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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-58

Filed: 3 July 2018

Forsyth County, No. 17 J 137, 138, 139

IN THE MATTER OF: Y.T., H.Y.T. and A.T.

Appeal by respondent-father from order entered 30 October 2017 by Judge Laurie Hutchins in Forsyth County District Court. Heard in the Court of Appeals 7 June 2018.

*Forsyth County Attorney's Office, by Assistant County Attorney Theresa A. Boucher, for petitioner-appellee Forsyth County Department of Social Services.*

*Anné C. Wright for respondent-appellant.*

*Morgan & Carter PLLC, by Michelle F. Lynch, for guardian ad litem.*

TYSON, Judge.

Respondent-father appeals the trial court's adjudication of his three children as neglected juveniles. We affirm.

I. Background

Respondent is the father of three juveniles, Y.T., H.Y.T. and A.T. The juveniles' mother ("Ms. Y") is also the mother of another child, M.Y. ("Molly"), by a

different father. At the time of the petition, four-year-old Molly lived with her half-siblings, one-year-old Y.T., two-year-old H.Y.T., and three-year-old A.T.

On 11 July 2017, Forsyth County Department of Social Services (“DSS”) visited the home of Ms. Y to investigate a child protective services report regarding improper discipline of four-year-old Molly. Ms. Y, Respondent and the four children were present in the home. DSS social worker Archie and Winston-Salem police officer Leggard observed bruises on Molly’s buttocks, lower back and back of her leg. Respondent acknowledged striking Molly with a belt while she was fully clothed.

A DSS investigation revealed Respondent had been convicted of felony child abuse inflicting serious injury on a twelve-year-old boy in 2006. DSS attempted to engage Ms. Y and Respondent to enter into a safety plan of care for the juveniles. DSS obtained nonsecure custody of the juveniles on 12 July 2017 and placed all four children into foster care.

The adjudication and disposition hearing was held 11 October 2017. Prior to the hearing the parties stipulated to the underlying facts of DSS’ investigation: the Respondent’s discipline of Molly; the bruises discovered on Molly; the events of the visit by DSS; and, Respondent’s prior conviction for felony child abuse. After the stipulations were acknowledged by all parties, the court heard arguments of counsel and concluded DSS had “proven the petition by clear, cogent, and convincing evidence.” The court’s order notes that the parties stipulated to the findings of fact

numbered 7–18 and left the determination of abuse and neglect to the court. In finding of fact 8, the court found “[Molly] to be an abused and neglected juvenile and [Y.T.], [H.Y.T.] and [A.T.] to be neglected juveniles pursuant to N.C.G.S. § 7B-101(15).”

After adjudication, the trial court heard testimony and received into evidence the court reports of the social worker and guardian *ad litem* for the disposition phase. The court adopted DSS’ recommended requirements for reunification of all children for both Ms. Y and Respondent and ordered the juveniles to remain in the custody of DSS. Respondent timely filed notice of appeal to this Court. Ms. Y did not appeal.

## II. Jurisdiction

Jurisdiction lies in this Court pursuant to N.C. Gen. Stat. § 7B-1001(a)(5) (2017).

## III. Standing to Challenge Adjudication of Molly

Respondent first argues the trial court erroneously adjudicated Molly to be an abused juvenile. DSS asserts Respondent does not have standing to appeal the trial court’s ruling as to Molly. We agree.

N.C. Gen. Stat. § 7B-1002 provides an appeal of the trial court’s adjudication and disposition order to the following parties:

- (1) A juvenile acting through the juvenile’s guardian ad litem . . . .
- (2) A juvenile for whom no guardian ad litem has been appointed under G.S. 7B-601 . . . .

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- (3) A county department of social services.
- (4) A parent, a guardian appointed under G.S. 7B-600 or Chapter 35A of the General Statutes, or a custodian as defined in G.S. 7B-101 who is a nonprevailing party.
- (5) Any party that sought but failed to obtain termination of parental rights.

N.C. Gen. Stat. § 7B-1002 (2017). “Standing is jurisdictional in nature and [c]onsequently, standing is a threshold issue that must be addressed, and found to exist, before the merits of [the] case are judicially resolved.” *In re T.M.*, 182 N.C. App. 566, 570, 643 S.E.2d 471, 474 (citation and quotation marks omitted), *aff’d per curiam*, 361 N.C. 683, 651 S.E.2d 884 (2007).

It is Respondent’s burden to show standing. *In re M.S.*, \_\_ N.C. App. \_\_, \_\_, 785 S.E.2d 590, 592 (2016). The stipulated document and court order identify another man as the father of Molly. In his brief, Respondent does not assert he was a biological, adoptive, or step-parent to Molly. Respondent-father is also not a juvenile, DSS, appointed guardian, or custodian as is defined by N.C. Gen. Stat. § 7B-101(8).

Respondent does not have standing and is not a proper party to appeal the adjudication of Molly as an abused juvenile. *In re M.S.*, \_\_ N.C. App. at \_\_, 785 S.E.2d at 593. Respondent’s argument is dismissed for lack of standing.

IV. Neglect of Y.T., H.Y.T. and A.T.

Respondent appeals the trial court’s adjudication of his own children, Y.T., H.Y.T. and A.T., as neglected.

A. Standard of Review

This Court reviews a trial court's adjudication of a juvenile as neglected 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 Gleisner*, 141 N.C. App. 475, 480, 539 S.E.2d 362, 365 (2000) (citations and quotation marks omitted). "The trial court's conclusions of law are reviewable *de novo* on appeal." *In re K.J.D.*, 203 N.C. App. 653, 657, 692 S.E.2d 437, 441 (2010) (citation and quotation marks omitted).

B. N.C. Gen. Stat. § 7B-101(15)

A neglected juvenile "does not receive proper care, supervision, or discipline from the juvenile's parent, guardian, custodian, or caretaker;" is not provided necessary medical or remedial care; or "lives in an environment injurious to the juvenile's welfare[.]" N.C. Gen. Stat. § 7B-101(15) (2017). "[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) (citation omitted).

"In determining whether a juvenile is a neglected juvenile, it is relevant whether that juvenile lives in a home where another juvenile has died as a result of suspected abuse or neglect or 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).

*1. Adult who Regularly Lives in the Home*

Respondent argues this factor is not relevant because he did not “regularly live[]” in Ms. Y’s home. The trial court’s order contains no specific finding of fact that Respondent “regularly lives in the home” where the alleged abuse occurred. The record contains only DSS’ counsel’s statement that at an earlier hearing the parties indicated they were living together and Respondent-father’s counsel’s statement that his client “no longer” lives with the children’s mother. The parties stipulated that on 11 July 2017, the same date DSS received the CPS report, DSS conducted a home visit. Respondent-father, the mother and all children were present in the home when DSS and Officer Leggard arrived.

Respondent’s only argument at the adjudication hearing was that his discipline of Molly did not rise to the level of abuse. Respondent made no argument or assertion at the hearing that he did not live in the home. He made no assertions that he did not neglect his own children, Y.T., H.Y.T. and A.T. Respondent may not now complain that the facts to which he stipulated should now be disregarded. *Weil v. Herring*, 207 N.C. 6, 10, 175 S.E. 836, 838 (1934) (“the law does not permit parties to swap horses between courts in order to get a better mount”).

*2. Substantial Risk of Future Abuse or Neglect*

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The abuse of a child does not compel or require removal of all other children from the home. The decision of the trial court regarding whether the other children in the home are neglected, “must of necessity be predictive in nature, as the trial court must assess whether there is a substantial risk of future abuse or neglect of a child based on the historical facts of the case.” *In re McLean*, 135 N.C. App. 387, 396, 521 S.E.2d 121, 127 (1999).

In *McLean*, an infant child of the parents had died by shaken baby syndrome. *Id.* at 388, 521 S.E.2d at 122. The parents subsequently gave birth to another baby and brought that infant into the same home where the previous child had died. The parents had not acknowledged any wrongdoing in the death of their infant. The parents were uncooperative with DSS and exhibited no concern for the future safety of their new baby. *Id.* at 396, 521 S.E.2d at 127. This Court upheld the trial court’s adjudication of the new infant as neglected where the trial court concluded that the infant would be at risk if the child was allowed to reside with her parents. *Id.*

In the case of *In re P.M.*, 169 N.C. App. 423, 425, 610 S.E.2d 403, 405 (2005), before P.M.’s birth, P.M.’s father had sexually abused one of the respondent’s daughters. Shortly after P.M.’s birth, DSS filed a petition alleging P.M. was neglected based upon the prior adjudication of the respondent’s other children. *Id.* This Court recognized the facts found by the trial court included the fact that the respondent had violated court-ordered protection plans with DSS in the past and had failed to take

responsibility for harm to her children as a result of her own conduct. These findings of fact, when viewed in their entirety, were sufficient to support the conclusion that P.M. was neglected. *Id.* at 427, 610 S.E.2d at 406. “Since the statutory definition of a neglected child includes living with a person who neglected other children and since this Court has held that the weight to be given that factor is a question for the trial court, the court, in this case, was permitted, although not required, to conclude that P.M. was neglected.” *Id.*

In each of these cases, the trial courts required additional factors, something more than just the adjudication of abuse of another child in the home. There was evidence of other factors, acts or omissions by the respondents. “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 (2014).

“[W]hile this language regarding neglect of other children ‘does not mandate’ a conclusion of neglect, the trial judge has ‘discretion in determining the weight to be given such evidence.’” *In re P.M.*, 169 N.C. App. at 427, 610 S.E.2d at 406 (quoting *In re Nicholson*, 114 N.C. App. 91, 94, 440 S.E.2d 852, 854 (1994)). “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 C.M.*, 183 N.C. App. 207, 210, 644 S.E.2d 588, 592 (2007) (citation and internal quotation marks omitted).



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Since the statutory definition of a neglected child includes living with a person who has abused or neglected other children, and since this Court has held that the weight to be given that factor is a question for the trial court, the trial court, in this case, was permitted, although not required, to conclude that [the juvenile] was neglected based on evidence that respondent-father had abused [her sibling].

*In re C.M. & H.M.*, 198 N.C. App. 53, 65, 678 S.E.2d 794, 801 (2009).

The trial court found Respondent-father had disciplined four-year old Molly with a belt. The court also found Molly suffered extensive bruising on her buttocks, lower back and the back of her leg, even though she was fully clothed at the time of the discipline. These stipulated findings of fact, along with Respondent's conviction of child abuse of another child in his care, support the trial court's conclusion that Y.T., H.Y.T. and A.T. were neglected juveniles. *Id.*; *In re P.M.*, 169 N.C. App. at 425, 610 S.E.2d at 405.

Respondent argues *In re J.C.B.*, 233 N.C. App. 641, 757 S.E.2d 487 (2014), controls the outcome of his case. We disagree. In *J.C.B.*, the respondents were the parents of J.C.B. and custodians of their nieces. The trial court concluded the respondent-father had sexually abused his niece and adjudicated the niece to be an abused juvenile. *Id.* at 642, 757 S.E.2d at 488. The trial court adjudicated the respondents' children as neglected juveniles due to the fact that they resided in the home when the abuse occurred. *Id.*

First, as in the case before us, this Court determined that the respondent-father did not have standing to appeal the adjudication of his niece as an abused juvenile. *Id.* at 643, 757 S.E.2d at 489. Next, the Court recognized “the fact of prior abuse, standing alone, is not sufficient to support an adjudication of neglect.” *Id.* at 644, 757 S.E.2d at 489 (citing *In re N.G.*, 186 N.C. App. 1, 9, 650 S.E.2d 45, 51 (2007), *aff’d per curiam*, 362 N.C. 229, 657 S.E.2d 355 (2008)).

Presuming the respondent-father had sexually abused his niece in the home where his own children and he lived, the Court held “this fact alone does not support a conclusion that [his children] were neglected.” *Id.* The trial court in *J.C.B.* made no other findings of fact supported by clear and convincing evidence to support a conclusion that the abuse would be repeated. *Id.* at 644, 757 S.E.2d at 490. There was no evidence of any previous sexual assaults or physical assaults committed by the respondent upon other children. This Court reversed the trial court’s adjudication of neglect of the respondent’s children. *Id.* at 645, 757 S.E.2d at 490.

Here, Respondent-father admitted to DSS and stipulated at the adjudication hearing that he had disciplined Molly “for agitating (hitting) her siblings and pulling the blinds out of the window.” The trial court found by clear and convincing evidence that DSS was called to investigate the alleged excessive discipline of Molly. The court found Ms. Y and Respondent had acknowledged four-year-old Molly had been

disciplined by Respondent with a belt for hitting her siblings and pulling the blinds out of the window, leaving large bruises on her lower back, buttocks and leg.

Additionally, there was evidence before the court regarding Respondent's "discipline" of another child with an electrical extension cord. The "discipline" of the child victim he referred to as his "play son" resulted in Respondent's 2006 conviction for felony child abuse. Respondent-father admitted this assault and was incarcerated for two years for the conviction of felony child abuse inflicting serious injury.

N.C. Gen. Stat. § 7B-101(15) "affords the trial judge some discretion in determining the weight to be given the evidence" of abuse of another child of the home. *McLean*, 135 N.C. App. at 395, 521 S.E.2d at 126 (quoting *Nicholson*, 114 N.C. App. at 94, 440 S.E.2d at 854). The trial court exercises discretion to determine "whether children are at risk for a particular kind of harm given their age and the environment in which they reside." *Id.* (citation omitted). Y.T, H.Y.T. and A.T. are close in age to Molly. The three other children were present in the home when Molly was punished by Respondent. Respondent has a prior criminal history of abusing another child for which he was the caretaker. The court's conclusion that Y.T, H.Y.T. and A.T. were neglected juveniles is supported by clear and convincing evidence.

#### V. Dispositional Findings

Respondent argues the trial court's findings of fact numbered 10–80 regarding disposition and based upon a lower evidentiary standard cannot be used to support

the adjudications of neglect of Y.T., H.Y.T. and A.T. A review of the trial court's order shows findings numbered 10–18 and finding 22 include statements in the parties' stipulation.

However, outside of the statements of the alleged abuse of Molly, none of these findings appear to be support for the adjudication. The findings relate to actions taken or actions suggested towards a placement of the children, visitation and steps required for final disposition or resolution of the case.

Neither DSS nor the guardian *ad litem* argue that any of the dispositional facts outside of those stipulated to by all parties are necessary to support the adjudication. No basis in the record before us supports Respondent's argument. Respondent's argument is overruled.

#### VI. Conclusion

Respondent-mother did not appeal any of the trial court's adjudications of her four children. Respondent-father does not have standing to challenge Molly's adjudication as an abused juvenile.

The trial court's order contains stipulated findings of fact based upon clear and convincing evidence to support the conclusion that Respondent-father neglected his three children. The court's order with respect to Respondent is affirmed. *It is so ordered.*

AFFIRMED.

IN RE: Y.T., H.Y.T. & A.T.

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Judges DIETZ and BERGER concur.

Report per Rule 30(e).