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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-1278

Filed: 15 May 2018

Harnett County, No. 17 JA 48

IN THE MATTER OF: J.W.

Appeal by respondent from order entered 15 September 2017 by Judge Mary H. Wells in Harnett County District Court. Heard in the Court of Appeals 19 April 2018.

Harnett County Department of Social Services, by Duncan B. McCormick, for petitioner-appellee.

Anné C. Wright for respondent-appellant.

Mobley Law Office, P.A., by Marie H. Mobley, for guardian ad litem.

ARROWOOD, Judge.

Respondent, the mother of the juvenile J.W. ("Julia")[1], appeals from an order adjudicating Julia neglected. After careful review, we affirm.

I. Background

[1] A pseudonym is used to protect the identity of the juvenile and for ease of reading. *See* N.C. R. App. P. 3.1(b) (2017).

On 1 June 2017, the Harnett County Department of Social Services ("DSS"), filed a petition alleging that Julia was a neglected juvenile. DSS stated that it first became involved with respondent and Julia on 20 August 2015 after receiving a Child Protective Services ("CPS") report that Julia was living in an injurious environment. The basis of the report was that respondent had been involuntarily committed due to her having a manic episode and a psychotic break caused by her bipolar disorder. Julia was placed by respondent in the care of her paternal aunt. Respondent remained hospitalized until 16 October 2015.

DSS again became involved with respondent and Julia on 27 April 2017 after respondent had a seizure while in the lobby of her primary care physician's office. Respondent was placed on a stretcher and emergency medical services were called, at which point respondent began yelling and became belligerent and stated that she would not go to the hospital. DSS stated that there was concern that respondent was experiencing "pseudoseizures" caused by her psychotic episodes and was not taking her psychiatric medication. Respondent was involuntarily committed and remained hospitalized for three days. Additionally, on several occasions in April and May 2017, police and emergency medical services were called to respondent's home because respondent was having seizures while Julia was present.

On 24 May 2017, respondent went to a tire store and requested service on her vehicle. While at the store, respondent became angry and confrontational, law

enforcement was called, and respondent was made to leave the store. The next day, law enforcement was called to the Hampton Inn in Dunn, North Carolina due to complaints about respondent disturbing the peace and child abuse. Respondent also would not open the door for hotel staff. When hotel staff and law enforcement were finally able to enter the room, an occupant in the room reported that the cause of the disturbance had been respondent arguing with Julia, who was only seven-years-old. Respondent was in a bathroom with Julia, and a police officer reported that he heard respondent arguing with Julia the entire time. Upon exiting the bathroom, respondent became confrontational, cursed, and refused to provide law enforcement with Julia's name or address. On 30 May 2017, respondent went to Julia's elementary school and became confrontational with school staff. Law enforcement was called and respondent was ordered to leave the premises or face arrest.

DSS stated that relatives were voicing concerns that respondent was no longer taking her psychiatric medication. DSS alleged that, throughout its current assessment of the matter, respondent had been in and out of hospitals for treatment of seizure and mental health issues. DSS further stated that respondent was at Wilson Medical Center awaiting a bed in the facility. DSS expressed concern that respondent would check herself out of the hospital and remove Julia from her kinship placement. Accordingly, DSS filed the petition alleging neglect and obtained non-secure custody of Julia.

On 15 September 2017, the trial court adjudicated Julia a neglected juvenile. The trial court granted custody of Julia to DSS and authorized placement with Julia's paternal aunt and uncle. The trial court also authorized DSS to begin a trial home placement with respondent. Respondent was granted unsupervised visitation and ordered to comply with a family services agreement and to take her prescribed medications.

Respondent appeals.

II. Discussion

Respondent's sole argument on appeal is that the trial court erred by adjudicating Julia a neglected juvenile. "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)), *aff'd 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). We review the trial court's conclusions of law *de novo* on appeal. *In re D.H.*, 177 N.C. App. 700, 703, 629 S.E.2d 920, 922 (2006).

Here, the trial court found as fact:

21. The mother in August 2015 was involuntarily committed at Central Harnett Hospital due to a manic episode and a psychotic break.

22. The mother is diagnosed with bipolar disorder.

23. The mother placed the juvenile with a paternal aunt . . . prior to CPS involvement in 2015.

24. The mother remained in the hospital until October 16, 2015. She attended therapy and took medications as prescribed following her discharge.

25. The mother was involuntarily committed at Central Harnett Hospital on April 27, 2017.

26. The mother was transferred to Vidant Duplin Hospital and stayed there for three days.

27. Lillington Police and EMS were called to the mother's home multiple times in April 2017 and May 2017 due to the mother experiencing seizures.

28. The mother was often belligerent and agitated toward law enforcement, EMS, or others at the time she was experiencing seizures. [The paternal aunt] went to the home during some of these episodes. [The paternal aunt] described the mother as not being herself.

29. The juvenile was usually present when the mother suffered from seizures.

30. The mother on multiple occasions in April and May 2017 called EMS and subsequently declined services.

31. A social worker went to the mother's home in Lillington on May 3, 2017. The mother became belligerent and yelled at the social worker during this

visit. The juvenile was present and did not react to the mother's behavior.

32. On May 25, 2017, the Dunn Police Department responded to the Hampton Inn. The mother, the juvenile, and an adult male were in the room. The mother would not open the door for hotel staff. Law enforcement waited outside the door for an hour. An officer heard the mother yelling and screaming at the juvenile. The mother's explanation was that she was getting the juvenile ready for school.

33. The mother contacted relatives and left multiple concerning voicemails in the early morning hours.

34. The mother reported seeing dead relatives driving a car.

35. The mother was in and out of Central Harnett Hospital and other medical facilities during the course of the most recent DSS assessment.

36. The mother was in a hospital in Wilson County at the time of the filing of the juvenile petition.

37. The mother was involuntarily committed in Wilson County on June 1, 2017. The mother had seizures, and these seizures led to delusions. The juvenile was with the mother in Wilson County.

38. The mother's mental health condition started deteriorating sometime after December 2016. The mother's condition significantly worsened in April and May 2017.

39. The mother suffered from delusions at the time of and prior to the filing of the juvenile petition. . . .

40. A Wilson County social worker visited the mother at the hospital prior to the filing of the juvenile petition.

> The mother was not willing to speak to the social worker about her plan for the juvenile, if she had one.
>
> 41. The juvenile was in the care of [the paternal aunt] at the time of the filing of the petition. The mother did not make the placement. The mother was either unwilling or unable to make the placement due to her medical condition.
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> 42. [The paternal aunt] worked at the juvenile's school. [The paternal aunt] was a tremendous resource to the mother. [The paternal aunt] took the juvenile to and from school. [The paternal aunt] responded to the mother's home when she had seizures.
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> 43. The mother dismantled the relationship with [the paternal aunt]. The mother became agitated with [the paternal aunt]. In May 2017, the mother sent the juvenile's school a note prohibiting the juvenile from having contact with [the paternal aunt]. The mother did not rescind this directive prior to the filing of the juvenile petition.
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> 44. The juvenile did not receive proper supervision from the mother due to the mother's mental health condition, be it due to medication, lack of medication, or overmedication.
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> 45. The juvenile lived in an environment injurious to her welfare in the home of the mother due to the mother's mental health condition.
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> 46. At the time of and prior to the filing of the juvenile petition, the mother's mental health condition and other life circumstances placed the juvenile at risk of a physical, mental, or emotional impairment.

We are bound by those findings not challenged by respondent on appeal. *See Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991) (unchallenged

findings are deemed supported by competent evidence and are binding on appeal) (citations omitted). Moreover, we review only those findings necessary to support the trial court's conclusion that the juvenile was neglected. *See In re T.M.*, 180 N.C. App. 539, 547, 638 S.E.2d 236, 240 (2006) (erroneous findings that are unnecessary to support adjudication of neglect do not constitute reversible error) (citation omitted).

Respondent first challenges several of the trial court's findings of fact as being unsupported by the evidence. We address each finding in turn.

Respondent contends that finding of fact number 28, to the extent the trial court found she was "often" belligerent towards law enforcement and others, is unsupported by the evidence and should be struck. We disagree. A police officer with the Lillington Police Department testified that he was dispatched to respondent's home several times and respondent was "in a very high emotional state every time that I went out there" and was "verbally aggressive towards police, EMS, anyone that was . . . trying to interact with her." While the same officer also testified that respondent was "inappropriately outspoken" on only one occasion, it was the trial judge's duty to resolve any discrepancies or inconsistencies in the evidence. *See In re Whisnant*, 71 N.C. App. 439, 441, 322 S.E.2d 434, 435 (1984) (it is the trial 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.") (citation omitted). Thus, we conclude that this finding was supported by competent evidence.

Respondent next challenges finding of fact number 32. Respondent contends the finding of fact implies that she yelled and screamed at Julia for an hour while refusing to open the door for law enforcement. We do not agree. A police officer testified that he waited for 20 to 25 minutes for someone to come to the door. Thus, the portion of the finding that the officer was made to wait an hour is unsupported. The officer further testified, however, that he heard a female arguing with a small child and there was some yelling. This evidence supports the portion of the trial court's finding that "[a]n officer heard the mother yelling and screaming at the juvenile." We disagree with respondent that the finding implied that she yelled at Julia for the entire period of time that the officer was at the door.

Respondent next argues that findings of fact numbers 39 and 40 are erroneous. Respondent does not challenge the factual underpinnings of these findings, however, conceding that she suffered from delusions and did not cooperate with Wilson County DSS. We thus decline to strike these findings.

Respondent challenges finding of fact number 41, to the extent the trial court found that she did not place Julia with the paternal aunt or was unwilling or unable to make the placement. We disagree. Respondent's testimony is confusing, stating at one point that she did not know whether Julia was with the paternal aunt, then

conversely saying that she did know that Julia was with the paternal aunt. However, the evidence also demonstrates that respondent had issued a directive to Julia's school prohibiting contact between Julia and the paternal aunt, and the directive was not rescinded prior to the filing of the petition. The trial court, as fact-finder, resolved the inconsistencies in the evidence and found that respondent did not, or could not, place Julia with the paternal aunt. *Whisnant*, 71 N.C. App. at 441, 322 S.E.2d at 435. Accordingly, we conclude the trial court did not err by making this finding.

Respondent next challenges findings of fact numbers 44 through 46. Respondent argues, and we agree, that these findings require "the exercise of judgment . . . or the application of legal principles" and are "more properly classified [as] conclusion[s] of law." *In re Helms*, 127 N.C. App. 505, 510, 491 S.E.2d 672, 675 (1997) (citations omitted); *see also In re Everette*, 133 N.C. App. 84, 86, 514 S.E.2d 523, 525 (1999) ("Determination that a child is not receiving proper care, supervision, or discipline, requires the exercise of judgment by the trial court, and is more properly a conclusion of law."). Given the nature of these findings of fact, respondent's argument largely overlaps with her challenge to the adjudication of neglect as a whole. Therefore, we will address respondent's challenge to findings of fact numbers 44 through 46 along with her challenge to the trial court's conclusion that Julia was neglected.

We must next determine whether the trial court's sustained findings of fact support the adjudication of neglect.

A "[n]eglected juvenile" is defined in N.C. Gen. Stat. § 7B-101(15) 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; or the custody of whom has been unlawfully transferred under G.S. 14-321.2; or who has been placed for care or adoption in violation of law. . . .

N.C. Gen. Stat. § 7B-101(15) (2017). To sustain an adjudication of neglect, this Court has stated that the alleged conditions must cause the juvenile some physical, mental, or emotional impairment, or create a substantial risk of such impairment. *See In re Safriet*, 112 N.C. App. 747, 752, 436 S.E.2d 898, 901-02 (1993) (citations omitted).

Here, the trial court's findings establish that respondent's mental health was deteriorating. During DSS's involvement with respondent, she was hospitalized and involuntarily committed several times; she suffered from delusions and seizures; and she was belligerent to law enforcement, social workers, and EMS. Her relationship with the paternal aunt, who was a major source of support for respondent and Julia, had also deteriorated. When the petition was filed, respondent could not care for Julia because she once again had been involuntarily committed. Although Julia was in the care of the paternal aunt, respondent had told Julia's school that the paternal

aunt was not to have contact with Julia, and this directive had not been rescinded. The trial court's findings demonstrate that respondent did not, or could not, place Julia with the paternal aunt herself.

Respondent contends that the trial court should have considered her condition at the time of the adjudicatory hearing, at which point she claims she was no longer hospitalized, her mental health had improved, and the conditions which led to Julia's removal had been remedied. However, post-petition evidence is generally not admissible, because "the purpose of the adjudication hearing is to adjudicate 'the existence or nonexistence of any of the conditions alleged in a petition.' " *In re A.B.*, 179 N.C. App. 605, 609, 635 S.E.2d 11, 15 (2006) (quoting N.C. Gen. Stat. § 7B-802). This Court has noted, however, "this rule is not absolute." *In re V.B.*, 239 N.C. App. 340, 344, 768 S.E.2d 867, 870 (2015). We nevertheless decline to find error because, at the adjudicatory hearing, respondent objected to post-petition evidence and specifically argued that post-petition evidence "is inadmissible for adjudication purposes." Thus, respondent's argument is waived. *See State v. Holliman*, 155 N.C. App. 120, 123, 573 S.E.2d 682, 685 (2002) (the law does not permit parties to change their arguments from that taken at trial in order to have a better argument on appeal) (citations omitted).

Respondent additionally argues that, throughout this case, there was no evidence of any impairment to Julia. Respondent asserts that, despite her mental

health issues, Julia has been appropriately cared for and is healthy and happy. However, "[i]t 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 T.S.*, 178 N.C. App. 110, 113, 631 S.E.2d 19, 22 (2006) (citation omitted), *aff'd per curiam*, 361 N.C. 231, 641 S.E.2d 302 (2007). Accordingly, we hold that the trial court did not err by concluding that, due to respondent's mental health and related conditions, Julia lived in an environment injurious to her welfare and was at risk of physical, mental, or emotional impairment. Accordingly, we affirm the adjudication of neglect.

AFFIRMED.

Judges CALABRIA and INMAN concur.

Report per Rule 30(e).