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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-414

Filed: 7 November 2017

McDowell County, No. 16 JA 107

IN THE MATTER OF: G.P.

Appeal by respondent from order entered 24 January 2017 by Judge Laura Powell in McDowell County District Court. Heard in the Court of Appeals 19 October 2017.

*Aaron G. Walker for McDowell County Department of Social Services, petitioner-appellee.*

*Christina Freeman Pearsall for guardian ad litem.*

*Assistant Appellate Defender Annick Lenoir-Peek for respondent-appellant.*

ZACHARY, Judge.

Respondent appeals from an order adjudicating her child, G.P. (“George”)<sup>1</sup>, to be a neglected and dependent juvenile, and approving a permanent plan of adoption with a secondary or concurrent plan of reunification.

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<sup>1</sup> In accordance with N.C.R. App. R. 3.1(b), the juvenile is referred to by the stipulated pseudonym of George.

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Respondent gave birth to George in January 2016. Five days after his birth, George tested positive for prenatal exposure to methamphetamine. George was placed on a methadone treatment regimen due to this exposure. He was subsequently discharged from the hospital and returned to respondent's care.

On 10 February 2016, McDowell County Department of Social Services ("DSS") began providing in-home family services. On 19 February 2016, respondent commenced a case plan in which respondent agreed, *inter alia*, to refrain from substance abuse and not associate with known drug users. On 4 April 2016, DSS received information from a law enforcement officer that respondent was selling methamphetamine. Respondent absconded from criminal probation, and George was placed in a safety resource placement with respondent's friend, "Ms. M."

On 25 August 2016, DSS filed the subject petition seeking an adjudication that George was a neglected and dependent juvenile. The petition alleged that there were outstanding warrants for respondent's arrest, and that respondent had not had any contact with the child in months. DSS also had not been in contact with respondent since 8 April 2016. During respondent's absence, Ms. M. bonded with George. She agreed to assume custody/guardianship of George.

The court conducted a hearing on 9 January 2017 and filed the subject order on 24 January 2017 in which it made findings of fact consistent with the allegations of the petition. In finding of fact number 14, the court stated that at or about the time

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of the filing of the petition, George “did not receive proper care and supervision from the respondent mother, lived in an environment injurious to his welfare, and said child was a neglected juvenile as defined by N.C. Gen. Stat. § 7B-101(15) and a dependent juvenile as defined by N.C. Gen. Stat. § 7B-101(9).” The disposition portion of the order states that “[h]aving found by clear cogent and convincing evidence that the minor child is a neglected child, the court proceeded to a dispositional, . . . 90 day review and initial permanency planning hearing.” The court found that George was doing well in the safety placement with Ms. M; that Ms. M. was willing to adopt George; and that given the child’s young age, the appropriate permanent plan would be adoption with guardianship as the secondary plan. The court permitted DSS to cease reunification efforts, including visitations, and to initiate proceedings to terminate parental rights. Respondent filed notice of appeal on 21 February 2017.

“The allegations in a petition alleging that a juvenile is abused, neglected, or dependent shall be proved by clear and convincing evidence.” N.C. Gen. Stat. § 7B-805 (2015). We review the lower court’s adjudication to determine whether (1) the findings of fact are supported by clear and convincing evidence, and (2) the legal conclusions are supported by the findings of fact. *In re Pittman*, 149 N.C. App. 756, 763-64, 561 S.E.2d 560, 566, *appeal dismissed and disc. review denied*, 356 N.C. 163, 568 S.E.2d 608 (2002), *cert. denied*, *Harris-Pittman v. Nash Cnty. Dep’t of Soc. Serv.*,

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538 U.S. 982, 155 L.E. 2d 673 (2003). We review the disposition to determine whether the trial court abused its discretion in making its determination of the child's best interests. *In re C.W.*, 182 N.C. App. 214, 219, 641 S.E.2d 725, 729 (2007).

Respondent first contends that the court erred by adjudicating George to be a dependent juvenile. A dependent juvenile is one who is "in need of assistance or placement because (i) the juvenile has no parent, guardian, or custodian responsible for the juvenile's care or supervision or (ii) the juvenile's parent, guardian, or custodian is unable to provide for the juvenile's care or supervision and lacks an appropriate alternative child care arrangement." N.C. Gen. Stat. § 7B-101(9) (2015). Respondent argues that George was not a dependent juvenile because he was in the care of an appropriate caregiver from whom he was receiving excellent care.

Our courts have . . . consistently held that in order for a parent to have an appropriate alternative child care arrangement, the parent must have taken some action to identify viable alternatives. . . . Having an appropriate alternative childcare arrangement means that the parent himself must take some steps to suggest a childcare arrangement – it is not enough that the parent merely goes along with a plan created by DSS.

*In re L.H.*, 210 N.C. App. 355, 364, 366, 708 S.E.2d 191, 197 -98 (2011). The evidence and the court's findings of fact show that respondent absconded from probation on or about 4 April 2016 and failed to notify DSS or otherwise make her whereabouts known. As a result, George was placed by DSS with Ms. M. in a safety resource

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placement on that date. We conclude the court properly adjudicated George to be a dependent juvenile.

Respondent next contends that the court erred when it adjudicated George to be neglected because, at the time of the filing of the petition, George was in the care of a suitable caretaker. Respondent argues that certain findings of fact are not supported by evidence and that they “were copied and pasted from the allegations in the petition.” She also argues that the findings of fact and evidence do not support a conclusion that George was abandoned.

This Court recently clarified that

it is not *per se* reversible error for a trial court’s fact findings to mirror the wording of a petition or other pleading prepared by a party. Instead, this Court will examine whether the record of the proceedings demonstrates that the trial court, through processes of logical reasoning, based on the evidentiary facts before it, found the ultimate facts necessary to dispose of the case. If we are confident the trial court did so, it is irrelevant whether those findings are taken verbatim from an earlier pleading.

*In re J.W.*, 241 N.C. App. 44, 48-49, 772 S.E.2d 249, 253, *disc. review denied*, 368 N.C. 290, 776 S.E.2d 202 (2015). A court’s findings of fact are binding if there is evidence to support them, even if the evidence would also support contrary findings. *In re A.R.*, 227 N.C. App. 518, 519-20, 742 S.E.2d 629, 631 (2013). With these principles in mind, we examine the findings of fact challenged by respondent.

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In finding of fact number 6, the court stated that George's father is unknown and that George's conception occurred as a result of rape. Respondent submits that the circumstances surrounding George's conception are not supported by the record. The medical records, however, showed that respondent reported to medical personnel that George "was product of domestic violence" and that an investigation was pending. The medical records were received without objection into evidence at the hearing. We thus conclude the finding was adequately supported by evidence at the hearing.

In finding of fact number 7, the court found that respondent admitted to using and selling methamphetamine for four years, tested positive for amphetamine while pregnant, and had been in jail on drug charges during her pregnancy. Respondent concedes that the portion of the finding regarding drug use during pregnancy is supported by her own testimony, but challenges the rest of the finding as unsupported by any testimony or other evidence. Again, the medical records admitted into evidence without objection show that respondent has a known history of drug abuse and positive drug screens. The court report prepared by DSS for the adjudication and disposition hearing shows that respondent has a criminal history dating back to 2012, including a felony conviction of possession of methamphetamine on 4 August 2015. The safety assessment signed by respondent on 25 January 2016, subsequent to George's birth, indicates that respondent was on house arrest at that time.

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Respondent admitted in her testimony at the hearing that George was born addicted to methamphetamine, that she had been using methamphetamine for several months during her pregnancy with George, and that she was on criminal probation. While we are unable to find evidence to support the finding that respondent had been using and selling methamphetamine for four years, we conclude that the erroneous portions of the finding are not reversible error as the remaining portions support the ultimate conclusion that George was subjected to harm by her drug usage during respondent's pregnancy. *See In re T.M.*, 180 N.C. App. 539, 547, 638 S.E.2d 236, 240 (2006) (When ample other findings support a court's determination, an erroneous finding is not reversible error).

Respondent acknowledges that finding of fact number 8, in which the court made findings concerning the child protective services report, is supported by the testimony of the protective services agent, but notes that the finding's statement of the reason for which the report was made is contradicted by the medical reports. Because there is evidence to support the finding that the child protective services report was filed due to respondent's usage of illicit drugs during pregnancy, that finding is binding and will not be disturbed. *See In re McCabe*, 157 N.C. App. 673, 680, 580 S.E.2d 69, 74 (2003) (when there is conflicting evidence, the determination of the trial court is binding on appeal).

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Respondent next challenges finding of fact number 10, in which the court found that the protective services agent was informed by law enforcement on 4 April 2016 that respondent was selling methamphetamine again, that respondent was absconding from probation, and that there were warrants outstanding for respondent's arrest. The finding also stated that respondent made no contact with the child for several months, and that the protective services agent had not been able to establish contact with respondent since 8 April 2016. Respondent acknowledges that the protective services agent testified that she became aware in April that law enforcement officers were looking for respondent based upon allegations that she was selling drugs, and that the protective services agent did not know of respondent's whereabouts after April. The protective services agent also testified that from April through the date of the filing of the petition, respondent had not contacted DSS and that DSS did not know where respondent was. Respondent testified that she exchanged text messages and spoke with the protective services agent on the telephone in September or October before she was arrested, and that she saw her son twice from April to October. We conclude the finding is supported by the testimony of the protective services agent.

Respondent next challenges portions of findings of fact number 12 and number 13 stating that continuation of the child in respondent's home would be contrary to the child's welfare, and that "DSS filed the petition because it thought the child [was]

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neglected and dependent and that staying in the home of the [respondent] was detrimental to the child's welfare." Respondent submits that these findings are similar to recitations of testimony, and reflect "DSS's 'thoughts' or recommendations" rather than a conscious determination by the court of the true facts.

"In all actions tried upon the facts without a jury . . . , the court shall find the facts specially and state separately its conclusions of law thereon[.]" N.C. Gen. Stat. § 1A-1, Rule 52(a)(1) (2015). Recitations of the evidence do not constitute findings of fact because they do not reflect a conscious determination by the court as to what the true facts are. *In re M.R.D.C.*, 166 N.C. App. 693, 699, 603 S.E.2d 890, 894 (2004), *disc. review denied*, 359 N.C. 321, 611 S.E.2d 413 (2005). We do not agree with respondent that the findings in question are mere recitations of evidence. The finding is not prefaced by language that a witness gave certain testimony or that a report suggested a certain course of action. Moreover, the extraction of a portion, but not all, of a witness's testimony or of a report is indicative of a conscious determination by the court of the true facts.

Respondent next challenges finding of fact number 14, in which the court found that on or about the date or dates set forth in the petition, George (a) was in respondent's care and not receiving proper care or supervision from respondent, (b) was living in an environment injurious to his welfare, and (c) was a neglected and dependent juvenile. She further asserts that this finding is more properly

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denominated as a conclusion of law, and as such, is reviewed *de novo* by this Court. Respondent contends that the findings of fact do not support the conclusion of law embodied by finding of fact number 14. She also contends that the findings of fact do not support the conclusion of law that she acted inconsistently with her constitutionally protected status as a parent by allowing George to be exposed to neglect and to be abandoned.

The determination of whether a juvenile is neglected requires application of legal principles and is therefore a conclusion of law. *In re Helms*, 127 N.C. App. 505, 510, 491 S.E.2d 672, 675-76 (1997). The court's conclusions of law are reviewable *de novo* on appeal. *In re D.H.*, 177 N.C. App. 700, 703, 629 S.E.2d 920, 922 (2006). Accordingly, we now address the question of whether the findings of fact support the court's conclusion of law that George was a neglected juvenile.

A juvenile is neglected if he "does not receive proper care, supervision, or discipline from [his] parent, guardian, custodian, or caretaker; or who has been abandoned; . . . or who lives in an environment injurious to [his] welfare[.]" N.C. Gen. Stat. § 7B-101(15) (2015). Our courts have traditionally required that there be some physical, mental, or emotional impairment to the juvenile, or a substantial risk thereof, due to the parent's failure to properly care, supervise or discipline. *In re Safriet*, 112 N.C. App. 747, 752, 436 S.E.2d 898, 901-02 (1993). Respondent contends that the court improperly concluded that George was neglected based upon

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respondent's drug use while pregnant with George and later abandonment of the child. She submits that at the time of the filing of the petition, George was receiving proper care and supervision from the caretaker and his needs were being met.

The juvenile's mother in *In re K.J.D.*, 203 N.C. App. 653, 692 S.E.2d 437 (2010), made a similar argument that the juvenile was not neglected because the child was receiving excellent care from the juvenile's maternal grandmother, with whom the child resided with the mother's consent. We rejected the argument, observing that a child may be adjudicated to be neglected and the parent's parental rights terminated on the ground that the parent neglected the child, even when the child has never resided with the parent. *Id.* at 660, 692 S.E.2d at 443. In upholding the trial court's adjudication of neglect, we noted that the findings of fact established, *inter alia*, that the juvenile resided with the maternal grandparent because neither parent was able to care for her, that the problems which made the parent unable to care for the child had continued, that the mother remained unable to adequately provide for the child's physical and economic needs and to correct the conditions that led to the placement of the child with the maternal grandparent, and that the mother continued to engage in the assaultive behavior which led to the kinship placement. *Id.* at 661, 692 S.E.2d at 444.

We conclude that the findings of fact at bar support the court's conclusion that George was a neglected juvenile. The findings establish that respondent consumed

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methamphetamine while she was pregnant with George, and thus subjected him to the risk of physical or mental impairment. George, in fact, tested positive for the presence of methamphetamine, requiring him to undergo a treatment regimen. After George's birth, respondent resumed the use of methamphetamine. Respondent absconded from probation and disappeared for several months, during which time she did not provide care for or supervision of the juvenile and did not personally provide for the child's physical and economic needs.

Respondent lastly contends that the order is internally inconsistent due to the court's misapprehension of the law governing its authority in cases in which custody of a child is not placed with a department of social services. On 21 August 2017, respondent filed a motion to withdraw this argument on the ground that it has become moot due to respondent's relinquishment of the child for adoption on 26 July 2017. She did not withdraw her first two arguments because the adjudications could lead to possible collateral consequences. This Court allowed the motion to withdraw on 23 August 2017. Thus, respondent's third argument will not be addressed.

We hold the court's findings of fact are supported by competent evidence and that they support the court's adjudication that George was a dependent and neglected juvenile. We affirm the order.

**AFFIRMED.**

Judges BRYANT and STROUD concur.

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Report as per Rule 30(e)