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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-450

Filed: 2 October 2018

New Hanover County, No. 17 JA 316

IN THE MATTER OF: C.S.

Appeal by respondent from order entered 26 January 2018 by Judge J.H. Corpening, II in New Hanover County District Court. Heard in the Court of Appeals 13 September 2018.

*Jennifer G. Cooke for petitioner-appellee New Hanover County Department of Social Services.*

*Sean P. Vitrano for respondent-appellant mother.*

*Parker Poe Adams & Bernstein LLP, by Ashley A. Edwards, and Womble Carlyle Sandridge & Rice, LLP, by Hunter S. Edwards, for guardian ad litem.*

ARROWOOD, Judge.

Respondent, the mother of the juvenile C.S. (“Charlie”)<sup>1</sup>, appeals from an order adjudicating Charlie neglected. After careful review, we reverse.

I. Background

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<sup>1</sup> 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) (2018).

On 15 November 2017, the New Hanover County Department of Social Services (“DSS”) filed a petition claiming that Charlie was a neglected juvenile. Specifically, DSS alleged that respondent had several mental health issues and was not taking her medications, was homeless, and had expressed feelings of worthlessness and being overwhelmed. DSS additionally alleged that respondent had a history of attempting suicide and was being hospitalized while awaiting a bed in a mental health facility. DSS obtained non-secure custody of Charlie.

An adjudicatory hearing was held on 3 January 2018. Prior to the hearing, the parties stipulated to the allegations in the petition as amended by the parties. Based on this stipulation, the trial court adjudicated Charlie a neglected juvenile. The trial court transferred custody and placement authority to the Onslow County Department of Social Services.<sup>2</sup> The trial court also authorized placement of Charlie with his father. Respondent appeals.<sup>3</sup>

## II. Discussion

Respondent’s sole argument on appeal is that the trial court erred by adjudicating Charlie a neglected juvenile. Respondent claims that the parties’ stipulation to the allegations in the petition provided an insufficient basis upon which to support a conclusion that Charlie was a neglected juvenile. We agree.

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<sup>2</sup> Respondent moved to Onslow County, and the juvenile was placed with his grandparents in Onslow County. Accordingly, the trial court entered an order transferring venue.

<sup>3</sup> Charlie’s father did not appeal from the trial court’s order and is not a party to this appeal.

“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 a trial court’s conclusions of law *de novo*” on appeal. *In re J.R.*, 243 N.C. App. 309, 312, 778 S.E.2d 441, 443 (2015) (citation omitted).

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 who has been placed for care or adoption in violation of law. . . .

N.C. Gen. Stat. § 7B-101(15) (2017).

Here, the sole finding of fact relevant to the trial court’s conclusion that Charlie was a neglected juvenile was finding of fact number 4, stipulated to by the parties, which states:

4. . . . That [Charlie] is a neglected Juvenile in that he does not receive proper care, supervision or discipline from

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[his] parent, guardian, custodian, or caretaker and lives in an environment injurious to [his] welfare in that specifically on or about November 15, 2017 and preceding: Respondent-Mother is diagnosed with major depression, generalized anxiety disorder, obsessive compulsive disorder, and borderline personality. She has not been taking medication consistently for one month. She admitted to being overwhelmed, has limited social support, feels worthless and has been homeless several months. She has a history of suicide attempts. She admitted to cutting herself one week ago. She is currently hospitalized awaiting a bed at the Behavioral Health Hospital. She reports that Respondent-Father is an alcoholic, and his house is unsuitable and unsafe for [Charlie]. He denies that information.

We initially note that respondent's stipulations that Charlie was a neglected juvenile, he did not receive proper care or supervision, and lived in an environment injurious to his welfare were ineffective. Recently, in *In re R.L.G.*, \_\_ N.C. App. \_\_, 816 S.E.2d 914 (2018), this Court reviewed similar stipulations. In *R.L.G.*, the parties stipulated as follows:

The mother, under oath and with the advice of counsel, acknowledged and admitted that the juvenile is a neglected juvenile as defined by N.C. Gen. Stat. § 7B-101(15) in that she did not receive proper care and supervision by her mother as her mother did not [e]nsure that the child attended school regularly, having missed twenty-five days during the 2016-17 calendar year and having been tardy thirty-seven times. The child did not pass the core classes of English, Science, and Social Studies. A copy of the child's report card was introduced into evidence in support of said admission. In addition, the child was not taken to well care visits with a physician to address her medical needs.

*Id.* at \_\_\_, 816 S.E.2d at 917. This Court concluded that a portion of the stipulation was invalid, stating:

[T]he determination of whether a juvenile is neglected within the meaning of N.C. Gen. Stat. § 7B-101(15) is a conclusion of law. It is well established that “stipulations as to questions of law are generally held invalid and ineffective, and not binding upon the courts, either trial or appellate.” Consequently, any “admission” by Respondent that [the juvenile] was a neglected juvenile was ineffective to support the trial court’s adjudication of neglect.

*Id.* at \_\_\_, 816 S.E.2d at 918-19 (citations omitted). The Court subsequently determined that the trial court’s remaining findings of fact that: (1) the mother failed to ensure that the juvenile regularly attended school; (2) the juvenile had not passed three core classes; and (3) the mother failed to take the juvenile to doctor’s visits related to her medical needs were insufficient to support the trial court’s conclusion that the juvenile was neglected. *Id.* at \_\_\_, 816 S.E.2d at 919.

In accordance with *R.L.G.*, we likewise conclude respondent’s stipulations that Charlie was neglected, did not receive proper care or supervision, and lived in an environment injurious to his welfare were invalid stipulations to conclusions of law. *Id.* at \_\_\_, 816 S.E.2d at 918-19; *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.”).

We must next determine whether the remainder of the trial court's finding of fact, which primarily concerned respondent's mental health issues and homelessness, was sufficient to support its conclusion that Charlie was neglected. We conclude it does not.

To sustain an adjudication of neglect, this Court has stated that the alleged neglectful 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 made no finding of fact that respondent's mental health issues and homelessness caused Charlie impairment or placed him at substantial risk of impairment, and no nexus between respondent's mental health issues and homelessness and any impairment or risk of impairment is apparent on the face of the trial court's findings of fact.

This Court has stated that "[w]here there is no finding that the juvenile has been impaired or is at substantial risk of impairment, there is no error if all the evidence supports such a finding." *In re Padgett*, 156 N.C. App. 644, 648, 577 S.E.2d 337, 340 (2003) (citation omitted). We do not conclude, however, that such is the case here. There was no evidence presented that respondent's mental health issues or homelessness had any adverse effect on Charlie. *See In re B.P.*, \_\_ N.C. App. \_\_, \_\_, 809 S.E.2d 914, 919 (2018) (declining to conclude that all the evidence supported a

determination that the juvenile was neglected where the evidence and supported findings demonstrated the respondent suffered from mental health issues, but was attending some treatment); *In re J.R.*, 243 N.C. App. at 314, 778 S.E.2d at 445 (reversing adjudication where the trial court made no finding that the juvenile was ever without shelter, and there was no evidence or findings of fact that the mother's unstable housing impeded her care and supervision of her child or exposed the child to an environment injurious to his welfare); *see also In re E.P.*, 183 N.C. App. 301, 304, 645 S.E.2d 772, 774 (reversing adjudication of neglect where "there was no substantial evidence of any connection between the [parent's] substance abuse and domestic violence and the welfare of [the] two children") (internal quotation marks omitted), *aff'd per curiam*, 362 N.C. 82, 653 S.E.2d 143 (2007).

Therefore, because DSS offered no evidence establishing that Charlie was actually harmed or placed at substantial risk of harm by respondent's mental health issues or homelessness, we conclude the stipulated findings of fact were insufficient to support the trial court's conclusion that Charlie was neglected. Accordingly, we reverse the trial court's order adjudicating Charlie a neglected juvenile.

REVERSED.

Chief Judge McGEE and Judge HUNTER, JR. concur.

Report per Rule 30(e).