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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-807

Filed: 20 March 2018

Haywood County, 16 JA 37-38

IN THE MATTER OF: J.N.S., A.J.S.

Appeal by Respondent-Fathers from orders entered 27 March 2017 and 22 May 2017 by Judge Jerry F. Waddell in Haywood County District Court. Heard in the Court of Appeals 22 February 2018.

Rachel J. Hawes, Agency Attorney for Haywood County Health and Human Services Agency, petitioner-appellee.

Jordan R. Israel, Assistant Agency Attorney for Haywood County Health and Human Services Agency, petitioner-appellee.

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

Lisa Anne Wagner, for respondent-appellant Ricky Stokely.

Ewing Law Firm, P.C., by Robert W. Ewing, for respondent-appellant William Blankenship.

HUNTER, JR., Robert N., Judge.

Respondent-father Stokely and respondent-father Blankenship independently appeal from an order ceasing reunification efforts with J.N.S. ("Jim") and A.J.S. ("Amy").[1] Respondent-father Stokely contends the trial court failed to make appropriate findings of fact under N.C. Gen. Stat. § 7B-901 to cease reunification efforts with him. Respondent-father Blankenship contends impermissible hearsay statements support certain findings of fact made by the trial court. We disagree with both contentions and affirm the trial court.

I. Factual and Procedural Background

Respondent-mother is the mother of Jim and Amy. At the outset of this case, the parties identified respondent-father Stokely as both children's father. However, the parties later determined respondent-father Blankenship was Amy's father. Jim was born in 2004 and Amy was born in 2009.

On 30 March 2011, Harnett County Department of Social Services ("Harnett DSS") received a report stating respondent-mother and respondent-father Stokely engaged in incidents of domestic violence in front of the children. During these incidents, in the children's presence, respondent-mother blackened both of

[1] We use pseudonyms to protect identities of the juveniles and for ease of reading. *See* N.C. R. App. P. 3.1(b) (2017).

respondent-father Stokely's eyes, pulled a knife on respondent-father Stokely, used alcohol, and screamed and cursed at the children. Respondent-mother reported she and respondent-father Stokely were no longer in a relationship. Respondent-mother also denied being in a relationship with respondent-father Blankenship. Harnett DSS ultimately closed this case in June 2011.

On 27 July 2015, the Haywood County Health and Human Services Agency ("Haywood Health") received a report stating the children had been visiting Haywood County for about a month, and had disclosed disturbing details about respondent-mother's household.[2] The children reported respondent-father Blankenship showed them inappropriate sexual videos. They also reported respondent-father Blankenship touched and rubbed Amy's thighs. Jim reported respondent-mother punched him, and respondent-father Blankenship called him a "pig." Jim also reported respondent-mother smoked marijuana. Harnett DSS met with respondent-mother and respondent-father Blankenship. Respondent-father Blankenship admitted to showing Amy a picture of a woman holding watermelons in front of her breasts, but he did not believe his conduct was inappropriate.

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[2] The record does not indicate with whom the children spoke.

On 17 September 2015, Haywood Health received a report stating Jim was at the emergency room under an involuntary commitment petition due to attacking respondent-father Stokely the night before. The hospital staff could not complete Jim's evaluation because respondent-father Stokely left Jim at the hospital. Later that month, Harnett DSS asked Haywood Health to assist in the investigation. A social worker also met Jim and respondent-father Stokely at the emergency room in December 2015, after respondent-father Stokely struck Jim in the face, causing bruising on his left eye. Additional reports of abuse surfaced in 2016.

On 24 May 2016, Haywood Health filed petitions alleging Jim and Amy were abused, neglected and dependent. On 31 May 2016, the trial court placed the juveniles in non-secure custody. On 15 September 2016, the trial court signed an order adding respondent-father Blankenship as a party to the action. The trial court also ordered respondent-father Blankenship to undergo DNA testing to determine whether he was Amy's biological father.

On 20 January 2017, Haywood Health filed a notice of intent to use hearsay evidence obtained during Jim's and Amy's CMEs.

On 8 February 2017, the adjudicatory hearing began. Respondent-father Stokely was present and represented by counsel. Respondent-mother and respondent-father Blankenship were not present, but their attorneys were present.

Attorney for respondent-mother stated respondent-mother's automobile didn't have working brakes. She instructed her attorney "that she wants [him] to contest this hearing and contend for the child not being abused, neglected or dependent. And in the dispositional hearing, if necessary, to contend for her to be found a proper placement for the – for the children."

The attorney for the Haywood Health first called Kristen Gruner ("Gruner"). Gruner is a physician assistant with Haywood Health Center and KARE house. KARE house is a child advocacy resource center and "it's the foundation of handling child abuse now as the child discloses a history of abuse. Children are taken there pretty quickly in order to get a forensic interview and a child medical exam." KARE is also where multi-disciplinary team meetings take place and where they discuss the case. Typically, the team consists of "[m]e being the medical[,] and law enforcement, DSS, child protective services, counselors and then the care KARE staff are involved." Gruner provides the child medical examinations:

> And so when I see the children I am performing a typical medical history and interviewing the non-offending caretaker and the child separately from the care giver. And then they're taken into a medical exam room where it's a typical kind of a doctor's office exam room where I just do a head to toe physical. If – I do a genital exam as well if there's been a claim of sexual abuse then I'll typically take photographs.
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> . . . .

> I work with mostly Savannah Yummit. She performs the forensic interviews and usually I witness to the forensic interviews. I'm sitting in a room with child protective service agency and social workers so we are witnessing the forensic interview. And then – the actual physical exam, Savannah is usually in the room with me.
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> . . . .
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> Actually I do the history in a different room all together. The medical history there of the child and then again the non-offending care giver. And then they're taken into the medical exam room where they're weighed and vital signs are collected and vision tests of that nature.

On 26 February 2016 Gruner performed a CME on both Jim and Amy. Prior to the CME:

> [W]e try to make it known to the child that the examination is nothing – not much more than they would have if their pediatrician office, a head to toe examination. The purpose of which is to just make sure that their body is safe and okay and not damaged. Also we're looking for any kind of signs of neglect and you know – like their weight and height is appropriate with their age.
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> . . . .
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> It's child friendly. We've got the medical exam table and lights and medical equipment, blood pressure cuff and otoscope and thermometers and that sort of thing.

Both children indicated they understood they were at KARE to receive medical exams.

Gruner was also "absolutely" certain she was careful to use non-leading questions when she talked to Jim and Amy. Counsel for respondent-mother stated he intended to object when Gruner testified as to any disclosures Josh made to her during the interview. The attorney for Haywood Health responded statements made by children "in the process of medical diagnosis or treatments are not hearsay." Additionally, "statements made to a social worker or during a forensic interview in concert with a medical examiner, i.e., a CME are considered part and parcel of a medical exam also." The court reserved ruling on the objection "because I don't think its been made."

When Gruner first met Jim and Amy, she introduced herself as a physician's assistant. She also "informed them that I want to ask you some questions so that I can see how best to take care of you and to focus my examination. Particularly with Jim's bruises."

Specifically, Jim reported to Gruner "me and dad got in a fight. He bit me." Jim then told Gruner "I miss my dad." Gruner also observed various bruises on Jim:

> He had a 3 – 4 inch diameter bruises on both forearms that – medial forearms. It were blue, gray, green coloration. And then on his right flank he had linear mark that was about 2 inches wide and then ½ inch tall. And then on his right posterior calf a very faint grayish bruise, it was about 3 inches in diameter.
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> . . . .

> But the one bruise on his left forearm does have some central clearing where there is no damage centrally. So you have to gather that the pressure was in a circular manner. And I would say that would be consistent with a bite mark. The central being clear without any bruising and the bruising was round. Other than the linear nature of the right flank mark which Jim did not have an answer for where that bruise came from in my interview. That linear mark is interesting because it is so geometric, has quite an angle on it. I wouldn't want to guess where that came from. The right calf, he didn't have any answer as to where that come from either. He did disclose that the left forearm was a bite mark and the right forearm injury occurred at a different altercation that he did not elaborate about but that's where he was grabbed.

Jim identified his dad as the one who left the marks on him. Gruner also testified:

> Jim reported to me that when his dad was trying to "give him an old fashioned whooping" with a belt Jim grabbed the belt with his left hand and he demonstrated this for me. Grabbed the belt with his left hand. Dad then bit his left forearm. When asked about the bruise on his right forearm he said it didn't happen at the same time as the bite. Jim used his left hand to grab the right forearm saying that he grabbed me.

Gruner described Jim's bruises as "non-accidental trauma." She also recommended for Jim "a place where he can live that's free from chaos[.]" He should also be "away from anyone who is using any corporal punishment certainly to the force and degree that would cause any bruising." Additionally, Gruner stated she "would encourage [Jim] not to be placed in custody with [respondent-father Stokely] and [respondent-

father's girlfriend.]"

Gruner also completed a CME on Amy on 26 February 2016. In the forensic interview:

> Amy reports having been touched in her no-no box or fondled twenty-two (22) times by [respondent-mother and respondent-father Blankenship]. She has also reported that she had witnessed some violence against her brother Jim. She mentioned that [respondent-father Blankenship] was intoxicated and she was also shown . . . video of a woman's breast moving[.]

Additionally, Amy disclosed "witnessing [respondent-father Stokely] dragging, grabbing, biting and whipping Jim with a belt." Amy also stated "sometimes it burns to pee." Amy had "itchy skin" and the bumps on her legs were "from flea bites." Gruner again asked Amy in private about her complaint of burning when she urinates:

> I asked her if when [respondent-mother and respondent-father Blankenship] touched her no-no box did it hurt afterwards. And she said yes sometimes it burns. She said and I put this in quotes "[respondent-mother] has long fingernails and these two (2)" indicating the third and fourth fingers "have broken nails and they scratch me and it hurt." After [respondent-father Blankenship] – I asked her after [respondent-father Blankenship] touches your no-no box does it hurt. Amy answered "no, he has short finger nails." She also offered that he touched her breasts too and she added "he was drunk."

The attorney for Haywood Health offered the written reports detailing Jim's and

Amy's CMEs into evidence.

Savannah Yummit ("Yummit") took the stand. She is a victim advocate and forensic interviewer at KARE House. Yummit completed RADAR training, which is "North Carolina's protocol for interviewing children." RADAR stands "for recognizing abuse disclosure types and responding. It's basically just non-biased questions that – non-leading protocol and how to gauge whether a child is safe and healthy[.]" Yummit is also part of KARE House's CME team. When Yummit first met Jim she introduced herself and said it was her job "to make sure that kids are safe and happy." She also discussed with Jim the importance of telling the truth. Jim showed Yummit the bruise on his left arm, and told her it was a bite mark. Yummit also testified:

> I asked if anyone had ever tried to get him to break their private part rules as in another person trying to get Jim to touch their private parts and he shook his head no. I asked him if he had ever been shown other people's private parts and he said yes. He said that [respondent-father Blankenship] had shown him a video about this girl and man.

Yummit performed Amy's forensic interview after Jim's. Yummit introduced herself to Amy as the forensic interviewer and explained to Amy she "worked with Physician Assistant Gruner." Yummit also explained she and Gruner worked to keep Amy's body safe. It appeared to Yummit that Amy understood these statements.

Yummit also discussed with Amy the importance of telling the truth. At that point, Amy promised to tell the truth. Amy told Yummit "her daddy was in jail and that the reason he's in jail is because he dragged my brother across the road."

Amy told Yummit there were "four (4) runaway things." Yummit asked Amy why Jim was trying to run away and Amy "said that Jim's biological mom abused him and tortured him. And that [respondent-father Blankenship] had put Jim against a wall and put his hand here and she motioned around her neck." Yummit also testified:

> She also disclosed that Jim had a butcher knife at one point at a different time – one of the runaway things she referred to. And he had a knife at his own neck. And when mommy would come closer Jim would pull it closer to his neck. And she thought that Jim – she wasn't sure if Jim had to go to a hospital after that but she thinks he did. She also talked further about [respondent-father Blankenship] having his hand around Jim's neck. She said he was trying to choke him out because they wanted a girl not a boy.

Yummit also asked Amy if she had any rules for her private parts. Amy said, "speaking of private parts [respondent-mother and respondent-father Blankenship] have touched me in my no-no box[.]" Amy also indicated her breast area. Yummit asked Amy what they used to touch her and Amy replied "their hands." Amy did not disclose any penetration. Yummit stated:

> I asked her if anyone has ever shown her picture or video

> of other people's private parts and she shook her head yes. She said [respondent-father Blankenship] had asked her if she wanted to look at private parts. And she didn't say anything. She said that he first showed her a video of breasts moving and then after the video he looked up pictures of breasts and showed her.

Brandon Milan, a social worker with Haywood County Health and Human Services, testified next. On 23 February 2016, Milan received a report "stating Jim had a large mark on his left forearm and that the bruise was blue and fading but was still visible." Milan testified:

> The report also stated that Sunday Jim had wanted to go next door and stay with the neighbors. And his dad told him no. And Jim came at him like he was going to hit him so dad bit him. . . . There was also mention of a paddle that had been removed from dad's home that had Jim's name on one side and Amy's name on the other. And that dad had called the people who had taken the paddle and asked for it back. The paddle had been taken by Seth Cole of Haywood County Psychological Services. The report also stated that Jim was scared of his dad. That he is on the autism spectrum. And then it also stated that Amy had . . . to ride the bus back to school one day because nobody was home when she got off the bus.

Milan met with Jim the next day in the school principal's office. Jim described the day respondent-father Stokely bit him and Jim disclosed "his dad had given him an old fashioned whooping. . . . [T]hat's when dad hits you everywhere with a belt."

Milan also interviewed Amy while she was at school:

> She started right off once I introduced myself and said I

> was from DSS. She said that her brother had been grounded and that he had gotten his butt busted twice yesterday. When I asked her why and she said that she was trying to get the water running for her bath and it was only cold so she was crying and Jim was in his room on his bed. And that he got in trouble for not running the bath water for her. And I asked where . . . [respondent-father Stokely and his girlfriend] were and Amy stated that they were in their bedroom playing on their phones.

Amy also reported she "gets butt bustings" from respondent-father and his girlfriend. Amy did not bruise from "physical discipline," but Jim had "bruises and marks."

Before Amy and Jim lived with respondent-father Stokely and his girlfriend, they lived with respondent-mother and respondent-father Blankenship. Amy said respondent-mother and respondent-father Blankenship "abused us." When asked to describe the abuse, Amy stated "[respondent-father Blankenship] had picked her up by her stomach, had thrown her on the floor and that he had shown her naked pictures on his cell phone." Milan stated he did not ask Amy any leading questions, and that "I hardly had to ask her any questions at all."

Detectives with the Haywood County Sheriff's Office arrested respondent-father Stokely and charged him with misdemeanor child abuse. At that point Milan had the opportunity to see inside respondent-father Stokely's house and "it was messy. There – there weren't clear pathways. I did go to the kids room . . . [a]nd I noted that there were – there were just two (2) mattresses on the floor. There were

no beds or anything, just mattresses."

While respondent-father Stokely was in jail, the juveniles stayed with Mrs. Goodson, who was the juveniles' paternal great-aunt. To the best of Milan's knowledge, the last time the juveniles had contact with respondent-mother was June 2015. Respondent-mother never came to Haywood County to see her children. Additionally, June 2015 was also the last time the children saw respondent-father Blankenship.

Milan's department made a case decision determining Amy "had been physically and sexually abused." Milan's department also "found that Amy had been neglected in the form of improper care and injurious environment." At this point counsel for respondent-mother unsuccessfully objected. Counsel for respondent-father Blankenship stated, "I thought that the providence currently is for Your Honor to make a ruling relative to those grounds."

The Court responded:

> That's true but that does not prohibit him from making these statements based upon his interview and his investigation of the case. The ultimate decision lies with the Court. But that's all – that's not – that's not binding on the (inaudible) fact its just giving us a time line of what happened and – and the way we got to where we are today.

Deputy Hayden Green ("Green") with the Haywood County Sheriff's Office testified next. Green first met Jim on 30 December 2015 when he received a call "in

reference to an out of control juvenile." When Green arrived at the Stokely residence he found Jim "crying uncontrollably." Respondent-father Stokely "stated that Jim became violent and was punching him so he did smack him two (2) times on the left side of the face in attempt to get Jim to stop hitting him." Respondent-father Stokely explained he found a place for Jim in Garner. Green "believe[d] it was some sort of hospital or child facility." Respondent-father Stokely told Green he would have to take Jim to the hospital before the center would arrange transportation to Garner. It seemed strange to Milan "that emergency services were necessary to get the child to Garner."

Dr. Raymond Turpin ("Turpin") testified next. He is "the clinical director for Child and Family Services at Meridian Behavioral Health. He is also a "clinical licensed psychologist." Turpin "function[ed] as a Clinical Director for [Jim's and Amy's] cases for both Haywood Psychological and Meridian." DSS referred Amy to Haywood Psychological on 19 October 2015. Jim's intake at Haywood Psychological was on 10 December 2015. Respondent-father Stokely and his girlfriend reported that "one of the behavioral concerns they had with Amy was the fact that she was masturbating, rubbing on herself a lot and that she was trying to get on top of Jim at the house." At that time, Amy had just turned six.

During one appointment, Amy stated "she does not want to see her mother

anymore and that Jim also does not want to see his mother anymore." As for Jim, "At least we had lots of verbal reports from Jim and some from Amy as well and the family and the parents, the Stokely's that Jim had seen significant abuse living with the mother, the biological mother." Turpin felt "really confident" with Jim's behavior "he was exhibiting that we could go ahead and diagnose him with post traumatic stress disorder." Jim exhibited:

> Lots of defiance. . . . [R]efusing to do things. Getting very agitated very quickly. Getting physical. Getting aggressive. Getting aggressive with Amy. Getting aggressive with both the parents at times. So a lot of aggression. A lot of defiance. I'd say those were kind of the big issues. Was just not getting him to be able to follow directions and behave and be safe in the home.

Turpin often sees that behavior in kids who "have been abused . . . [and] in kids that are in for whatever reason in a situation that doesn't feel safe." Most of what Jim told Turpin "was directed towards [respondent-mother] at the time. And then later there was also evidence of [respondent-father Blankenship] providing physical abuse to Jim."

Additionally:

> [A]bout a month before when [the Stokelys] moved into their new place, we had learned that both of the kids, Amy and Jim were sleeping at a neighbor's home. They had slept for 2 nights there and they only – the Stokely's only knew these neighbors for a week. And so we had some concerns about that. And what it led up – what we were

> told led up to the biting incident was that Jim wanted to spend the night again at this house and at this point . . . they had been spending multiple nights each week at this neighbor's house. And we had concerns about that.

After respondent-father Stokely went to jail, and the children went to the Goodson's, Turpin could see "almost an immediate change in Jim." Prior to going to the Goodson's, Jim "was not communicative. He really shut down and so when we saw him removed from dad's house and – and he had said on 2/24 that he was quote 'scared when dad is angry.'" Soon after going to the Goodson's, "we're seeing this complete turnaround in this kid." Turpin noted, "[t]hat [Jim's] noticeably better across settings at school and the home. He's more communicative and engaging. . . . And in both kids in the Goodson's home were following rules, they were compliant with expectations, and they were actually doing chores."

Once the juveniles were able to visit their respondent-father Stokely, "old behaviors resurface[ed]." Jim was "starting to go back to clinging stuffed animals, which is what he did when he first got to [the Goodson's] home." Jim was also "crying and whining a lot." Teachers at Jim's school were seeing "an increase in defiance." Eventually "Jim had a meltdown and started hitting himself in the face and tantruming." Jim also had a "meltdown" at school where he "was crying uncontrollably [and] had to be removed from class." By 23 May 2016, Jim's behavior was to the point the Goodson's told Turpin "we need him out of our house today." Jim

then went to Broyhill. As for Amy:

> [T]he only person that she seemed to have any kind of attachment to somewhat was Jim. And she would – you know, would worry about him and she really talked a lot about the abuse that she witnessed at the [respondent-mother and respondent-father Blankenship's] home towards Jim at the time. That it really bothered her and she would talk about memories of that. . . . [W]e saw that there was no strong care giver attachment which really made us concerned that there was a good bit of neglect early on.

Neither respondent-mother nor respondent-father Blankenship had any contact with Turpin or his agency. Also, none of "these parents throughout your agency's working with these children demonstrated an ability to safely and appropriately parent these children."

After DSS rested, respondent-father Stokely took the stand. He is 44 years old and a seventh-grade graduate. He is Amy's legal father, and recently learned he is not her biological father. He is Jim's biological father. The juveniles came to live with respondent-father Stokely and his wife Elizabeth in Haywood County on Father's Day weekend of 2015. Prior to that weekend, the juveniles lived in Harnett County with respondent-mother and her boyfriend, respondent-father Blankenship. The children were happy to be with respondent-father Stokely. However, after about 2 ½ weeks, Jim began "acting out." Jim "would throw temper tantrums. Hit itself. He would go into a blind rage[.]" During these tantrums, Jim would call respondent-

father Stokely by respondent-father Blankenship's name and would tell respondent-father Stokely to get away from him.

Respondent-father Stokely described Jim's tantrum:

> When he got into that blind rage. He called Elizabeth [by respondent-mother's name, Tracy]. He said Tracy why are you doing this to me. Why do you want to kill me. Why do you want to hurt me. And then I told him – I said Jim – I said that's not Tracy, that's Elizabeth. And he turned around and looked at me and he said [respondent-father Blankenship] get away from me. I don't understand why you done what you done to me. And I was trying to figure out what had happened but I couldn't never get him to tell me what had happened.

In order to calm Jim, respondent-father Stokely would "put him basically in a backwards bear hug and me in behind him with my arms wrapped around him." Respondent-father Stokely also "went everywhere trying to get help and all they would say was let him have his way, let him do what he wants to do." First, in August 2015, respondent-father Stokely took Jim to Haywood Regional. There, "[t]hey done an evaluation on him and sent him home." The following week, Jim went back to Haywood Regional by ambulance due to another outburst. Jim stayed in the ER three days, and was then "transferred to Copestone." He stayed at Copestone approximately three weeks.

When Jim returned to respondent-father Stokely, he was on medication. The medicine worked for about a month. Then, "[h]is mom – Tracy started calling and

coming around and he started having outbursts again." These outbursts were "very violent." Respondent-father called law enforcement for help during these outbursts, until "911 finally told me to just quit calling them."

The bruise on Jim's left eye was caused by a flagpole:

> Jim was running through the house playing and right where the hallway started going to their bedrooms, the floor was weak. And when you run through the house it would vibrate where the entertainment center was at because it was sitting in close proximity to the hallway. And when Jim run down the hall and come back up and he was running, the pole – me hollering at him told him – I told him stop but before he could stop the pole shifted and hit him right here in the eye and caused basically like a rug burn.

At that time, Jim was about five feet, five inches tall, and weighed 245 pounds. Respondent-father Stokely is six feet, six inches tall, and weighs 288 pounds. When respondent-father Stokely had to "bear hug" Jim, he had to use "just about all of [his] strength." Respondent-father Stokely "was pouring the sweat by the time the paramedics got there and helped me restrain him."

Respondent-father Stokely made a paddle in 2016. He made it to be "basically a scare tactic." Respondent-father Stokely "would not use it on [Jim]. Neither one of em." One time respondent-father Stokely used a belt on Jim because he had to "stop [Jim] from running off." Respondent-father Stokely never left a mark on Jim except for the one time he used the belt on him. A few days after Jim ran away respondent-

father Stokely bit Jim:

> I got him up cause he'd been running a fever, to go to school and he wasn't feeling good. So I told him I said well just go in the kitchen sit down I said I need to talk to you anyway. . . . I said I just want to talk to you about the incident the other night where you run away and I had to stop you with my belt. . . . I seen him get up and I seen him come out of the kitchen and he put his arm around me like he was gonna hug me. And when he slid his arm up he slid it up just about like this and he went to choking me and he was telling me [respondent-father Blankenship] I'm going to kill you for what you done to my sister and me. And I was trying to talk to him and I couldn't talk because he was cutting my air off. . . . And I didn't want to hit him. I did not want to hurt him. And my instinct was that's the way to get him off from me and that's what I done to get him to turn me loose. When I done it, after I done it, I went to him and I told him – I said son I'm sorry for doing that. I said I did not mean to do that. But I said you was choking me, I could not get you off from me.

Respondent-father Stokely was charged with misdemeanor child abuse for biting Jim, and respondent-father Stokely pled guilty to that offense.

Respondent-father Stokely discussed Jim's other bruises:

> Some of the bruises – I'm gonna say some of the bruises on his legs and stuff like that – the apartment has got steps. And if you're not careful on it there's a couple of steps that is sloped just a little bit. And if you don't pay attention, if you like if you run down the steps or go down a little quick, your feet will come out from under you. I have done it and fell down the steps.
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> . . . .

> [Jim fell down the steps]. Twice. And I checked him and maked sure he was all right. I seen a couple of little bruises on the back of his legs and stuff like that. And I checked his back. He had a little mark about like that all the way across his back from where his back hit the steps. And I asked him I said are you hurt and he said no.

Respondent-father Stokely rested. At the close of the evidence, counsel for respondent-mother made a motion to dismiss part of the petition:

> [A]s I understand the petition, it alleges that Ms. Tracy James or respondent mother, abused, neglected or left the children in dependency situation by delivering them to [respondent-father] Stokely knowing that [respondent-father] Stokely would or having knowledge that [respondent-father] Stokely would be a person who may cause injury to the children. And I think the evidence is clear that this particular element or this particular allegation of abuse, neglect and dependency is not supported by any evidence which the Court can find that existed.

The court stated, "As to that motion to dismiss regarding [respondent-mother], that motion would most respectfully be overruled in that matter." Counsel for respondent-father Blankenship then moved to dismiss the petition as it related to his client, "in that the department had not proven, met its burden of proof by fact of finding clear and convincing evidence as to the abuse neglect or dependency related to Amy as pertains to [respondent-father Blankenship]." The court then responded "that motion will also be overruled and denied."

Counsel for Haywood County Health and Human Services Agency then asked

the court to "find that both children are abused, neglected and dependent." Counsel continued:

> And as far as neglect Your Honor, these homes, Harnett County, Haywood County, are chaotic, disorganized. They are absolutely unstructured, unstable and are full of violence and just a complete lack of stability. There is not – there is improper discipline. There is improper structure. There is improper supervision and improper care. . . . We know absolutely nothing about their pediatric care before they physically came to Haywood County. We know that they didn't have their glasses. We know that their mother sent them here with nothing and left them here. And as far as remedial care, again, these children – Haywood Psychological attempted to get them services started on – had a DSS referral starting in October of 2015. They were able to get Amy in. Jim, arguable been the more high needs sibling, because of delays and missed appointments they couldn't even get assessed until two months later. And then they attempted to get intensive in home services in place. They were trying to do that intensive twelve hours a week in the home to keep the children in the home and this explosive, violent situation sets up and ends up where there's a belt used, a paddle used and Jim has bruises and bite mark. Dad gets arrested for misdemeanor child abuse and things just explode. So even with these intensive community services in the home, dad's home wasn't appropriate.
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> And they came from a home of horrible abuse and neglect in Harnett County with [respondent-mother] and [respondent-father] Blankenship. And they came to Mr. Stokely with so many needs already. But, and they probably thought initially that they were getting saved. That they were getting out of this terrible situation and

> they were getting to a new situation that would treat them better. And he was not equipped and could not handle it and responded inappropriately. Disciplined them inappropriately, in an abusive way.
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> And what it comes down to is these parents, [respondent-mother] and [respondent-father] Stokely, want to sit here and say how terrible the other person is. And maybe its all true. . . . It doesn't matter who was violent to each other; there was domestic violence, the children were present and these parties keep giving the children to each other.
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> . . . .
>
> So the fact of the matter remains that this is an improper – this is a injurious environment in every sense of the word for these children. Neither of these homes is appropriate. And none of these parents have come up with any appropriate alternative child care arrangements for these children.

The trial court made its oral findings of fact. Based upon those findings, the court found by "clear and convincing evidence" the juvenile Amy "to be abused and neglected by [respondent-mother], [respondent-father Blankenship] and [respondent-father Stokely]." The trial court then found "by clear and convincing evidence" the juvenile Jim "is found to be abused" by all three parties. The trial court stated, "as to adjudication Jim and Amy are both adjudicated to be abused" and "neglected."

The trial court set the disposition hearing for 20 February 2017. Respondent-

father Stokely was present with counsel. Neither respondent-mother nor respondent-father Blankenship were present, but their counsel were present. Paula Watson ("Watson") took the stand. Watson is a foster care supervisor for the Haywood County Health and Human Services Agency ("the Agency"). Watson began supervising this case in June 2016, and continued to supervise it until December 2016. The juveniles have been in the Agency's custody since 24 May 2016. Jim "is placed in a PRTF[3] at Youth Springs. And Amy is in a foster home in Macon County." Initially, Jim was in a "therapeutic foster home" but his behaviors "accelerated." Jim was "very aggressive to the point of physically threatening to hurt the foster parents." At the PRTF:

> [Jim's] in weekly therapy. He's in groups. He gets his education there, as well. They do some live skills just learning to do your own basic needs stuff. Which is normal in any PRTF. Putting a child on a real strict routine, where they get up at a certain time. They do a certain number of tasks. They do school, they do therapy. They do intervention if there's a crisis. And I think that that's been the biggest benefit for him. . . . But, if you looked at where he was when he went in, where he was just out of control and not able to even – even express I'm hungry, and I really, really didn't sleep well. He can actually do those things in therapy now, where he couldn't before. He can talk about fears, because that was where his trauma is: the fear of something happening. And he can actually express what that was and why he was fearful.

[3] PRTF stands for psychiatric residential treatment facility.

Additionally, Jim has developmental delays:

> Most twelve year olds are looking more at getting into middle school and playing sports, and even girls. Where he is more into action figures and legos. . . . That's typical for a seven or eight year old, and that's kinda where I see him at times. A twelve year old can say I'm angry and storm off to his room. Jim acts out that right there in front of you . . . . So, it's letting people understand that the tantrum he's having is like a seven year old, but for him, intellectually, that's where he's at, [in that emotional – being able to express his emotions[.]

Jim also has "a low IQ." When a child has a low IQ, and they're "put in a trauma, and they experience trauma[,]" it makes the child more delayed. Jim "should be able to process the trauma in therapy at twelve quicker, but he won't, because he's so much delayed."

Ultimately, Jim's caregivers are going to need a special "sort of skill set." Watson testified, "I think they need to be seasoned parents. They need to be individuals who have parented a child of his stature. You know, definitely not new, green in any (inaudible) size. I think they need to be very mature. Maybe even parented their own children into adulthood."

Right now Amy is "in your basic foster home." She goes to school, and "[t]he school absolutely loves her." She also has a "very dedicated therapist who is really walking slowly through preparing her to start dealing with the trauma."

Jim's needs "were so high" that Jim and Amy can't be together right now:

> [W]e always update each sibling when we see them. Social Worker Hooper always lets them know how each of them are doing. If they were old enough to do the letters or even communicate by phone I don't think anybody would object to that. I just think that a lot of it just has to do with their trauma and being able to do that successfully.

As far as future care for Amy, "we'd be looking for seasoned parents who understood the basic information about what happens when a child is sexually abused."

Respondent-mother and respondent-father Blankenship have not provided the Agency with any relatives' names who could foster either Amy or Jim. Respondent-father Stokely "reluctantly" provided his brother's name "saying very clearly that he would not be appropriate for his children to be at. . . . He has an extensive criminal history."

Respondent-mother has not made much progress on a case plan since May 2016. She has had "very limited contact with the department." Besides her incomplete case plan, the "only other thing mother did was – she did find a 3 day parenting class but we didn't get a certificate." Also, "her communication with us has been very, very sporadic." The Agency has had "3 face to faces with the mom and that's basically when she's come to Court. . . . We've had 8 telephone calls from the mother through the history of this case."

To the Agency's knowledge, the last time respondent-mother saw the children was December 2015, which was the "Christmas visit that [respondent-father] Stokely

discussed in his testimony." Respondent-mother hasn't called any social worker to request a visit or ask about her children's ongoing therapy. She has not provided any items for her children, and she says she is not able to pay child support. Additionally, respondent-mother has not "done anything to take responsibility for the trauma in her home that her children were exposed to." She has not taken "any sexual abuse offender assessment" and she has not "engaged in any sort of sexual abuse treatment for parents of children who are victims." She "adamantly" denies her role in Amy's sexual abuse.

Respondent-father Blankenship "has not completed anything on a case plan other than completing the DNA testing which was required by the Court. He's not done anything." The Agency has had no communication with him, and he has not taken any steps towards any type of treatment.

Respondent-father Stokely "has communicated with the Agency consistently." Respondent-father Stokely has:

> [A]ttended the PPAT meetings for his children. He considers Amy his daughter so he inquires as much about her as he does about his son Jim. He started working with the KARE program, the triple P parenting where he did some assessments and has worked with KANE in regards to that. He has done the interview portion of a capacity to parent and this week completed the testing portion.

Respondent-father Stokely has also been "very candid about his history of domestic violence with [respondent-mother]," and he is "relatively candid about his own struggles with mental health." Respondent-father Stokely does "odd jobs but he doesn't have a job that would be able to be verified through pay check or pay stub."

As far as a permanent plan for the children,

> It was very telling to hear a mental health professional say words like not until they're adults should they have contact with a parent due to the extent of the trauma in which they experienced. To hear the type of discipline that was utilized on these children while in the care of Mr. Stokely as well as the disclosures of the sexual abuse by Amy, the Agency at this time feels like that there is no likelihood of reunification with these children.

The Agency's recommendation "would be to move the permanent plan to adoption with a concurrent plan of guardianship."

At this point, counsel for respondent-father Blankenship moved to dismiss the petition on constitutional grounds:

> Under 7B-901c to cease reunification efforts at this initial disposition hearing by applying 7B-901c under these circumstances without taking into consideration other factors as to my client's ability to remedy the conditions that caused the child to be removed from his home. Not delving into the potential safety of his home now or in the new future, means that this section is unconstitutional as applied against my client.

In addition, counsel for respondent-father Blankenship moved to dismiss the petition

"on the grounds that the petition was never amended to include my client so as to give him the defacto due process rights of the reunification." The trial court overruled the motions to dismiss.

In closing, counsel for the Agency argued:

> [T]his is the whole purpose of 7B-901 allowing Your Honor the ability to say let's not waste these children's time. They've spent enough time messing around with these folks. Let's move forward. . . . That [respondent-mother and respondent-father Blankenship] . . . have shown no interests, no inclination and they have sexually abused Amy and physically abused Jim[.]
>
> . . . .
>
> Really to me the difficult issue is [respondent-father Stokely] who has been honest with us about his challenges. . . . He is concerned about his children. But, he reacted so inappropriately and so extremely to – to – now listen, no one is sitting here and saying that Jim is an easy child. He's not. . . . It is not without empathy for [respondent-father Stokely] that for what behaviors those children presented with in his home but to chase a child down a road with a belt in his hand, and that paddle is completely inappropriate and can we over come that?

Counsel for respondent-father Blankenship responded:

> Relative to the perimeters of 7B-901C; that is a threshold at disposition to provide a justification to cease reunification. It is not a threshold to be applied prior to the department's exercising reasonable efforts. That was not done. The statute dictates that that be done until we get to this (inaudible). Then the question is are there aggravating circumstances? How do we determine

> whether there were aggravating circumstances? . . . We don't fully understand what these two children are able to assimilate, how they're able to express these things[.]
>
> . . . .
>
> But how can we determine what the best situation the best interest of the children are if we don't know what the perimeters are of the aggravating circumstances so as to even apply this statute.

Next, counsel for respondent-mother argued:

> That we have a window that neither Jim nor Amy are gonna be available for foster care, adoption or guardianship in the next six months – three to six months. They're gonna be still doing diagnosis and assessment of those children. . . . But what is apparent is that the department wants to cease reasonable efforts and to go launch upon a plan of adoption or guardianship.
>
> The reason I asked the social worker whether or not this could be a 3 legged plan is I don't think that that the plan is unreasonable. I would ask the Court to continue the reunification plan along with those two so that my client has a chance to totally fail. I don't have a lot of hope for this case. I don't. But we have three months without affecting the welfare or best interests of the children. Because they're still going to be in diagnosis. **[**
>
> I would ask the Court to continue the plan of reunification and to order the department and to order my client to embark upon a sexual abuse assessment plan, a capacity to parent plan – assessment plan and a mental health – a separate mental health assessment plan. And to continue reasonable efforts so that the department can assist her in that.

Counsel for respondent-father Stokely stated:

> The crooks in the case is that the department wants to take these kids away from their parents because of the trauma that's been afflicted on the kids. Today, we don't know what that trauma is. We know some of it. We don't know the whole picture. . . . But the department is trying to fast track termination to adopt these kids. Adoption ain't gonna work right now anyway; cause of their state the kids were in. Should not rush to adopt these kids till we know what is going on. What is this Court gonna do? Five years from now, these kids have been adopted out and they come back and the trauma is from the death of their brother. . . . So, we asked to continue working the plan of reunify with [respondent-father Stokely]. What he has admitted to and then what this Court found, where inappropriate discipline methods that used to be more common. Then in modern day we say we don't paddle kids.
>
> . . . .
>
> Your Honor all that we ask is that [respondent-father Stokely] be given a chance to work a plan to reunify with his kids. He has been – had these kids dropped in his lap by [Blankenship] and the mother with who knows what happened to them while they were under their care. And its kinda easy because he has admitted to some of these actions to place a lot of the blame on him because its easy – easy to prove, easy to make a finding of. He cares about those kids.

The trial court stated:

> 7B-901C uses some strong language when its talking about reasonable efforts. This is what it says; it 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 shall not . . . be required if the Court makes written findings of fact pertaining to any of the following. A Court of competent jurisdiction has determined that aggravating circumstances exist. Those are: 1. Sexual abuse. That's been found. 2. Chronic physical or emotional abuse. We've got that.
>
> . . . .
>
> Pursuant to 7B-901C; the Court shall not order continued reunification efforts as to [respondent-father Blankenship] or [respondent-mother]. I think I'm compelled to order the same as to [respondent-father Stokely].
>
> . . . .
>
> The plan then must be a concurrent plan of adoption or guardianship.

Additionally, the trial court stated, "Cannot be any visitation right now." The trial court also ordered the matter to come on for a 90-day review on 22 May 2017.

II. Standard of Review

"This Court reviews an order that ceases reunification efforts to determine whether the trial court made appropriate findings, whether the findings are based upon credible evidence, whether the findings of fact support the trial court's conclusions, and whether the trial court abused its discretion with respect to disposition." *In re C.M.*, 183 N.C. App. 207, 213, 644 S.E.2d 588, 594 (2007). "An

abuse of discretion occurs when a trial court's ruling is so arbitrary that it could not have been the result of a reasoned decision." *Chicora Country Club v. Town of Erwin*, 128 N.C. App. 101, 109, 493 S.E.2d 797, 802 (1997).

This Court reviews *de novo* the trial court's determination of whether "an out-of-court statement is admissible pursuant to N.C. R. Evid. Rule 803." *State v. Wilson*, 197 N.C. App. 154, 159, 676 S.E.2d 512, 515 (2009).

III. Analysis

A. Respondent-Father Stokely

We first address respondent-father Stokely's contention the trial court failed to make appropriate findings of fact under N.C. Gen. Stat. § 7B-901 to cease reunification efforts with him.

N.C. Gen. Stat. § 7B-901(c) permits the trial court to cease reunification efforts at an initial disposition hearing under certain circumstances. This section provides, in pertinent part:

> (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[:]
>
> > (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:
>
> a. Sexual abuse.
>
> b. Chronic physical or emotional abuse.
>
> c. Torture.
>
> d. Abandonment.
>
> e. Chronic or toxic exposure to alcohol or controlled substances that causes impairment of or addiction in the juvenile.
>
> f. Any other act, practice, or conduct that increased the enormity or added to the injurious consequences of the abuse or neglect.

N.C. Gen. Stat. § 7B-901(c)(1) (2017).

Recently, a majority of a panel of this Court interpreted Section 901(c)(1) to mean the trial court must find the existence of the aggravated circumstances in a previously entered order, and not within the disposition order ceasing reunification efforts. *In re G.T.*, ___ N.C. App. ___, ___, 791 S.E.2d 274, 279 (2016).[4]

Respondent-father Stokely relies entirely on this Court's holding in *G.T.* to support his argument the trial court failed to make the Section 901(c)(1) findings. ___

[4] This case currently awaits review in our Supreme Court.

N.C. App. ___, 791 S.E.2d 274 (2016). Respondent-father Stokely's reliance is misplaced. In *G.T.,* the trial court concluded in its initial disposition order reasonable efforts were no longer necessary pursuant to N.C. Gen. Stat. § 7B-901(c)(1) as a result of the respondent-mother's admission to continued substance abuse and her lack of understanding regarding the effect of her chronic substance abuse on her child. *Id.* at ___, 791 S.E.2d at 278. Although these findings addressed aggravated circumstances, the majority of this Court's panel concluded the use of the phrase "has determined" in the statute meant a previous court must have entered an order finding the existence of the aggravated circumstances. *Id.* at ___, 791 S.E.2d at 279. There were no such findings in the prior orders entered in that case. *Id.* at ___, 791 S.E.2d at 279.

In the instance case, however, the trial court specifically found in its disposition order it had previously made the required findings of aggravating circumstances in the separate pre-adjudication and adjudication order:

> 91. That aggravating factors do exist under N.C.G.S. 7B-901(c) regarding the juveniles, as this Court previously found in the Adjudication Order entered on February 10, 2017. Specifically, that the minor child [Amy] was sexually abused by the Respondent Mother and the Respondent Father Blankenship; the juveniles were both chronically physically and emotionally abused by the Respondent Mother, Respondent Father Stokely, and the Respondent Father Blankenship; . . . the instability and domestic violence the children were exposed to by all three

> Respondent Parents; and the significant neglect perpetrated upon the juveniles by all Respondent Parents. As such, reasonable efforts toward Reunification with Respondent Parents shall not be ordered.

As the trial court stated in finding number 91 of its disposition order, the trial court previously made undisputed findings establishing chronic abuse and neglect in its initial pre-adjudication and adjudication order. Specifically, the trial court found by "Clear, Cogent and Convincing Evidence" in its pre-adjudication and adjudication order:

> 21. Haywood County Health and Human Services Agency Social Worker Brandon Milan observed the bruises on [Jim's] arms on February 24, 2016, and at least one of the bruises appeared to be a bite mark. When Social Worker Milan asked the juvenile who did this, [Jim] broke down and started crying and stated, "I don't want my dad to go to jail." The juvenile then described to Social Worker Milan receiving an "old-fashioned whoopin;" stating that was "when dad hits you everywhere with a belt." At the end of the interview, [Jim] cried and stated he was afraid that he would get another "old-fashioned whoopin" because he had told the truth. When Social Worker Milan interviewed [Amy] on February 24, 2016, she reported that yesterday [Jim] got two whoopings and that [Jim] was grounded.
>
> 22. On February 24, 2016, the Respondent Father Stokely was arrested and charged with Misdemeanor Child Abuse regarding the bruises and bite mark on [Jim]. He pled Guilty to that charge in July 2016, and served 52 days in jail.
>
> . . . .

> 41. The Respondent Father Stokely testified and the Court finds as fact as follows. "I didn't mean to hurt my kids." Mr. Stokely admitted to causing the bruising on [Jim], to hitting the juvenile with a belt on more than one occasion, and to biting [Jim] to get the juvenile off of him. The Respondent Father Stokely claimed that the wood paddle was designed to be a "scare tactic" for the juveniles; however, when he turned it over to the Haywood County Psychological Services, Mr. Stokely stated he had used the paddle on the juveniles occasionally.
>
> 42. The Respondent Father Stokely witnessed the Respondent Mother hit [Jim] in the mouth and on one occasion he saw the Respondent Mother standing and holding a high-heeled shoe, while [Jim] held his head and cried. When the Respondent Mother brought [Jim] and [Amy] to the Respondent Father Stokely's home, she did not provide their Social Security cards, Food Stamp cards or Medicaid cards; she did not bring the juveniles' medications or eyeglasses; and the Respondent Father had to obtain copies of the juveniles' Birth Certificates. . . .
>
> . . . .
>
> 45. On Super Bowl weekend, February 7, 2016, the Respondent Father Stokely used the belt on [Jim] to stop him from running toward Jonathan Creek Road, hitting the juvenile on his right leg. Around one week later following this incident, the Respondent Father Stokely bit [Jim] in "self-defense" to get the juvenile off of him. The Respondent Father Stokely is 6 foot, 6 inches tall and weighs around 285 pounds. [Jim] is 5 foot tall and weighs around 215 pounds.

The trial court's findings show respondent-father Stokely chronically abused and neglected Jim, and the trial court's adjudicatory findings describe that abuse and

neglect in detail. The trial court made Finding of Fact #3 in its disposition order stating it was taking judicial notice of the findings of fact from the written pre-adjudication and adjudication order into its disposition order and setting them forth fully in the disposition order in paragraphs 4 through 56.

We conclude the trial court properly found in its disposition order it had previously made findings in its pre-adjudication and adjudication order documenting this chronic abuse and neglect. Therefore, we conclude the trial court properly ceased reunification efforts with respondent-father Stokely in its initial disposition order pursuant to N.C. Gen. Stat. § 7B-901(c)(1).

B. Respondent-Father Blankenship

Respondent-father Blankenship objects only to findings of fact 15 through 18, and 50 through 54, and contends impermissible hearsay statements support these findings. Those findings are as follows:

> 15. Kristen Gruner, PA, SANE, of Haywood Health Center, was admitted as an expert witness in Child Medical Examination, without objection. On February 26, 2016, PA Gruner completed Child Medical Examinations on Jim and Amy at the KARE House. As part of the Child Medical Examination process, the juveniles completed a medical history with PA Gruner and underwent Forensic Interviews with Savannah Yummit, Victim Advocate, as observed by PA Gruner.
>
> 16. Victim Advocate Yummit testified and the Court finds as fact as follows. Ms. Yummit observed bruising on Jim;

the juvenile told her it was a bite mark, and stated, "Dad and I got in a fight about Mommy and Dad bit me." Jim stated that the Respondent Father Blankenship "broke rules" about Amy's private parts, and he had seen other private parts in that Mr. Blankenship has shown him a video of a man and woman. Amy reported to Ms. Yummit that the Respondent Father Stokely was in jail for dragging Jim, and another time she has seen Mr. Stokely drag [Jim] by his shirt. When Ms. Yummit brought up the issue of private parts with Amy, the juvenile immediately stated, "Speaking of private parts," the Respondent Mother and Respondent Father Blankenship had touched her in her "no-no box" and on her breasts on more than one occasion. They took their hands and touched her at the same time; sometimes with her clothes on and sometimes with her clothes off; and that "it felt weird and not right." Amy also stated that Mr. Blankenship had shown her videos of breasts "moving" and also shown her photos of breasts.

17. PA Gruner testified and the Court finds as fact as follows. Jim was cooperative and calm and made eye contact with her during the course of the Child Medical Examination. Although Jim declined to get undressed or allow her to examine his private parts, PA Gruner otherwise physically examined the juvenile. Jim stated to PA Gruner, "Me and dad got in a fight and he bit me. I miss my dad." PA Gruner observed injuries on Jim that included three- to four-inch bruises on both forearms, right flank bruising, and a bruise on his right calf. She found that the bruise on Jim's left foreman was "consistent with a bite mark." Jim reported that the bruise was a bite mark when his dad was trying to give him "an old-fashioned whoopin;" the juvenile turned around, and the Respondent Father Stokley bit him. PA Gruner's expert opinion is that Jim's bruises were consistent with non-accidental trauma, and the Court finds the same as fact.

18. During the course of Amy's Child Medical

Examination, she stated to PA Gruner that "sometimes it burns to pee." Amy described that her terminology for her private parts was her "no-no box." The Court finds as fact that Amy reported to PA Gruner as follows: "Mom and Walter" had touched her no-no box. When the Respondent Mother touched her no-no box, it hurt because of her long fingernails; the Respondent Mother's 3rd and 4th fingers had broken nails, and they scratched the juvenile's genitals. When Walter touched her no-no box it did not hurt because he had short fingernails. Walter had touched her breasts also and, "He was drunk." When this happened, Amy was lying in the middle between the Respondent Mother and Respondent Father Blankenship, sometimes with her clothes on and sometimes with her clothes off.

. . . .

50. Jim . . . Stokely is an Abused juvenile, as defined by N.C.G.S. 7B-101(1), by the Respondent Mother, the Respondent Father Stokely, and the Respondent Father Blankenship.

51. Jim . . . Stokely is a Neglected juvenile, as defined by N.C.G.S. 7B-101(15), by the Respondent Mother, the Respondent Father Stokely, and the Respondent Father Blankenship.

52. Amy . . . Stokely is an Abused juvenile, as defined by N.C.G.S. 7B-101(1), by the Respondent Mother, Respondent Father Blankenship, and the Respondent Father Stokely.

53. Amy . . . Stokely is a Neglected juvenile, as defined by N.C.G.S. 7B-101(15), by the Respondent Mother, the Respondent Father Blankenship, and the Respondent Father Stokely.

"'Hearsay' is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." N.C. Gen. Stat. § 8C-1, Rule 801(c) (2017). "Hearsay is not admissible except as provided by statute" or the Rules of Evidence. N.C. Gen. Stat. § 8C-1, Rule 802 (2017). Rule 803(4) creates an exception to the hearsay rule for statements made for purposes of medical diagnosis or treatment. Our State Supreme Court stated, "Rule 803(4) requires a two-part inquiry: (1) whether the declarant's statements were made for purposes of medical diagnoses or treatment; and (2) whether the declarant's statements were reasonably pertinent to diagnosis or treatment." *State v. Hinnant*, 351 N.C. 277, 284, 523 S.E.2d 663, 667 (2000).

The rationale for this rule is "statements made for purposes of medical diagnosis or treatment are inherently trustworthy and reliable because of the patient's strong motivation to be truthful." *Id.* at 284, 523 S.E.2d at 668. Therefore, the "proponent of Rule 803(4) testimony must affirmatively establish that the declarant had the requisite intent by demonstrating that the declarant made the statements understanding that they would lead to medical diagnosis or treatment." *Id.* at 287, 523 S.E.2d at 669. In determining whether a child's statements are admissible, "the trial court should consider all objective circumstances of record

surrounding declarant's statements in determining whether [the child] possessed the requisite intent under Rule 803(4)." *Id.* at 288, 523 S.E.2d at 670.

In determining the intent for diagnosis or treatment, *Hinnant* explains a court looks to whether the child understood the importance of truthful answers; the circumstances under which and to whom the child made the statements; the interview's setting; and the nature of the questions posed to the child. *Id.* at 287-88, 523 S.E.2d at 669-70. It is not required for all of these indicators to be present. Rather, the cases demonstrate these circumstances should be viewed in their totality. *See State v. Lewis*, 172 N.C. App. 97, 104, 616 S.E.2d 1, 5 (2005). Furthermore, there is no prohibition on statements gathered in interviews serving the dual purpose of medical intervention and prosecution. *See State v. Isenberg*, 148 N.C. App. 29, 38, 557 S.E.2d 568, 574 (2001).

In this case, law enforcement initiated the Child Medical Exam ("CME") following their arrest of respondent-father Stokely. Physician Assistant ("PA") Gruner set her role apart from that of law enforcement:

> My role is to listen to the child's report of the events, examine the child, document the bruises and assure that the child doesn't need advanced medical care. My role is not to assume how he obtained the bruises or to criminally convict anyone. My role is just to collect the information and document it.

Additionally, the declarant juveniles had a proper treatment motive. First Forensic

Interviewer Savannah Yummit ("Yummit") explained to the juveniles the need for truthful answers. Jim expressed he understood by promising to tell the truth. Amy also indicated she understood by promising to tell the truth and to only tell Yummit "things that really happened."

At the juveniles' entry into the KARE facility, they were introduced to their interviewers as a team. Each individual introduced him or herself according to their certifications and qualifications. Gruner testified she was present for the juveniles' forensic interviews, where she again introduced herself as a physician's assistant. To ensure her role as medical personnel was clear, she explained herself as "the provider that would be there and we'll do well child checks." Gruner also explained, "what we are going to be doing today is similar to what you would experience at your office visits at your pediatrician's office." Furthermore, Gruner wore a nametag identifying herself as "Kristen Gruner, PA-C SANE-P," and a stethoscope around her neck. Prior to the medical exam, Gruner explained the medical purpose of the juveniles' visit:

> [W]e try to make it known to the child that the examination is nothing – not much more than they would have if [at] their pediatrician office, a head to toe examination. The purpose of which is to just make sure that their body is safe and okay and not damaged. Also we're looking for any kind of signs of neglect and you know – like their weight and height is appropriate with their age. So, we just want them to understand that the examination is going to be something that's going to serve to reassure them that their body is okay and safe.

Additionally, Yummit, the forensic interviewer, explained to the juveniles she would share her information with the physician's assistant. Yummit told Jim and Amy, it is "my job to make sure that kids are safe and healthy."

Gruner and Yummit conducted their interviews in a medical environment. After discussing medical history with Gruner in a separate room, the children went to a medical examination room where "their weight and vital signs [were] collected and vision tests" were taken. The medical exam room contained "the medical exam table and lights and medical equipment, blood pressure cuff and otoscope and thermometers and that sort of thing."

Yummit received RADAR training specific to her work as a forensic interviewer:

> RADAR training is North Carolina's protocol for interviewing children. It stands for recognizing abuse disclosure types and responding. Its basically just non-biased questions that – non-leading protocol and how to gauge whether a child is safe and healthy basically.

Yummit also received extensive training as to not to lead children during an interview. Yummit initiated her interview with Jim by allowing him to provide narrative answers about things he enjoyed such as playing video games and playing outside. Likewise, Gruner stated she employed non-leading questions and, when collecting medical history, "it's a broad questioning of the body's different system.

And that guides a focused physical assessment."

We note the children's statements actually did result in diagnosis and treatment. Based on her medical examination, Gruner determined Jim's injuries were consistent with non-accidental trauma. Gruner's treatment recommendations for Jim included mental health treatment, no contact with respondent-father Stokely or the respondent-mother, and a trauma assessment for Trauma-Focused Cognitive Behavioral Therapy. Gruner's treatment recommendations for Amy included mental health treatment and for Amy to also undergo Trauma-Focused Cognitive Behavioral Health Therapy. Gruner also recommended there be no more corporal punishment and noted respondent-father Blankenship's and respondent-father Stokely's households were not safe for Jim and Amy. Where the statements of children did, in fact, lead to diagnosis and treatment, this is properly considered in support of admissibility. *See In re Mashburn*, 162 N.C. App. 386, 395, 591 S.E.2d 584, 591 (2004).

We conclude Jim's and Amy's statements to Yummit and Gruner were made under circumstances that promote truthfulness and reliability. The juveniles' statements were also pertinent to their diagnosis and treatment. Accordingly, the trial court did not err in considering Yummit's and Gruner's testimony regarding their treatment of Jim and Amy. We affirm the decision of the trial court.

AFFIRM.

Judges DIETZ and ZACHARY concur.

Report per Rule 30(e).