistent in appearance with blood. Respondent-father was immediately arrested on charges of Assault Inflicting Serious Bodily Injury, Communicating Threats, and Assault on a Female.

¹ Hereinafter, S.T. and Q.T. will be referenced with the pseudonyms "Sarah" and "Quincy."

Based on the 16 November 2013 incident and previous alleged acts of domestic violence, petitioner filed a juvenile petition on 19 November 2013 alleging that Sarah, Quincy, and the mother's four other children were abused, neglected, and dependent juveniles. The mother's other four children are not respondent-father's children and are therefore not subjects of this appeal. Petitioner alleged, in relevant part, that the juveniles were dependent because "the juvenile[s'] parent . . . is unable to provide for the juvenile[s'] care or supervision and lacks an appropriate alternative child care arrangement."

At the adjudication hearing on 6 February 2014, the mother was not present, and respondent-father was called as petitioner's first witness. At petitioner's request, the trial court reminded respondent-father before he testified that he could assert his Fifth Amendment privilege against self-incrimination by stating that he wished to do so after being asked a question. While testifying, respondent-father attempted to assert his Fifth Amendment privilege "on everything." The judge reminded respondent-father that he could not plead the Fifth Amendment on everything and must indicate that he wanted to invoke this privilege after a question was asked "because the Fifth Amendment only applies to . . . things that may

incriminate you.” Respondent-father then continued answering petitioner’s questions, ultimately admitting that a recording of a 911 call on 5 November 2012 contained his voice, the mother’s voice, and that the recording was accurate. When asked for further details about the circumstances surrounding the 911 call, respondent-father attempted to invoke his Fifth Amendment privilege. Petitioner argued that respondent-father could not refuse to answer because he had “opened the door” to this line of questioning. The trial court agreed, despite an objection by respondent-father’s counsel, and told respondent-father that he must answer the questions related to the 911 call.

Based on respondent-father’s aforementioned testimony and other evidence presented, the trial court adjudicated Sarah and Quincy as abused, dependent, and neglected juveniles.

II. Analysis

a.) Self-Incrimination

Respondent-father argues that the trial court erred by failing to stop petitioner’s examination of him regarding the details surrounding the 911 call after he invoked his Fifth Amendment privilege against self-incrimination. We disagree.

“The standard of review for alleged violations of constitutional rights is *de novo*.” *State v. Graham*, 200 N.C.

App. 204, 214, 683 S.E.2d 437, 444 (2009), *appeal dismissed and disc. review denied*, 363 N.C. 857, 694 S.E.2d 766-67 (2010).

The Fifth Amendment to the United States Constitution, in relevant part, states that "[n]o person shall . . . be compelled in any criminal case to be a witness against himself[.]" U.S. Const. amend. V. "In our legal system, a criminal defendant is entitled under the Fifth Amendment, as incorporated by the Fourteenth Amendment, to remain silent and to refuse to testify." *In re Pittman*, 149 N.C. App. 756, 760, 561 S.E.2d 560, 564 (2002) (emphasis in original) (citations and quotation marks omitted). In addition to protection during a criminal prosecution, "the Fifth Amendment also privileges an individual not to answer official questions put to him in any other proceeding, civil or criminal, formal or informal, where the answers might *incriminate* him in future *criminal* proceedings." *Debnam v. N. Carolina Dep't of Correction*, 334 N.C. 380, 385, 432 S.E.2d 324, 328 (1993) (citation and quotation marks omitted).

However, "[t]he privilege is deemed waived unless invoked." *Rogers v. United States*, 340 U.S. 367, 371, 95 L. Ed. 344, 348 (1951) (quotation marks and citation omitted). Moreover, voluntary statements are not barred by the Fifth Amendment. *In*

re *D.L.D.*, 203 N.C. App. 434, 442, 694 S.E.2d 395, 402 (2010). A witness, in a proceeding, cannot voluntarily testify about a subject matter and then invoke his or her Fifth Amendment privilege when further questioned about the specifics of the matter. See *Mitchell v. United States*, 526 U.S. 314, 143 L.Ed.2d 424 (1999).

Before respondent-father testified at the adjudication hearing, the trial court explained his right to invoke the Fifth Amendment: "[A]s I indicated earlier, you do have your Fifth Amendment right. If you wish to assert that right, you'll just need to state so whenever the question is asked of you. Okay?" Respondent-father then indicated that he understood and petitioner began direct examination. After respondent-father answered some questions, and specifically after he was asked whether he and the mother resumed a romantic relationship, the transcript reflects the following:

RESPONDENT-FATHER: Can I plead the Fifth?

PETITIONER: I have no objection to that,
Your Honor.

RESPONDENT-FATHER: I have criminal cases and
I just would like to plead the Fifth.

THE COURT: Okay.

PETITIONER: Did y'all ever move back in
together?

RESPONDENT-FATHER: I want to plead the Fifth. . . . Do I have to testify?

THE COURT: You can indicate that you --

RESPONDENT-FATHER: I wish not to testify. I want to plead the Fifth. I want to plead the Fifth on everything.

THE COURT: If you intend to plead the Fifth, you'll have to indicate that when a question's asked. You can't just say I plead the Fifth to everything because the Fifth Amendment only applies to certain things --

RESPONDENT-FATHER: Okay.

THE COURT: -- those things that may incriminate you.

RESPONDENT-FATHER: I understand, ma'am.

Respondent-father then answered a series of questions regarding an audio recording offered by petitioner of a 911 call on 5 November 2012. On the recording, an individual can be heard yelling, cursing, and threatening the mother, and the mother was screaming. Respondent-father admitted that his voice and the mother's voice were on the recording. Respondent-father also acknowledged that the recording was accurate.

Next, petitioner asked respondent-father if the recording continued for another seven to ten minutes, whether police arrived after the 911 call was made, and if the door to the

house was barricaded when respondent-father arrived at the residence. To each question, respondent-father replied "I want to plead the Fifth." Petitioner objected to respondent-father's invocation of the Fifth Amendment privilege on the basis that respondent-father "already opened the door wide to this. He indicated that was him, that was an accurate recording of what happened, that he does remember that incident, that another individual he saw -- or knew there was domestic violence, that he got upset and that he yelled." The trial court agreed, ruling that "[respondent-father], with regard to this incident you're going to have to answer his questions."

Pursuant to the trial court's mandate requiring respondent-father to answer questions regarding this incident, respondent-father testified that he forced his way into the mother's house by breaking a lock on the door and moving a couch out of a doorway. He also testified that the children were in the house, and that although he yelled at the mother and scared her, he did not hit her.

While respondent-father initially invoked his Fifth Amendment privilege after he was asked whether he and the mother resumed a romantic relationship, the invocation did not operate as a blanket protection to all of his subsequent testimony. See

Hoffman v. United States, 341 U.S. 479, 486, 95 L. Ed. 1118, 1124 (1951) ("The witness is not exonerated from answering merely because he declares that in so doing he would incriminate himself. . . . It is for the court to say whether his silence is justified and to require him to answer if it clearly appears to the court that he is mistaken.").

Moreover, respondent-father voluntarily testified about the 911 call. As such, he could not subsequently assert the Fifth Amendment privilege when he was questioned about the details related to that incident. See *Mitchell, supra*; see also *Rogers*, 340 U.S. at 373, 95 L. Ed. at 349 ("[W]here [in]criminating facts have been voluntarily revealed, the privilege cannot be invoked to avoid disclosure of the details."). Accordingly, the trial court did not err by failing to stop petitioner's examination of respondent-father regarding the details surrounding the 911 call.

b.) Dependent Juveniles

Respondent-father also argues that the trial court erred by adjudicating Sarah and Quincy as dependent juveniles. We disagree.

The allegations in a petition alleging abuse, neglect, or dependency shall be proved by clear and convincing evidence. 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. 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. The trial court 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 T.H.T., 185 N.C. App. 337, 343, 648 S.E.2d 519, 523 (2007) (citations and quotation marks omitted). "While a trial court's findings of fact are binding if supported by sufficient evidence, its conclusions of law are reviewable *de novo* on appeal." *Starco, Inc. v. AMG Bonding & Ins. Servs.*, 124 N.C. App. 332, 336, 477 S.E.2d 211, 215 (1996).

In North Carolina, a "dependent juvenile" is "[a] juvenile in need of assistance or placement because (i) the juvenile has no parent, guardian, or custodian responsible for the juvenile's care or supervision or (ii) the juvenile's parent, guardian, or custodian is unable to provide for the juvenile's care or supervision and lacks an appropriate alternative child care arrangement." N.C. Gen. Stat. § 7B-101(9) (2013).

We initially note that respondent-father does not challenge any of the trial court's findings of fact. Thus, they are binding on appeal.

Respondent-father first argues that because the trial court's adjudication order contains no findings of fact that the mother was not able to provide for Sarah and Quincy's care or supervision, the trial court erred by adjudicating them as dependent juveniles. However, the trial court's findings of fact indicate several instances where the mother refused to take out a protective order against respondent-father and allowed respondent-father into her home even though she felt that her life was in danger. Her repeated contact with respondent-father exposed Sarah and Quincy to an injurious environment. Thus, the trial court appropriately found that "[t]he juveniles require more adequate care and supervision than any parent can provide at this time." Accordingly, respondent-father's argument fails.

Respondent-father also avers that the adjudication order contains no specific finding of fact concerning the juveniles' residence and "there was no evidence . . . that Sarah and Quincy lived with someone other than the respondent[-]mother." As such, respondent-father argues that we cannot conclude that Sarah and Quincy had no parent able to provide for their care or

supervision. This assertion is incorrect. The trial court specifically made a finding in the adjudication order that "[t]he juveniles, [Sarah] and [Quincy] are placed together in a licensed foster home." Moreover, evidence showed that Sarah and Quincy had been in a foster home since 20 November 2013, which was approximately two months prior to the adjudication hearing date.

Respondent-father also contends that the trial court failed to make findings of fact to support the conclusion that he is unable to provide care or supervision over Sarah and Quincy. However, the trial court made an uncontested finding that respondent-father "is currently incarcerated in the Guilford County Jail[.]"² The trial court also considered the effect of respondent-father's violence towards the mother on the children when it determined his inability to care or supervise the juveniles.

Finally, respondent-father argues that the trial court failed to make any findings of fact to support the conclusion that Sarah and Quincy lack an appropriate alternative child care arrangement. Respondent-father asserts that placement with his brother, Sarah and Quincy's paternal uncle, would be an

² We also note that respondent-father, in his brief, concedes that "[he] is incarcerated and he cannot parent the children[.]"

appropriate alternative child care arrangement. In considering placement with the paternal uncle as an appropriate alternative child care arrangement, the trial court "determined that this placement would not be an appropriate placement for the juveniles based on the [respondent] father['s] . . . testimony that he has forced entry into a residence where the juveniles were residing with their mother. There are also concerns about . . . [the paternal uncle's] ability to prevent his mother from violating orders of this Court." Based on respondent-father's prior forced entry into a residence where the juveniles were residing, placement with a close relative would certainly jeopardize the trial court's ruling that visitation between the juveniles and respondent-father remain suspended. Also, evidence presented and reflected in the trial court's findings of fact indicate that respondent-father's mother "will go to extreme measures to protect [respondent-father], . . . to include not being truthful with the Court[.]" Thus, these findings support the trial court's conclusion that placement with the paternal uncle would not be an appropriate alternative child care arrangement for Sarah and Quincy.

Because we rule that the trial court did not err by adjudicating Sarah and Quincy as dependent juveniles and affirm

the adjudication order, and respondent-father predicates his challenge to the disposition order solely based on the adjudication of dependency, we necessarily also affirm the disposition order.

III. Conclusion

In sum, we affirm the trial court's adjudication order and disposition order. The trial court neither erred by failing to stop petitioner's examination of respondent-father regarding the details surrounding the 911 call nor by adjudicating Sarah and Quincy as dependent juveniles.

Affirmed.

Judges DAVIS and BELL concur.

Report per Rule 30(e).