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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-1250

Filed: 5 July 2017

Forsyth County, Nos. 15 J 243, 244, 245

IN THE MATTER OF: E.V.R., A.V.R. & J.V.R.

Appeal by Respondent from order entered 19 September 2016 by Judge Denise S. Hartsfield in District Court, Forsyth County. Heard in the Court of Appeals 5 June 2017.

Assistant County Attorney Theresa A. Boucher for Forsyth County Department of Social Services, Petitioner-Appellee.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Annick Lenoir-Peek, for Respondent-Appellant.

Parker Poe Adams & Bernstein LLP, by Kiah T. Ford IV, for Guardian ad Litem.

McGEE, Chief Judge.

Respondent appeals from an order adjudicating E.V.R. and J.V.R. as abused and neglected juveniles, adjudicating A.V.R. as a neglected juvenile, and allowing the Forsyth County Department of Social Services (“DSS”) to cease reunification efforts. We affirm in part, reverse in part, and remand to the trial court for further proceedings.

I. Background

Respondent is the mother of three children, E.V.R., A.V.R., and J.V.R. (collectively, “the children”), who are the subject of this appeal. At the time the juvenile petitions were filed in the present case, the children were eleven, thirteen, and sixteen years old, respectively. Respondent is also the mother of an adult child, A.R., who was twenty years old at the times relevant to this appeal. In November 2013, approximately two years before the juvenile petitions in this matter were filed, J.V.R. was raped by multiple individuals on multiple occasions. Respondent became aware of the abuse when she saw signs that then fourteen-year-old J.V.R. was pregnant. Respondent contacted law enforcement and sought medical treatment for J.V.R. Although Respondent was told by the medical professionals who treated J.V.R. that she would need trauma counseling to recover from the abuse, Respondent did not seek this treatment for her daughter.

In March 2015, Respondent rented a room in the home she shared with the children to Louis Aguilar (“Aguilar”), then thirty-seven years old. While Aguilar was living in the house, he began to sexually abuse E.V.R. Although Aguilar threatened to kill E.V.R. and her family if she told anyone about the abuse, E.V.R. eventually informed Respondent about the abuse in October 2015. While living in the home, Aguilar was also having a “sexual relationship” with J.V.R. When Respondent learned of Aguilar’s actions, she “kicked [Aguilar] out of the home.” A.V.R. was living

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in Respondent's home with E.V.R. and J.V.R. when Aguilar was abusing them. A.V.R. reported to his therapist that, while living with Respondent, he learned to sell drugs to help contribute to the care of the family.

Respondent, by forcing Aguilar to leave the home, angered J.V.R., who considered herself to be "dating" Aguilar. J.V.R. was also pregnant with Aguilar's child. Respondent ordered A.R., her adult son, to physically discipline J.V.R. According to a DSS investigation, A.R. carried out the requested discipline by beating J.V.R. with an electrical cord. J.V.R. retaliated by stabbing A.R. with a pair of scissors. J.V.R. was arrested, plead guilty to assault with a deadly weapon, and was sentenced to two years' probation. Respondent contacted J.V.R.'s probation officer and attempted to have J.V.R. deported to Mexico.

A medical evaluation was scheduled for E.V.R. for 9 November 2015 in connection with the sexual abuse by Aguilar. Before the evaluation occurred, Respondent signed financial power of attorney and guardianship of E.V.R. to Alberto Winnatu Lorenzo ("Lorenzo"), a family friend. Lorenzo attempted to interfere with E.V.R.'s medical examination, and hospital staff and the police had to escort Lorenzo off the property so E.V.R.'s examination could continue.

DSS filed juvenile petitions on 10 November 2015 alleging E.V.R. and J.V.R. were abused and neglected juveniles, pursuant to N.C. Gen. Stat. §§ 7B-101(1) and 7B-101(15), and A.V.R. was a neglected juvenile pursuant to N.C.G.S. § 7B-101(15).

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At a hearing on the juvenile petitions, DSS made an oral motion to appoint a Rule 17 guardian ad litem for Respondent “due to [Respondent’s] level of education, ability to understand the proceedings, and language barrier[.]”¹ Respondent opposed the motion, “and asked the [c]ourt to order DSS to provide court documents to [Respondent] in Spanish in advance of court hearings.” The court allowed DSS’s motion and “declined [Respondent’s] request.”

The trial court held an adjudication hearing on the juvenile petitions on 8 August 2016. At the hearing, Respondent was present and was also represented by an attorney and her N.C. Gen. Stat. § 1A-1, Rule 17 guardian ad litem. Following the hearing, the trial court entered an order on 19 September 2016 (“the order”) that has adjudicatory and dispositional aspects. The court found by clear, cogent, and convincing evidence that E.V.R. and J.V.R. were sexually abused and neglected juveniles, and A.V.R. was a neglected juvenile.² The trial court concluded as a matter of law that legal custody of the children should be granted to DSS and that “[the children’s] placement [was] at the discretion of [DSS].” The trial court also “sanction[ed] the plan of reunification with a parent with a concurrent plan of

¹ A transcript of this proceeding is not in the record on appeal. The only account of DSS’s motion and the trial court’s ruling appears in a finding of fact in an order entered by the trial court on 16 February 2016.

² At the time of the order, Respondent was in the custody of the Forsyth County Detention Center on two charges of felony child abuse. According to a court report contained in the record, these charges stemmed from J.V.R. revealing to law enforcement that Respondent was allegedly “pimping” E.V.R. and J.V.R. “by allowing older men to have sex with them for money.”

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[g]uardianship with a [c]ourt appointed caretaker for [A.V.R.] and [E.V.R.],” but nevertheless ordered that DSS cease reunification efforts between the children and Respondent, “as she committed, encouraged, or allowed the continuation of sexual abuse of [J.V.R.] and [E.V.R.]” While the court ordered reunification efforts to cease, the trial court also ordered that “[i]f [Respondent] wishes to achieve reunification with [the children], she shall” take certain actions enumerated in the adjudication order, which are discussed below. Respondent appeals.

II. Analysis

Respondent argues the trial court erred by: (1) violating her due process rights by appointing a guardian ad litem pursuant to N.C.G.S. § 1A-1, Rule 17; (2) violating her due process rights by denying her the ability to receive all documents in Spanish, her native language; (3) adjudicating E.V.R. and J.V.R. as abused pursuant to N.C.G.S. § 7B-101(1) when the offender was not a “caretaker,” as defined by N.C. Gen. Stat. § 7B-101(3); (4) adjudicating E.V.R. and A.V.R. as neglected pursuant to N.C.G.S. § 7B-101(15); (5) ceasing reunification efforts at the initial disposition hearing when the requirements of N.C. Gen. Stat. § 7B-901(c) were not met; and (6) ordering Respondent to complete certain actions, as part of a reunification plan, unrelated to the reason for the removal of E.V.R., A.V.R., and J.V.R. from her home.

(A) Appointment of N.C. Gen. Stat. § 1A-1, Rule 17 Guardian Ad Litem

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Respondent argues the trial court erred in appointing a guardian ad litem pursuant to N.C.G.S. § 1A-1, Rule 17 and N.C. Gen. Stat. § 7B-602(c). We disagree. N.C.G.S. § 7B-602(c) provides: “On motion of any party or on the court’s own motion, the court may appoint a guardian ad litem for a parent who is incompetent in accordance with G.S. 1A-1, Rule 17.” N.C. Gen. Stat. § 7B-602(c) (2015). N.C.G.S. § 1A-1, Rule 17, in turn, provides in relevant part:

[A] guardian ad litem for an . . . incompetent person may be appointed in any case when it is deemed by the court in which the action is pending expedient to have the . . . incompetent person so represented, notwithstanding such person may have a general or testamentary guardian.

N.C. Gen. Stat. § 1A-1, Rule 17(b)(3) (2015). An “incompetent adult” is defined³ as one “who lacks sufficient capacity to manage the adult’s own affairs or to make or communicate important decisions concerning the adult’s person, family, or property whether the lack of capacity is due to mental illness, mental retardation, epilepsy, cerebral palsy, autism, inebriety, senility, disease, injury, or similar cause or condition.” N.C. Gen. Stat. § 35A-1101(7) (2015).

³ While N.C.G.S. § 1A-1, Rule 17 does not provide a definition of “incompetent person,” cases from this Court and our Supreme Court have, without elaboration, used the definition of “incompetent adult” set forth in N.C. Gen. Stat. § 35A-1101(7) to determine whether a parent was incompetent for purposes of N.C.G.S. § 1A-1, Rule 17. See *In re T.L.H.*, 368 N.C. 101, 106, 772 S.E.2d 451, 454-55 (2015) (employing N.C.G.S. § 35A-1101(7)’s definition of “incompetent adult” for the purposes of determining whether a parent was an “incompetent person” pursuant to N.C.G.S. § 1A-1, Rule 17); *In re M.B.B.*, ___ N.C. App. ___, ___ S.E.2d ___, 2016 N.C. App. LEXIS 340, at *9-10 (2016) (same). Consistent with *In re T.L.H.*, we do the same.

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“A trial judge has a duty to properly inquire into the competency of a litigant in a civil trial or proceeding when circumstances are brought to the judge’s attention [that] raise a substantial question as to whether the litigant is *non compos mentis*.” *In re T.L.H.*, 369 N.C. 101, 106-07, 772 S.E.2d 451, 455 (2015) (citation omitted). Both “[a] trial court’s decision concerning whether to conduct an inquiry into a parent’s competency” and its decision “concerning whether to appoint a parental guardian *ad litem* based on the parent’s incompetence” are reviewed for abuse of discretion. *Id.* at 107, 772 S.E.2d at 455 (citation omitted).

Our Supreme Court recently dealt with competency questions in a context similar to the present case in *In re T.L.H.*, where a mother’s parental rights were terminated upon a finding by the trial court that her child had been neglected. *Id.* at 104-05, 772 S.E.2d at 454. On appeal, the mother argued the trial court had abused its discretion by failing to conduct an inquiry concerning whether she was entitled to the appointment of a guardian ad litem. *Id.* at 105, 772 S.E.2d at 454. Noting the “quite deferential” standard of review in these claims, the Court held that, although it was “unable to conclude that an inquiry into [the mother’s] competence was actually conducted during the course of” that case, the Court was “equally unable to conclude that the apparent failure to conduct such an inquiry constituted an abuse of discretion.” *Id.* at 108, 772 S.E.2d at 456. The Supreme Court noted that, while the

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“nature and extent” of a diagnosis from mental health professionals is important in determining competency, so too is

the information that members of the trial judiciary glean from the manner in which the individual behaves in the courtroom, the lucidity with which the litigant is able to express himself or herself, the extent to which the litigant’s behavior and comments shed light upon his or her understanding of the situation in which he or she is involved, the extent to which the litigant is able to assist his or her counsel or address other important issues, and numerous other factors.

Id. at 108, 772 S.E.2d at 456. The Court held that much of the information relevant in determining a litigant’s competency “is simply not available from a study of the record developed in the trial court and presented for appellate review,” and that where “the record [on appeal] contains an appreciable amount of evidence tending to show that the litigant whose mental condition is at issue is not incompetent,” the trial court’s decision will only be held to be an abuse of discretion “in the most extreme circumstances.” *Id.* at 108-09, 772 S.E.2d at 456.

Our Supreme Court’s reasoning in *T.L.H.* dictates our decision on this issue. In the present case, there exists no transcript or record of the hearing conducted upon DSS’s oral motion to appoint a Rule 17 guardian ad litem. The only account of the Rule 17 motion appears in the findings of fact of the adjudication order: “[DSS] made an oral motion to appoint a Rule 17 Guardian ad Litem for [Respondent] due to [her] level of education, ability to understand the proceedings and language barrier.” The

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finding of fact goes on to state that Respondent's attorney "opposed the motion" and that the trial court "allowed DSS's motion."

Given the "quite deferential" standard of review and the paucity of the record as to this issue, we cannot say the trial court abused its discretion in appointing a N.C.G.S. § 1A-1, Rule 17 guardian ad litem for Respondent. As Respondent correctly notes, the record on appeal does not contain a "mental health diagnosis." However, this absence is not determinative; our Supreme Court has instructed that a trial court's competency decision – made after having the opportunity to glean important information regarding the litigant's courtroom behavior, lucidity of expression, understanding of her situation, and ability to assist her counsel – will only be an abuse of discretion in "the most extreme circumstances." *T.L.H.*, 368 N.C. at 108, 772 S.E.2d at 456.

It is well established that "it is the *appellant* who has the burden in the first instance of demonstrating error from the record on appeal." *State v. Adams*, 335 N.C. 401, 409, 439 S.E.2d 760, 764 (1994) (emphasis in original) (citation omitted). It is Respondent, as appellant, who has the burden to demonstrate that the trial court's decision that Respondent was incompetent and required a Rule 17 guardian ad litem amounted to an abuse of discretion. The evidence in the record on appeal does not make any abuse of discretion manifest. Given our deferential standard of review, we hold Respondent has failed "to overcome the presumption of correctness at trial."

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State v. Ali, 329 N.C. 394, 412, 407 S.E.2d 183, 194 (1991). We therefore hold the trial court did not abuse its discretion in appointing a N.C.G.S. § 1A-1, Rule 17 guardian ad litem to Respondent.

(B) Due Process Concerns/Title VI of the Civil Rights Act of 1964

Respondent purports to argue that the trial court violated her “due process rights” by declining to provide all court documents in Spanish. For the reasons that follow, we do not reach this issue. The United States Constitution contains two due process clauses. *See* U.S. CONST. AMEND. V.; XIV. Both of the federal Due Process Clauses contain “procedural” and “substantive” safeguards. *See generally State v. Thompson*, 349 N.C. 483, 491-92, 508 S.E.2d 277, 282 (1998) (noting the procedural and substantive aspects of the Fifth Amendment’s Due Process Clause); *State v. Guice*, 141 N.C. App. 177, 186-88, 541 S.E.2d 474, 481-82 (2000) (noting the procedural and substantive aspects of the Fourteenth Amendment’s Due Process Clause). In addition, the North Carolina Constitution also contains a due process clause. *See* N.C. CONST. art. I, § 19; *State v. Guice*, 141 N.C. App. 177, 186, 541 S.E.2d 474, 481-82 (2000) (“Our courts have long held that the ‘law of the land’ clause [contained in Article I, Section 19 of the North Carolina Constitution] has the same meaning as ‘due process of law’ under the Federal Constitution.” (citation and internal quotation marks omitted)).

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In her brief to this Court, Respondent is nonspecific about which Due Process Clause of which constitution the trial court's refusal allegedly implicates, and also does not specify whether that refusal violated procedural or substantive due process concerns. Respondent merely invokes the Due Process Clause(s), and argues that the trial court's refusal to provide all documents in Spanish "violated [Respondent's] due process rights by preventing her from being able to participate meaningfully in the proceedings," and further argues that "[t]he trial court in Juvenile proceedings is tasked with ensuring fairness and equity in protecting the rights of parents as well as juveniles," and that the denial of Respondent's request "is a violation of Title VI of the Civil Rights Act of 1964" and one of its implementing regulations.

The notable lack of specificity in Respondent's due process clause argument subjects it to dismissal. *See* N.C.R. App. P. 28(b)(6) ("Issues not presented in a party's brief, or in support of which no reason or argument is stated, will be taken as abandoned"); *Viar v. N.C. Dep't of Transp.*, 359 N.C. 400, 402, 610 S.E.2d 360, 361 (2005) (per curiam) ("[i]t is not the role of the appellate courts . . . to create an appeal for an appellant"). In order to reach this issue, we would need to determine which aspect (procedural or substantive) of which due process clause of which constitution (Fifth or Fourteenth of the United States Constitution, or Article 1, Section 19 of the North Carolina Constitution) Respondent seeks to invoke, all before determining whether any due process clause was violated. As we cannot "create an appeal" for

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Respondent, *Viar*, 359 N.C. at 402, 610 S.E.2d at 361, we deem any due process clause argument abandoned.

Respondent also argues that the failure to provide documents to her in Spanish violated her rights under Title VI of the Civil Rights Act of 1964, 78 Stat. 252, *codified at* 42 U.S.C. §§ 2000d to 2000d-7, and its implementing regulations, 45 C.F.R. §§ 80.1-80.13.⁴ Pursuant to Title VI, “[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” 42 U.S.C. § 2000d (2017). Respondent appears to argue that failure to provide all court-related documents in Spanish subjected her to discrimination by North Carolina’s courts, and that discrimination was a form of national origin discrimination prohibited under Title VI.⁵

Assuming, without deciding, that the trial court’s refusal to provide all documents in Spanish violated Respondent’s rights under 42 U.S.C. § 2000d,

⁴ We note that the “purpose of” 45 C.F.R. §§ 80.1-80.13, the implementing regulations cited by Respondent, “is to effectuate the provisions of title VI of the Civil Rights Act of 1964 . . . to the end that no person in the United States shall” be subjected to discrimination prohibited by Title VI “under any program or activity receiving Federal financial assistance from the Department of Health and Human Services” (“DHHS”). Respondent has not shown, and we find no evidence in the record, that the North Carolina court system – the entity that allegedly violated her Title VI rights by failing to provide all documents in Spanish – receives federal funding from DHHS.

⁵ See Letter from Thomas E. Perez, Assistant Attorney General, U.S. Dep’t of Justice, Civil Rights Division, to State Court Administrator (Aug. 16, 2010), *available at* http://ncids.org/foreignlanguageresources/doj_memo.pdf (“The [United States] Supreme Court has held that failing to take reasonable steps to ensure meaningful access for [limited English proficient] persons is a form of national origin discrimination prohibited by Title VI regulations. See *Lau v. Nichols*, 414 U.S. 563 (1974)).

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Respondent would not be entitled to the relief she seeks in the present case. As noted, Title VI provides that “any program or activity receiving Federal financial assistance” may not discriminate against or deny participation in any program to any person “on the ground of race, color, or national origin[.]” 42 U.S.C. § 2000d. “Each Federal department and agency” which extends federal funds is “authorized and directed to effectuate the provisions of” Title VI, *see* 42 U.S.C. § 2000d-1 (2017), and judicial review is available for “[a]ny [federal] department or agency action taken pursuant to [42 U.S.C. § 2000d-1.]” 42 U.S.C. § 2000d-2.

In addition to department or agency action, it is also “beyond dispute” that individuals may sue in federal court under Title VI for violations caused by intentional discrimination. *Alexander v. Sandoval*, 532 U.S. 275, 149 L. Ed. 2d 517 (2001) (implying a private right of action to enforce rights conferred by 42 U.S.C. § 2000d). As the United States Supreme Court has held, Title VI rights are to be vindicated through action from “department[s] or agenc[ies]” of the federal government, with those actions being subject to judicial review pursuant to 42 U.S.C. § 2000d-2, or through a private suit in federal court. *See Alexander*, 532 U.S. 275, 149 L. Ed. 2d 517. Respondent cites no case from any jurisdiction, and we have found

none, in which a violation of Title VI was used as a basis for invalidating a state court parental rights order.⁶

We find no merit in Respondent’s argument, to the extent she contends a violation of Title VI is, *a fortiori*, a violation of federal or state due process rights, and on that basis requires the order in the present case be invalidated. Such a rule would disturb the carefully crafted statutory scheme created by Congress to deal with violations of Title VI. And in any event, as explained above, Respondent has waived her due process clause argument.

(C) Trial Court’s Adjudication of E.V.R. and J.V.R. as Abused

Respondent argues the trial court erred in adjudicating E.V.R. and J.V.R. as “abused,” as that term is defined in N.C.G.S. § 7B-101(1), because the person who perpetrated the sexual abuse of E.V.R. and J.V.R., Aguilar, was not a “caretaker” pursuant to N.C.G.S. § 7B-101(3). We review this argument *de novo*. *Dion v. Batten*, ___ N.C. App. ___, ___, 790 S.E.2d 844, 851 (2016) (noting that this Court reviews issues of statutory interpretation *de novo*).

As relevant here, N.C.G.S. § 7B-101 defines “[a]bused juveniles” as “[a]ny juvenile less than 18 years of age whose parent, guardian, custodian, or

⁶ Respondent cites the Superior Court of Pennsylvania’s decision in *In re P.S.S.C.*, 32 A.3d 1281 (Pa. Super. Ct. 2011) in support of her argument. The court in that case, without elaboration, stated: “Due process requires that [the court] protect [the father’s] rights as much as the recognized interests of [the children].” *Id.* at 1287. *In re P.S.S.C.* does not contain any detailed due process clause analysis, nor did it involve any Title VI claims. We find it inapposite to the situation we confront in the present case.

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caretaker . . . [c]ommits, permits, or encourages the commission of a violation of,” among others, statutory rape of a child by an adult pursuant to N.C. Gen. Stat. § 14-27.23; statutory sexual offense with a child by an adult pursuant to N.C. Gen. Stat. § 14-27.28; and first-degree statutory sexual offense pursuant to N.C. Gen. Stat. § 14-27.29. *See* N.C.G.S. § 7B-101(1).

Respondent concedes, and we assume for the purpose of our decision, that Aguilar committed one of the enumerated statutory offenses when he “engaged in a sexual relationship” with E.V.R. and J.V.R. However, Respondent argues, because Aguilar was not a “parent, guardian, custodian, or caretaker,” of J.V.R. and E.V.R., they were not “abused juveniles” within the meaning of N.C.G.S. § 7B-101(1). We do not agree. The parties confine their arguments to whether Aguilar was a “caretaker” of E.V.R. and J.V.R. pursuant to N.C.G.S. § 7B-101(3), and we do the same. N.C.G.S. § 7B-101(3) defines caretaker, as relevant here, as

[a]ny person other than a parent, guardian, or custodian who has responsibility for the health and welfare of a juvenile in a residential setting. A person responsible for a juvenile’s health and welfare means a stepparent, foster parent, *an adult member of the juvenile’s household*, an adult relative entrusted with the juvenile’s care, any person such as a house parent or cottage parent who has primary responsibility for supervising a juvenile’s health and welfare in a residential child care facility or residential educational facility, or any employee or volunteer of a division, institution, or school operated by the Department of Health and Human Services.

N.C.G.S. § 7B-101(3) (emphasis added).

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In *In re R.R.N.*, 368 N.C. 167, 775 S.E.2d 656 (2015), our Supreme Court considered whether an adult relative who supervised a child during a sleepover was a “caretaker” of that child under N.C.G.S. § 7B-101(3) because he was an “adult relative entrusted with the juvenile’s care.” *In re R.R.N.*, 368 N.C. at 658, 775 S.E.2d at 167. In that specific context, our Supreme Court held:

The “caretaker” statute protects children from abuse and neglect inflicted by people with significant, parental-type responsibility for the daily care of a child in the child’s residential setting. Stepparents, foster parents, and *adult members of the juvenile’s household*, for example, *live with the child in the child’s home*. Similarly, house parents or cottage parents are in charge of children in nontraditional residential settings, such as dormitories or group residences, where children live for extended periods of time.

Id. at 170, 775 S.E.2d at 659 (emphasis added).

While our Supreme Court characterized the caretaker statute as aimed at protecting children from abuse inflicted by people with “significant, parental-type responsibility for the daily care of a child,” we do not construe its holding to limit its reach to *only* those with parental-type roles in a child’s life. For instance, the Court noted that “adult members of the juvenile’s household” are people who “live with the child in the child’s home,” and equated that status with having “significant, parental-type responsibility” for the child. *See id.* While there is no evidence in the record that Aguilar had any “parental-type responsibility” for E.V.R. and J.V.R., the thirty-

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seven-year-old adult male rented a room from Respondent in the home she shared with E.V.R., A.V.R., and J.V.R., and therefore lived with the children in their home.

The primary dictionary definition of “household” includes “[a] family living together.” BLACK’S LAW DICTIONARY 756 (8th ed. 2008). However, the term is secondarily defined as “[a] group of people who dwell under the same roof.” *Id.* As our Supreme Court has held, “words are to be given their plain and ordinary meaning unless the context, or the history of the statute, requires otherwise.” *State v. Wiggins*, 272 N.C. 147, 153, 158 S.E.2d 37, 42 (1967). The plain and ordinary meaning of the phrase “adult member of the juvenile’s household” encompasses a non-relative who rents a room in the home in which a juvenile lives. Such a person has unfettered and unsupervised access to the child on a daily basis, which necessarily makes it much easier for that person to repeatedly abuse the juvenile than a person who does not live in the same house as the juvenile.

We hold that an adult living as a boarder in a home with unrelated juveniles is an “adult member of the juvenile’s household” for the purpose of N.C.G.S. §_7B-101(3). Therefore, Aguilar was a “caretaker” of E.V.R. and J.V.R., and the trial court did not err in adjudicating E.V.R. and J.V.R. as abused pursuant to N.C.G.S. § 7B-101(1).

(D) Trial Court’s Adjudication of E.V.R. and A.V.R. as Neglected

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Respondent next argues the trial court erred in adjudicating E.V.R. and A.V.R. as neglected juveniles. We disagree. Neglected juvenile is defined, in relevant part, 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.

N.C. Gen. Stat. § 7B-101(15) (2015). "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." *Id.* In the present case, both E.V.R. and A.V.R. lived in a home in which another juvenile was subjected to sexual abuse by an adult who regularly lived in the home. In addition to being sexually abused by Aguilar herself, E.V.R. lived in an environment in which J.V.R. was sexually abused by the same man. Similarly, A.V.R. lived in a home in which both of his sisters were sexually assaulted on a regular basis.

The findings of fact in this case depict a household environment that can only be described as injurious to E.V.R., A.V.R., and J.V.R.'s welfare. Respondent pursued the deportation of one of her children to Mexico, and signed guardianship rights over another of her children to Lorenzo, a family friend, who then attempted to disrupt a medical examination of the child. Respondent ordered A.R. to physically discipline J.V.R., which resulted in a choking, a stabbing, and criminal charges. Respondent

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was also arrested on two felony child abuse charges in connection with her alleged role in the sexual abuse of E.V.R. and J.V.R. Based upon these, and other findings of fact in the trial court's order, we conclude the trial court did not err in determining E.V.R. and A.V.R. were neglected juveniles pursuant to N.C.G.S. § 7B-101(15).

(E) N.C. Gen. Stat. § 7B-901(c)

Respondent argues the trial court erred in ceasing reunification efforts between her and the children at the initial disposition hearing pursuant to N.C.G.S. § 7B-901(c). We agree. The General Assembly added subsection (c) to N.C. Gen. Stat. § 7B-901 in 2015, and made it applicable to all actions filed or pending on or after 1 October 2015. *See* 2015 N.C. Sess. Laws ch. 136 § 18. Since the present case was filed on 10 November 2015, subsection (c) applies here. N.C.G.S. § 7B-901(c), as relevant to the present case, provides:

(c) If the disposition order places a juvenile in the custody of a county department of social services, the court shall direct that reasonable efforts for reunification as defined in G.S. 7B-101 shall not be required if the court makes written findings of fact pertaining to any of the following, unless the court concludes that there is compelling evidence warranting continued reunification efforts:

- (1) A court of competent jurisdiction has determined that aggravated circumstances exist because the parent has committed or encouraged the commission of, or allowed the continuation of, any of the following upon the juvenile:

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a. Sexual abuse.

N.C.G.S. § 7B-901(c). In *In re G.T.*, ___ N.C. App. ___, 791 S.E.2d 274 (2016), this Court interpreted N.C.G.S. § 7B-901(c) and concluded that, in order for a court to cease reunification efforts at the initial disposition hearing, “the dispositional court must make a finding that [a] court of competent jurisdiction has determined that the parent allowed one of the aggravating circumstances to occur.” *In re G.T.*, ___ N.C. App. at ___, 791 S.E.2d at 279. Relying upon the use of the phrase “has determined” in the statute, this Court elaborated:

[It] is clear and unambiguous and that in order to give effect to the term “has determined” [in N.C.G.S. § 7B-901(c),] it must refer to a prior court order. The legislature specifically used the present perfect tense in subsections (c)(1) through (c)(3) to define the determination necessary. Use of this tense indicates that the determination must have already been made by a trial court—either at a previously-held adjudication hearing or some other hearing in the same juvenile case, or at a collateral proceeding in the trial court. The legislature’s use of the term “court of competent jurisdiction” also supports this position. Use of this term implies that another tribunal in a collateral proceeding could have made the necessary determination, so long as it is a court of competent jurisdiction.

Id. “Thus,” the Court concluded, “by our plain reading of the statute, if a trial court wishes to cease reunification efforts pursuant to N.C. Gen. Stat. § 7B-901(c)(1)[] , it must make findings at disposition that a court of competent jurisdiction *has already determined* that the parent allowed the continuation of” one of the situations

enumerated in N.C.G.S. § 7B-901(c)(1), including sexual abuse. *Id.* (emphasis added); *see also* N.C.G.S. §§ 7B-901(c)(1)(a)–(f).

In the present case, the trial court’s order does not cite to N.C.G.S. § 7B-901(c). However, because the trial court ceased reunification efforts in an order following an initial disposition hearing, N.C.G.S. § 7B-901(c) was necessarily implicated. In the order in the present case, the trial court found as fact and ordered that “the [c]ourt cease [sic] reunification efforts as [Respondent] committed, encouraged or allowed the continuation of the sexual abuse of [J.V.R.] and [E.V.R.]” This finding of fact is insufficient to cease reunification efforts at an initial disposition hearing; under *In re G.T.*, the trial court’s order was required to include a finding “that a court of competent jurisdiction ha[d] already determined that” Respondent committed, encouraged, or allowed the continuation of the sexual abuse perpetrated by Aguilar. No court of competent jurisdiction had made such a determination and, even if it had, the trial court did not make the required finding. Consistent with *In re G.T.*, and because the trial court erroneously concluded that reasonable reunification efforts must cease pursuant to N.C.G.S. § 7B-901(c)(1)(a), we reverse that portion of the trial court’s order.

(F) Reunification with E.V.R. and J.V.R.

Respondent argues the trial court erred in ordering her to complete certain tasks “[i]f [Respondent] wishes to achieve reunification with her children[.]” We

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review dispositional orders for an abuse of discretion. *See In re B.W.*, 190 N.C. App. 328, 336, 665 S.E.2d 462, 467 (2008). Pursuant to N.C. Gen. Stat. § 7B-904(d1)(3), the trial court may order a parent to “[t]ake appropriate steps to remedy conditions in the home that led to or contributed to the juvenile’s adjudication or to the court’s decision to remove custody of the juvenile from the parent.” N.C. Gen. Stat. § 7B-904(d1)(3) (2015). In the present case, the trial court ordered Respondent to take five actions if she wished to achieve reunification with the children:

- a) Submit to a Psychological Evaluation/Parenting Capacity Assessment for the purpose of determining her mental status and parenting skills and abilities. That [Respondent] follows all recommendations of the assessment including a psychiatric evaluation if recommended to address any mental health concerns.
- b) Establish and maintain a living arrangement suitable for the care of [E.V.R., A.V.R. and J.V.R.].
- c) Establish financial means to demonstrate the ability to provide for [E.V.R. A.V.R., and J.V.R.], meeting all their basic needs.
- d) Actively attend, participate in and complete parenting classes and training through a [DSS] approved provider to develop her knowledge of understanding child development. That [Respondent] demonstrates knowledge and techniques learned during all contacts with [E.V.R., A.V.R. and J.V.R.] and a change in her parenting abilities and style.
- e) That [Respondent] signs a release of information to [DSS] in order that said agency will be able to

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determine her progress and/or recommendations made from any evaluations or referrals in relation to her ability to care for [E.V.R., A.V.R. and J.V.R.].

Respondent challenges the trial court's authority to order each of the above portions of the reunification plan, and we address each in turn.

The trial court's requirement that Respondent submit to a psychological examination as part of reunification efforts with the children is in accord with N.C.G.S. § 7B-904(d1)(3). The trial court found Respondent to be incompetent pursuant to N.C.G.S. §§ 1A-1, Rule 17 and 35A-1101(7), and appointed her a guardian ad litem throughout the pendency of the proceedings. In addition, the trial court made findings of fact in the adjudication order noting decisions and actions by Respondent that reasonably may have called Respondent's competency into question and led to the children's removal. For instance, the trial court found as fact that Respondent: (1) signed a power of attorney and guardianship over E.V.R. to a "family friend," Lorenzo, who subsequently attempted to interfere with E.V.R.'s medical examination; (2) directed her adult son, A.R., to physically discipline J.V.R.; and (3) pursued J.V.R.'s deportation to Mexico. Given these findings and the trial court's appointment of a Rule 17 guardian ad litem to Respondent, we hold that ordering Respondent to submit to a psychological examination and follow the recommendations of the assessment was an "appropriate step" to remedy a condition in the home that contributed to the children's removal, and the trial court did not abuse its discretion in so finding.

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We also conclude that the trial court's requirement that Respondent find and maintain suitable housing was an appropriate step to remedy a condition in the home that contributed to the children's adjudication and removal. Two of Respondent's children, E.V.R. and J.V.R., were sexually abused by a man who was permitted to live in the home they shared with Respondent. A.R., Respondent's adult child who carried out physical discipline on J.V.R. at Respondent's request, was also permitted to live in the home with the children. In addition, at the time of the 8 August 2016 hearing, Respondent was a resident of the Forsyth County Detention Center. We hold that the lack of safe, suitable housing contributed to the children's adjudication and removal from Respondent's care, and the trial court properly required Respondent to maintain suitable housing as a prerequisite to reunification with the children.

Similarly, the trial court's requirement that Respondent establish financial means to demonstrate the ability to provide for the children was an appropriate requirement to remedy a condition which lead to the children's removal. A.V.R. reported to his therapist that he had learned to sell drugs "as a means of survival" and as a way of providing for the family financially. Further, Respondent rented a room to Aguilar, which resulted in the sexual abuse of E.V.R. and J.V.R., and the trial court also found as fact that Respondent was unemployed. Taken together, Respondent's lack of financial means contributed to the adjudication and removal of the children, and the trial court's order mandating that Respondent remedy this

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problem prior to reunification with the children was consistent with N.C.G.S. § 7B-904(d1)(3).

Respondent also challenges the trial court's ability to require her to "[a]ctively attend, participate in and complete parenting classes and training through" DSS. We conclude that this step of the reunification plan to be an appropriate requirement in an effort to remedy conditions that led to the children's removal. In its order, the trial court found as fact that Respondent: (1) failed to obtain trauma therapy for J.V.R. after her first rape; (2) directed A.R. to physically discipline J.V.R., which lead to A.R. striking J.V.R. with an electrical cord and her retaliating by stabbing A.R. with scissors; and (3) contacted J.V.R.'s probation officer in an effort to have J.V.R. deported to Mexico. In addition, as of the date of the disposition hearing, Respondent had been arrested on two counts of felony child abuse in connection with allegedly "pimping" her underage daughters to older men for sex. Respondent's dearth of parenting abilities contributed to the adjudication and removal of her children. Therefore, the trial court's order mandating that Respondent participate in parenting classes was consistent with N.C.G.S. § 7B-904(d1)(3), and the trial court did not abuse its discretion in ordering those actions.

Finally, Respondent challenges the trial court's ability to require her to sign a release of information to DSS in order for the agency to be able to determine Respondent's progress on the reunification plan. We hold that the trial court did not

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abuse its discretion in ordering Respondent to sign a release of information so as to allow DSS to monitor her progress on the reunification plan. As all of the other actions ordered by the court were consistent with N.C.G.S. § 7B-904(d1)(3), we conclude it is inherent that the court may be permitted to allow DSS to monitor Respondent's progress on the ordered actions. A contrary conclusion would leave the court and DSS with no mechanism to monitor and ensure Respondent's compliance with the reunification order.

In sum, the findings in the trial court's order indicate that Respondent's mental status, lack of suitable housing, lack of financial resources, and questionable parenting ability all contributed to the adjudication of E.V.R., A.V.R., and J.V.R. as abused and/or neglected juveniles, and their removal from Respondent's custody. We hold that the trial court's finding of Respondent as incompetent, along with the binding findings of fact in the order, detailed above, provided a sufficient basis for the trial court to order the actions it did, and was fully consistent with N.C.G.S. § 7B-904(d1)(3). This holding is consistent with precedent from our Supreme Court. *See, e.g., In re D.L.W.*, 368 N.C. 835, 845, 788 S.E.2d 162, 168-69 (2016) (holding that a case plan requiring parents to create a budgeting plan did not violate N.C.G.S. § 7B-904(d1)(3) where the findings in the order "indicate[d] that . . . the parents' inability to meet the minimal needs of the juveniles[] [was a] reason[] for" the children's removal and their adjudication as neglected).

III. Conclusion

For the reasons stated, we affirm the trial court's order adjudicating E.V.R. and J.V.R. as abused and neglected, and adjudicating A.V.R. as neglected. However, we reverse the portion of the trial court's order ceasing reunification efforts between Respondent and the children. This case is remanded for further proceedings.

AFFIRMED IN PART; REVERSED AND REMANDED IN PART.

Judges TYSON and INMAN concur.

Report per Rule 30(e).