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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-1289

Filed: 18 July 2017

Randolph County, No. 16 JA 45

IN THE MATTER OF: A.C.W., ONE MINOR CHILD.

Appeal by Randolph County Department of Social Services, juvenile A.C.W. through guardian ad litem, and cross-appeal by respondent-mother from order entered 22 September 2016 by Judge Stephen Bibey in Randolph County District Court. Heard in the Court of Appeals 6 June 2017.

Staff attorney Erica Glass, for Randolph County Department of Social Services, petitioner-appellant.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender J. Lee Gilliam, for respondent cross-appellant mother.

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

BRYANT, Judge.

Where the trial court's findings of fact are wholly inconsistent and, as such, cannot support its conclusion of law that the child was not abused, we reverse and remand for a new hearing on abuse.

On 29 April 2016, Randolph County Department of Social Services (“RCDSS”) filed a juvenile petition alleging that a juvenile, Ann,¹ was abused and neglected. As to the allegation of abuse, RCDSS alleged that Ann’s parent, guardian, custodian or caretaker had inflicted or allowed to be inflicted a serious injury by other than accidental means or had created or allowed to be created a substantial risk of serious physical injury by other than accidental means. As to the allegation of neglect, RCDSS alleged that Ann did not receive proper care, supervision, or discipline from the parent, guardian, custodian, or caretaker and that she lived in an environment injurious to her welfare. Ann’s mother (“respondent-mother”) and putative father (“respondent-father”) each accepted appointed counsel, and a guardian ad litem was appointed for Ann.

Following a pre-adjudication hearing on 31 August 2016, an adjudication hearing on 31 August and 7 September 2016, and a dispositional hearing also on 7 September, the trial court entered a pre-adjudication order and consolidated adjudication and disposition order on 22 September 2016. In its adjudication order, the court found that Ann had been born on 2 September 2015 and that she had been in the custody of respondent-mother and respondent-father since birth. Though there were no abnormal medical conditions noted at birth, just over one month later, Ann was taken to a doctor for a swollen leg. Following evaluations by various medical

¹ A pseudonym is used to protect the identity of the minor child. N.C. R. App. P. 3.1(b) (2017).

professionals, the cause of the swollen leg was determined to be injury to her leg and other bone fracture. However, the reports were “inconclusive as to whether they were caused by genetic or accidental or non-accidental means.” RCDSS initiated a safety plan in which respondent-mother, respondent-father, and Ann would reside with Ann’s maternal grandmother until 31 January 2016. During Ann’s placement with her maternal grandmother, RCDSS noted that Ann appeared to be happy and had no noticeable injuries. On 31 January, RCDSS consented to respondent-mother, respondent-father, and Ann residing outside of the supervision of Ann’s maternal grandmother. On 9 March 2016, RCDSS notified respondent-mother and respondent-father via letter that RCDSS had closed its case.

On 11 March 2016, while in the care of respondent-mother and respondent-father, Ann was found non-responsive. CPR was initiated, and Ann was transported to Randolph Hospital, where she was diagnosed with a subdural hematoma/hemorrhage. She was further diagnosed with bone fractures throughout her body that were not observed during her October 2015 medical review. Respondent-father later disclosed to a social worker that Ann may have fallen. Following her 11 March treatment, Ann underwent further medical evaluation. At trial, Dr. Samantha Schilling, UNC School of Medicine, Department of Pediatrics, Director of Outpatient Child Maltreatment Evaluations, UNC Beacon Program,

testified that Ann's injuries were consistent with child physical abuse as defined in the medical field.

The trial court found that respondent-mother and respondent-father were put on notice of Ann's susceptibility to injury, whether caused by genetics or other than accidental means, and failed to provide the special care and supervision Ann needed. Further, the court noted that respondent-father's unwillingness to inform medical personnel of a potential cause for Ann's unresponsive condition on 11 March 2016 was improper. The court found that RCDSS had met its burden of proving that Ann had not received proper care and supervision and thus, concluded Ann was a neglected juvenile. However, the trial court found that RCDSS failed to prove by clear and convincing evidence that Ann was abused.

Following a dispositional hearing, the court found that Ann "needs more adequate care and supervision than she would receive if returned to the parents' home and care today." Therefore, the trial court concluded that it was in Ann's best interest to be removed from both parents. The court established a weekly visitation schedule for respondent-mother and respondent-father and set a date for a review hearing three months following the last hearing date. RCDSS and Ann (acting through her guardian ad litem) appeal; respondent-mother cross-appeals.²

² Respondent-mother did not submit a brief on in support of her cross-appeal and thus, abandons her cross-appeal.

On appeal, RCDSS argues the trial court erred by making certain findings of fact, by failing to admit medical records into evidence, and by failing to conclude that Ann was an abused child. The guardian ad litem also argues the trial court erred in failing to conclude that Ann was an abused child. We agree.

Because we conclude that the trial court’s findings of fact are inconsistent and cannot support its conclusion of law that Ann was not abused, we reverse and remand for a new hearing on abuse.³ We do not address the remaining arguments presented on appeal.

“Appellate review of an adjudication order is limited to determining ‘(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 C.B.*, ___ N.C. App. ___, ___, 783 S.E.2d 206, 208 (2016) (quoting *In re Pittman*, 149 N.C. App. 756, 764–64, 561 S.E.2d 560, 566 (2002)); *see also* N.C. Gen. Stat. § 7B-807(a) (2015) (stating that findings of fact made following an adjudication hearing for abuse, neglect, or dependency must be proven by clear and convincing evidence). “The conclusion that a juvenile is abused, neglected, or dependent is reviewed *de novo*.” *In re V.B.*, 239 N.C. App. 340, 341, 768 S.E.2d 867, 868 (2015) (citation omitted).

An “abused juvenile” is defined as

[a]ny juvenile less than 18 years of age whose parent,
guardian, custodian, or caretaker:

³ The trial court’s conclusion that Ann is a neglected juvenile is not challenged on appeal; therefore, the trial court’s ruling as to neglect remains undisturbed.

- a. Inflicts or allows to be inflicted upon the juvenile a serious physical injury by other than accidental means;
- b. Creates or allows to be created a substantial risk of serious physical injury to the juvenile by other than accidental means[.]

N.C. Gen. Stat. § 7B-101(1)a. & b. (2015).

Here, the trial court's findings of fact indicate that Ann presented to medical personnel on 13 October 2015 and 11 March 2016 exhibiting several bone fractures to her extremities. At the adjudication hearing, the trial court heard testimony from Dr. Samantha Schilling, who was admitted to testify as an expert in pediatrics and child abuse pediatrics.

Q. And at the time that you saw her, what were her injuries at that time?

A. She had a fracture of the right bone in the upper arm, the humerus [sic], both of the radius bones, so those are two of the bones in the lower arms . . . fractures of her fingers, of her -- on her right hand of her thumb, and her ring finger and her pinky, and on her left hand, her thumb.

She had fractures of the femurs in both of the legs, so in the left leg and the right leg, and that's again the big bone in the upper part of the leg. And then she also had fractures in both tibias, which are one of the two bones in the lower legs on both the right side and the left side.

In addition to the fractures, Ann presented at the Randolph Hospital Emergency Room on 11 March 2016 with a subdural hemorrhage, a "collection of blood around the brain between the skull and the brain."

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Q. [(Ann's attorney advocate)]: From your examination of [Ann] and your expert opinion, is there any other medical explanation that would be consistent with your causation of the injuries that [Ann] sustained other than abuse?

A. So in my medical opinion, the injuries are not consistent with any other medical explanation. She had multiple injuries to multiple organ systems, severe injuries, and there is not a medical diagnosis that is consistent with all of those things, other than . . . child abuse.

Dr. Schilling was the only medical expert who testified, and her expert medical opinion was that Ann's injuries were the result of child abuse and were "not consistent with any other medical explanation." Nevertheless, the trial court found that there were other possible causes of the injuries, such as an undiagnosed genetic condition. Indeed, the trial court found as follows:

12. Initial testing results indicated per the minor child's medical records from various medical institutions that the minor child had genetic mutations. The minor child had a low vitamin D level but at such time the record reflects that the Mother and the putative father had been briefed of findings per physicians and were made aware of heightened precautions and sensitivity and that each parent should be cognizant of supervising and providing for the care and well-being of the minor child.

. . . .

22. The Court finds that to the injuries whether it be the Mother and the putative father being aware of the infant minor child's peculiar susceptibility-*genetic or caused by other than accidental means*, the Mother and the putative father were put on heightened awareness[] that there should be special care and supervision provided by the parents to the minor child while in the parents' care.

(emphasis added). It appears that the trial court erroneously based Findings of Fact Nos. 12 and 22 on proffered medical records not accepted into evidence for the truth of the matters asserted therein.

Following the presentation of testimony, RCDSS moved the court to admit medical records from multiple medical providers (Murphy and Wainer Orthopedics, Moses Cone Hospital, Brenner's Children's Hospital, and UNC Hospitals). After reviewing the records, the trial court made the following findings and ruling:

The [c]ourt having reviewed [the proffered medical records] has determined that there are statements contained within the -- each of the purported records from each of the facilities and from the doctors. That the [c]ourt in its endeavor would almost impossibly be able to redact or strike through such statements of allegations made between different parties or entities within the records.

However, the [c]ourt does have the ability and would not accept any statements of allegations of purported histories that have not been testified to by said individuals in this court, *would not consider them as for the truth of the matter asserted, and that the [c]ourt and accepted in the record any records of medical records subpoenaed would not consider those said allegations or statements as to findings of fact on the issues before me.*

(emphasis added). In its written order, the trial court made the following statements:

The [c]ourt received the following into EVIDENCE at the ADJUDICATION hearing:

. . . .

5. Medical records from White Oak Family Physicians regarding the minor child. *The [c]ourt did not accept these*

records for the truth of the matter asserted.

6. Medical records from UNC Hospitals regarding the minor child. *The [c]ourt did not accept these records for the truth of the matter asserted.*

7. Medical records from Randolph Hospital regarding the minor child. *The [c]ourt did not accept these records for the truth of the matter asserted.*

8. Medical records from Wake Forest Baptist Medical Center/Brenner's Children's Hospital regarding the minor child. *The [c]ourt did not accept these records for the truth of the matter asserted.*

9. Medical records from Murphy Wainer Orthopedic Specialists regarding the minor child. *The [c]ourt did not accept these records for the truth of the matter asserted.*

10. Medical records from Moses Cone Hospital regarding the minor child *The Moses Cone Hospital medical records were not accepted for the truth of the matter asserted.*

(Emphasis added).

No evidence admitted at trial supports the trial court's finding that Ann "had genetic mutations." To the contrary, Dr. Schilling testified unequivocally that Ann's "injuries [were] not consistent with any other medical explanation" other than child abuse. At most, Dr. Schilling testified about "genetic mutations" or genetic disease only to the extent that she explained her professional process in ruling out genetic or other medical conditions which could have led to Ann's injuries:

Q. . . . I believe you testified . . . that on March 25th of 2016 when you first saw the child [Ann], I think you made the

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statement that it was most likely abuse, but you could not rule out some unknown medical problem; is that true?

A. It is -- no, that statement is not true. What is true is that when I first saw [Ann] in November, that was the conclusion I came to. So the first time I saw [Ann], she came in with -- I was evaluating three unexplained fractures that she had, and after a very thorough evaluation considering possible genetic and metabolic explanations, *I felt that although most likely she had a normal skeleton and had experienced trauma, and in a child of that age that's very concerning for child abuse*, I -- there are a couple of abnormalities that didn't fit with a specific disease, but things were not completely normal, and so, you know, I was not able to make a diagnosis of abuse at that first encounter when she just had three fractures and no other injuries.

. . . .

A. . . . I made what we do in medicine a differential diagnosis, in addition to child abuse, were bone diseases, because she had -- you know, at that point she didn't have injuries to other areas of her body. She just had injuries to her skeleton, to one organ system, and so I needed to know was she, you know, was she non-accidentally injured, or does she have something wrong with her bones, a genetic disease that was causing her bones to be, you know, broken, without any sort of trauma.

. . . .

So sort of over time [Ann] came back several times, and we learned more about her bone health during that course, and we learned that, you know, those labs normalized, that she did not have . . . -- a disease, a bone disease

. . . .

A. So in my medical opinion, the injuries are not consistent

with any other medical explanation. She had multiple injuries to multiple organ systems, severe injuries, and there is not a medical diagnosis that is consistent with all of those things, other than . . . child abuse.

(emphasis added).

In *Matter of L.Z.A.*, this Court held that the evidence and the trial court's findings of fact which established that the minor child sustained bilateral skull fractures, subdural hematomas, and an arm fracture while solely in the custody of her parents was a likely result of "non-accidental trauma." ___ N.C. App. ___, ___, 792 S.E.2d 160, 168 (2016). The parents offered no explanation for the minor child's injuries. *Id.* This Court held that the Department of Social Services "was not required to rule out every remote possibility; nor was it required to prove abuse beyond a reasonable doubt. The trial court's findings of fact [were] sufficient to establish abuse." *Id.*

Consistent with this Court's opinion in *Matter of L.Z.A.*, we conclude that RCDSS "was not required to rule out every remote possibility; nor was it required to prove abuse beyond a reasonable doubt." *Id.* As a result, the trial court's findings of fact, including its finding and conclusion that it "[could] not find by clear and convincing evidence that RCDSS has proven abuse," is not supported by the evidence where its other findings of fact are wholly inconsistent with the evidence in the record. *See In re C.B.*, ___ N.C. App. at ___, 783 S.E.2d at 208. Accordingly, we reverse and remand this matter to the trial court for a new hearing on abuse.

IN RE: A.C.W.

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REVERSED AND REMANDED.

Judges CALABRIA and STROUD concur.

Report per Rule 30(e).