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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-979

Filed: 17 April 2018

Randolph County, Nos. 12 JA 201, 16 JA 134-36

IN THE MATTER OF: B.D.A.I., M.B., M.T., and B.T.

Appeal by respondent-mother from order entered 7 June 2017 by Judge Robert M. Wilkins in Randolph County District Court. Heard in the Court of Appeals 22 March 2018.

Melissa Starr Livesay, Staff Attorney, for petitioner-appellee Randolph County Department of Social Services.

J. Thomas Diepenbrock for respondent-appellant mother.

Everett Gaskins Hancock, LLP, by Katherine A. King and James M. Hash, for Guardian ad Litem.

HUNTER, JR., Robert N., Judge.

Respondent-mother appeals from an order concluding her four children, B.D.A.I. ("Brian"), M.B. ("Mary"), M.T. ("Margaret"), and B.T. ("Beth"),[1] were neglected juveniles and it was in their best interest to remain in the custody of the Randolph County Department of Social Services ("DSS"). We affirm.

[1] Pseudonyms are used to protect the identity of the juveniles and for ease of reading.

I. Factual and Procedural History

On 18 November 2016, DSS filed petitions alleging all four children were neglected juveniles where (1) they did not receive proper care, supervision, or discipline from their parents and (2) lived in an environment injurious to their welfare. The petitions alleged respondent-mother and respondent-father, who is Mary's biological father and a caretaker for the other three children, both had substance abuse issues, used drugs in the presence of the children, and refused to submit to random drug screens. The petitions also alleged both parents had domestic violence issues and the children had been present in the home during a violent incident. According to the petitions, respondent-mother tested positive for Oxycodone at Mary's birth in April 2016, and Mary suffered withdrawal following her birth. Lastly, the petition alleged Brian, who was four years old at the time of the petitions, had previously been in DSS custody for approximately eighteen months due to respondent-mother's substance abuse, mental health issues, and unstable housing. The trial court issued non-secure custody orders for all four children around the same time DSS filed the petitions.

Following a two-day hearing, the trial court entered a combined adjudication and disposition order on 7 June 2017. In the adjudicatory portion of the order, the trial court concluded all four children were neglected because they did not receive proper care, supervision, or discipline from their parents or caretaker and lived in an

environment injurious to their safety and welfare. The adjudication was based on findings of fact related to the couple's domestic violence and substance abuse. As to their domestic violence, the trial court made, in pertinent part, the following findings: (1) respondent-mother drove to respondent-father's workplace and struck him in the face with a closed fist while holding a carabiner-type keychain, while Mary was in the back seat of the car; (2) the blow lacerated respondent-father's lower lip and chipped three teeth, and respondent-mother was charged with assault inflicting serious injury; (3) respondent-father subsequently assaulted respondent-mother and was charged with assault on a female; (4) respondent-father engaged in a physical altercation with the children's maternal grandfather in November 2016 following an argument between respondent-mother and respondent-father; (5) all four children witnessed the altercation from inside the grandparents' van; and (6) following the altercation, the children's maternal grandmother left the family's home with the children in her van and drove the maternal grandfather to the hospital.

As to substance abuse, the trial court found both parents had a history of using heroin and pills. On or about 20 September 2016, respondent-mother found respondent-father on the floor unresponsive. She suspected he had overdosed on pills, and called 911. Paramedics responded and respondent-father became conscious while the paramedics administered CPR. Additionally, Mary tested positive at birth for Oxycodone, and respondent-mother did not have a prescription for Oxycodone.

While the hospital treated Mary for Oxycodone withdrawal symptoms, the parents left the hospital with Mary against medical advice. This was before Mary received the full course of treatment. Finally, both parents refused to submit to random drug screens.

In a separate disposition portion of the order, the trial court concluded it was in the children's best interests to remain in DSS custody. The trial court also ordered respondent-mother to comply with various services, such as completing a substance abuse assessment and following recommendations. The trial court also ordered respondent-mother to maintain employment and housing, to complete a psychological evaluation, and to complete domestic violence treatment. Respondent-mother appealed. Respondent-father participated in the juvenile proceedings below, but does not appeal.[2]

II. Standard of Review

Our 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 Pittman*, 149 N.C. App. 756, 763-64, 561 S.E.2d 560, 566, *appeal dismissed, disc. review denied*, 356 N.C. 163, 568 S.E.2d 608 (2002), *cert. denied, Harris-Pittman v. Nash County Dept. of Social Servs.*, 538 U.S. 982, 155 L. Ed. 2d 673 (2003). "In a non-

[2] Brian's father and Beth's father did not participate in the juvenile proceedings. Margaret's father is deceased.

jury neglect adjudication, the trial court's findings of fact supported by clear and convincing competent evidence are deemed conclusive, even where some evidence supports contrary findings." *In re Helms*, 127 N.C. App. 505, 511, 491 S.E.2d 672, 676 (1997) (citations omitted). If competent evidence supports the findings, they are "binding on appeal." *In re McCabe*, 157 N.C. App. 673, 679, 580 S.E.2d 69, 73 (2003) (citations omitted).

"We review a trial court's dispositional order for abuse of discretion." *In re A.R.*, 227 N.C. App. 518, 520, 742 S.E.2d 629, 631 (2013). " 'A ruling committed to a trial court's discretion is to be accorded great deference and will be upset only upon a showing that it was so arbitrary that it could not have been the result of a reasoned decision.' " *Id.* at 520-21, 742 S.E.2d at 632 (quoting *White v. White*, 312 N.C. 770, 777, 324 S.E.2d 829, 833 (1985)).

III. Analysis

On appeal, respondent-mother first challenges the trial court's conclusion Brian, Margaret, and Beth were neglected juveniles. She, however, does not challenge the conclusion that Mary was a neglected juvenile.

A neglected juvenile is defined 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). Additionally, this Court has 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) (quoting *In re Thompson*, 64 N.C. App. 95, 101, 306 S.E.2d 792, 796 (1983)).

The trial court made approximately twenty-three findings of fact to support its adjudication, which are summarized *supra*. Respondent-mother challenges only one. As a result, the remaining findings of fact are presumed to be supported by competent evidence and are binding on appeal. *See In re M.D.*, 200 N.C. App. 35, 43, 682 S.E.2d 780, 785 (2009). Respondent-mother challenges finding of fact 21, which states, "[t]he Mother and [respondent-father] have substance abuse issues and domestic violence issues that impact their ability to safely and appropriately parent the minor children." Respondent-mother concedes both she and respondent-father had substance abuse and domestic violence issues. However, she argues the evidence does not support the finding these issues impacted their ability to safely and appropriately parent Brian, Beth, and Margaret. Thus, she challenges an ultimate finding made by the trial court in support of the neglect adjudication—the finding in which the trial court connected respondent-mother's actions to her children's well-being. Given the nature of finding of fact 21, respondent-mother's argument largely overlaps with her

challenge to the adjudication of neglect as a whole. Therefore, we will address respondent-mother's challenge to finding of fact 21 along with her challenges to the trial court's conclusion that Brian, Beth, and Margaret were neglected.

Respondent-mother argues the findings of fact and evidence do not support a conclusion the eldest three children were neglected. She contends the neglect of Mary is insufficient, standing alone, for an adjudication of neglect as to the other children, and that other factors must be present to suggest the neglect impacted the other children. She also argues the trial court failed to make findings of fact showing a pattern of continual or repetitive neglect, which would put the children at risk of harm. For example, she argues the fact Mary was born addicted to Oxycodone does not translate to a finding the other children were harmed. She also submits Mary was the only child present for the altercation at respondent-father's workplace, and there was only one other domestic violence incident in front of the other children. Respondent-mother also submits the paternal grandmother testified the parents were never impaired in front of the children, and the parents made arrangements for others to care for the children when they used controlled substances. This Court is not persuaded.

The statutory definition of neglect specifically provides "[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." N.C. Gen. Stat. § 7B-101(15). We have held "the weight to be given that factor is a question for the trial court[.]" *In re A.S.*, 190 N.C. App. 679, 690, 661 S.E.2d 313, 320 (2008), *aff'd per curiam*, 363 N.C. 254, 675 S.E.2d 361 (2009). "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) (quoting *In re McLean*, 135 N.C. App. 387, 395, 521 S.E.2d 121, 126 (1999)), *aff'd per curiam*, 362 N.C. 229, 657 S.E.2d 355 (2008). "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 (2009) (citation and quotation marks omitted).

Respondent-mother is correct in her assertion "the fact of prior abuse [or neglect], standing alone, is not sufficient to support an adjudication of neglect." *N.G.*, 186 N.C. App. at 9, 650 S.E.2d at 51. Indeed, this Court "has generally required the presence of other factors to suggest that the neglect or abuse will be repeated." *In re J.C.B.*, 233 N.C. App. 641, 644, 757 S.E.2d 487, 489, *disc. review denied*, 367 N.C. 524, 762 S.E.2d 213 (2014). However, in this case, the trial court did not solely base its adjudication of neglect as to the eldest three children on the circumstances surrounding Mary. Here, the findings of fact show a pattern of violent conduct between the parents, and all four children witnessed the November incident which

culminated in their grandfather going to the emergency room. This pattern of abusive behavior, fueled by substance abuse, is sufficient to demonstrate how the domestic violence impacted the children's well-being. We reiterate the trial court need not wait for actual harm to occur to adjudicate the children neglected. *See D.B.J.*, 197 N.C. App. at 755, 678 S.E.2d at 780.

The findings of fact also demonstrate how the parents' pattern of substance abuse impacted their children's well-being. Respondent-mother's drug use was regular enough for Mary to be born addicted to Oxycodone. It is illogical this level of drug use did not affect her other children. Additionally, respondent-mother removed Mary from the hospital against medical advice, which demonstrates her substance abuse impaired her judgment as to her children's medical needs. Although this decision directly impacted Mary, one can infer respondent-mother has made or in the future would make similar poor decisions regarding her other children's medical needs. Lastly, it is noteworthy neither respondent-mother nor respondent-father consented to DSS's random drug screens. From this finding, the trial court could infer the parents continued their substance abuse. These foregoing factors all demonstrate how respondent-mother's substance abuse negatively impacted her ability to safely and appropriately parent Brian, Beth, and Margaret to the extent they were neglected juveniles. *See D.B.J.*, 197 N.C. App. at 755, 678 S.E.2d at 780 ("Other conduct that supports a conclusion that a child is neglected includes . . . abuse

of illegal substances, and threatening or abusive behavior toward social workers and police officers in the presence of the children.”).

Finally, we reject respondent-mother’s arguments regarding the paternal grandmother. Respondent-mother is essentially asking this Court to credit the favorable portions of the grandmother’s testimony to her and to ignore the remaining evidence that supports neglect. It appears the trial court was not persuaded by the grandmother’s testimony, and it is not our duty to credit one witness over another. *See In re Hughes*, 74 N.C. App. 751, 759, 330 S.E.2d 213, 218 (1985) (“The trial judge determines the weight to be given the testimony and the reasonable inferences to be drawn therefrom. If a different inference may be drawn from the evidence, he alone determines which inferences to draw and which to reject.”). If anything, the trial court likely found the grandmother’s testimony evidences the parents’ habitual drug use. Accordingly, we conclude finding of fact 21 was supported by competent evidence, and we further conclude the trial court’s findings of fact support the conclusion all four children were neglected juveniles. Respondent-mother’s argument is overruled.

In her second argument,[3] respondent-mother challenges a provision in the dispositional portion of the trial court’s order.

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[3] Both DSS and the GAL argue that respondent-mother’s second argument should be dismissed. Because this issue was raised in their briefs, and not in a properly-filed motion to dismiss, we decline to hear it. *See Vaden v. Dombrowski*, 187 N.C. App. 433, 436, 653 S.E.2d 543, 545 (2007);

Here, respondent-mother contends the trial court exceeded its dispositional authority under N.C. Gen. Stat. § 7B-904 (2017) by ordering her to (1) obtain and maintain stable, legal, and verifiable income; (2) obtain and maintain safe and stable housing; and (3) complete a psychological evaluation and follow recommendations. Respondent-mother argues these requirements were not necessary to remedy the conditions leading to the adjudication of neglect or the trial court's decision to remove the custody of the children from respondent-mother.

Section 7B-904 provides, in pertinent part, as follows:

> (c) At the dispositional hearing or a subsequent hearing the court may determine whether the best interests of the juvenile require that the parent, guardian, custodian, stepparent, adult member of the juvenile's household, or adult relative entrusted with the juvenile's care undergo psychiatric, psychological, or other treatment or counseling directed toward remediating or remedying behaviors or conditions that led to or contributed to the juvenile's adjudication or to the court's decision to remove custody of the juvenile from the parent, guardian, custodian, stepparent, adult member of the juvenile's household, or adult relative entrusted with the juvenile's care. . . .
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> . . . .
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> (d1) At the dispositional hearing or a subsequent hearing, the court may order the parent, guardian, custodian, or caretaker served with a copy of the summons pursuant to G.S. 7B-407 to do any of the following:

Smithers v. Tru-Pak Moving Sys., Inc., 121 N.C. App. 542, 545, 468 S.E.2d 410, 412, *disc. review denied*, 343 N.C. 514, 472 S.E.2d 20 (1996).

> . . . .
>
> (3) Take appropriate steps to remedy conditions in the home that led to or contributed to the juvenile's adjudication or to the court's decision to remove custody of the juvenile from the parent, guardian, custodian, or caretaker.

N.C. Gen. Stat. § 7B-904. "For a court to properly exercise the authority permitted by this provision, there must be a nexus between the step ordered by the court and a condition that is found or alleged to have led to or contributed to the adjudication." *In re T.N.G.*, ___ N.C. App. ___, ___, 781 S.E.2d 93, 101 (2015).

Here, the trial court's dispositional findings of fact explain the reasoning for ordering respondent-mother to comply with requirements related to housing, employment, and mental health. Dispositional findings of fact 9 and 18-21 detail respondent-mother's history of unstable housing dating back to 2012. Furthermore, respondent-mother's history of unstable housing was one of the allegations contained in DSS's petition. Dispositional findings of fact 22-24 detail respondent-mother's lack of stable or verifiable income, including her dependence on respondent-father. Employment and stable housing are undoubtedly relevant to respondent-mother's case, given the interplay between domestic violence and respondent-mother's dependence on respondent-father.

Similarly, respondent-mother's mental health relates to her substance abuse. The juvenile petition itself alleges respondent-mother had a history of mental health issues, and dispositional findings of fact 40-43 detail respondent-mother's past psychological diagnoses, prescriptions, and therapy. Finding of fact 44 explicitly refers to the interplay between respondent-mother's substance abuse and mental health. That finding states a psychological evaluation "will also help to determine if the Mother is self-medicating mental health issues by abusing substances or if mental health issues otherwise contribute to the behaviors and conditions that caused the minor children's removal and adjudication." Respondent-mother has not challenged any of the trial court's dispositional findings of fact, and this Panel is satisfied the record evidence contains a sufficient nexus between the requirements imposed on respondent-mother by the trial court and the circumstances that led to the children's removal from respondent-mother's custody or the adjudication of neglect. *See A.R.*, 227 N.C. App. at 522, 742 S.E.2d at 632-33 (where requirements related to mental health and substance abuse would assist respondents in "understanding and resolving the possible underlying causes of respondents' domestic violence issues"). Accordingly, we hold the trial court did not abuse its discretion in the dispositional portion of the order, and we affirm the order of the trial court.

AFFIRMED.

Judges ELMORE and ZACHARY concur.

Report per Rule 30(e).