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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-735

Filed: 6 February 2018

Guilford County, No. 16 JA 527

IN THE MATTER OF: K.W.

Appeal by Respondent-Mother from order entered 19 April 2017 by Judge Angela C. Foster in Guilford County District Court. Heard in the Court of Appeals 18 January 2018.

Mercedes O. Chut for Petitioner-Appellee Guilford County Department of Health and Human Services.

Troutman Sanders LLP, by Gavin B. Parsons, for the guardian ad litem.

Jeffrey William Gillette for the Respondent-Appellant.

DILLON, Judge.

Respondent ("Mother") appeals from the trial court's order adjudicating her daughter, K.W. ("Kelly")[1], as an abused, neglected, and dependent juvenile. For the following reasons, we reverse the trial court's order and remand for additional findings of fact.

[1] A pseudonym is used to protect the juvenile's privacy and for ease of reading.

I. Background

On 3 November 2016, the Guilford County Department of Health and Human Services ("DHHS") received a report alleging that Mother's live-in boyfriend ("Boyfriend") was sexually abusing Kelly and that Kelly was living in an injurious environment. During the investigation, Kelly told the social worker that she gave Mother a letter earlier that week informing Mother that Boyfriend had been doing "inappropriate stuff" to Kelly. Kelly told the social worker that Boyfriend touched her private area and buttocks when he hugged her and that he had been doing this two to three times a week since the previous school year. Kelly also told the social worker that Mother did not believe her.

Mother told the social worker she thought Kelly was lying because she was angry that Boyfriend would not let her use his cell phone. However, Mother entered into a safety plan agreeing to have Boyfriend leave the home until Child Protective Services could complete its investigation and to not allow any contact between Boyfriend and Kelly. Boyfriend denied the allegations to the social worker, stating that Kelly was upset over not being able to use his cell phone, but agreed to move from the home until the investigation was complete.

On 29 November 2016, the social worker learned that Mother had just traveled to Ohio with Kelly and Boyfriend in violation of the Safety Plan. At an emergency Team Decision Meeting, Mother admitted to violating the Safety Plan by allowing

Boyfriend to have contact with Kelly and travel with her and Kelly to Ohio. Boyfriend rode in the same car with Kelly and they all stayed in the maternal grandmother's home for a nine-day period.

The following day, on 30 November 2016, DHHS obtained non-secure custody of Kelly and filed a petition alleging that she was an abused, neglected, and dependent juvenile. Months later, on 10 March 2017, a hearing on the petition was held. On 19 April 2017, the trial court entered an order adjudicating Kelly abused, neglected, and dependent and ceasing reunification efforts with Mother. Mother appeals.

II. Analysis

The role of this Court in reviewing an initial adjudication of abuse, neglect, or dependency is to determine "(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 Gleisner,* 141 N.C. App. 475, 480, 539 S.E.2d 362, 365 (2000) (internal quotation marks and citation omitted). "If such evidence exists, the findings of the trial court are binding on appeal, even if the evidence would support a finding to the contrary." *In re T.H.T.*, 185 N.C. App. 337, 343, 648 S.E.2d 519, 523 (2007).

Mother first argues that the trial court failed to make sufficient findings of fact to support its conclusion that Kelly is an abused, neglected, and dependent juvenile. She argues that the trial court's findings were "almost entirely" recitations of the

testimony of various witnesses at the hearing and that the trial court failed to resolve material differences in the testimonies. We agree.

"[A] trial court must . . . make sufficient findings of fact and conclusions of law to allow the reviewing court to determine whether a judgment, and the legal conclusions that underlie it, represent a correct application of the law." *Spicer v. Spicer,* 168 N.C. App. 283, 287, 607 S.E.2d 678, 682 (2005). "[R]ecitations of the testimony of each witness *do not* constitute *findings of fact* by the trial judge, because they do not reflect a conscious choice between the conflicting versions of the incident in question which emerged from all the evidence presented." *Moore v. Moore*, 160 N.C. App. 569, 571-72, 587 S.E.2d 74, 75 (2003) (emphasis in original). "Where there is directly conflicting evidence on key issues, it is especially crucial that the trial court make its own determination as to what pertinent facts are actually established by the evidence, rather than merely reciting what the evidence may tend to show." *Gleisner,* 141 N.C. App. at 480, 539 S.E.2d at 366. In such situations, "the trial judge must determine which inferences shall be drawn and which shall be rejected." *Id.*

In support of its conclusion that Kelly is an abused, neglected, and dependent juvenile, the trial court made the following relevant findings of fact:

> 9. On November 3, 2016, [the social worker] initiated the case and met with the juvenile first since this was a forensic report. The juvenile reported to the Social Worker that she had given her mother a letter Monday or Tuesday of that same week that [Boyfriend] had been doing inappropriate stuff to her. The juvenile reported that

[Boyfriend] had been exhibiting that behavior two or three days a week since last school year. The juvenile reported that the last time [Boyfriend] kissed her stomach was before the summer break. The juvenile said she told her maternal grandmother about [Boyfriend] and then her grandmother talked to her mother who talked to [Boyfriend]. The juvenile said that when she told her mother through her letter her mother stated that she cannot believe the man she loves would do that to her. The juvenile was visibly upset and stated that her mother believed her boyfriend instead of her.

10. . . . On November 3, 2016, [Mother] entered a safety plan agreeing to have [Boyfriend] leave the home until the CPS investigation could be completed, to not allow contact between the juvenile and [Boyfriend], including in person, phone, email, mail, skype or any other means, and not to discuss the case with [Kelly], except to console and comfort her. The safety agreement was accepted into evidence without objection.

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13. On November 29, 2016, [the social worker] learned that [Mother], [Kelly], and [Boyfriend] had gone to Ohio to see [Mother's] mother for Thanksgiving week. They all drove together in one car – [Mother] and [Boyfriend] in front sear [sic]; [Kelly] in the back seat. They all stayed at the home [of] the maternal grandmother. The maternal grandmother, [ ] had told the mother prior to coming to Ohio that she should not bring [Boyfriend] in light of the allegations and CPS investigation. [Mother] declined to follow [the maternal grandmother's] advice and brought [Boyfriend] with them. Throughout the visit, [Boyfriend] and [Kelly] were present together at meals, and went on at least one shopping excursion together with [Mother] and [the maternal grandmother]. This nine-day period of contact was in violation of the Safety Assessment.

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20. [Kelly] stated that when [Boyfriend] first moved in, "he was cool, he was nice and all". They shared an interest in horses. [Kelly] said everything was fine between [Boyfriend] and her until she was 12 and he started doing the things he did, that "were not okay to do to a 12-year-old; that were not right". [Kelly] stated that these things happened at the barn after Lexington, a little far out from Greensboro. [Kelly] stated these things would happen when she got home from school when her mother was not at home, or when she went out to the barn to feed the horses. [Kelly] described [Boyfriend] physically touching her with his hand on her vagina and buttocks, over the clothing, while hugging her. [Kelly] stated that this occurred more than one time. [Kelly] stated that [Boyfriend] also kissed her on the stomach. [Kelly] stated that these touches happened in both "barns".

21. [Kelly] stated that after they moved to the "Greensboro Barn" [Boyfriend] touched her a couple of times on the vagina and on the buttocks, over the clothing. Specifically, [Boyfriend] would hug [Kelly] from behind and put his hand over her lower stomach and vagina, and hug her from the front and put his hand on her butt. After he tried touching her one day, she pushed him away and she told her mother that same night. [Kelly] stated that she told her mother by writing her a letter. [Kelly] verified that the County's Exhibit #1 was the letter she wrote to her mother. [Kelly] stated that the letter was written around the time school began, she was in the 7th grade. [Kelly] stated that after her mother spoke to [Boyfriend], he stopped touching her.

22. [Kelly] told her teacher about the inappropriate touching by [Boyfriend] because she needed someone to talked [sic] to and if she was asking for help. [Kelly] said she felt safer telling her friends first. [Kelly] loves her mother, and loved the life they had, and she does not want to hurt her mother. [Kelly] said it was hard to write the letter, but she was hoping her mother would fix everything

once she read it, and stop what was happening. [Kelly] was not trying to get rid of [Boyfriend] she just wanted him to stop; but, she did not feel comfortable around him anymore.

23. [Mother] testified under oath that she first learned about the allegations regarding her daughter and [Boyfriend] touching her inappropriately on November 1, 2016, when [Kelly] gave her a letter, at bedtime around 9:30 in the evening. [Mother] said she spoke with [Kelly] and told her that they were very serious allegations. [Kelly] insisted that they were true. The next morning [Mother] said she spoke to [Boyfriend], because she had to teach a class in Raleigh the next morning. [Respondent-mother] said she had another discussion with [Kelly] on the way to school that morning. [Mother] stated that, "By that time, living in the household and seen [sic] behavior between the two, I was of the opinion that it was not a true statement". [Mother] stated she talked to [Boyfriend] on her drive to and from Raleigh that day, where he basically he denied everything. [Mother] stated she was always there, that there was only one incident where [Kelly] was [alone] with [Boyfriend] and that was September 25, 2016.

24. [Mother] admitted that she knowingly violated the safety plan and stated that she signed it under duress. At first, after signing the safety plan, [Boyfriend] was in the motel those couple of weeks, [Kelly's] behavior in the home, she was happy as a clam. [Mother] said she took [Boyfriend] to Ohio with them because she had "heard nothing from [DHHS] up to that point, he was innocent, it was Thanksgiving". This is a trip they take every year. [Mother] stated that she, [Boyfriend][,] and [Kelly] drove to Ohio. [Kelly] did not seem scared, apprehensive[,] or afraid around [Boyfriend] at all. In fact, [Mother] stated that when she told [Kelly] [Boyfriend] was going [Kelly] said "OK". [Mother] acknowledged that this was after [DHHS] had contacted her, [Boyfriend] had moved out and staying in a motel.

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> 26. Based on the above Findings of Fact, the Court adjudicates the juvenile sexually abused, neglected, and dependent.

These findings are insufficient to support the trial court's conclusion that Kelly is an abused, neglected, and dependent juvenile. Indeed, the trial court's findings primarily recite the testimony of witnesses, indicating that witnesses "said," "stated," or "testified" about particular topics, and therefore do not constitute findings of fact. *See In re Bullock*, 229 N.C. App. 373, 379, 748 S.E.2d 27, 31 (2013). And there was conflicting evidence regarding the allegation of sexual abuse. Kelly testified to instances of sexual abuse and the social worker testified that the child disclosed instances of sexual abuse, while Mother testified that the alleged conduct did not and could not have happened. The trial court did not make actual findings resolving this material fact, either by making separate findings or by finding specific testimony in the record credible.

DHHS argues that finding of fact 26 demonstrates that the trial court resolved the conflicts in the evidence in Kelly's favor by adjudicating her sexually abused. However, finding of fact 26 is more properly classified as a conclusion of law and therefore must be supported by adequate findings of fact. *See Matter of Helms*, 127 N.C. App. 505, 510, 491 S.E.2d 672, 675-76 (1997) ("The determination of neglect requires the application of the legal principles set forth in N.C. Gen. Stat. § 7A-517(21) and is therefore a conclusion of law."). Without a finding that Kelly was

sexually abused or that the court found Kelly's testimony more credible than Mother's, "finding of fact" 26 is not supported by adequate findings.

In conclusion, we hold that the trial court's findings of fact are insufficient to support its conclusion that Kelly is an abused, neglected, and dependent juvenile. Therefore, we reverse and remand to the trial court for further findings of fact resolving the material factual disputes. *See Moore*, 160 N.C. App. at 574, 587 S.E.2d at 77 (reversing and remanding for further findings of fact because the "trial court merely recited the testimony of witnesses and failed to make the required findings of fact resolving the critical factual disputes"). Having reversed and remanded the trial court's adjudication of the juvenile as abused, neglected, and dependent, the trial court's disposition must also be reversed. *See In re S.C.R.*, 217 N.C. App. 166, 170, 718 S.E.2d 709, 713 (2011).

REVERSED AND REMANDED.

Judge HUNTER, JR., and Judge MURPHY concur.

Report per Rule 30(e).