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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-1242

Filed: 20 June 2017

Wilkes County, Nos. 15 JA 199, 200

IN THE MATTER OF: J.L.T. and S.R.J.T.

Appeal by respondents from order entered 29 August 2016 by Judge David V. Byrd in Wilkes County District Court. Heard in the Court of Appeals 25 May 2017.

Vannoy, Colvard, Triplett & Vannoy, P.L.L.C., by Daniel S. Johnson, for petitioner-appellee Wilkes County Department of Social Services.

Amanda Armstrong, for guardian ad litem.

Anné C. Wright, for respondent-appellant father.

Lisa Anne Wagner, for respondent-appellant mother.

CALABRIA, Judge.

Respondent-mother, the mother of the minor children Joe and Scottie,¹ and respondent-father, father of Scottie (collectively “respondents”), appeal from the trial court’s “Adjudication and Disposition Order” adjudicating the minor children to be neglected juveniles, maintaining them in the legal custody of petitioner Wilkes

¹ We use pseudonyms to protect the juveniles’ privacy and for ease of reading.

County Department of Social Services (“DSS”), and relieving DSS of further efforts toward reunification. We affirm in part and reverse in part.

I. Factual and Procedural Background

Scottie was born to respondents in November 2010, approximately eight months after respondents’ parental rights to an older daughter were terminated and two years after the termination of respondent-mother’s parental rights to another child. Joe was born in September 2012. Joe’s father, Arnold, is respondent-mother’s husband but is not a party to this appeal.

On 6 November 2015, DSS obtained nonsecure custody of three-year-old Joe and four-year-old Scottie and filed juvenile petitions alleging they were neglected and dependent. The petitions alleged that the children were exposed to domestic violence between respondent-mother and Arnold in the home and that respondent-mother had failed to comply with safety plans designed to protect the children. When she appeared at the DSS office with Arnold on 6 November 2015, respondent-mother “appeared to be under the influence of some type of substance due to her slurring and slobbering at the mouth.” Although DSS initially intended to place the children with respondent-father, the petitions reported that Yadkin County Department of Social Services had refused to approve the placement due to his “extensive criminal history, [child protective services (“CPS”)] history in Yadkin County, and most recently, the home being raided this weekend for drugs.”

After several continuances – one attributable to respondent-father’s arrest and detention in Yadkin County Jail – the trial court held a hearing on the petitions on 25 April 2016. The court reconvened the hearing on 7 June 2016 to announce its ruling. In its “Adjudication and Disposition Order” entered 29 August 2016, the court adjudicated Joe and Scottie to be neglected juveniles in that they “have not received proper care and supervision from their parents and . . . have been living in an environment injurious to their welfare” *See* N.C. Gen. Stat. § 7B-101(15) (2015). The court placed the children in the legal and physical custody of DSS and granted respondents one hour of supervised visitation twice per month, contingent upon their passing a random drug screen. Finding that respondent-mother and respondent-father “have had their parental rights to another child/children involuntarily terminated by a Court of competent jurisdiction[,]” the court relieved DSS of reasonable efforts to reunify respondents with their children pursuant to N.C. Gen. Stat. § 7B-901(c)(2) (2015).²

II. Adjudication of Neglect

On appeal, both respondents challenge several of the trial court’s adjudicatory findings of fact as unsupported by the evidence. Respondents further claim that the court’s remaining, properly-supported findings do not support its adjudication of Joe and Scottie as neglected juveniles.

² The court ordered DSS to undertake reasonable efforts to reunify Joe with Arnold.

A. Standard of Review

We review an adjudication under N.C. Gen. Stat. § 7B-807 to determine whether the trial court's findings are supported by "clear and convincing competent evidence" and whether the court's findings, in turn, support its conclusions of law. *In re Helms*, 127 N.C. App. 505, 511, 491 S.E.2d 672, 676 (1997). Uncontested findings are binding on appeal. *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991). Moreover, "erroneous findings unnecessary to the determination do not constitute reversible error" where the adjudication is supported by sufficient additional findings grounded in competent evidence. *In re T.M.*, 180 N.C. App. 539, 547, 638 S.E.2d 236, 240 (2006). A court's conclusions of law are reviewed *de novo*. *In re J.S.L.*, 177 N.C. App. 151, 154, 628 S.E.2d 387, 389 (2006).

Because an adjudication of neglect is a determination of the status of a juvenile rather than the fault or culpability of an individual parent, *see In re J.S.*, 182 N.C. App. 79, 86, 641 S.E.2d 395, 399 (2007), we review respondents' arguments together.

B. Findings of Fact

Respondents object to several of the trial court's adjudicatory findings on the ground that they are unsupported by clear and convincing evidence as required by N.C. Gen. Stat. § 7B-805. "When the trial court is the trier of fact, the court is empowered to assign weight to the evidence presented at the trial as it deems appropriate." *In re Oghenekevebe*, 123 N.C. App. 434, 439, 473 S.E.2d 393, 397 (1996).

“ ‘It is not the role of this Court to substitute its judgment for that of the trial court.’ ”
In re C.B., __ N.C. App. __, __, 783 S.E.2d 206, 208 (2016) (quoting *Scott v. Scott*, 157 N.C. App. 382, 388, 579 S.E.2d 431, 435 (2003)). “If the trial court’s findings of fact are supported by competent evidence, they are binding on appeal, even if there may be evidence to support contrary findings.” *In re A.L.T.*, __ N.C. App. __, __, 774 S.E.2d 316, 318 (2015); *see also In re Helms*, 127 N.C. App. at 511, 491 S.E.2d at 676.

In support of its adjudication, the trial court made the following findings of fact³ by clear and convincing evidence:

5. [DSS] has an extensive history of involvement with the children’s mother and [respondent-father]. [DSS] has had the care and custody of at least two (2) other children of [respondent-mother] . . . because of issues dealing with her substance abuse and concerns similar to those present in the current case. [Respondent-father] is the father of one of the children previously removed.

6. [Respondent-mother] has had her parental rights involuntarily terminated to the two (2) children referenced above. Her rights with regard to one (1) child were terminated November 18, 2008. Her parental rights to the child that she has with [respondent-father] were terminated March 16, 2010.

7. [Respondent-father’s] parental rights to the aforesaid child were also involuntarily terminated on March 16, 2010.

³ Respondents challenge several additional findings that are either immaterial or unnecessary to support the juveniles’ adjudications as neglected. For example, respondent-father takes exception to the finding that he and respondent-mother used to be married. Because any error with regard to these findings would not constitute reversible error, we need not address respondents’ arguments. *See In re A.L.T.*, __ N.C. App. at __, 774 S.E.2d at 319.

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8. . . . [DSS] became involved with the children named in the current proceedings in October, 2015. This involvement was the result of acts of domestic violence occurring between [respondent-mother and Arnold]. In October, 2015, [respondent-mother] related to personnel of [DSS], and the Court finds, that Arnold . . . had been physically abusive to her. In an attempt to leave the children in the home, DSS established a Safety Plan that required [respondent-mother] to remove herself and the children from the home if further acts of violence occurred. Both [respondent-mother and Arnold] agreed to the terms of this plan.

9. Approximately three (3) days after the initiation of the Safety Plan referenced above, [respondent-mother] contacted [DSS] and indicated that she and [Arnold] had again been involved in some act of domestic violence. [She] came to [DSS] and related to the Social Worker, and the Court finds, that [Arnold] had pulled her out of the bed, hurting her shoulder. [Respondent-mother] further indicated that she had no desire to be involved with [Arnold] further and that she and the children were leaving. Because of this, personnel of [DSS] assisted [her] and the children in moving to an emergency shelter.

10. [Respondent-mother] and the children apparently remained in the shelter for a brief period of time. However, contrary to her representations to the Social Worker, [respondent-mother] left the shelter with her children and returned to the home of Arnold

11. Despite her protestations to the contrary, the mother returned to the home of Arnold . . . shortly after telling the Social Worker that she had no intention of resuming her relationship with [him] or exposing the children to this.

12. On or about November 5 in the early morning hours, another report was received which caused two (2) Social Workers to go to the home of [respondent-mother and

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Arnold]. At that time, the Social Workers found [respondent-mother, Arnold, and Joe] in the . . . home. However, [Scottie] had been left with his father. The Social Workers arranged for [Joe] to be placed with family members until further investigation.

13. On the following day, [respondent-mother and Arnold] came to [DSS]. At that time, [respondent-mother] was impaired. Her speech was slurred and she was slobbering. She was arguing with her husband and yelling at the Social Worker that she was not going to take [respondent-mother's] children. Following this display, it became apparent that the children could not be safely left with [Arnold] and/or [respondent-mother]. Judge [Jeanne R.] Houston, a District Court Judge, also instructed the Social Workers to remove [Scottie] from the home of his father due to [respondent-father's] criminal record and prior Child Protective Services history.

We address respondents' objections to these findings below.

Respondent-mother challenges the statement in Finding 5 that she lost her parental rights to the two other children in 2008 and 2010 due to "substance abuse and concerns similar to those present in the current case." She argues DSS adduced no evidence that these prior terminations were based on domestic violence. She further contends there was no evidence of her "current drug use with or without the children in her care."

We agree with respondent-mother regarding Finding 5 suggesting that the prior terminations of respondent-mother's parental rights were attributable to domestic violence issues rather than substance abuse. DSS social worker Tina Caudle testified that respondent-mother's CPS history involved chronic substance

abuse and that she “lost all of her kids because of her drug usage.” No history of domestic violence was noted.

However, the evidence supports the court’s finding of current “concerns” about respondent-mother’s substance abuse. Ms. Caudle testified that respondent-mother appeared to be “under some kind of influence” when she came to the DSS office with Arnold on the morning of 6 November 2015. Respondent-mother “was slobbering at the mouth” and slurring her words. When asked if she could pass a drug test, respondent-mother replied that she had taken a “pain pill” three days earlier. Ms. Caudle’s observations are sufficient to justify “concerns” about respondent-mother’s ongoing drug use.

Respondent-mother next claims the evidence does not support Findings 8 and 9 “regarding acts of domestic violence between [her] and [Arnold].” She notes DSS presented no evidence that respondent-mother bore any visible “signs of domestic violence or physical abuse” or that Joe and Scottie “were present during any altercation” between respondent-mother and Arnold.

Again, we agree in part with respondent-mother’s contention. The evidence of physical violence between Arnold and respondent-mother was limited to respondent-mother’s statement to Ms. Caudle on 8 October 2015 that Arnold “had jerked her out of the bed[and] hurt her shoulder” while Joe and Scottie were with respondent-father. Ms. Caudle cited this incident as “[t]he only time” respondent-mother had

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described “any kind of violence” by Arnold. With regard to the initial domestic violence report DSS received on 4 October 2015, Ms. Caudle testified that “it was more of . . . [a] misunderstanding, a little argument” according to both parties. Likewise, on 4 November 2015, respondent-mother told Ms. Caudle only that she and Arnold “had some sort of fight and she wanted our help” to leave him. The evidence thus discloses a single physical altercation between respondent-mother and Arnold, at a time when the children were out of the home. There is no evidence Scottie or Joe witnessed either the “argument” on 4 October 2015 or “some sort of fight” on 4 November 2015.

Respondent-mother further insists “there was no evidence that [she] was impaired or under the influence of any substance while the [sic] Scottie and Joe were in her care.” Respondent-mother correctly characterizes the evidence on this point. However, none of the trial court’s findings of fact depict respondent-mother as impaired while she was caring for the children.

Respondent-mother also takes exception to Findings 10 and 11, which state that she “remained in the [SAFE] shelter for a brief period of time” and then “left the shelter with her children and returned” to live with Arnold, and that she did so “shortly after telling the Social Worker that she had no intention” of going back to Arnold. The evidence at the hearing shows that respondent-mother, Scottie, and Joe, left the shelter the same day they arrived, 8 October 2015, and that they stayed with

respondent-father for “a week and a half.” On 4 November 2015, respondent-mother came to the DSS office and told Ms. Caudle that “she and Arnold . . . had gotten into a fight” and “she was done with Arnold.” Respondent-mother signed another safety plan agreeing “that she was not allowed to take [Joe] and [Scottie] back to Arnold’s home.”⁴ Based on this evidence, the trial court could reasonably infer that respondent-mother and the children resumed living with Arnold at some point after leaving respondent-father’s residence and before respondent-mother’s appearance at the DSS office on 4 November 2015. Respondent-mother’s exception is overruled.

Respondent-father challenges the trial court’s findings that indicate Scottie resided with respondent-mother and Arnold, rather than respondent-father, before entering DSS custody. Respondent-father testified that he was Scottie’s primary caretaker both before and after DSS became involved with the family, pursuant to an informal custody arrangement with respondent-mother. He now argues that DSS failed to present clear and convincing evidence to contradict his testimony. Respondent-father specifically objects to Finding 9, insofar as it “creates the impression that both children were living with [respondent-mother] at [Arnold’s] house prior to 8 October 2015.” He also contests Finding 10, which depicts respondent-mother as returning with both children to live with Arnold after leaving

⁴ Although Ms. Caudle assumed respondent-mother and the kids rejoined Arnold upon leaving respondent-father’s home, she acknowledged having no information about their whereabouts prior to 4 November 2015.

the SAFE shelter on 8 October 2015. Respondent-father insists there was no showing “that Scottie ever went to [Arnold’s] house after October 8, 2015.”

We find sufficient evidence to uphold the disputed portions of Findings 9 and 10. Ms. Caudle testified that Joe and Scottie have lived with respondent-mother since birth and were residing with respondent-mother and Arnold at the time DSS received the initial CPS report on 5 October 2015. Ms. Caudle further averred that, after respondent-mother and the children left the emergency shelter on 8 October 2015, respondent-mother stayed with respondent-father for “a week and a half” before leaving and “t[aking] the boys with her.” Ms. Caudle described the children’s living situation as follows: “if [respondent-mother is] at [respondent-father’s residence], then the boys are [there]. If she’s at Arnold’s, then the boys are at Arnold’s.” Even if Ms. Caudle’s testimony was based on statements made by respondent-mother, the trial court was entitled to credit this evidence. *See In re S.W.*, 175 N.C. App. 719, 723, 625 S.E.2d 594, 596-97 (holding that “the social worker’s testimony regarding respondent’s statements to her was properly allowed”), *disc. review denied*, 360 N.C. 534, 635 S.E.2d 59 (2006); *see also* N.C. Gen. Stat. § 8C-1, Rule 801(d) (2015). Respondent-father’s testimony that Scottie spent just two or three days per month with respondent-mother and otherwise lived with him is also at odds with the parties’ conduct throughout the relevant period.

C. Conclusion of Law

Respondents challenge the trial court's adjudication of Joe and Scottie as neglected. "The conclusion that a juvenile is abused, neglected, or dependent is reviewed *de novo*." *In re J.D.R.*, 239 N.C. App. 63, 66, 768 S.E.2d 172, 175 (2015).

The Juvenile Code defines a "neglected juvenile," *inter alia*, as one "who does not receive proper care, supervision, or discipline from the juvenile's parent . . . or who lives in an environment injurious to the juvenile's welfare[.]" N.C. Gen. Stat. § 7B-101(15). Furthermore, to qualify as neglected, the juvenile must experience "some type of physical, mental, or emotional impairment or a substantial risk of such impairment." *In re C.M.*, 183 N.C. App. 207, 210, 644 S.E.2d 588, 592 (2007). " 'Section 7B-101(15) affords the trial court 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 A.L.T.*, __ N.C. App. at __, 774 S.E.2d at 321 (quoting *In re C.M.*, 183 N.C. App. at 210, 644 S.E.2d at 592).

The trial court based its adjudication on the following conclusion of law:

2. [DSS] has shown by clear and convincing evidence that the above-named children are neglected juveniles, as that term is defined by G.S. § 7B-101. In reaching this Conclusion, the Court finds that the above circumstances show that the children have not received proper care and supervision from their parents and that the children have been living in an environment injurious to their welfare in that the children have resided primarily with their mother and Arnold . . . in which substance abuse and domestic violence have been common place and the children's mother has evidenced her unwillingness to protect the children by removing them from this environment.

Respondent-mother argues that the court's findings of fact do not support a conclusion that Joe and Scottie are neglected.⁵ She claims there is neither evidence nor any finding "that the children were present for, or impacted by, any acts of domestic violence or substance use," or that they "suffered any physical, mental or emotional impairment" or exposure to "a substantial risk of such impairment."

The trial court made no finding that Joe and Scottie experienced either a physical, mental, or emotional impairment or a substantial risk thereof. This Court has held that, "[w]here there is no finding that the juvenile has been impaired or is at substantial risk of impairment, there is no error if all the evidence supports such a finding." *In re Padgett*, 156 N.C. App. 644, 648, 577 S.E.2d 337, 340 (2003). However, we agree with respondent-mother that the record is devoid of evidence of actual harm to the children or of any incident giving rise to substantial risk of such harm.

With regard to reports of domestic violence, DSS adduced no evidence that any conflict between respondent-mother and Arnold occurred in the presence of Joe or Scottie. Moreover, although respondent-mother repeatedly sought DSS' assistance to leave Arnold, she made a single report of physical violence, alleging that Arnold

⁵ Respondent-father also challenges the trial court's conclusion with regard to Scottie. However, he bases his argument on his testimony that Scottie resided with him, rather than with respondent-mother and Arnold. Having upheld the trial court's findings about Scottie's residence, we decline to address respondent-father's argument here.

pulled her out of bed by the shoulder on 8 October 2015. At the time of this episode, both boys were with respondent-father. Likewise, the only evidence of recent substance abuse by respondent-mother was her apparent intoxication at DSS on the morning of 6 November 2015, when the children were no longer in her care.

“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). Although the trial court heard evidence that respondent-mother’s parental rights to two older children were terminated due to issues related to her substance abuse, there is no indication that respondent-mother abused or neglected her older children or that her rights were terminated for abuse or neglect.

Conclusion 2 mischaracterizes the evidence in describing Joe and Scottie’s home environment as rife with domestic violence and substance abuse. Absent evidence that the children were exposed to, or otherwise endangered by, violence in the home or substance abuse by respondent-mother, we hold the trial court erred in concluding that the children were neglected. *See In re E.P.*, 183 N.C. App. 301, 306, 645 S.E.2d 772, 775, *aff’d per curiam*, 362 N.C. 82, 653 S.E.2d 143 (2007).

III. Conclusion

We find no error with the trial court’s findings of fact. However, we hold that the trial court’s adjudication of neglect with regard to both Joe and Scottie was not

supported by its findings of fact, and thus reverse the adjudication of neglect. Because we reverse the trial court's adjudication of neglect with regard to both Joe and Scottie, the resulting disposition is also reversed. *In re S.C.R.*, 217 N.C. App. 166, 170, 718 S.E.2d 709, 713 (2011). Furthermore, we need not review respondents' arguments related to disposition. *Id.*

AFFIRMED IN PART, REVERSED IN PART.

Judges DIETZ and INMAN concur.

Report per Rule 30(e).