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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-901

Filed: 3 April 2018

Wake County, Nos. 16 JA 265-67

IN THE MATTER OF: P.R., C.R., Jr., A.R.

Appeal by Respondent-Father from order entered 10 April 2017 by Judge Monica M. Bousman in District Court, Wake County. Heard in the Court of Appeals 8 March 2018.

Wake County Attorney's Office, by Mary Boyce Wells, for Wake County Human Services, Petitioner-Appellee.

Jeffrey William Gillette for Respondent-Appellant Father.

Ellis & Winters LLP, by Troy D. Shelton, for Guardian ad Litem.

McGEE, Chief Judge.

Respondent-Father ("Respondent") appeals from an order adjudicating his children, P.R., C.R., Jr., and A.R. (together, "the children"), as neglected juveniles. For the reasons discussed below, we affirm.

I. Background

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Respondent and the children's mother¹ ("the mother") (collectively, "the parents") have a longstanding history of family conflict that has included frequent physical and verbal altercations, often in the presence of the children. The parents' family violence began in 2005, shortly after their first child was born. In addition to physical violence between the parents, Respondent allegedly struck the children with a belt, on some occasions leaving marks or causing bleeding, and in one instance held the head of one of the children under running water as a punishment. In June 2015, the parents consented to a domestic violence protection order that prohibited any further acts of domestic violence or threats of domestic violence. Although the parents separated in or around June 2015, problems continued. The parents "had numerous altercations during the exchange of the children on school grounds and daycare, and police [were] routinely . . . called to restore order." The parents "continue[d] to argue in front of the children" and struggled "to co-parent for the best interests of the children." The oldest child was diagnosed with "[p]ost[-]traumatic [s]tress [d]isorder as a result of the problems between her parents[.]" and two of the children expressed anxiety and distress to school social workers over their parents' behavior. Neither parent consistently complied with the terms of their custody agreement.

¹ The mother has not appealed the trial court's order adjudicating the children as neglected and is not a party to this appeal.

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Wake County Human Services (“WCHS”) received a report on or about 26 September 2016 that the children were neglected and being subjected to inappropriate discipline. A WCHS social worker (“the social worker”) conducted home visits at each parent’s residence, and interviewed Respondent, the mother, and two of the children. The social worker testified that, although she had no safety concerns at that time, she “did not feel comfortable with closing the case out[,]” and decided to attend the parents’ next custody hearing on 10 October 2016. At that hearing, Respondent engaged in a verbal confrontation with the mother’s fiancé in the court lobby. The trial court asked WCHS to resolve the family’s situation out of court. The social worker conducted another safety assessment and concluded the children were “safe with conditions.” WCHS held a Child Family Team Meeting with the parents on 18 October 2016 to discuss the oldest child’s need for therapy and mental health counseling. The parents were unable to agree on a treatment plan at that meeting, and neither Respondent nor the mother subsequently sought therapy for the child.

The mother contacted WCHS on 5 December 2016 and stated “things were getting worse for the children and that she did not know what to do other than to file a motion with the [c]ourt in the custody case.” WCHS filed juvenile petitions on 9 December 2016 alleging the children were neglected and dependent juveniles. WCHS obtained non-secure custody of the children and placed them in foster care.

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The trial court heard the petitions on 1-2 March 2017. The court entered an order on 10 April 2017 adjudicating the children as neglected juveniles. It dismissed the allegation of dependency based on insufficient evidence.

Respondent filed a letter with the clerk of court on 10 May 2017, stating as follows:

I am writing to [a]ppeal the matter that came before the court by way of [p]etition dated December 9, 2016. That was heard on March 1, 2017. For the reasons but not limited to it going against the parents[] . . . right to express their civil [r]ights. Plus the fabrications of evidence.

The letter was not signed by Respondent's trial counsel. We note that both N.C. Gen. Stat. § 7B-1001(c) (2017) and N.C.R. App. P. 3.1(a) provide that a notice of appeal in an abuse, neglect, or dependency case must be signed by both the appealing party and the appellant's trial counsel, if any. Rule 3 is jurisdictional, and its requirements are mandatory. *McQuillin v. Perez*, 189 N.C. App. 394, 397, 657 S.E.2d 924, 926-27 (2008). Failure to comply with the requirements of this rule "subjects an appeal to dismissal." *Id.* Accordingly, because Respondent's notice of appeal was signed by Respondent only, we must dismiss the appeal. *See In re L.B.*, 187 N.C. App. 326, 332, 653 S.E.2d 240, 244 (2007) ("Because we hold that a GAL's signature on the notice of appeal is not sufficient to grant this Court jurisdiction, we cannot address the merits of the appeal. Accordingly, we dismiss the matter.").

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However, Respondent has also filed a petition for writ of *certiorari* to obtain review of the trial court's order. See N.C.R. App. P. 21(a)(1) ("The writ of certiorari may be issued in appropriate circumstances by either appellate court to permit review of the judgments and orders of trial tribunals when the right to prosecute an appeal has been lost by failure to take timely action[.]"). In support of the petition, Respondent submits that he gave timely notice of appeal that "substantially satisfied" the requirements of N.C. Gen. Stat. § 1001(b) (2017). Respondent further observes that although there is no indication in the record that Respondent served notice of appeal on either WCHS or the guardian *ad litem*, neither party has raised the issue of defective notice and they participated in settling the record on appeal. See *Hale v. Afro-American Arts International*, 335 N.C. 231, 436 S.E.2d 588 (1993). We exercise our discretion to issue the writ of *certiorari* and reach the merits of Respondent's appeal. See *In re A.S.*, 190 N.C. App. 679, 683, 661 S.E.2d 313, 316 (2008).

II. Respondent's Appeal

Respondent argues on appeal the trial court erred by adjudicating the children as neglected because there was insufficient evidence to support an adjudication of neglect. We disagree.

A. *Standard of Review*

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“The role of this Court in reviewing a trial court’s adjudication of neglect . . . 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) (quoting *In re Gleisner*, 141 N.C. App. 475, 480, 539 S.E.2d 362, 365 (2000)). “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.* Unchallenged findings of fact are also binding on appeal. *See Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991).

B. Analysis

A neglected juvenile is defined in pertinent part as

[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[.]

N.C. Gen. Stat. § 7B-101(15) (2017). “In determining whether a juvenile is a neglected juvenile, it is relevant whether that juvenile . . . lives in a home where another juvenile has been subjected to abuse or neglect by an adult who regularly lives in the home.” *Id.*

In the present case, the trial court’s order adjudicating the children neglected included the following findings of fact:

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6. The children have repeatedly witnessed the domestic violence in the home between the parents and they have been traumatized by witnessing the chaos and violence in the home. The violence goes back to at least since shortly after [the oldest child] was born. Both parents have physically struck each other and this has been ongoing. [Respondent] strangled [the mother] while she was pregnant with [one of the children] while [one of the other children] was present.

7. [The oldest child] is often upset during the school day and has to leave the classroom due to anxiety from the conflict between her parents. School officials spoke with the parents about the effect the conflict was having on [the oldest child] but the problems have continued. At meetings with school officials the parents have struggled to understand the impact their conflict has had on the children and they have focused on who was “right[.]”

8. The parents separated in or around June 2015 but the problems have continued. The parents have often had to call 911 when they are exchanging the children. They have had numerous altercations during the exchange of the children on school grounds and daycare, and police have routinely had to be called to restore order. [Respondent] and [the mother]’s current boyfriend . . . got into a physical altercation outside of Judge Denning’s courtroom while the children were present. [Respondent] and [the mother] continue to argue in front of the children and they are unwilling or unable to come together as a unit to co-parent for the best interests of the children. Neither parent is following the terms of the custody agreement.

9. [Respondent] has often struck the children violently with a belt. He has done so in a way that left marks [on one of the children] that were approximately four inches long and that left marks from being struck. [Respondent] struck [one of the children] with a belt on at least one occasion when [the child] was less than two years old. On

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one occasion he struck [one of the children] with a belt such that [the child] bled from her vagina. On one occasion he held [one of the children's] head under the water to punish him.

10. The parents have used curse words such as “asshole[,]” “bitch[,]” and “nigger” to insult each other while the children were present.

11. [The oldest child] has asked her parents to stop these behaviors but they have been unwilling or unable to act appropriately.

12. The oldest child . . . feels overwhelmed and depressed and has asked for help dealing with the situation. [The child] has a prior hospitalization for emotional distress and bother [sic] parents are aware that [the child] is in need of psychological help. Neither parent has called to schedule an appointment for mental health counseling for [the child]. [The child] was diagnosed with Post Traumatic Stress Disorder as a result of the problems between [the] parents.

. . . .

14. On October 18, 2016, WCHS conducted a [Child Family Team] meeting. [Respondent] and [the mother] were not in agreement and the meeting resulted in no plan being made. Neither parent scheduled an appointment for [the oldest child] to address her urgent mental health concerns. Neither parent provided the name of a proposed therapist to the other parent or WCHS for consideration.

15. On December 5, 2016 the mother contacted the social worker to state that things were getting worse for the children and that she did not know what to do other than to file a motion with the Court in the custody case. The turmoil and strife in the family has negatively affected the children and interfered with the parents providing proper

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care and supervision for the children to meet the children's need for a safe and stable home.

The findings thus showed that, shortly after the parents' oldest child was born in June 2005 and continuing through their separation in June 2015, Respondent and the mother had a tumultuous relationship that included family violence. After their separation, Respondent and the mother continued to have verbal altercations in the presence of the children. The trial court found that the discord between Respondent and the mother had a significant, negative impact on the children, including the oldest child's diagnosis with post-traumatic stress disorder. Neither parent made any effort to avoid conflict in front of the children, and neither parent sought treatment for the oldest child, despite knowing the child needed psychological help. The trial court also found there were multiple instances of inappropriate discipline of the children by Respondent.

Respondent contends the incidents of domestic violence reflected in the trial court's findings predated his separation from the mother and occurred years prior to the filing of the juvenile petitions in this case. According to Respondent, the past family violence was insufficient to support a finding of neglect absent evidence "that domestic violence was ongoing between the parents at the time WCHS filed its juvenile petitions." Respondent cites *In re J.A.M.*, ___ N.C. App. ___, 795 S.E.2d 262 (2016), in support of this argument. In *J.A.M.*, this Court concluded an adjudication of neglect was not supported by the findings of fact or the evidence, where "[n]o

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evidence was presented of any instances of domestic violence between [the parents] or that either parent had engaged in domestic violence while in [the child's] presence[.]” and “the father’s last proven incident of domestic violence occurred more than [forty-two] months prior to [the child’s] birth.” *Id.* at ___, 795 S.E.2d at 265. We note that during the pendency of Respondent’s appeal, our Supreme Court reversed this Court’s decision in *J.A.M.*² See *In re J.A.M.*, ___ N.C. ___, ___ S.E.2d ___, 2018 WL 1125084 (2018). Regardless, *J.A.M.* is factually distinguishable from the present case. Here, Respondent and the mother engaged in years of family violence that often did occur in the children’s presence. Even after the parents separated, they continued having verbal altercations, witnessed by the children, that at times required law enforcement intervention.

Respondent also challenges the trial court’s characterization of certain evidence. For example, Respondent contends that the evidence regarding the effect of the parents’ continuing conflict on the children was “more ambivalent,” such that the trial court’s findings did not “present the whole story[.]” Respondent further asserts the trial court improperly credited the testimony of the oldest child because there was evidence the child “was prone to exaggeration, dishonesty and attention seeking behaviors[.]” and because her testimony was “immature and inconsistent.”

² The Supreme Court’s reversal in *J.A.M.* was based on the Court’s conclusion that the respondent-mother’s testimony supported the trial court’s finding that she “failed to acknowledge her role in [her other children] entering custody and her [parental] rights [with respect to those children] subsequently being terminated.” See *J.A.M.*, 2018 WL 1125084 at *1.

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Finally, Respondent submits that his discipline of the children was mostly proper, and that the only instance of inappropriate discipline in evidence “was a one-time occurrence” that happened “in a moment of panic[.]”

Respondent’s arguments are misplaced. “When the trial court is the trier of fact, the court is empowered to assign weight to the evidence presented at the trial as it deems appropriate.” *In re Oghenekevebe*, 123 N.C. App. 434, 439, 473 S.E.2d 393, 397 (1996); *see also Kelly v. Kelly*, 228 N.C. App. 600, 605, 747 S.E.2d 268, 275 (2013) (“[T]his Court cannot substitute its judgment for that of the trial court in weighing the evidence. When the trial judge is authorized to find the facts, his findings, if supported by competent evidence, will not be disturbed on appeal *despite the existence of evidence which would sustain contrary findings.*” (citation and internal quotation marks omitted) (emphasis added)). In this case, the trial court’s findings were amply supported by testimony at the adjudication hearing that chronicled the parents’ longstanding conflict and its harmful effects on the children.

Respondent notes that the trial court’s findings mainly focused on the effects of the parents’ behavior on the oldest child, and argues there was insufficient evidence that the other two children were neglected. However, N.C.G.S. § 7B-101(15) provides that “[i]n determining whether a juvenile is a neglected juvenile, it is relevant whether that juvenile lives in a home . . . where another juvenile has been subjected to abuse or neglect by an adult who regularly lives in the home.” While

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this language “does not mandate a conclusion of neglect” as to the other children, “the trial judge has discretion in determining the weight to be given such evidence.” *In re P.M.*, 169 N.C. App. 423, 427, 610 S.E.2d 403, 406 (2005) (internal quotation marks and citation omitted). In the present case, the fact that the oldest child exhibited more overt symptoms of neglect did not preclude a conclusion by the trial court that her siblings – who lived in the same tumultuous environment – were also neglected. As Respondent conceded during his testimony, “domestic violence bothers the adults but also the children who witness it,” such that “[all] the children are the victims.” Moreover, there was evidence Respondent physically struck the youngest child with a belt when she was less than two years old, and disciplined the middle child by holding his head under water. These incidents are reflected in the trial court’s findings and further support the adjudication of neglect of all three children.

The trial court’s unchallenged findings of fact, chronicling the parents’ long history of physical violence and verbal altercations in the presence of the children, the negative impact of their behavior on the children, and the improper discipline of the children, supported its conclusion that the children were neglected juveniles. Accordingly, we affirm the trial court’s order.

AFFIRMED.

Judges BRYANT and STROUD concur.

Report per Rule 30(e).