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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-48

Filed: 3 July 2018

Durham County, Nos. 17 JA 89-90

IN THE MATTER OF: L.S. & L.S.

Appeal by respondent-mother from order entered 5 October 2017 by Judge Doretta L. Walker in Durham County District Court. Heard in the Court of Appeals 4 June 2018.

Durham County Department of Social Services, by Senior Assistant County Attorney Robin K. Martinek, for petitioner-appellee.

Robert W. Ewing for respondent-appellant mother.

Parker Poe Adams & Bernstein LLP, by Michael J. Crook, for guardian ad litem.

BRYANT, Judge.

Where the trial court's findings of fact and conclusions of law were sufficient to establish dependency of the minor children, we affirm the trial court's order on adjudication. Where respondent-mother claims the trial court erred in concluding she acted inconsistently with her parental rights and insinuated her involvement in her minor child's abuse, we dismiss these arguments.

On 26 April 2017, Petitioner Durham County Department of Social Services (“DSS”) obtained nonsecure custody of L.S. and L.S. (“Larry and Leslie”)¹ and filed a juvenile petition alleging the minor children were neglected and dependent juveniles. The petition alleged that, on or about 25 April 2017, DSS received a report from Duke Medical Center indicating Larry was vomiting blood. After further inspection, the medical providers discovered Larry had Level 2 trauma with “alcohol in [his] system, multiple bruises all over his body in different stages of healing, a liver laceration, contusions to the lungs and kidneys, fractures to the spine and skull, malnourishment, E. Coli, a UTI, and erythematous lesions on the abdomen.” The petition further alleged that both children were “in need of assistance or placement” to ensure “adequate supervision [and] protection[,]” as they lived in the same home, and it was suspected that Leslie was exposed to Larry’s abuse.

On 14 September 2017, this case was brought before the Honorable Doretta L. Walker, Judge presiding, for an adjudication and disposition hearing to determine if Larry and Leslie were neglected, dependent, and/or abused. The parents stipulated that, prior to 25 April 2017, Larry suffered severe injuries over time through non-accidental means, for which neither party could provide an adequate explanation. The parents also stipulated that no one sought medical treatment for Larry prior to

¹ Pseudonyms are used to protect the identity of the minor children and for ease of reading.

his admittance to the hospital even though both children resided with respondent-mother for “several months.” Following the hearing, the trial court entered an adjudication and disposition order on 5 October 2017, in which it: determined Larry to be an abused juvenile; determined Leslie and Larry to be dependent and neglected; continued the children’s legal custody with DSS; highlighted concerns about “the veracity of the mother and the detachment of the father”; ordered the instatement of corrective procedures; and awarded parents limited supervised visitation with the children. Respondent-mother appeals.

On appeal, respondent-mother appears to challenge only the adjudication and disposition as to dependency. Therefore, the trial court’s adjudication and disposition of Larry as an abused juvenile and Larry and Leslie as neglected juveniles stands unchallenged. Nevertheless, we review respondent-mother’s argument as to dependency. Respondent-mother argues that the trial court erred by: (I) finding and concluding Larry and Leslie were dependent juveniles as the court failed to establish that respondent-mother was unable to provide proper care and supervision for her children; (II) finding that respondent-mother was unfit and acted inconsistently with her parental rights; and (III) finding that “[t]he court had concerns [respondent-mother] was involved in the abuse due to her being continually untruthful.”

I.

Respondent-mother contends the trial court failed to make the necessary findings before determining the children to be dependent juveniles. Specifically, respondent-mother argues that the trial court failed to address her ability to properly provide for the children before classifying Larry and Leslie as dependent. We disagree.

“Appellate review of an adjudication order is limited to determining (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 C.B.*, 245 N.C. App. 197, 199, 783 S.E.2d 206, 208 (2016) (quoting *In re Pittman*, 149 N.C. App. 756, 763–64, 561 S.E.2d 560, 566 (2002)); *see also* N.C. Gen. Stat. § 7B-807(a) (2017) (stating that findings of fact made following an adjudication hearing for abuse, neglect, or dependency must be proven by clear and convincing evidence). “The conclusion that a juvenile is abused, neglected, or dependent is reviewed *de novo*.” *In re V.B.*, 239 N.C. App. 340, 341, 768 S.E.2d 867, 868 (2015). “In a non-jury neglect [abuse or dependency] 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).

North Carolina General Statutes Section 7B-101(a)(9) provides for two situations where a juvenile can be classified as dependent: “(i) the juvenile has no

parent, guardian, or custodian responsible for the juvenile's care or supervision or (ii) the juvenile's parent, guardian, or custodian is unable to provide for the juvenile's care or supervision and lacks an appropriate alternative child care arrangement." N.C. Gen. Stat. § 7B-101(9) (2017). Herein, we address only the second prong, as the first prong is not relevant. As such, we examine findings on respondent-mother's ability to provide care or supervision and her ability to provide alternative child care arrangements.

In the instant case, the trial court issued findings of fact based on stipulations made by both parents and other evidence including extensive medical records related to Larry's injuries. Respondent-mother does not dispute that Larry was abused while in her care or the likelihood that Leslie was susceptible to abuse or neglect. Instead, respondent-mother argues the trial court's conclusions are "inadequate" as to her ability "to provide for the care and supervision [of her children]." As noted in the trial court's adjudication order, "the parents submitted twenty-six stipulations to the [c]ourt." In those stipulations, the parents conceded in relevant part: a) That respondent-mother was the primary custodian for the children; b) Respondent-mother allowed her boyfriend to supervise the children, and that Larry suffered physical abuse by a parent or caretaker; c) That from "May 2016 to [25 April] 2017, no one took either child to see a doctor or medical provider"; d) That given Larry's extensive injuries which occurred over a period of time, the parents or caretakers

created conditions likely to cause injury and failed to provide adequate supervision or protection; and e) Respondent-mother acknowledges that she “failed to protect Larry and Leslie from an injurious environment.”

In addition to the relevant stipulations noted above, the trial court made the following findings of fact as to dependency:

21. [Respondent-mother] had a limited relationship with [her boyfriend] prior to moving into his home. Despite this, [respondent-mother] allowed [her boyfriend] to be a primary caretaker for both of her children.

....

23. The parents and caretaker lacked appropriate explanations for the cause of Larry’s injuries.

24. The child Larry was malnourished, and significantly underweight. [Respondent-mother] reported that she had consulted with the child’s pediatrician about the child’s weight; however, the child had not seen a doctor for approximately a year.

....

36. . . . Neither parent could identify one [appropriate, alternative caretaker for the children.] While the parents mentioned having relatives in Connecticut and provided specific contact information for those relatives, [DSS] was unable to determine if they were appropriate placements or if they would be willing to care for the children at the time the petition was filed.

....

38. There is no relative of the children who is willing and able to provide proper care and supervision of the children

in a safe home.

The record shows there was evidence to support the trial court's findings on dependency. Obviously, some of the findings support abuse and neglect, as well as dependency. Neither parent could provide appropriate care and supervision nor ensure the safety of the children. During the adjudication hearing, respondent-mother stated that she temporarily moved into her boyfriend's apartment "until [she] got back on [her] feet" following an eviction from her previous residence. She allowed her boyfriend to act as a caretaker to her children because she "didn't have anybody [in North Carolina] to really help in the situation."

Further, the record supports the trial court's concern that the current living conditions were injurious to the children's welfare. It was also noted that upon admitting Larry to the emergency room, the doctors were concerned that he was malnourished and significantly underweight. Respondent-mother stated that she consulted with Larry's pediatrician about the child's weight while in another state; however, the trial court found that Larry had not seen a doctor in North Carolina for approximately a year. The record is clear that the trial court's conclusions as to respondent-mother's ability to provide care or supervision for the children were supported. Also, the trial court's findings that, despite efforts to locate an alternative caretaker, there was no one suitable to act as a guardian to the children are supported by the record. Taken together, these findings and conclusions are sufficient to

support an adjudication and disposition of dependency under the second prong of N.C.G.S. § 7B-101(9). Respondent-mother's argument is overruled.

II-III

Respondent-mother also argues the trial court erred by finding and concluding she was an unfit parent and insinuating her involvement in the abuse of Larry. Specifically, respondent-mother contends that it was "improper" for the trial court to make such a determination during an adjudication and disposition hearing because DSS was only awarded temporary custody. However, as respondent-mother did not properly preserve these issues, we decline to review them on the merits and dismiss the arguments.

Although admittedly dicta, we note that neither of respondent's arguments have merit. It is not improper, although unnecessary, for the trial court to make a finding that a parent has acted inconsistently with her parental rights at a temporary custody hearing. As to the trial court's insinuation that respondent-mother was being untruthful, and bore responsibility for the abuse to Larry, the record supports the trial court's findings. Therefore, a full review on the merits, would not change the outcome of this case. The trial court's adjudication and disposition is

AFFIRMED.

Chief Judge MCGEE and Judge STROUD concur.

Report per Rule 30(e).