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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-102

Filed: 17 July 2018

Yadkin County, Nos. 17 JA 35-36

IN THE MATTER OF: B.H.S. and A.F.S.

Appeal by respondent-father from order entered 9 November 2017 by Judge Robert J. Crumpton in Yadkin County District Court. Heard in the Court of Appeals 21 June 2018.

J. Brett Lane for petitioner-appellee Yadkin County Human Services Agency.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender J. Lee Gilliam, for respondent-appellant father.

Paul W. Freeman, Jr. for guardian ad litem.

DIETZ, Judge.

Respondent appeals from an order adjudicating his children as neglected juveniles and placing them in the custody of the Yadkin County Human Services Agency (YCHSA). As explained below, we reject Respondent's challenges to the trial court's individual findings of fact and affirm the trial court's ultimate finding and conclusion of neglect.

Facts and Procedural History

On 7 September 2017, YCHSA obtained nonsecure custody of Brayden and Abigail.¹ The agency also filed a juvenile petition alleging that the children were neglected.

The petition alleged that YCHSA had previously been involved with the family on 4 February 2016 and 17 July 2016 due to allegations of domestic violence and substance abuse by the mother. On 24 April 2017, YCHSA received a Child Protective Services report stating that law enforcement had received an “anonymous call about a domestic violence/assault incident between the father and mother taking place at the family’s home.” Both Brayden and Abigail were present when the assault occurred. Respondent had injuries on both sides of his face. Law enforcement arrested the mother for assault.

That same day, Respondent signed a safety assessment with YCHSA, agreeing not to allow the mother back into the home “until the children were grown.” The mother was taken to Yadkin County Detention Center. She was released on the condition that she stay 250 feet away from Respondent and have no contact with him before her court date. The mother later signed a safety plan with the Burke County Department of Social Services agreeing to have no contact with Respondent.

The petition further alleged that in August 2017, Wiley Garrett, a licensed social worker, conducted a Child and Family Evaluation. Mr. Garrett concluded that

¹ Pseudonyms have been used throughout this opinion to protect the juveniles’ privacy and for ease of reading.

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Brayden's and Abigail's statements, behaviors, and interactions with him were "consistent with mental injury from domestic violence between the parents." Mr. Garrett recommended that both children attend therapy; that Respondent and the mother complete comprehensive psychological testing and assessments to determine the full extent of their needs; and that Respondent and the mother follow all recommendations for treatment in psychotherapy and treatment that may include medication management, as well as possible marriage therapy, family therapy, individual therapy, and parent training.

Finally, the petition alleged that, during the Child and Family Evaluation process, Respondent admitted that he met with the mother despite the various orders prohibiting contact between them. Respondent also stated that he would not testify against the mother on the assault charges and that he would not get counseling or parenting services. YCHSA later discovered that the mother had been living with Respondent for approximately two weeks.

The juvenile petition came on for adjudication and disposition on 12 October 2017. On 9 November 2017, the trial court adjudicated Brayden and Abigail as neglected juveniles pursuant to N.C. Gen. Stat. § 7B-101(15) and continued legal custody with YCHSA. Respondent timely appealed.²

² Brayden and Abigail's mother is not a party to this appeal.

Analysis

Respondent argues that the trial court erred by adjudicating Brayden and Abigail as neglected. As explained below, we reject this argument and affirm the trial court's order.

“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), *aff'd as modified*, 362 N.C. 446, 665 S.E.2d 54 (2008).

The Juvenile Code defines a “neglected juvenile,” in relevant part, as one “who does not receive proper care, supervision, or discipline from the juvenile's parent, guardian, custodian, or caretaker; . . . or who lives in an environment injurious to the juvenile's welfare.” N.C. Gen. Stat. § 7B-101(15). “This 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” under the statute. *In re Safriet*, 112 N.C. App. 747, 752, 436 S.E.2d 898, 901–02 (1993). “[T]he 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., III*, 178 N.C. App. 110, 113, 631 S.E.2d 19, 22 (2006), *aff'd per curiam*, 361 N.C. 231, 641 S.E.2d 302 (2007).

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With this standard of review in mind, we turn to Respondent's arguments. Respondent challenges a series of fact findings by the trial court that support the ultimate finding of neglect. We address these challenges in turn below.

Respondent first challenges Finding of Fact 11, which states that "[Respondent] has informed the YCHSA that he would not participate in counseling or parenting services and that he would not testify against [the mother] at her criminal trial for the domestic violence charges she incurred on April 24, 2017." This finding is supported by clear and convincing evidence. A YCHSA employee testified that she was appointed to complete a family assessment. She testified that Respondent told her that he was not going to testify against the mother concerning the April 2017 assault charges and that "he did not believe that counseling was going to help anything, that he didn't need [the] parenting [program]." We thus reject this argument.

Respondent next challenges the portion of Finding of Fact 12 stating that "Mr. Garrett further found that [Respondent] had a form of 'addiction' to [the mother] in that, although he and [the mother] struggle with domestic violence, [Respondent] is disinclined to separate himself and the minor children from [the mother]." This finding is supported by Mr. Garrett's testimony at the adjudication hearing:

[YCHSA attorney:] Do you believe [Respondent] has a form of addiction with respect to [the mother]?

[Mr. Garrett]: Well, he admitted that to me. I mean he is

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addicted to her. He can't let go. That's what – he told me that. You know, he can't let go. He's addicted to her, and so I think he definitely needs some help in terms of how to manage that.

The trial court's finding also is supported by Mr. Garrett's conclusions in his Child and Family Evaluation report:

[Respondent] is co-dependent with the mother[.] . . . [Respondent] states that he wants to protect the children from the chaotic, toxic, self-destructive relationship he has with the mother while at the same time admitting that he does not want to live without her and has problems saying no to her and setting healthy boundaries. . . . At this time he is still ambivalent about whether he can and will do this. There is no clear indication that he will protect the children from the mother at this time.

This testimony and evidence is sufficient to support the trial court's finding.

Respondent next challenges the portion of Finding of Fact 12 that states “[w]ith respect to the minor children, Mr. Garrett found that they were aware of, and frightened by, incidents of domestic violence between [Respondent] and [the mother].” This finding is supported by clear and convincing evidence in the record. To be sure, Mr. Garrett testified that the children generally felt safe, protected, and nurtured by Respondent. But Mr. Garrett also testified that that the children's exposure to domestic violence caused them mental injury, anxiety, and fear. This testimony—which Respondent contends is conflicting—is consistent. Mr. Garrett was addressing two separate issues: the children's feelings towards Respondent and the children's

feelings towards the domestic violence that occurred in the home. That testimony is sufficient to support the challenged finding.

Respondent next contends that there was insufficient evidence to show a pattern of domestic violence or serious and severe domestic violence and insufficient evidence of a connection between the domestic violence and harm or substantial risk of harm to the children. Again, we reject these arguments.

“Our Supreme Court has characterized parental behavior constituting ‘neglect’ as either severe or dangerous conduct or a pattern of conduct either causing injury or potentially causing injury to the juvenile.” *In re J.R.*, 243 N.C. App. 309, 315, 778 S.E.2d 441, 445 (2015). Conduct constituting “severe or dangerous conduct or a pattern of conduct either causing injury or potentially causing injury to the juvenile” may include alcohol or substance abuse by the parent or exposing the children to acts of domestic violence. *In re D.B.J.*, 197 N.C. App. 752, 755, 678 S.E.2d 778, 781 (2009). Here, the trial court found—and clear and convincing evidence supports—that there was a history of domestic violence between Respondent and the mother, that the children had observed the domestic violence and it had caused them mental and emotional harm, and that the most recent incident of domestic violence occurred within five months of the adjudication hearing. Moreover, Respondent was unwilling to distance himself and his children from the mother despite her ongoing drug use and domestic violence. Respondent also failed to participate in counseling or

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parenting services to address these issues. Finally, the trial court found that returning the children to the home would be contrary to their health and safety and that they were in need of more care and supervision.

These findings demonstrate that Brayden and Abigail's physical, emotional, and mental well-being were impaired or in substantial risk of being impaired because of improper care and supervision. Accordingly, the trial court properly adjudicated the children as neglected juveniles.

AFFIRMED.

Judges TYSON and MURPHY concur.

Report per Rule 30(e).