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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA 18-172

Filed: 3 July 2018

Orange County, No. 17 JA 41

IN THE MATTER OF: R.W.

Appeal by respondent-father from order entered 9 November 2017 by Judge Joseph M. Buckner in Orange County District Court. Heard in the Court of Appeals 7 June 2018.

Holcomb & Stephenson, LLP, by Deana K. Fleming, for petitioner-appellee Orange County Department of Social Services.

Mary McCullers Reece for respondent-appellant father.

Parker Poe Adams & Bernstein LLP, by Jason R. Benton, for guardian ad litem.

BERGER, Judge.

Respondent-father appeals from the trial court's order adjudicating his child, R.W. ("Ricky")¹ neglected and abused. Respondent-father contends the trial court erred by making findings of fact that are unsupported by clear and convincing evidence necessary to sustain an adjudication of neglect and abuse and by not

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

allowing Respondent-father visitation with Ricky. For the following reasons, we affirm.

Factual and Procedural Background

Respondent-father is the biological father of Ricky, and had primary custody since July 2016. Ricky was born on September 24, 2007. On June 12, 2017, Orange County Department of Social Services (“OCDSS”) received a report from Ricky’s school regarding a significant injury to his face, and school journal entries written by Ricky indicating he was being beaten at home. The initial report to OCDSS included a photo of a linear bruise with a large, bright line running from Ricky’s cheek to his ear; another parallel line above the frame of his glasses; and more bruising in-between and below the bright line.

On June 19, 2017, OCDSS conducted an interview with Ricky at Respondent-father’s home in Orange County. However, they were unable to properly interview Ricky due to Respondent-father’s presence. On June 27, 2017, Moore County DSS (“MCDSS”) conducted a follow-up interview outside Respondent-father’s presence while Ricky was visiting his mother.

During the second interview, Ricky told the MCDSS social worker that his facial bruise was not from a biking accident, as he had previously stated, but instead from Respondent-father hitting him. Ricky further described Respondent-father spanking him. Because of the severity of Ricky’s injuries and allegations against

Respondent-father, OCDSS initiated an investigative assessment with law enforcement on June 28, 2017. On June 30, 2017, Dr. Dana Hagele conducted a Child Medical Evaluation (“CME”) on Ricky at the Crossroads Child Advocacy Center in Burlington, North Carolina. Based on the CME and photographic evidence, Dr. Hagele entered a summary diagnosis of physical and emotional abuse for Ricky.

OCDSS filed a juvenile petition on July 3, 2017, alleging that Respondent-father abused Ricky by inflicting serious physical injury and creating a substantial risk of serious physical injury, using cruel or grossly inappropriate devices or procedures to modify behavior, and creating serious emotional damage to the juvenile. OCDSS further alleged Respondent-father neglected Ricky by not giving proper care, supervision, or discipline, and by placing him in an injurious environment. On July 3, 2017, Ricky’s mother was given nonsecure custody of Ricky.

On August 31 and October 4, 2017, the trial court held adjudication and disposition hearings. The trial court heard evidence from the social worker assigned to the case, Dr. Hagele, and the guardian *ad litem*. The trial court incorporated all reports into evidence, and adjudicated Ricky neglected and abused. At disposition, the trial court suspended Respondent-father’s visitation rights, transferred primary physical custody from Respondent-father to Ricky’s mother, and continued therapy for Ricky. Respondent-father timely appeals.

Analysis

Respondent-father contends the trial court erred in adjudicating Ricky neglected and abused because the trial court's findings of fact were insufficient to support the conclusions of law, and erred in suspending visitation. We disagree.

"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). 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).

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); *see also In re Safriet*, 112 N.C. App. 747, 752, 436 S.E.2d 898, 901-02 (1993).

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) (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).

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The trial court also adjudicated Ricky abused. An “abused juvenile” is

[a]ny juvenile less than 18 years of age whose parent, guardian, custodian, or caretaker:

a. Inflicts or allows to be inflicted upon the juvenile a serious physical injury by other than accidental means;

b. Creates or allows to be created a substantial risk of serious physical injury to the juvenile by other than accidental means;

c. Uses or allows to be used upon the juvenile cruel or grossly inappropriate procedures or cruel or grossly inappropriate devices to modify behavior;

....

e. Creates or allows to be created serious emotional damage to the juvenile; serious emotional damage is evidenced by a juvenile’s severe anxiety, depression, withdrawal, or aggressive behavior towards himself or others[.]

N.C. Gen. Stat. § 7B-101(1) (2017).

“Each definition states that a juvenile is abused when a caretaker harms the juvenile in some way, allows the juvenile to be harmed, or allows a substantial risk of harm. The harm may be physical, emotional, or some combination thereof.” *In re M.G. M.B., K.R., J.R.*, 363 N.C. 570, 573, 681 S.E.2d 290, 292 (2009) (citations omitted). “Certain allegations might justify a finding of abuse under several or even all of the criteria.” *Id.* at 573-74, 681 S.E.2d at 292.

Respondent-father generally argues the trial court did not make sufficient findings of fact adjudicating Ricky neglected and abused. Here, the trial court made the following findings of fact at the adjudicatory hearing to substantiate adjudications of neglect and abuse:

[6]f. Respondent father did not deny using a belt to discipline the juvenile.

. . . .

8. During the 2016-17 school year, the juvenile requested to sit on a bouncy ball multiple times because his bottom was sore from being disciplined by Respondent father.

9. The juvenile wrote in a journal at school about Respondent father beating him and doing mean things to him.

10. The juvenile has exhibited anxiety at school when he thought he might get in trouble from Respondent father for his behavior at school. On one occasion, he vomited as a result.

11. The juvenile's teacher, [T.F.], observed a huge red and purple mark on the left side of the juvenile's face from his eyebrow to his jaw line on 02 June 2017.

12. The juvenile told school personnel that he injured his face when he fell off his bike 2-3 days before. This explanation was not plausible, because the juvenile did not have the mark the day before.

13. A photograph of the injury shows a bruise that is linear in nature.

14. The juvenile exhibits severe anxiety when being returned to his father's home after a visit. He has cried

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and begged not to have to return to his father. The juvenile has vomited while being transported to return to his father.

...

15. Between 24 January 2017 and 02 June 2017, OCDSS received three prior child protective services reports regarding Respondent father's home that did not meet the screening requirements for an assessment.

....

19. [MCDSS] interviewed the juvenile in the home of Respondent mother on 27 June 2017. The juvenile was forthcoming with MCDSS and made disclosures that caused OCDSS to request a Child Medical Evaluation (CME).

20. Dr. Dana Hagele, M.D., conducted a CME of the juvenile on 30 June 2017.

21. Dr. Hagele found that the juvenile's history was consistent with a medical diagnosis of physical and emotional abuse.

22. The physical abuse diagnosis relied on the following:

a. The juvenile was struck on multiple occasions with a belt on his (clothed and exposed) buttocks, upper legs, and lower back. The juvenile indicated that this contact was painful and resulted in large, persistent bruises on his buttocks, on his upper legs wrapping around his lateral thighs, and on the lower aspect of his back. The juvenile often had difficulty walking or sitting following these incidents.

b. The juvenile was struck with an open hand on both cheeks resulting in pain and red marks and significant bruising on one cheek on at least one occasion.

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- c. The juvenile was thrown to the floor two times.
- d. The juvenile was kicked in the ankles two times.
- e. The juvenile was called a “mother fucker” on multiple occasions.
- f. The juvenile had been grabbed under his chin and upper neck with his head thrust against the back of the couch two times, resulting in bruising under his chin.
- g. The juvenile had his head “banged” against a metal bar on his bunk bed with significant force above his right temple, putting the juvenile at risk of permanent physical disability or even death.
- h. The emotional abuse diagnosis relied on the juvenile’s description of significant fear, anxiety, and distraction at school because:
 - i. Respondent father instructed the juvenile to “lie” if he was questioned about the origin of the bruising on his face or body. He was instructed to say he wrecked his bike if questioned.
 - ii. Respondent father told the juvenile there would be serious consequences if he was truthful such as being sent to live with strangers where he would be mistreated and Respondent father being sent to jail.
 - iii. Respondent father called the juvenile “mother fucker” and other “cuss words” when angry, resulting in significant psychological distress.

We note that Respondent-father does not challenge or contest any findings by the trial court that he caused Ricky's injuries as described in the order on appeal. Accordingly, these findings of fact are binding on appeal. *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991).

Respondent-father specifically challenges Finding of Fact 8 that Ricky wanted to sit on a bouncy ball due to soreness from injuries inflicted by Respondent-father. Respondent-father contends that there was "no clear and convincing evidence that [Ricky's] bottom was hurting as the result of discipline from his father." We disagree.

The trial court considered substantial evidence that tended to show Ricky's "bottom was hurting *as a result* of discipline from his father." The trial court allowed several exhibits into evidence at the adjudication hearing from both OCDSS and Respondent-father. OCDSS submitted several pages from Ricky's school journal and accompanying drawings regarding Ricky's feelings about Respondent-father. OCDSS admitted into evidence a school journal entry in Ricky's handwriting:

Scared: he abusesd [sic] me
Happy: so far I get to say with my mom
Sad: he abused me
Hopeful: It will work out
Thankful: that so far it is working out

[Respondent-father] hits me with a belt and he
makes me hold on to my bed while he does it[.]

Respondent-father admitted into evidence the following school journal entry in Ricky's handwriting: "The new benefit of the new types of seating are kids learning

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better, and not roaming around the room. I would like that type of seating because when I get wiggly and I have the ball I can just bounce.”

The trial court evaluated these school journal entries together with supporting testimony from Ricky’s teacher (“T.F.”). Without objection, T.F. testified:

[T.F.] So he came in and asked to speak to the counselor a few times throughout the year, and he also came in and would ask to sit on like an orange bouncy ball that I had in my classroom, and he would just tell me it was because his bottom was hurting. So I would let him.

[OCDSS Counsel] How many times did he ask you to sit on the bouncy ball?

[T.F.] I’m not – I can’t remember exactly. I would say maybe like four or five.

[OCDSS Counsel] Okay. And each time, did he say it was because his bottom was hurting?

[T.F.] Yes.

Despite some conflicting evidence presented on whether Ricky specifically said he wanted to sit on the bouncy ball because of pain caused by Respondent-father’s discipline or because he wanted to “just bounce,” 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. “In a non-jury . . . adjudication, the trial court’s findings of fact supported by clear and convincing 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). Accordingly, we hold that Finding of Fact 8 was specifically

supported by competent evidence presented at trial in the form of testimony, incorporated reports, and exhibits admitted at the adjudication. Therefore, we affirm the trial court's order on this issue.

Respondent-father further argues the trial court improperly delegated its authority to make sufficient findings of fact and conclusions of law by solely relying on evidentiary reports, rendering the adjudication order incomplete and insufficient to support the trial court's conclusions of abuse and neglect. We disagree.

Respondent-father relies on this Court's prior holding in *In re J.S.*, 165 N.C. App. 509, 598 S.E.2d 658 (2004), *superseded by statute on other grounds as recognized by In re A.S.*, ___ N.C. App. ___, 793 S.E.2d 285 (2016), where we held a trial court failed to make findings of "specific ultimate facts, which are sufficient for this Court to determine that it was proper for the lower court to allow DSS to cease reunification efforts." *Id.* (citation and quotation marks omitted). In *In re J.S.*, the trial court entered "a cursory two page order," and all of the findings were broadly incorporated as findings of fact, opposed to the result of logical reasoning by the trial court itself. *Id.*

Here, the trial court entered an adjudication and disposition order with thirty-six detailed findings of fact, followed by appropriate conclusions of law. Several of the findings included subsections and details from incorporated reports from witnesses, parties, and medical exams. Findings of Fact 22 and 23 detailed Dr.

Hagele's CME, stating the specific injuries detailed by Ricky during the evaluation, and how Respondent-father threatened Ricky if he told anyone what had happened. The inclusion of an expert witness' report regarding a diagnosis as a specific finding does not substitute for the need of the trial court to make its own ultimate findings of fact. However, "[t]here is nothing impermissible about describing testimony, so long as the court ultimately makes its own findings, resolving any material disputes." *In re C.L.C., K.T.R., A.M.R., E.A.R.*, 171 N.C. App. 438, 446, 615 S.E.2d 704, 708 (2005), *aff'd and disc. rev. improvidently allowed*, 360 N.C. 475, 628 S.E.2d 760 (2006).

From review of the order on appeal, it is clear that the trial court properly incorporated the medical testimony and CME from Dr. Hagele in Findings of Fact 22 and 23, and subsequently made proper findings of fact that were "established by the evidence, admissions and stipulations which are determinative of the questions involved in the action and essential to support the conclusions of law reached." *Id.* (quoting *Quick v. Quick*, 305 N.C. 446, 451-52, 290 S.E.2d 653, 657-58 (1982)). We hold the trial court did not improperly delegate its fact-finding duty to a third party.

Respondent-father next contends the trial court did not make sufficient findings of fact detailing what disciplinary procedures he used to punish Ricky, pursuant to Section 7B-101(1)(c). Respondent-father relies on this Court's holding in *In re H.H.*, 237 N.C. App. 431, 436, 767 S.E.2d 347, 350 (2014), where we held

evidence showing a child being stricken with a belt multiple times by his mother was sufficient to uphold the finding of abuse. *Id.* We disagree.

Here, the trial court made several findings of fact that detailed Respondent-father using a belt to repeatedly strike Ricky on the buttocks, upper legs, and lower back; banging Ricky's head into a metal bar on his bunk bed; throwing Ricky to the floor; kicking Ricky; and slapping Ricky across the face. These findings were supported by testimony from Dr. Hagele, the juvenile's teacher, and the social worker. The witnesses' testimonies were found to be credible and reliable by the trial court, and their respective reports were incorporated into the adjudication order as listed in Findings of Fact 33-36. The trial court heard the following testimony from Dr. Hagele:

[Ricky] also added that his dad was angry and quote, "banged his – banged my head against the metal bar," and so I clarified and what he described was there's a metal bar on his bunk bed – and I wanted to be very clear about this because we were talking about head trauma – that his father – that this is the part of his head, his right temple, where he was struck and that it was painful, he said, and that it *happened multiple times*.

Why that's important is the temporal bone is the thinnest bone in the skull. It can fracture or alternatively it can have a sort of depressed fracture and even result in what we call like an epidural bleed where you can cut an artery and it can actually be *rapidly fatal* with no ability to intervene if you have a fracture there. So that to me is *consistent with life-threatening physical abuse*.

(Emphasis added).

The trial court heard further testimony from Dr. Hagele concerning Ricky's severe physical injuries:

The child said that it, quote, "hurts a lot," end quote, and results in bruises on his buttocks, also bruises on his upper legs wrapping along to his lateral thighs, which is kind of the upper side of his legs, and then on the lower – excuse me – the lower aspect of his back. He described large bruises with, quote, "hard bumps in them," end quote, which is a hematoma medically. He says that he has difficulty walking or sitting down following these incidents.

The trial court included this language in Finding of Fact 22(a) from Dr. Hagele's CME report, and this testimonial evidence supports Findings of Fact 6(f), 8, and 26.

The trial court also heard the following testimony from Dr. Hagele, over objections of hearsay and relevancy:

All these come together to form a final diagnosis. So he told me he was struck on more than five occasions on his cheeks with an open hand resulting in pain and persistent red marks on his face. He said that on two occasions, quote, his father – his father was, quote, "throwing me on the floor two times," end quote. So I clarified that, and he said that his father had become angry with him on two different occasions while he, [Ricky], was sitting on the bed and that his father had gripped him by the – by [Ricky's] upper body with his father's hands and, quote, "threw him onto the ground."

The trial court made Findings of Fact 24 and 25 supporting the adjudication of Ricky being abused and neglected pursuant to N.C. Gen. Stat. § 7B-101(1) and (15), and an additional finding that "[w]hile in primary physical custody of [Respondent-father], the emotional and physical abuse had a significant impact on the welfare of

the juvenile.” Respondent-father does not challenge Findings of Fact 10-12 detailing a large facial bruise and Ricky’s vomiting from anxiety as a result of returning to Respondent-father’s home. In conjunction with the testimony heard and evidence admitted at adjudication, the trial court found Ricky to be neglected and abused “through processes of logical reasoning from the evidentiary facts [to] find the ultimate facts essential to support the conclusions of law.” *In re Harton*, 156 N.C. App. 655, 660, 577 S.E.2d 334, 337 (2003) (citations and quotation marks omitted); *see also In re B.P.*, ___ N.C. App. ___, ___, 809 S.E.2d 914, 918-19 (2018). Therefore, we hold the trial court made its own findings of fact, supported by competent evidence, which in turn supported the conclusions of law adjudicating Ricky abused and neglected, without improperly delegating its authority to Dr. Hagele or any other party.

Respondent-father also contends the trial court erred in finding Ricky suffered from serious emotional damage from Respondent-father’s actions. Respondent-father’s brief does not put forth any legal argument on this issue, and is therefore abandoned. N.C.R. App. P. 28(b)(6). Accordingly, we do not address this issue.

Lastly, Respondent-father contends the trial court erred at disposition in suspending all visitation with Ricky. We disagree.

“All dispositional orders of the trial court after abuse, neglect and dependency hearings must contain findings of fact based upon the credible evidence presented at

the hearing.” *In re Weiler*, 158 N.C. App. 473, 477, 581 S.E.2d 134, 137 (2003) (citation omitted). “The district court has broad discretion to fashion a disposition from the prescribed alternatives in N.C. Gen. Stat. § 7B-903(a), based upon the best interests of the child. . . . We review a dispositional order only for abuse of discretion.” *In re B.W.* 190 N.C. App. 328, 336, 665 S.E.2d 462, 467 (2008) (citations omitted).

An order that removes custody of a juvenile from a parent . . . or that continues the juvenile’s placement outside the home shall provide for appropriate visitation as may be in the best interests of the juvenile consistent with the juvenile’s health and safety. The court may specify in the order conditions under which visitation may be suspended.

N.C. Gen. Stat. § 7B-905.1(a) (2017).

Respondent-father argues this Court has recognized “a parent’s right of visitation with his . . . child is a natural and legal right.” *In re Custody of Stancil*, 10 N.C. App. 545, 551, 179 S.E.2d 844, 849 (1971). However, this Court has also held that “[v]isitation rights should not be permitted to jeopardize the best interest and welfare of the child.” *Appert v. Appert*, 80 N.C. App. 27, 39, 341 S.E.2d 342, 349 (1986) (citations omitted).

The right of visitation is an important, natural and legal right, although it is not an absolute right, but is one which must yield to the good of the child. A parent’s right of access to his or her child will ordinarily be decreed unless *the parent has forfeited the privilege by his conduct* or unless the exercise of the privilege would injuriously affect the welfare of the child

In re Custody of Stancil, 10 N.C. App. at 550, 179 S.E.2d at 848 (citation and quotation marks omitted) (emphasis added).

Here, the aforementioned findings of fact are based upon evidence, and from these findings of fact the trial court made a reasoned decision to not allow visitation between Respondent-father and Ricky based upon Respondent-father's conduct that had endangered the welfare of the child. The trial court made further dispositional findings of fact based on reports and testimony heard from the guardian *ad litem* and social worker during the dispositional hearing.

The trial court found that Ricky's mother was "a fit and proper person to have custody of the minor child with [Respondent-father] having no visitation until further order of a court." The trial court also transferred the ongoing custody action to Orange County where Respondent-father resides, and did not preclude Respondent-father from pursuing visitation rights at a later time.

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, 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). Based on the trial court's

findings of fact, we hold the trial court did not abuse its discretion in suspending Respondent-father's visitation rights with Ricky.

Conclusion

We hold the trial court did not err in adjudicating Ricky as neglected and abused. The trial court made sufficient findings of fact which, in turn, supported its conclusions of law. The trial court did not improperly delegate its authority to Dr. Hagele or any other party. Further, the trial court did not abuse its discretion suspending Respondent-father's visitation at the dispositional hearing. Therefore, we affirm.

AFFIRMED.

Judges DIETZ and TYSON concur.

Report per Rule 30(e).