IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-105

Filed: 16 October 2018

Mecklenburg County, Nos. 17-JA-155, 157, 211, 212

IN THE MATTER OF: Z.B., A.B., V.T., I.B.L.

Appeal by respondent mother from orders entered 1 September 2017 and 2 November 2017 by Judge Ty Hands in Mecklenburg County District Court. Heard in the Court of Appeals 12 July 2018.

Mecklenburg County Attorney, by Kristina A. Graham, for petitioner-appellee Mecklenburg County Department of Social Services.

Parker Poe Adams & Bernstein L.L.P., by Katherine E. Ross, for guardian ad litem.

Lisa Anne Wagner, for respondent-appellant mother.

MURPHY, Judge.

Respondent-mother ("Valerie") appeals from orders adjudicating four of her minor children, "Zachary," "Amy," "Victor," and "Ivy,"[1] to be neglected juveniles and maintaining them in the custody of Mecklenburg County Youth and Family Services

[1] Pseudonyms chosen by the parties. Pseudonyms are used throughout this opinion to protect the identity of juveniles and for the ease of reading. *See* N.C. R. App. P. 3.1(b).

("YFS"). We affirm the trial court's ruling as to Ivy, and vacate as to Victor, Zachary, and Amy and remand for further proceedings.

BACKGROUND

On 29 March 2017, YFS obtained non-secure custody of nine-year-old Victor and fifteen-year-old Ivy and filed a juvenile petition, alleging they were neglected and dependent. The petition alleged that Victor had accumulated 72 unexcused absences from school after 115 days of enrollment; that Valerie claimed without evidence that Victor had been bullied at school and "wants to kill some of his teachers and burn down the school"; and that Valerie was not registered to home-school Victor, had failed to follow through with the Day Treatment Program for homebound students as authorized by Victor's doctor, and refused to meet with school staff to create reentry and attendance plans for Victor. With regard to Ivy, the petition accused Valerie of refusing to cooperate with Ivy's post-operative treatment for leg surgery on 21 March 2017, which was inhibiting Ivy's recovery. Ivy also reported that some of her pain medication was missing. When a YFS social worker attempted to visit the children in the home on 28 March 2017, Valerie would not allow him into the residence or permit him to ask questions of the children. The petition alleged that Ivy's father's parental rights had been terminated in 2006, and that Valerie refused to name Victor's father.

The seven-day hearing was continued to 12 April 2017. Following the hearing, the trial court returned physical custody of Victor and Ivy to Valerie, but continued legal custody with YFS. The court conditioned Victor's placement upon his attending and remaining in school. Because Ivy was then on Spring Break with her foster parents, the court ordered that she be placed with Valerie upon her return.

When notified by the social worker that she would be returned home, Ivy refused, claiming Valerie had assaulted her and Victor and had allowed Victor to molest seven-year-old Amy. In investigating these claims, a social worker spoke to Ivy's older brother, "Damon," who was seventeen years old and in YFS custody pursuant to an adjudication of dependency in case number 17-JA-04. Based upon Damon's corroboration of his sister's claims and on Ivy's additional disclosures to investigators in Carteret County, YFS obtained non-secure custody of Amy, Victor, Ivy, and five-year-old Zachary on 18 April 2017 and filed a new petition alleging neglect and dependency. As with Victor's father, the petition listed the identity of Zachary and Amy's father as unknown.

The trial court held an adjudicatory hearing on 16 May and 12 June 2017 and adjudicated each of the four children to be neglected by order entered 1 September 2017. The court ruled YFS had failed to prove dependency.

During the dispositional hearing on 6 July 2017, counsel for Valerie moved for the appointment of a guardian *ad litem* ("GAL") for Valerie pursuant to N.C.G.S. §

1A-1, Rule 17 (2017). *See* N.C.G.S. § 7B-602(c) (2017). The court continued the hearing pending the completion of a competency evaluation. Valerie was found competent to proceed without a GAL, and the court resumed the hearing on 20 September 2017.

In the dispositional order entered 2 November 2017, the court maintained the children in YFS custody and ordered Valerie to, *inter alia*, comply with the terms of her Family Services Agreement, submit to a parenting capacity evaluation, continue her individual therapy, and take any medication as prescribed. Valerie filed timely notice of appeal.

ANALYSIS

Valerie claims the trial court erred in adjudicating her children neglected because the trial court's findings of fact do not support the adjudications. Valerie argues that many of the trial court's adjudicatory findings are not proper "determinations of fact." Other findings, she contends, lack evidentiary support.

The Court reviews a trial court's adjudication of neglect under N.C.G.S. § 7B-807 to determine whether the facts found by the trial court are based on "clear and convincing competent evidence" and whether the findings, in turn, support the court's conclusions of law. *In re Helms*, 127 N.C. App. 505, 511, 491 S.E.2d 672, 676 (1997). Uncontested findings are "presumed to be supported by competent evidence and [are] binding on appeal." *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731

(1991). We review a court's conclusions of law *de novo*. *In re J.S.L.*, 177 N.C. App. 151, 154, 628 S.E.2d 387, 389 (2006). "Whether a child is neglected or abused is a conclusion of law." *In re Ellis*, 135 N.C. App. 338, 340, 520 S.E.2d 118, 120 (1999).

Valerie objects to the trial court's findings in subparagraphs 5(b)-(g), (o)-(q), (u), and (v) of the adjudicatory order because they are drawn verbatim from the petitions filed by YFS. As explained in *In re J.W.*, 241 N.C. App. 44, 772 S.E.2d 249, *disc. review denied*, 368 N.C. 290, 776 S.E.2d 202 (2015), findings of fact are not invalid "simply because they are similar, or even identical, to the wording of the juvenile petition." *Id.* at 48, 772 S.E.2d at 253. So long as the trial court affirmatively finds the facts, and its order shows its adjudication of conflict in the evidence to reach and support its conclusions, "it is irrelevant whether those findings are taken verbatim from an earlier pleading." *Id.* at 49, 772 S.E.2d at 253; *see also Coble v. Coble*, 300 N.C. 708, 712, 714, 268 S.E.2d 185, 189, 190 (1980) ("The purpose of the requirement that the court make findings of those specific facts which support its ultimate disposition of the case is to allow a reviewing court to determine from the record whether the judgment – and the legal conclusions which underlie it – represent a correct application of the law. The requirement for appropriately detailed findings is thus not a mere formality or a rule of empty ritual; it is designed instead to dispose of the issues raised by the pleadings and to allow the appellate courts to perform their proper function in the judicial system. . . . Our decision to remand this case for further

evidentiary findings is not the result of an obeisance to mere technicality. Effective appellate review of an order entered by a trial court sitting without a jury is largely dependent upon the specificity by which the order's rationale is articulated. Evidence must support findings; findings must support conclusions; conclusions must support the judgment. Each step of the progression must be taken by the trial judge, in logical sequence; each link in the chain of reasoning must appear in the order itself. Where there is a gap, it cannot be determined on appeal whether the trial court correctly exercised its function to find the facts and apply the law thereto.") (internal quotation marks and citations omitted).

Valerie also observes, many of the trial court's adjudicatory findings merely recite and recount statements made to YFS during its investigation and are thus "not even really . . . finding[s] of fact." *In re O.W.*, 164 N.C. App. 699, 703, 596 S.E.2d 851, 854 (2004). As explained in *In re Harton*, 156 N.C. App. 655, 577 S.E.2d 334 (2003),

> When a trial court is required to make findings of fact, it must make the findings of fact specially. The trial court may not simply recite allegations, but must through processes of logical reasoning from the evidentiary facts find the ultimate facts essential to support the conclusions of law.

Id. at 660, 577 S.E.2d at 337 (citations and internal quotation omitted). "Findings of fact that merely restate a party's contentions or testimony without finding the facts in dispute are not adequate. It is the duty of the fact finder to resolve conflicting

evidence." *Dunlap v. Clarke Checks, Inc.*, 92 N.C. App. 581, 584, 375 S.E.2d 171, 174 (1989).

Although she mischaracterizes out-of-court statements as "testimony," we agree with Valerie that many of the trial court's findings simply recount a statement made by a particular declarant, as follows:

> m. *The mother testified* that [Ivy] was not receiving adequate care and supervision in the hospital leading to [Ivy] falling right after surgery, and that this upset the mother. *Per* [*the hospital's nurse manager*], [Ivy] had no accidents or falls at the hospital.
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> o. On or about March 27, 2017, [*Ivy*] contacted [the nurse manager] and *reported* that the mother is not assisting her at the house. [*Ivy*] *indicated* that she has to hop around the home on her own and pay her siblings $1.00 to change her portable commode or get things that she needs. [*Ivy*] *also reported* that some of her pain medication is missing.
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> s. On or about April 13, 2017, during a telephone conversation [*Ivy*] *began to disclose* . . . that [Victor] was subjected regularly to corporal punishment and that the same was true for [Ivy]. [*Ivy*] *specifically shared* that her mother had previously put a glass of water into a microwave oven, heated up the water and then threw the hot water on her.
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> t. [Ivy] spoke with a Social Worker while she was on spring break at the beach with her foster mother. [*Ivy*] *disclosed* physical altercations between her and the mother or between her siblings and the mother. [*Ivy*] *disclosed* that the mother threw objects at her and her siblings, and that

> they were hit and kicked. [*Ivy*] *reported* being hit in the head with a paper towel holder by the mother when they resided in Greensboro and still has a bump on her head as a result. [*Ivy*] *reported* that she and her older sibling were burned and the mother tried to stab them. [*Ivy*] *also reported* that the mother blames her and her siblings for the death of . . . a younger sibling who passed away.
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> u. On April 17, 2017, [Victor] was supposed to return to school (following spring break), but he did not. *The pending matter involving* [*Victor*] (referenced above in Paragraph b) *states* that since the beginning of the school year he has missed 72 school days so his missing the first day back following spring break is a concern.

(Emphasis added).

To the extent the trial court's adjudications hinge on whether the events described by Ivy or another declarant actually occurred, these findings are ineffectual and do not support the trial court's conclusions. *See In re O.W.*, 164 N.C. App. at 703, 596 S.E.2d at 854. Moreover, the parties adduced conflicting testimony with regard to these events, requiring resolution by the fact-finder.

Compounding the trial court's error is its failure to find any ultimate facts supporting its bare conclusion that Zachary, Amy, and Victor are "neglected as defined by NCGS §7B-101." "'Ultimate facts are the final resulting effect reached by processes of logical reasoning from the evidentiary facts.'" *In re Anderson*, 151 N.C. App. 94, 97, 564 S.E.2d 599, 602 (2002) (quoting *Appalachian Poster Advertising Co. v. Harrington*, 89 N.C. App. 476, 479, 366 S.E.2d 705, 707 (1988)).

Under N.C.G.S. § 7B-101(15) (2017), a "neglected juvenile" is defined as one

> 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 the custody of whom has been unlawfully transferred under G.S. 14-321.2; or who has been placed for care or adoption in violation of law.

Id. While minimal, the trial court did find that "Petitioner is not able to appropriately assess the safety and well-being of [Ivy] without Court intervention." This finding is sufficient to support the adjudication of neglect as to Ivy.

Finally, the adjudicatory order is largely silent with regard to Zachary and Amy. Other than noting the ages and school attendance of the "two other children in the home," the trial court's findings make no mention of Zachary or Amy's experience with the possible exceptions of (1) Valerie's refusal to allow the social worker access to "her children" during an unscheduled and unannounced attempted home visit on 28 March 2017, and (2) Ivy's report to a social worker of "physical altercations . . . between her siblings and the mother" in which "the mother threw objects at . . . her siblings, and . . . hit and kicked [them]." As previously discussed, a finding that Ivy said a certain event occurred is not equivalent to a finding of the event's actual occurrence. *See In re O.W.*, 164 N.C. App. at 703, 596 S.E.2d at 854. The existing findings offer no basis to conclude that Zachary and Amy are neglected juveniles under N.C.G.S. § 7B-101(15).

CONCLUSION

We hold the trial court failed to enter sufficient findings of fact to support its adjudications of neglect for Zachary, Amy, and Victor. Upon a review of the hearing transcript, we further conclude YFS adduced sufficient evidence to support – though not compel – such findings. We otherwise affirm the trial court's adjudication of Ivy as neglected. Accordingly, we vacate the adjudicatory order as to Zachary, Amy, and Victor and "remand for entry of a revised order with appropriate findings of fact and conclusions of law consistent with those findings." *In re Bullock*, 229 N.C. App. 373, 385, 748 S.E.2d 27, 35, *disc. review denied*, 367 N.C. 277, 752 S.E.2d 149 (2013); *see also In re O.W.*, 164 N.C. App. at 703, 596 S.E.2d at 854. The trial court may take additional evidence on remand. *See Heath v. Heath*, 132 N.C. App. 36, 38, 509 S.E.2d 804, 805 (1999). In light of our ruling, we need not address Valerie's remaining arguments on appeal.[2] *In re O.W.*, 164 N.C. App. at 704, 596 S.E.2d at 854.

Because we have vacated the underlying adjudications of Zachary, Amy, and Victor, we must also vacate the trial court's dispositional order as to Zachary, Amy,

[2] Valerie challenges several of the trial court's adjudicatory findings as unsupported by the evidence. Pending the entry of a new adjudicatory order on remand, we will not review these claims. We note that many of the contested findings do not appear material to a determination of the juveniles' neglected status. For example, findings that describe Valerie's disagreeable behavior toward hospital staff are not probative of neglect absent evidence of an adverse impact on Ivy's recovery from surgery. *See* N.C.G.S. § 7B-101(15). In order to obtain relief on appeal, Valerie must show *prejudicial* error by the trial court. *See In re T.M.*, 180 N.C. App. 539, 547, 638 S.E.2d 236, 240 (2006) ("[W]e agree that some of [the challenged findings] are not supported by evidence in the record. When, however, ample other findings of fact support an adjudication of neglect, erroneous findings unnecessary to the determination do not constitute reversible error.").

and Victor and remand for entry of a new dispositional order, if warranted by the proceedings on remand. *See* N.C.G.S. §§ 7B-807(a)-(b), -901, -905 (2017).

AFFIRMED IN PART; VACATED IN PART AND REMANDED.

Judges DIETZ and TYSON concur.

Report per Rule 30(e).