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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA 17-1212

Filed: 20 March 2018

Guilford County, Nos. 17 JA 164-66

IN THE MATTER OF: A.R., D.G., T.G.

Appeal by respondent-mother from order entered 4 August 2017 by Judge Tonia A. Cutchin in Guilford County District Court. Heard in the Court of Appeals 21 February 2018.

Mercedes O. Chut for petitioner-appellee Guilford County Department of Health and Human Services.

Richard Croutharmel for respondent-appellant mother.

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

BERGER, Judge.

Respondent-mother appeals from the trial court's order adjudicating her children, A.R. ("Andy"), D.G. ("Debbie"), and T.G. ("Tonya")[1] neglected and dependent. Respondent-mother contends the trial court made findings of fact that

[1] Pseudonyms are used throughout to protect the identity of the children pursuant to N.C.R. App. P. 3.1(b), and for ease of reading.

are unsupported by clear and convincing evidence necessary to sustain an adjudication of neglect and dependency regarding her three minor children. For the following reasons, we affirm.

Factual and Procedural Background

On March 2, 2017, Guilford County Department of Health and Human Services ("GCDHHS") received a report alleging three children had been left alone unsupervised for three weeks at their home. At the time of the report, Andy was fourteen years old, Debbie was fifteen years old, and Tonya was sixteen years old. Ashley Knight, a GCDHHS Social Worker, was assigned the case and interviewed the children at their respective schools. From the interviews with the children, Ms. Knight learned that there was no adult living in the home, and Respondent-mother was away. During one of the interviews, Tonya stated that she had last seen her mother the two weeks prior to the interview and that some adults would occasionally check on them a couple of times per week. Andy stated that Respondent-mother would call them once per week to talk to them, but that they could not call her, and that he thought she was incarcerated.

GCDHHS determined that Respondent-mother was no longer employed at a trucking company, and had been incarcerated in Rowan County Jail since February 2, 2017. Kadisa Bradley, a friend of Respondent-mother, had been bringing some food to the house, and Respondent-mother had left her Food Stamp Card at the home for

the children to use. Tonya had admitted to driving to the grocery store to get food for the children although she was an unlicensed driver. Andy and Debbie had been living with their paternal great-grandmother over a span of ten years until December 2016 and had since moved into Respondent-mother's home.

On March 2, 2017, a GCDHHS Supervisor visited Respondent-Mother's home after-hours, between 4:00 p.m. and 6:00 p.m., to speak to the children. The social worker determined that there was not an adult or caregiver present at the house, and did not enter the home because no adult was present. The GCDHHS Supervisor took the children to the GCDHHS Office. Andy and Debbie were placed with the paternal great-grandmother, Avella Bessent, and Tonya was placed with her godmother, Ms. Bradley.

On March 3, 2017, GCDHHS filed petitions alleging the children were neglected and dependent. The petitions specifically alleged (1) Respondent-mother left the children home unsupervised and unattended for approximately one month prior to the petition being filed, (2) Respondent-mother was currently incarcerated, (3) Respondent-mother had an extensive criminal history, (4) the children were at risk of harm, and (5) it was contrary to the safety and best interests of the juveniles to continue to be in the custody of Respondent-mother.

On July 5, 2017, the trial court held adjudication and disposition hearings. The trial court entered an Adjudication and Disposition Order on August 4, 2017

containing findings of fact and conclusions of law adjudicating the juveniles neglected and dependent due to Respondent-mother making no plan for the supervision of the children while she was incarcerated and because there was no adult living with the children during that time. Respondent-mother timely appeals.

Analysis

"The role of this Court in reviewing a trial court's adjudication of neglect and abuse 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 T.H.T.*, 185 N.C. App. 337, 343, 648 S.E.2d 519, 523 (2007) (citation, quotation marks, and brackets omitted), *affirmed as modified*, 362 N.C. 446, 665 S.E.2d 54 (2008). "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." *Id.* (citation omitted).

A "neglected juvenile" is

> [a] juvenile who does not receive proper care, supervision, or discipline from the juvenile's parent, guardian, custodian, or caretaker; or who has been abandoned; or who is not provided necessary medical care; or who is not provided necessary remedial care; or who lives in an environment injurious to the juvenile's welfare; . . . or who has been placed for care or adoption in violation of law.

N.C. Gen. Stat. § 7B-101(15) (2017). "In order to adjudicate a juvenile neglected, our courts have additionally required that there be some physical, mental, or emotional

impairment of the juvenile or a substantial risk of such impairment as a consequence of the failure to provide proper care, supervision, or discipline." *In re Stumbo*, 357 N.C. 279, 283, 582 S.E.2d 255, 258 (2003) (citation and internal quotation marks omitted). "It is well-established that the trial court need not wait for actual harm to occur to the child if there is a substantial risk of harm to the child in the home." *In re D.B.J.*, 197 N.C. App. 752, 755, 678 S.E.2d 778, 780-81 (2009) (citation and quotation marks omitted).

The trial court also adjudicated the juveniles dependent. A "dependent juvenile" is

> [a] juvenile 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) (2017).

The trial court made the following unchallenged findings of fact supporting the adjudication of the juveniles as neglected and dependent:

> 12. On March 2, 2017, Social Worker Ashley Knight went to Southern Guilford High School and interviewed [Tonya] and [Debbie]; and then to Southern Guilford Middle to interview [Andy]. The two older juveniles indicated that their mother called on a weekly basis and her friend, [Ms.] Bradley, would stop by the house to "check on them." The juveniles stated to SW Knight that their mother was a long-distance truck driver for [Mabe's] Trucking Company and that was the reason she was not in the home. The

juveniles also stated that the mother's boyfriend, Michael Davis, spent the night in their home on the weekends and that he too was a long-distance truck driver.

13. [Andy], by contrast, stated that he believed that his mother was incarcerated because they could not call her, but she would call once a week.

14. After speaking with the juveniles, Social Worker Knight contacted her supervisor to alert her of the situation regarding no adult supervision being in the home.

15. When the Social Worker arrived at the home on March [2], 2017, approximately 4:00 p.m., there was no adult present, and therefore, she did not enter the residence.

. . . .

17. The juveniles provided the Social Worker with a telephone number for Michael Davis. Although there were repeated calls, left phone messages, and text messages regarding the allegations, Mr. Davis did not respond.

18. On March 2, 2017 the Social Worker contacted [Mabe's] Trucking Company and was informed that the mother's employment was terminated, but they could not provide any contact information. A central register search was completed under the mother's name for past Child Protective Services, and the search resulted in Rowan County. The Social Worker then searched the jail in Rowan County and learned that the mother was incarcerated, where she had been placed on February 2, 2017, a month prior to receiving the report.

. . . .

20. The juveniles informed the Social Worker that the putative paternal [great-]grandmother and the mother had an argument around Christmas time, and removed them from Ms. Bessent's home. They explained that they were

> not able to visit and not allowed to have contact with her. Prior to the mother going to jail in February 2017, [Debbie] and [Andy] had lived with [Ms. Bessent] since [Andy] was two years old. The mother was incarcerated over a span of ten years, and [Debbie] and [Andy] resided with Ms. Bessent during that time. They returned to live with their mother around Christmas 2016, until March 2, 2017. At the time of the filing of the petition, the Social Worker was aware there was a conflict between the mother and putative paternal great-grandmother, and that mother would not approve of this home as a placement.
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> . . . .
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> 23. The mother presented in court a Power of Attorney identified as Respondent's Exhibit #1 giving Ms. Bradley POA over the juveniles while she was incarcerated; however, the Department was not aware of the power of attorney until after the petition was filed.

Respondent-mother contends the trial court's findings are unsupported by competent evidence that provide a legal basis for neglect and dependency, and that GCDHHS failed to meet their burden of clear and convincing evidence of actual harm or a substantial risk of harm. Respondent-mother specifically challenges the following findings of fact made by the trial court in the order adjudicating the children neglected and dependent:

> 11. The Guilford County Department of Health and Human Services became most recently involved with this family on March 2, 2017. At the time of the report [Respondent-mother] had not been home for a month and the juveniles were left home alone without adult supervision.
>
> . . . .

16. The juveniles were left home alone for approximately three weeks without adult supervision. Further, the juveniles were unaware that the mother had been in the Rowan County Jail for the last month; and thought that she was still away for work. The mother was serving a 60-day sentence and was aware that she would be serving that sentence prior to February 2, 2017. However, she did not inform the younger juveniles.

. . . .

19. The mother offered evidence that her boyfriend's niece, Ebony Davis[,] was in the home with the juveniles and slept over every night. The Court did not find that evidence to be credible.

. . . .

21. When the mother was incarcerated, there [was] no adult living or residing in the residence who was able to provide adequate supervision of the juveniles to ensure that they went to sleep on time, that they attended school regularly, [or] were properly fed and clothed. The mother did not share with all the juveniles that she would be serving at least a 60-day sentence in custody at the Rowan County Detention Center, and no adequate plan was in place. She did not provide adequate supervision at the time that the petition was filed.

22. There was some food at the residence; however, the mother left the food stamp card and the keys to her car with [Tonya], [16] years of age [at the time of the report], and on more than one occasion, [Tonya] did operate a motor vehicle to retrieve food and necessities without being properly licensed through the Department of Motor Vehicles in the State of North Carolina.

. . . .

> 24. The mother did place the juveniles in an injurious environment, even though there was an appropriate child care arrangement available with Ms. Bessent, who had been providing proper care for the juveniles for several years.

"Review of a trial court's adjudication of dependency, abuse, and neglect requires a determination as to (1) whether clear and convincing evidence supports the findings of fact, and (2) whether the findings of fact support the legal conclusions." *In re J.M.*, ___ N.C. App. ___, ___, 804 S.E.2d 830, 837 (citation omitted), *disc. review allowed*, ___ N.C. ___, 807 S.E.2d 146 and ___ N.C. ___, 807 S.E.2d 564 (2017). "Where no exception is taken to a finding of fact by the trial court, the finding is presumed to be supported by competent evidence and is binding on appeal." *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991) (citations omitted). However, it is not the role of this Court to pass judgment on the credibility of evidence presented by witnesses. *See In re K.W.*, 192 N.C. App. 646, 653, 666 S.E.2d 490, 496 (2008).

> [W]hen a trial judge sits as both judge and juror, as he or she does in a non-jury proceeding, it is that judge's duty to weigh and consider all competent evidence, and pass upon the credibility of the witnesses, the weight to be given their testimony and the reasonable inferences to be drawn therefrom.

In re Whisnant, 71 N.C. App. 439, 441, 322 S.E.2d 434, 435 (1984) (citation and internal quotation marks omitted).

Extensive evidence and testimony was presented at the adjudication before the trial court. Social Worker Knight's testimony detailed the juveniles' varying

statements to GCDHHS regarding their adult supervision, or lack thereof, and established a pattern of unstable and inconsistent care for the children in the home. Further, a preferable alternative relative placement for caretaking was available for the children with the paternal great-grandmother, where two of the children had lived full-time until two months prior to Respondent-mother leaving the home. Respondent-mother actively avoided placing the children in this alternative child care arrangement. *See* N.C. Gen. Stat. § 7B-101(9). Competent evidence was established from testimony regarding the adult supervision in the home. Andy stated:

> [Ms. Bradley] was not staying overnight there. She stayed, probably -- I think she stayed one night, and I didn't see her no more. She probably would be there in the morning, and then I come home, and the door would be unlocked, so who knows who was there at the time in between when I was at school, but I know that she wasn't.
>
> And Michael Davis, I didn't even know who that was until a couple of days ago, because I was told his name was Montana. So -- and he was there on the weekends, but probably left, like, early in the morning. You would never see him leave. So you probably see him one night, and then he would be in the room, and the next morning he would not be there.

Andy's testimony corroborates Findings of Fact 11, 19, and 21 pertaining to inadequate and inconsistent adult supervision in the home and failure to provide for an alternative arrangement, which directly supports the adjudication of dependency. Andy also testified to the following:

> Q. Okay. And where did you believe your mother was?
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> A. [S]he kept telling me that she was at a job, and every time she calls, like every other week, she would be like, "I will be back the following week," and then come back and change it. Then when I started thinking hard about it, . . . how we couldn't contact her, she wasn't calling, she kept changing dates, and I thought about how her background was, how much she had been to jail continuously, and I put pieces together, and that eventually was my thought, that she was incarcerated.

This testimony directly supports the trial court's finding that at least one child did not understand where Respondent-mother was located for extended periods of time, and specifically supports Finding of Fact 16.

Andy and Tonya presented conflicting testimony regarding Tonya's use of the car alleged in Finding of Fact 22 and how the children obtained food on a regular basis. However, it is not this Court's role to weigh the credibility of evidence presented at trial. *See In re Whisnant*, 71 N.C. App. at 441, 322 S.E.2d at 435. Therefore, we affirm Finding of Fact 22 as conclusive, even though "some evidence supports contrary findings." *In re Helms*, 127 N.C. App. 505, 511, 491 S.E.2d 672, 676 (1997).

Respondent-mother also challenges Finding of Fact 24 in which the trial court found that the children were living in an injurious environment that subjected them to a substantial risk of harm. "[T]his Court has consistently required that there be some physical, mental, or emotional impairment of the juvenile or a *substantial risk*

of such impairment as a consequence of the failure to provide proper care, supervision, or discipline." *In re Safriet*, 112 N.C. App. 747, 752, 436 S.E.2d 898, 901-02 (1993) (emphasis added) (citation and quotation marks omitted); *see also In re Stumbo*, 357 N.C. at 283, 582 S.E.2d at 258.

> Any child whose physical, mental or emotional condition has been impaired or is in danger of becoming impaired as a result of the failure of his or her parent to exercise that degree of care consistent with the normative standards imposed upon parents by our society may be considered neglected . . . .

In re Thompson, 64 N.C. App. 95, 101, 306 S.E.2d 792, 796 (1983) (internal citation and internal quotation marks omitted). "Section 7B-101(15) affords the trial court some discretion in determining whether children are at risk for a particular kind of harm given their age and the environment in which they reside." *In re N.G.*, 186 N.C. App. 1, 8-9, 650 S.E.2d 45, 50 (2007) (citation and quotation marks omitted), *affirmed per curiam*, 362 N.C. 229, 657 S.E.2d 355 (2008).

Here, the trial court considered harm that could befall children in their teenage years while living for extended periods of time without adult supervision, in addition to maintaining the regular activities and responsibilities of day-to-day living. The trial court heard evidence of athletic practices, school bus schedules, in-school disciplinary matters, and buying groceries that were primarily the children's responsibilities to handle on a daily basis for a planned period of up to sixty days

without proper adult supervision. This supports the trial court's Finding of Fact 24 that the children were subjected to a substantial risk of harm.

Respondent-mother challenges Finding of Fact 30, which is essentially a conclusion of law, and simply repeats Conclusion of Law 2 in the trial court's order adjudicating the juveniles neglected and dependent. "The determination of neglect [and dependency] requires the application of the legal principles set forth in N.C. Gen. Stat. § [7B-101(9), (15) (2017)] and is therefore a conclusion of law." *In re Helms*, 127 N.C. App. at 510, 491 S.E.2d at 675-76. "[I]f a finding of fact is essentially a conclusion of law[,] it will be treated as a conclusion of law which is reviewable on appeal." *See In re M.R.D.C.*, 166 N.C. App. 693, 697, 603 S.E.2d 890, 893 (2004) (citation, quotation marks, brackets, and ellipses omitted), *disc. review denied*, 359 N.C. 321, 611 S.E.2d 413 (2005); *see also Lamm v. Lamm*, 210 N.C. App. 181, 189, 707 S.E.2d 685, 691 (2011).

Finding of Fact 30 states: "Based on the above Findings of Fact[,] the juveniles are adjudicated neglected and dependent." Here, the trial court made sufficient findings of fact regarding a lack of an alternative child care arrangement, and a substantial risk of harm during the period without adult supervision. Findings of Fact 11-13, 15-22, and 24 contained in the order sufficiently support the conclusion of law that the children were adjudicated neglected and dependent.

Based on the record on appeal, it is clear there is evidence that the children were subjected to a substantial risk of harm while unsupervised for several weeks with, at best, inconsistent and unfamiliar adults visiting the home, and the trial court made sufficient findings of fact in the appealed order necessary to sustain an adjudication of neglect and dependency. Respondent-mother merely contested the credibility and weight of the evidence given at the hearing by the trial court, and asks this Court to exercise judgment on these issues, which is outside of our appellate function. *See In re K.W.*, 192 N.C. App. at 653, 666 S.E.2d at 496. Despite Respondent-mother's contention that the "proof is in the pudding" that the children were unharmed and therefore not neglected and dependent, the evidence does not need to support a particular instance of physical or mental harm to sustain an adjudication of neglect or dependency.[2]

Our Supreme Court has stated that the parents are the "natural protectors, for maintenance and education. But courts of justice may[,] in their sound discretion[,] and when the morals or safety of interests of the children strongly require it,

[2] This Court notes that evidence in the disposition order, but not presented at the adjudication hearing, would have also supported findings of specific, repeated physical harm to at least one, potentially two, of the children if presented at the adjudication hearing. Unchallenged Finding of Fact 42 states: "[Debbie] states that she wishes to remain permanently in the home of Ms. Bessent who has loved and cared for her most her life and because she is more familiar with Ms. Bessent than her mother. [Debbie] recently shared with Social Worker that she is afraid to return to her mother's home. She stated that, while briefly residing with her mother, December 2016 - March 2017[], she was 'beaten up[] four times.' [Debbie] explained that she had been physically assaulted by her mother for not wanting to participate in traditional Muslim practices, not sharing her mother's opinions and other minor incidents. [Debbie] also shared that her mother encouraged her to get boxing lessons so they could have a 'fair' physical fight."

withdraw the [children] from the custody of the father or mother and place the care and custody of them elsewhere." *Latham v. Ellis*, 116 N.C. 30, 33, 20 S.E. 1012, 1013 (1895) (citation and quotation marks omitted), *disapproved of on other grounds by Griffith v. Griffith*, 240 N.C. 271, 81 S.E.2d 918 (1954). Here, Respondent-mother failed to adequately provide for the safety and interests of her children by leaving them unsupervised, and exposed them to a substantial risk of harm over a period of several weeks. The trial court made findings of fact to sufficiently support the adjudication of the children as neglected and dependent.

Conclusion

The order adjudicating the children neglected and dependent is affirmed because the trial court made sufficient findings of fact necessary to sustain said adjudication.

AFFIRMED.

Judges ELMORE and INMAN concur.

Report per Rule 30(e).