

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-1235

Filed: 18 July 2017

Forsyth County, No. 16 JA 45

IN THE MATTER OF: S.W.

Appeal by Respondent-Mother from order entered 31 August 2016 by Judge Laurie Hutchins in District Court, Forsyth County. Heard in the Court of Appeals 29 June 2017.

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

Peter Wood for Respondent-Appellant Mother.

Administrative Office of the Courts, by GAL Appellate Counsel Matthew D. Wunsche, for Guardian ad Litem.

McGEE, Chief Judge.

Respondent-Mother appeals from an order concluding that S.W. was a neglected juvenile pursuant to N.C. Gen. Stat. § 7B-101(15). We affirm.

I. Background

The Forsyth County Department of Social Services (“DSS”) was contacted by the Florida Department of Children and Families (“DCF”) on or about 24 February 2016, after DCF assumed protective custody of S.W., a resident of Forsyth County,

North Carolina. S.W. had been left at DCF offices the day before by J.R., an adult male who has no familial relationship to either S.W. or Respondent-Mother. DCF conducted an investigation, which revealed Respondent-Mother had permitted eleven-year-old S.W. to be under the care and supervision of J.R., and had allowed S.W. to accompany J.R. to Florida when J.R. relocated there from North Carolina in January 2016. While in Florida, J.R. and S.W. had a disagreement on 20 or 21 February 2016 “over incomplete homework and groceries not properly put away.” This disagreement “resulted in [J.R.] physically pulling [S.W.] into her bedroom, which left [S.W.] with superficial scratching to her right inner arm.”¹ Shortly after the incident, law enforcement and DCF were called to J.R.’s Florida residence. J.R. produced a note from Respondent-Mother giving him temporary guardianship of S.W. J.R. took S.W. to a DCF office a few days later, on 23 February 2016, and requested assistance in obtaining legal custody of S.W. After his request was refused, J.R. stated he could no longer provide care for S.W. and left her at the DCF office.

Through its investigation, DCF learned that J.R. had a “significant” criminal record, and that J.R.’s own children had been removed from his care by DCF in 2007 due to “substance misuse and inadequate supervision.” DCF also learned that J.R. “was identified as the caregiver responsible for bruises/welts and beatings to his then

¹ We note that the factual allegations regarding the altercation between J.R. and S.W. are located in finding of fact 14 of the trial court’s order. Respondent-Mother challenges a portion of finding of fact 14, but presents no argument that the above-quoted material is unsupported by clear and convincing evidence.

minor child.” DCF contacted Respondent-Mother, who stated that she had been unemployed for the past two and a half years and was unable to travel to Florida to take custody of S.W. Respondent-Mother also told DCF that she did not know the whereabouts of S.W.’s father.

After learning the details of DCF’s investigation, DSS began its own investigation into Respondent-Mother and S.W.’s father. During the course of the investigation, Respondent-Mother indicated to DSS that J.R. was a family friend, that he was temporarily helping her care for S.W., and that she permitted J.R. to take temporary custody of S.W. because Florida “was new and different and [Respondent-Mother] wanted [S.W.] to have the opportunity to explore new things.” Respondent-Mother also told DSS she did not have a job for two and a half years, and had recently moved into a different home in Winston-Salem. Respondent-Mother stated she had originally planned to pick S.W. up in Florida on 28 February 2016, but did not know what to do since S.W. was in DCF custody. Respondent-Mother claimed S.W.’s father was abusive and had not been in S.W.’s life for several years.

The DSS social worker assigned to S.W.’s case determined the house Respondent-Mother had moved into was not suitable for children. The social worker noted in his report that the outside of the residence looked like a junkyard, complete with “debris, old appliances, aluminum cans, old cars and junk” such that the social worker “couldn’t figure out how to get into the house.” The interior of the house was

stuffed with items piled to the ceiling, such as “furniture, lots [of] building supplies, clothes, and papers.” S.W.’s future bedroom was a bare room with no furniture and was in need of new walls and flooring. The residence also lacked electricity. Respondent-Mother claimed to the social worker that she bought the home from a hoarder and was in the process of cleaning it. The social worker also met with S.W.’s father, who had been attempting to find S.W. and was upset that S.W. had been taken to Florida without his knowledge or consent. S.W.’s father alleged that Respondent-Mother kept S.W. away from him and, as a result, he was unable to have a meaningful relationship with S.W. S.W.’s adult sister reiterated the father’s claims.

During the course of its investigation, DSS also learned that a DCF social worker suspected S.W. had been sexually abused during her time in Florida. Although S.W. did not disclose that J.R. had sexually abused her, she “shut down” in response to questions regarding sexual abuse. Additionally, S.W. became defensive and refused to take off her clothes when a nurse practitioner attempted to examine her.

Based on the foregoing investigation, DSS obtained nonsecure custody of S.W. upon her return to North Carolina. DSS filed a juvenile petition on 15 March 2016 alleging neglect based on improper supervision and Respondent-Mother’s inappropriate plan of care for S.W. Following a hearing, the trial court entered an order on 31 August 2016, concluding S.W. was a neglected juvenile. In its order, the

trial court found, *inter alia*: (1) Respondent-Mother allowed S.W. to be under the care and supervision of J.R., an adult man who was not a relative; (2) J.R. took S.W. to Florida in January 2016; (3) DCF investigated an incident between J.R. and S.W. on 20 or 21 February 2016; (4) DCF took emergency custody of S.W. after J.R. indicated he could no longer provide care for S.W.; (5) J.R. had a criminal record and his own child was removed from his custody by DCF in 2007; (6) Respondent-Mother had several family members who were willing to care for S.W. in lieu of Respondent-Mother sending S.W. to Florida with J.R.; (7) Respondent-Mother's only proffered reason for allowing S.W. to travel to Florida instead of seeking help from her family was that she wanted S.W. to experience a place other than Winston-Salem; and (8) Respondent-Mother's home was not a suitable place for S.W. to live. As to disposition, the trial court granted DSS custody of S.W. and sanctioned placement with S.W.'s maternal grandparents. Respondent-Mother appeals.

II. Analysis

Respondent-Mother argues the trial court erred by concluding S.W. was a neglected juvenile. A neglected juvenile is defined by N.C. Gen. Stat. § 7B-101(15), as relevant to the present case, 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[.]

N.C. Gen. Stat. § 7B-101(15) (2015). In order for a juvenile to be adjudicated as neglected, “[t]his Court has consistently required that there be some physical, mental, or emotional impairment of the juvenile or a substantial risk of such impairment as a consequence of the failure to provide proper care, supervision, or discipline in order to adjudicate a juvenile neglected.” *In re L.Z.A.*, ___ N.C. App. ___, ___, 792 S.E.2d 160, 168-69 (2016) (citation, quotation marks, and emphasis omitted).

“Allegations of neglect must be proven by clear and convincing evidence.” *In re Helms*, 127 N.C. App. 505, 511, 491 S.E.2d 672, 676 (1997) (citations omitted). “Clear and convincing evidence is greater than the preponderance of the evidence standard required in most civil cases. It is defined as evidence which should ‘fully convince.’” *In re Smith*, 146 N.C. App. 302, 304, 552 S.E.2d 184, 186 (2001) (citations omitted). “In a non-jury neglect adjudication, the trial court’s findings of fact supported by clear and convincing competent evidence are deemed conclusive, even where some evidence supports contrary findings.” *In re Helms*, 127 N.C. App. at 511, 491 S.E.2d at 676 (citations omitted). If competent evidence supports the findings, they are “binding on appeal.” *In re McCabe*, 157 N.C. App. 673, 679, 580 S.E.2d 69, 73 (2003) (citations omitted). “Findings of fact are also binding if they are not challenged on appeal.” *In re A.R.*, 227 N.C. App. 518, 520, 742 S.E.2d 629, 631 (2013).

Respondent-Mother challenges all or portions of findings of fact 8, 14, 17, 18, and 26 of the trial court’s order. All other findings of fact of the trial court are not

challenged, and are therefore binding on appeal. *Id.* We need not address all of the challenged findings of fact, and only discuss finding of fact 17, the only challenged finding of fact we determine to be relevant to our decision in this case. Respondent-Mother challenges a portion of finding of fact 17, which states that “[Respondent-Mother] was unable to provide alternate arrangements of the care of [S.W.] and stated that she was unable to travel to Florida to take custody of her.” At the adjudication hearing, De’Neisha Carter (“Carter”), a child protective investigator with DCF, testified that after S.W. was left at DCF offices, she contacted Respondent-Mother who stated that “she was financially unable to come to Florida, and that, at that time, the only way she had to get [S.W.] back to North Carolina was through [J.R.]” The record also contains a DSS report to the same effect, stating that when Respondent-Mother was contacted by DCF upon S.W. being left at a DCF office, Respondent-Mother “was unable to provide alternate arrangements for the care of [S.W.] and stated that she was unable to travel to Florida to take custody of [S.W.]” Accordingly, we hold the challenged portion of finding of fact 17 is supported by clear and convincing evidence.

Assuming, without deciding, that the challenged portions of findings of fact 8, 14, 18, and 26 are unsupported by clear and convincing evidence, the trial court’s other, binding findings of fact provide ample support for its conclusion that S.W. was neglected. *See In re T.M.*, 180 N.C. App. 539, 547, 638 S.E.2d 236, 240 (2006) (“[W]e

agree that some of [the challenged findings] are not supported by evidence in the record. When, however, ample other findings of fact support an adjudication of neglect, erroneous findings unnecessary to the determination do not constitute reversible error.”) (internal citation omitted).

The unchallenged findings show Respondent-Mother allowed J.R., an unrelated adult male, to take S.W. several hundred miles away to live in Florida, despite having multiple family members who were willing and able to provide assistance in caring for S.W. Respondent-Mother, at a minimum, failed to investigate J.R.’s background, a background that included a criminal record and having his own children removed from his custody. After J.R. left S.W. at a DCF office in Florida, Respondent-Mother was unwilling or unable to provide arrangements for S.W. to be returned to North Carolina.

In addition, the binding findings of fact show Respondent-Mother was unable to provide a safe and suitable home for S.W. in North Carolina. Respondent-Mother’s home “looked like . . . a junkyard[,]” did not have electricity, and the interior of the home was “stuffed with objects . . . furniture, lots [of] building supplies, clothes[,] and papers.” When asked by a social worker how long it would take Respondent-Mother to make the house suitable for a child, Respondent-Mother replied that cleaning the house could take two months. At the time the juvenile petition was filed, a DSS social

worker had determined that Respondent-Mother's house was "unsafe for any child to live in."

As this Court has held, "[t]he purpose of the adjudication. . . proceeding[] should not be morphed on appeal into a question of culpability regarding the conduct of an individual parent." *In re J.S.*, 182 N.C. App. 79, 86, 641 S.E.2d 395, 399 (2007). Rather, "[t]he question this Court must look at on review is whether the court made the proper determination in making findings and conclusions as to the status of the juvenile." *Id.* Here, S.W. was permitted to travel to Florida without a parent, and her safety and wellbeing were entrusted to an unrelated adult male with a criminal record whose children had been removed from his care. Thereafter, S.W. was left at a child welfare office in Florida until DSS could transport her back to North Carolina. In addition, the house S.W. would occupy with Respondent-Mother was, as the trial court found, "unsafe for any child to live in."

In sum, the trial court's binding findings of fact support its conclusion of law that S.W. "[did] not receive proper care, supervision, or discipline from" Respondent-Mother, and that as a consequence there was, at a minimum, "a substantial risk" of "some physical, mental, or emotional impairment of" S.W. pursuant to N.C.G.S. § 7B-101(15) and *In re L.Z.A.*, ___ N.C. App. at ___, 792 S.E.2d at 168-69. We affirm the trial court's conclusion that S.W. was neglected.

AFFIRMED.

IN RE: S.W.

Opinion of the Court

Judges STROUD and ARROWOOD concur.

Report per Rule 30(e).