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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-788

Filed: 21 March 2017

Johnston County, No. 14 JA 49

IN THE MATTER OF: M.B.

Appeal by respondents from orders entered 5 and 11 May 2016 by Judge Paul A. Holcombe, III in Johnston County District Court. Heard in the Court of Appeals 20 February 2017.

Holland & O'Connor, P.L.L.C., by Jennifer S. O'Connor, for petitioner-appellee Johnston County Department of Social Services.

Edward Eldred for respondent-appellant mother.

The Tanner Law Firm, by James E. Tanner, III, for respondent-appellant father.

Marie H. Mobley for guardian ad litem.

ZACHARY, Judge.

Respondents, the mother and father of the juvenile M.B. (“Matthew”),¹ appeal from orders adjudicating the juvenile neglected. After careful review, we affirm the trial court’s orders.

¹ Pseudonyms are used to protect the identities of the juveniles and promote ease of reading.

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On 13 December 2013, Johnston County Department of Social Services (“DSS”) received a Child Protective Services (“CPS”) report concerning Matthew and his two older siblings, B.B. and J.B. (“Beth” and “John”). The report claimed that respondents utilized “cruel/grossly inappropriate behavior modification.” Among the allegations were that: (1) Beth was instructed to run 700 laps over a two-week span; (2) Beth was punished every day; (3) Beth was treated differently than her siblings; and (4) John expressed suicidal ideation and displayed anxiety to the point of shaking. On 31 December 2014, Beth and John were adjudicated “seriously neglected” juveniles, while Matthew was adjudicated neglected. Beth and John no longer reside in respondents’ home.

On 6 November 2015, DSS received a CPS report claiming that nine-year-old Matthew was living in an environment injurious to his welfare and receiving improper discipline. The report was filed after Matthew was observed with a bruise on his neck, allegedly the result of respondent-mother dragging him out of bed by his “hoodie.” There were also reports that Matthew was complaining about being “constantly hungry” because he did not get enough food. The report further claimed that Matthew had become the “target child” of respondents once Beth and John no longer resided in the home.

In an attachment to the CPS report, the juvenile’s therapist reported concerns about Matthew being hungry and stealing food. The therapist further stated,

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concerning the bruise on Matthew's neck, that when respondent-mother was explaining the bruise, the therapist observed Matthew "biting his nails and [being] visibly afraid and was tearful when his mother left the room." In addition, the therapist reported that a sibling who remained in the home was receiving preferential treatment.

On 21 December 2015, DSS filed a petition alleging that Matthew was a neglected juvenile. DSS expressed concern that there was a reoccurrence of conditions that led to the removal of Beth and John from the home. Initially, Matthew was allowed to remain in the home. However, on 27 January 2016, a non-secure custody order was entered and Matthew was removed from respondents' care and placed in foster care. On 5 May 2016, the trial court adjudicated Matthew neglected. Respondents appeal.

Respondents argue that the trial court erred by adjudicating Matthew a neglected juvenile. We disagree.

"The role of this Court in reviewing a trial court's adjudication of neglect . . . 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) (some internal quotation marks omitted) (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

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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.* (citation omitted). We review the trial court’s conclusions of law *de novo* on appeal. *In re D.M.M.*, 179 N.C. App. 383, 385, 633 S.E.2d 715, 716 (2006) (citation omitted).

“Neglected juvenile” is defined in N.C. Gen. Stat. § 7B-101(15) as:

A juvenile 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. In determining whether a juvenile is a neglected juvenile, it is relevant whether that juvenile . . . lives in a home where another juvenile has been subjected to abuse or neglect by an adult who regularly lives in the home.

N.C. Gen. Stat. § 7B-101(15) (2015). Section 7B-101(15) affords “the trial judge some discretion in determining whether children are at risk for a particular kind of harm given their age and the environment in which they reside.” *In re McLean*, 135 N.C. App. 387, 395, 521 S.E.2d 121, 126 (1999) (citation omitted). However, to sustain an adjudication of neglect, this Court has stated that the alleged conditions must cause the juvenile “some physical, mental, or emotional impairment, [or create] a substantial risk of such impairment.” *See In re Safriet*, 112 N.C. App. 747, 752, 436 S.E.2d 898, 901-02 (1993).

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Here, the trial court made the following findings of fact in support of its conclusion that Matthew was a neglected juvenile:

3. [DSS] has a history of involvement with the family dating back to 2013, that resulted in an Adjudication of Serious Neglect of the child's two older siblings and neglect of this child. The parents consented to the adjudication in 2014. All three of the children were adopted by the respondent parents previously. The respondents subsequently had two biological children.

4. This child's older sister, [Beth], was previously the "target" child, and was treated differently from the other children, including, but not limited to, disparate punishments. Both [Matthew and John] were aware of the disparate treatment of [Beth] and required counseling concerning the same. The juvenile [John], became suicidal as a result of the treatment of [Beth] and the parents did not follow through with his mental health treatment. All three children were on restrictive diets, resulting in low developmental weight gain, and there was differing treatment between the adoptive children and the biological children.

5. [DSS] worked with the family concerning the minor child, [Matthew], until September 30, 2015, at which time [Matthew's] case was closed due to the child gaining weight, regularly participating in therapy and no concerns being reported.

6. The juvenile [Matthew] had been recommended to attend weekly therapy. Upon closure of the case, however, [Matthew] stopped attending therapy on a regular basis.

7. As noted in Finding Number 4, above, there is evidence from prior adjudications that both of the child's siblings were placed on restrictive diets resulting in improper weight gain. Against this backdrop, the Court finds that [Matthew] was again placed on a restrictive diet, this time

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involving “no dairy.” There has been no explanation presented to this Court satisfactorily explaining this restrictive diet or that the parents made an effort, having imposed a restrictive diet of this magnitude, to ensure that [Matthew] was getting appropriate amounts of Vitamin D and calcium. The imposition of this diet resulted in [Matthew] informing the therapist on at least one occasion that he was “starving.” When confronted with this, instead of recognizing that the juvenile was hungry, the mother became agitated and told the therapist that the child was “stealing” food. This statement by the mother was an effort to deflect the focus away from herself and her terminology had a significant potential to emotionally and psychologically harm [Matthew].

8. The child has been observed during his therapy sessions to be nervous and anxious around his mother, often seen to be either tearful or biting his nails. The juvenile was further fearful of the mother being brought into his therapy sessions.

9. The Court finds, from the accredited testimony of Dr. Christina Strayer-Thornton, the child’s therapist, that the mother had previously been advised not to inquire or discuss with the juvenile his therapy sessions, as it could be detrimental to the child’s therapy and feeling of safety during his therapy session. However, the mother continued to inquire of the juvenile what was discussed in therapy, and on at least one occasion, challenged the same in the presence of the juvenile, resulting in the juvenile cowering and showing signs of anxiety.

10. The mother, on one occasion while angry with the juvenile, grabbed the child’s hoodie sweatshirt to yank him from his bed after he failed to do an assigned chore. The incident resulted in a linear mark on the child, observed by the therapist and Dawn Tolson, the GAL volunteer. The juvenile was tearful and anxious while describing the [] the incident to the therapist. In front of the child, the mother was not truthful with the therapist about the incident and

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this had a demonstrable negative emotional effect on the child.

11. The Court finds the mother placed [Jennifer], the child's younger sibling and natural child of the parents, in [Matthew's] room because [Jennifer] did not want to sleep in her own room despite the fact that the room was physically connected to the parents' room. This was done in complete disregard of the feelings and physical effect on [Matthew]. As a result of [Jennifer] being placed in his room, [Matthew] suffered from lack of sleep, as demonstrated by dark circles under his eyes and lethargy. [Matthew] further had difficulty waking up in the morning, resulting in punishment as a consequence thereof. Instead of recognizing that the juvenile was suffering as a result of placing [Jennifer] in his room, the mother blamed [Matthew] and informed the therapist that he was "regressing" as he was not getting up in the morning and getting ready for school in a timely manner. The juvenile, [Jennifer], in light of the sleeping situation, and with regard for punishment, was again being viewed as receiving preferential treatment. The mother was untruthful with the therapist when she said [Matthew] was "okay" with the sleeping arrangement. [Matthew] clearly verbalized that he was not okay with [Jennifer] sleeping in his room and had visible signs of the detrimental effect of her being in his room.

12. In light of the history of the case, Dr. Christina Strayer-Thornton, upon observation of the mother with the juvenile, the mother's lack of empathy for the juvenile, the punishments implemented on the juvenile and the distress of the juvenile, recommended that the mother seek individual counseling, and expressed concerns about Munchausen by Proxy Syndrome to the Court.

13. The juvenile was forced to perform disparate chores, from his siblings, to include but not limited to folding laundry and other household chores. The chores were, in light of the history of this case, inappropriate and possibly

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unreasonable in light of the juvenile's size and age. The Court finds that the punishment of "doing chores", to include the folding of laundry were disparate and it was this very chore that led to the incident in Finding Number 10, above. Also, the mother has imposed writing of sentences as a form of punishment which was excessive in the eyes of the therapist. The juvenile's older sibling, [John], further was aware of the disparate punishments and expressed concern about the excessive writing, as he had done in regards to the juvenile [Beth] during the previous adjudication.

14. Upon JCDSS becoming back involved with [Matthew], the juvenile received more food and [Jennifer] was removed from [Matthew's] room, allowing him to get adequate sleep.

15. The Mother has failed to accept responsibility for her role in [Matthew's] current neglect and showed a persistent and notable lack of empathy toward this child, as found in the prior adjudication of neglect, and in the testimony of Dr. Strayer-Thornton, that has caused emotional, psychological and physical harm to the child. The mother has manipulated this child and sought to control this child in ways contrary to his health, safety, and welfare.

16. The trial court has the discretion to determine the weight to be given to a prior adjudication of neglect of this child and his older siblings. *See In Re A.S.*, 190 N.C. App. 679 (2008). The Court has received into evidence an Adjudication Order, from an October 27, 2014 hearing, filed on December 31, 2014. The Court places substantial weight on the prior adjudication because of the seriousness of neglect in the home at the time of the prior adjudication and the proximity [in] time to these findings. The Court finds that the fact that the two other children were out of the home when these new allegations occurred increased the importance of [Matthew] having a loving and nurturing home life and exacerbated the emotional and psychological harm the mother's most recent actions had on [Matthew].

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17. The Court, while considering the prior adjudication and facts therein, finds that a pattern was emerging with regards to the treatment of [Matthew] in the home that had previously been observed for the juvenile, [Beth], and that resulted in [Beth] being adjudicated as seriously neglected. As such, this Court finds that the juvenile, [Matthew], was at a substantial risk of physical and emotional impairment based upon the mother's current actions. Additionally, the parents' failure to recognize their role or responsibility in the emergence of this pattern of behavior in regard to the treatment of [Matthew], compounded by the mother's blaming of [Matthew], heightens the substantial risk of physical and emotional impairment for [Matthew].

We are bound by those findings not challenged by respondent on appeal. *See Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991) (unchallenged findings are deemed supported by competent evidence and are binding on appeal). Moreover, we review only those findings necessary to support the trial court's conclusion that the juvenile was neglected. *See In re T.M.*, 180 N.C. App. 539, 547, 638 S.E.2d 236, 240 (2006) (erroneous findings that are unnecessary to support adjudication of neglect do not constitute reversible error).

Respondent-mother first challenges a portion of finding of fact number 3, as well as finding number 17, in which the court states that Beth and John had previously been adjudicated seriously neglected. Respondent-mother asserts that the Juvenile Code does not provide for an adjudication of serious neglect, and it pertains only to placement of a person on the "responsible individuals list." *See* N.C. Gen. Stat. § 7B-101(18a) (2015) (defining "[r]esponsible individual" as "[a] parent,

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guardian, custodian, or caretaker who . . . seriously neglects a juvenile.”); N.C. Gen. Stat. § 7B-311(b) (2015) (providing that the Department of Health and Human Services “shall . . . maintain a list of responsible individuals.”). We agree that respondent-mother could not agree to an adjudication—“serious neglect”—that is not authorized by law. However, regardless of the propriety of the prior adjudication of “serious neglect,” it is apparent from the record that respondents consented to an adjudication of *neglect* regarding Beth and John. Consequently, we conclude that the trial court’s finding is supported by the record, but only to the extent that Beth and John were previously adjudicated neglected juveniles.

Respondent-mother next challenges the trial court’s finding of fact number 6 that, after DSS closed its prior case, Matthew failed to attend regular therapy. We conclude that this finding was supported by the evidence. Matthew’s therapist, Dr. Strayer-Thornton, testified that it was recommended that she see Matthew for therapy on a weekly basis. However, Dr. Strayer testified that there was a gap of several weeks, from 17 October 2015 until 21 November 2015, during which she did not see Matthew for a therapy session.

The support for finding of fact number 7, which concerns Matthew’s placement on a “restrictive diet,” is then challenged by respondent-mother. In the prior adjudication, the court made several findings of fact that the juveniles, and especially Beth, had been placed on a restrictive diet. The trial court further found that a Child

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Medical Evaluation expressed concern that the restrictions resulted in “low weight.” At Matthew’s adjudicatory hearing, Dr. Strayer-Thornton expressed concern that Matthew was not being fed adequately, and that restrictions on food were being used as a form of discipline. While respondent-mother’s expressed rationale for restricting Matthew’s dairy intake was because of its effect on his mental status, the trial court determined that her explanation for this restriction was not satisfactory. *See In re Whisnant*, 71 N.C. App. 439, 441, 322 S.E.2d 434, 435 (1984) (recognizing that it is the trial judge’s duty to “weigh and consider all competent evidence, and pass upon the credibility of the witnesses, the weight to be given their testimony and the reasonable inferences to be drawn therefrom”). Dr. Strayer-Thompson further testified that prior to DSS involvement, Matthew would report that he was “starving.” However, whenever there was DSS involvement in Matthew’s life, “he would be eating again and he would report that he was having more food, more snacks[.]” Thus, we conclude that the court’s findings regarding Matthew’s restrictive diet are supported by competent evidence.

We do, however, find a portion of finding of fact number 7 to be an inaccurate representation of the evidence presented at the adjudicatory hearing. Dr. Strayer-Thornton testified that when she addressed favoritism with respondent-mother, respondent-mother responded by accusing Matthew of stealing food at home. This differs from the trial court’s finding of fact that respondent-mother accused Matthew

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of stealing to deflect the focus away from his claims that he was starving, and thus the trial court's finding is not strictly supported by the record, and excluded from our analysis of the trial court's conclusions of law.

Respondent-mother next challenges the trial court's finding that Matthew's chores were inappropriate and unreasonable, and constituted disparate treatment. John testified at the hearing, however, that Matthew had more chores to complete than did any other members of the family, and that it caused him distress because he believed they should all have the same amount. John further expressed concern that with one of the chores, folding laundry, Matthew was required to fold an excessive amount of clothing, especially when combined with his other chores. Dr. Strayer-Thornton similarly testified that respondent-mother required Matthew to write three pages as punishment, and that this punishment was excessive and not developmentally appropriate considering his age. Thus, there was sufficient evidence upon which the trial court could make its finding of fact, and it was permissible for the court to characterize the discipline as disparate and unreasonable based on the evidence. *See id.* at 441, 322 S.E.2d at 435.

Regarding finding of fact 15, respondent-mother asserts that there was no evidence that her perceived lack of empathy caused emotional, psychological, or physical harm to Matthew, and there was no evidence that she manipulated or controlled Matthew in a manner contrary to his health, safety, and welfare. We

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disagree. Dr. Strayer-Thornton testified repeatedly regarding respondent-mother's lack of empathy towards Matthew. Additionally, Dr. Strayer-Thornton testified that when Matthew was around respondent-mother, he exhibited "anxiety behavior" such as "cowering" and "biting his nails." Dr. Strayer-Thornton also described how, at one therapy session, Matthew had "dark circles under his eyes" and "was anxious." We conclude that the trial court's finding of fact constitute reasonable inferences based upon the evidence presented. *Id.*

Respondent-mother next argues that the trial court improperly placed substantial weight on the prior determination that John, Beth, and Matthew were neglected. We disagree. This Court has stated that "in determining whether a parent has neglected a juvenile, a prior adjudication of neglect involving that parent is a relevant factor to consider, and 'the trial judge [is afforded] some discretion in determining the weight to be given such evidence.'" *In re E.N.S.*, 164 N.C. App. 146, 150, 595 S.E.2d 167, 169 (quoting *In re Nicholson and Ford*, 114 N.C. App. 91, 94, 440 S.E.2d 852, 854 (1994)), *disc. review denied*, 359 N.C. 189, 606 S.E.2d 903 (2004).

Citing *In Re A.K.*, 178 N.C. App. 727, 637 S.E.2d 227 (2006), respondent-mother argues that even if the trial court properly placed substantial weight on the prior adjudication, the passage of time precluded the trial court from allowing the prior adjudication to "tip the scales" in this case. We conclude, however, that *A.K.* is distinguishable. In *A.K.*, this Court determined that the trial court improperly relied

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solely on previous orders from a neglect adjudication of the juvenile's sibling when concluding that the juvenile was neglected. *Id.* at 730, 637 S.E.2d at 228. This Court did not conclude that the prior adjudication was too remote in time to be relevant, but instead held that trial court had erred because it "did not accept any formal evidence in addition to its consideration of the prior court orders" *Id.* at 732, 637 S.E.2d at 230. Here, conversely, the trial court received extensive evidence concerning the repetition of conditions that led to the filing of the new neglect petition.

Respondent-father argues that the trial court erred by adjudicating Matthew neglected. Respondent-father asserts that the evidence does not show any substantial risk of physical, mental, or emotional impairment, nor any ongoing risk of neglect based upon the circumstances of the prior adjudication. We are not persuaded. The trial court's findings of fact demonstrate that there was a repetition of conditions from the prior adjudication of neglect, including restrictive diets, improper discipline, and disparate treatment between Matthew, who was adopted, and his siblings, who were respondents' biological children. The trial court further found as fact that Matthew suffered from anxiety and physical harm due to respondents' actions, and that he was at a heightened risk of physical and emotional impairment. Thus, we conclude the trial court did not err by adjudicating Matthew neglected. Accordingly, we affirm the adjudication and disposition orders entered.

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AFFIRMED.

Judges CALABRIA and INMAN concur.

Report per Rule 30(e).