

NO. COA14-759

NORTH CAROLINA COURT OF APPEALS

Filed: 3 February 2015

IN THE MATTER OF:

I.D.

Henderson County
No. 13 JA 118

Buncombe County
No. 13 JA 9007

Appeal by respondent-mother from orders entered on 5 December 2013 and on or about 1 May 2014 by Judges Athena Brooks and Ward Scott in Henderson and Buncombe County District Courts. Heard in the Court of Appeals on 9 December 2014.

Buncombe County Department of Social Services by Matthew J. Putnam, for petitioner-appellee.

Appellate Defender Staples Hughes by Assistant Appellate Defender Annick Lenoir-Peek, for respondent-appellant mother.

Michael N. Tousey, for guardian ad litem.

STROUD, Judge.

Respondent-mother appeals from adjudication and disposition orders in which the trial court concluded that her minor child, I.D. ("Irene"), is an abused and neglected juvenile.¹ Because the

¹ A pseudonym is used to protect the identity of the juvenile and

trial court failed to conduct a proper adjudication hearing to determine the allegations in the juvenile petition, we reverse and remand.

I. Background

On 16 September 2013, the Henderson County Department of Social Services ("HCDSS") filed a petition alleging that Irene was an abused and neglected juvenile. Irene was placed with her father, who was separated from respondent. After a brief hearing on 7 November 2013, the Henderson County District Court entered an adjudication order on 5 December 2013, concluding that Irene was an abused and neglected juvenile. The court then transferred this case to Buncombe County, in which both parents and the juvenile resided, and ordered that the Buncombe County Department of Social Services ("BCDSS") replace HCDSS as the petitioner in this case.

After a hearing on 28 January 2014, the Buncombe County District Court entered a disposition order on or about 1 May 2014. The court adopted the recommendations of BCDSS and ordered that respondent-mother complete a parenting program, undergo a parenting capacity evaluation, and complete a comprehensive clinical assessment focusing on mental health. The court also ordered that the "the respondent mother shall have no contact with

for ease of reading.

[Irene], but the respondent mother shall contact [Irene's] therapist to determine when visitation would be appropriate." Respondent filed a timely notice of appeal.

II. Adjudication Order

Respondent contends that the Henderson County District Court erred in entering its adjudication order solely upon the allegations in the petition and without taking any evidence. We agree.

Section 7B-802 of the North Carolina General Statutes provides: "The adjudicatory hearing shall be a judicial process designed to adjudicate the existence or nonexistence of any of the conditions alleged in a petition. In the adjudicatory hearing, the court shall protect the rights of the juvenile and the juvenile's parent to assure due process of law." N.C. Gen. Stat. § 7B-802 (2013). This Court has held that "[a]s the link between a parent and child is a fundamental right worthy of the highest degree of scrutiny, the trial court must fulfill all procedural requirements in the course of its duty to determine whether allegations of neglect are supported by clear and convincing evidence." *In re Shaw*, 152 N.C. App. 126, 129, 566 S.E.2d 744, 746 (2002) (quoting *Thrift v. Buncombe County DSS*, 137 N.C. App. 559, 563, 528 S.E.2d 394, 396 (2000)). Accordingly, "[j]ust as a

default judgment or judgment on the pleadings is inappropriate in a proceeding involving termination of parental rights, it is equally inappropriate in an adjudication of neglect." *Thrift*, 137 N.C. App. at 563, 528 S.E.2d at 396.

Here, HCDSS put on no evidence at the adjudicatory hearing; instead, after informing the court that the parents did not consent to any findings of fact, HCDSS merely asked that the court accept its verified petition as its evidence. The court then adjudicated Irene to be an abused and neglected juvenile, basing its ruling solely upon HCDSS's verified petition.

Irene's guardian ad litem contends that respondent invited this error, and BCDSS asserts that respondent stipulated that the petition's allegations were true. But respondent neither invited this error nor stipulated that the petition's allegations were true; rather, respondent failed to object to the trial court's consideration of the verified petition as evidence. Respondent's failure to object is immaterial, because the trial court's adjudication order amounts to a judgment on the pleadings, which is inappropriate in a proceeding to determine whether a juvenile is abused, neglected, or dependent. See *id.*, 528 S.E.2d at 396.

III. Conclusion

For the foregoing reasons, we reverse the court's adjudication order and remand this matter for further proceedings. Because we reverse the court's adjudication order, we must also reverse the disposition order. *See In re S.C.R.*, 217 N.C. App. 166, 170, 718 S.E.2d 709, 713 (2011). In light of our holding, we need not address the additional arguments raised by respondent on appeal. *See id.*, 718 S.E.2d at 713.

REVERSED AND REMANDED.

Judges DILLON and DIETZ concur.