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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-482

Filed: 6 November 2018

Swain County, Nos. 16 JA 18, 19, 20

IN THE MATTER OF: D.C., Jr., J.C., D.C.

Appeal by respondents from orders entered 20 July 2017 by Judge Tessa Sellers and 22 January 2018 by Judge Kristina Earwood in Swain County District Court. Heard in the Court of Appeals 4 October 2018.

Swain County Department of Social Services, by Justin B. Greene for petitioner-appellee

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

Edward Eldred, Attorney at Law, PLLC, by Edward Eldred, for respondent-appellant father.

Womble Bond Dickinson (US) LLP, by Samuel B. Hartzell, Theresa M. Sprain, and Jonathon D. Townsend, for guardian ad litem.

BRYANT, Judge.

Respondent-mother and respondent-father (collectively "respondents") appeal from orders adjudicating "Dylan,"[1] "Julia," and "Diana" to be neglected juveniles, maintaining them in the custody of petitioner Swain County Department of Social

[1] Pseudonyms are used to protect the juveniles' privacy and for ease of reading.

Services ("DSS"), and relieving DSS of reunification efforts by establishing a permanent plan of adoption or guardianship. We affirm the adjudication order. We affirm the disposition and permanency planning order in part, vacate it in part, and remand for further proceedings.

I. Factual Background

Respondents are the parents of Dylan, born in February 2009, Julia, born in September 2005, and Diana, born in October 2003. In early 2016, respondents took into their home three additional children belonging to "Mr. and Mrs. Adams"[2]: four-year-old "Ryan," eight-year-old "Charlotte," and two-year-old "Ava." Mr. and Mrs. Adams left their children in respondents' care while they tried "to get their lives straightened out." They maintained some telephone contact with their children[3] but did not see them in person. DSS social worker Tracy Phillips observed Ryan in respondents' home in January 2016, at which time he appeared to be healthy.[4]

On 4 April 2016, Ryan was admitted to the emergency room at Swain Medical Center with life-threatening, non-accidental injuries. Ryan was also dirty, covered with scabs and bruises, and severely malnourished. His body temperature was 87.0 degrees and his toes pointed downward, indicating neurological trauma. The

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[2] A pseudonym.

[3] Mrs. Adams advised the DSS social worker that "she was not allowed to talk to [Ryan] often due to him always being in trouble."

[4] In its oral findings at the conclusion of the hearing, the trial court found Ms. Phillips testified she "hardly recognized [Ryan]" upon seeing him at Swain County Medical Center on 4 April 2016. This portion of her testimony seems to have occurred during a gap in the hearing transcript.

emergency room physician concluded that Ryan "was minutes to an hour away from death at the time he arrived . . . ." Ryan was intubated and transported to the pediatric intensive care unit ("PICU") at Mission Children's Hospital in Asheville.

Dr. Sarah Monahan-Estes, a pediatric hospitalist and child abuse pediatrician, oversaw Ryan's treatment at Mission Hospital. She determined that Ryan had subdural hemorrhages in two areas of his brain as well as "bilateral fluid collections over the bent portions of his brain." Ryan also had a subdural hemorrhage between T12 and S1 of his spine. Dr. Monahan-Estes determined that Ryan's brain hemorrhages were "less than a week old" and his spinal injury was between ten days and a month old. Ryan had also lost 15% of his body weight between the date of his last recorded weight of 43 pounds, 8 September 2015, and the date of his hospitalization on 4 April 2016, when he weighed 36 pounds. Doctors found no medical condition that would explain his severe malnourishment and weight loss. By 1 June 2016, Ryan had gained ten pounds.

Ryan wore a breathing tube for twelve days and spent twenty-five days in the PICU before being transferred to an inpatient rehabilitation clinic. According to Dr. Monahan-Estes, a CT scan of Ryan's head performed in October 2016 "continued to show multifocal encephalomalacia, which means he basically has portions of his brain that were previously there that are missing now." He is likely to experience "long term neurologic sequelae or side effects" from his injuries.

Swain County Sheriff's Detective Charles Robinson observed Ryan in the emergency room at Swain Medical Center on 4 April 2016. In addition to his injuries, Ryan "reeked of animal feces and urine." Detective Robinson and a DSS social worker proceeded to respondents' residence based on reports of additional children in the home. Detective Robinson noted an "overwhelming" odor of animal urine and feces and saw multiple dogs and cats running through the residence. The living room had been converted to a sleeping area for the six children. Detective Robinson described the five children remaining in the home as "unclean" and "nasty."

Detective Robinson observed that respondents' refrigerator was secured by a padlock. Respondents told him they installed the lock because "[Ryan] was constantly into the refrigerator." Detective Robinson also observed surveillance cameras inside the residence overlooking the living room and master bedroom and an outside camera pointed toward the driveway and the children's play area. Respondents said "that the camera system was there to keep an eye on the children because [they] misbehaved and it was to keep them out of things."

Detective Robinson obtained a search warrant and seized a series of recordings stored on respondent-father's cell phone. The recordings depict respondent-mother referring to Ryan in a phone call as follows: "I've never seen a child so evil . . . he's fucking sneaky and conniving . . . I've spanked his ass all night long . . . ." A video

recording showed Ryan being punished by respondent-mother "by being made to hold his arms up in a living room while [she] asks him, 'Why did you lie?' and [Ryan] cries."

Asked about Ryan's condition on 4 April 2016, respondent-mother told Detective Robinson that the child "had like a seizure," and that she had been instructed by Mr. and Mrs. Adams to "push on his stomach a couple times [so] he would start breathing back, and to roll him up in a blanket and he would be fine by the next morning." She claimed Ryan was scratched and bruised when respondents received him from Mr. and Mrs. Adams and described his injuries as "typical of little boy injuries" obtained from playing, running through the woods, and climbing trees. Respondent-mother also told Detective Robinson that Ryan's "balance wasn't good," and he "was always falling down." Regarding the scratches on Ryan's face, respondent-mother claimed the family's rooster had attacked Ryan when he tried to eat chicken feed and "slop" from the chicken pen.

Respondent-mother provided a similar account of Ryan's injuries to Dr. Monahan-Estes, stating that Ryan "came from [Mr. and Mrs. Adams'] care with significant bruises on him" and "was neurologically abnormal when [respondent-mother] got him." Dr. Monahan-Estes concluded that most of Ryan's injuries were inconsistent with respondent-mother's explanations and could not have been caused by a seizure or by falling down.[5] She diagnosed Ryan with physical abuse and

[5] Dr. Monahan-Estes did concede the laceration on Ryan's face could have been inflicted by a rooster, as respondent-mother told Detective Robinson.

trauma. Respondents were arrested and charged with felony child abuse in June 2016.

II. Procedural History

DSS obtained nonsecure custody of respondents' and Mr. and Mrs. Adams' children on 5 April 2016 and filed juvenile petitions alleging that Ryan was abused in that his "parent . . . or caretaker inflicts or allows to be inflicted upon [him] serious physical injury by other than accidental means," and that all six children were neglected "in that they reside in an environment injurious to their welfare." *See* N.C.G.S. § 7B-101(1), (15) (2017). In addition to describing Ryan's injuries and respondent-mother's explanations therefor, the petitions noted the surveillance cameras observed by Detective Robinson and alleged that DSS had "previously been involved with [respondents'] family, following a report that the home was dirty and unsanitary and [respondents'] children were not being educated." The petitions further alleged that respondents' children "are not functioning on an appropriate grade level and have been withdrawn from school."

The trial court held an adjudicatory hearing in May 2017 and entered its order adjudicating Ryan abused and neglected and adjudicating the remaining children neglected on 20 July 2017 ("Adjudication Order"). Mr. and Mrs. Adams waived participation in the adjudicatory stage of the proceedings.

The trial court severed the two families' cases for purposes of disposition and held a dispositional and permanency planning hearing for respondents' three children on 16 November 2017. After receiving additional evidence about the children's educational delays and trauma-induced psychological issues, as well as Julia's "numerous disclosures of sexual abuse and physical abuse by [respondents]" in the home, the trial court entered its "Disposition Order" on 22 January 2018. *Inter alia*, the Disposition Order granted DSS continuing custody and placement authority over respondents' children, relieved DSS of further efforts to reunify respondents with their children, and established a permanent plan for the children of guardianship concurrent to a plan of "adoption via termination of parental rights or relinquishment." Respondents filed timely notices of appeal.

III. Respondent-Mother's Petition for Writ of Certiorari

Respondent-mother has filed a petition for writ of certiorari as an alternative basis for this Court's review should we find a fatal defect in her notice of appeal. The Juvenile Code authorizes a respondent-parent's appeal from, *inter alia*, "[a]ny initial order of disposition and the adjudication order upon which it is based." N.C.G.S. § 7B-1001(a)(3) (2017). Under this provision, the right of appeal from the adjudication lies only after entry of the resulting dispositional order. *See In re Laney*, 156 N.C. App. 639, 643, 577 S.E.2d 377, 379, *disc. review denied*, 357 N.C. 459, 585 S.E.2d 762 (2003).

Rule 3(d) of the North Carolina Rules of Appellate Procedure, requires that a notice of appeal "designate the judgment or order from which appeal is taken . . . ." N.C.R. App. P. 3(d); *see also* N.C.R. App. 3.1(a) (incorporating requirements of Rule 3(d) unless otherwise specified by Rule 3.1). In her notice of appeal filed 14 February 2018, respondent-mother designated for appeal "the Adjudication/Dispositional Order that was filed on January 22, 2018 and served by mail on January 22, 2018." The trial court entered its "Adjudication Order" on 20 July 2017 prior to entry of its "Disposition Order" on 22 January 2018.

Although respondent-mother's notice of appeal does not separately list the date of entry of the "Adjudication Order," we believe her intention to appeal from the "Adjudication Order" and "Disposition Order" may be " 'fairly inferred' " from her notice's reference to the "Adjudication/Disposition Order." *In re M.B.*, 240 N.C. App. 140, 151, 771 S.E.2d 615, 623 (2015) (quoting *Phelps Staffing, LLC v. S.C. Phelps, Inc.*, 217 N.C. App. 403, 410, 720 S.E.2d 785, 791 (2011)). Accordingly, we conclude respondent-mother's notice of appeal is sufficient to permit review of both orders and dismiss her petition for writ of certiorari as unnecessary. *Id.*

IV. Respondents' Appeal from the Adjudication Order

Respondents both challenge the trial court's adjudication of their children as neglected. As a general matter, we review an adjudication under N.C.G.S. §§ 7B-802, 807 (2017) to determine whether the trial court's findings of fact are supported by

"clear and convincing competent evidence" and whether those 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 of fact 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). The trial court's conclusions of law, including the conclusion that a child is a "[n]eglected juvenile" as defined by N.C.G.S. § 7B-101(15), are reviewed *de novo*. *Helms*, 127 N.C. App. at 512, 491 S.E.2d at 676.

Respondent-father first claims the trial court erred by making findings of fact that assign blame for Ryan's abuse to respondents. While not disputing the accuracy of the court's fact-finding, respondent-father contends the question of who is responsible for a child's legal status as an "abused juvenile" is not an authorized subject of inquiry for an adjudicatory hearing under N.C.G.S. § 7B-802. He cites a series of cases standing for the principle that an adjudication of abuse, neglect, or dependency hinges solely upon a juvenile's status as abused, neglected, or dependent as those terms are defined by N.C.G.S. § 7B-101 (2017), and not on the culpability of any particular respondent. *E.g.*, *In re S.C.R.*, 217 N.C. App. 166, 170, 718 S.E.2d 709, 713 (2011) (ruling that "the trial court should not have dismissed the petition as to the [non-culpable] father, since an adjudication of abuse, neglect, or dependency pertains to the status of the child and not to the identity of any perpetrator of abuse or neglect of the child"); *In re J.A.G.*, 172 N.C. App. 708, 721, 617 S.E.2d 325, 334

(2005) (Levinson, J., concurring) ("Fashioning adjudication orders on abuse, neglect, and dependency 'as to' anyone misapprehends our juvenile statutes.").

We find no merit to respondent-father's suggestion that a trial court is *forbidden* to identify the party responsible for a child's mistreatment simply because such identification may not be *necessary* for an adjudication under N.C.G.S. § 7B-802. The fact that a child was physically injured by his parent or caretaker – rather than by a classmate at school – may determine whether he is an "[a]bused juvenile" as defined in N.C.G.S. § 7B-101(1).[6] Indeed, the very definition of "[n]eglected juvenile" affirms the relevance of such information in some circumstances when ascertaining a child's *status* as neglected:

> 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.G.S. § 7B-101(15) (emphasis added). By statute, therefore, it is relevant to Dylan, Julia, and Diana's adjudications whether respondent-mother or respondent-

[6] Although "[a]bused juvenile" is a term of art defined by the Juvenile Code in N.C.G.S. § 7B-101(1), the noun and verb forms of "abuse" are not. Accepting *arguendo* respondent-father's assertion that a trial court makes "a legal conclusion" when it attributes "abuse" of a child to a particular parent or caretaker, the court's attribution of a child's physical injuries to a parent or caretaker is pure fact-finding. Respondent-father does not dispute that the severity of Ryan's injuries meet the legal standard for "[a]bused" status in N.C.G.S. § 7B-101(1); nor does he challenge the evidence supporting the court's determination that respondents were responsible for Ryan's injuries.

father "subjected" Ryan to abuse or neglect. *Id.*; *see also* N.C.G.S. § 8C-1, Rule 401 (2017) (defining relevancy). Respondent-father's argument is overruled.

Respondents both[7] except to the following italicized portion of Finding 79 in the Adjudication Order on the ground that it unsupported by the evidence:

> 79. . . . [Julia, Diana, and Dylan] were being home schooled by [respondent-mother]. [Respondent-mother] *indicated that they were approximately 6 months behind their grade level in their education at the time [DSS] took custody of the minor children.*

(Emphasis added).

Because this finding is not needed to sustain the children's adjudication as neglected, any error by the trial court is harmless. *See In re T.M.*, 180 N.C. App. 539, 547, 638 S.E.2d 236, 240 (2006). However, we note the absence of evidence to support this finding appears to result from a gap in the hearing transcript, which omits most of the direct examination testimony of DSS Social Worker Tracy Phillips due to a failure to reactivate the recording device following the lunch break. The court adjourned for lunch at 12:56 p.m., and the recording did not resume until 2:40 p.m. At the conclusion of the hearing, the trial court appeared to summarize Ms. Phillips' testimony, as follows:

> Social Worker Phillips had had previous contact with the family, specifically in January of 2016. There was a child protective services report where there was a report made

[7] Respondent-father "adopts by reference" the argument found in respondent-mother's appellant's brief. *See* N.C.R. App. P. 28(f) ("Any party to any appeal may adopt by reference portions of the briefs of others.").

> as to the condition of the home, and that the children in the home were not being properly homeschooled as required.
>
> On January 15th of 2016, Social Worker Phillips did go to the home and speak with [respondent-mother]. . . .
>
> Social Worker Phillips had the opportunity to see [Ryan] there at the home. He was verbal. She noticed nothing unusual about his gait, and had no concern as to his well-being or welfare.
>
> Social Worker Phillips indicated that on April 4th of 2016 she had the opportunity to see this same child laying in the hospital bed at Swain County Medical Center in which her words were "she hardly recognized the child."
>
> The other children in the home, specifically [Julia], [Diana], and [Dylan] were being homeschooled by [respondent-mother]. *And [respondent-mother] indicated that they were at least six months behind on grade level. That she was hoping to have them ready for public school beginning in the fall.*

(Emphasis added).

"[I]t is the appellant's responsibility to make sure the record on appeal is complete," and we presume the correctness of the trial court's actions in the absence of evidence to the contrary. *In re Clark*, 159 N.C. App. 75, 81, 582 S.E.2d 657, 661 (2003). There is no indication in the record before this Court that respondents attempted to construct a narrative of Ms. Phillips' unrecorded testimony as authorized by N.C.R. App. P. 9(c). *Id.* at 83, 582 S.E.2d at 662. Nor do respondents contend on appeal that the trial court mischaracterized Ms. Phillips' hearing testimony in announcing its findings in open court at the conclusion of the hearing.

Accordingly, their exception to Finding 79 is overruled.

Respondents next claim that the trial court's findings of fact do not support its conclusion that Dylan, Julia, and Diana are neglected juveniles as defined by N.C.G.S. § 7B-101(15). Under N.C.G.S. § 7B-101(15), 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 . . . .

Id. Our courts further require that the conditions at issue result in some "physical, mental, or emotional impairment [to the juvenile] or a substantial risk of such impairment" in order to support an adjudication of neglect. *In re C.M.*, 183 N.C. App. 207, 210, 644 S.E.2d 588, 592 (2007).

As discussed above, "[i]n determining whether a juvenile is a neglected juvenile, it is relevant whether that juvenile . . . lives in a home where another juvenile has been subjected to abuse or neglect by an adult who regularly lives in the home." *Id.* "[W]hile this language regarding abuse or 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 A.S.*, 190 N.C. App. 679, 689–90, 661 S.E.2d 313, 320 (2008) (quoting *In re Nicholson*, 114 N.C. App. 91, 94, 440 S.E.2d 852, 854 (1994)).

With regard to respondents' children, the trial court concluded "[t]hat [Dylan, Julia, and Diana] are neglected juveniles as same is defined in N.C.G.S. [§] 7B-101(15), in that they reside in an environment injurious to their welfare." In reaching this conclusion, the court expressly "considered that the juveniles resided in a home where another juvenile ([Ryan]) was abused and neglected by an adult who regularly lives in the home."

We hold the trial court's conclusion of law is fully supported by its detailed findings of fact depicting the abuse and malnourishment experienced by four-year-old Ryan while living in respondents' home between mid-January and 4 April 2016. Such prolonged and extreme abuse – which was plainly visible on Ryan and resulted in "significant pain" – unquestionably created a traumatic living environment for respondents' three young children, who were forced to bear witness to Ryan's mistreatment at the hands of their own parents. The fact that Dylan, Julia, and Diana were themselves found to be filthy and living in unsanitary conditions only bolsters our conclusion that the trial court properly concluded that respondents' children lived in an environment injurious to their welfare under N.C.G.S. § 7B–101(15).

Respondents cite to several cases in which a respondent's abuse of one child was held to be insufficient to support an adjudication of neglect as to another child. We find these prior cases distinguishable from the case *sub judice*. In *In re J.C.B.*,

233 N.C. App. 641, 757 S.E.2d 487 (2014), the respondent-father sexually abused his cousin's step-daughter during her overnight visit to the home. *Id.* at 642, 757 S.E.2d at 488. Although the respondent-father's son and two nieces "were all present in the home at the time of the alleged sexual abuse," *id.*, there was no indication these children were aware of the sexual abuse, had been sexually abused themselves, or were at risk of similar abuse by their father in the future. *Id.* at 643-45, 757 S.E.2d at 489-90. Similarly, in *In re J.R.*, 243 N.C. App. 309, 314, 778 S.E.2d 441, 445 (2015), the respondent-father's prior sexual abuse of his girlfriend's daughter, standing alone, did not support a conclusion that his own son was neglected, absent any "evidence . . . [or] findings tending to show that respondent-father was at risk of sexually abusing his own nineteen-month-old son." *Id.* at 314, 778 S.E.2d at 445.

Unlike the case before us, neither *In re J.C.B.* nor *In re J.R.* involved a child's ongoing exposure to a respondent-parent's severe physical abuse of another child in the home. The trial court could reasonably conclude that living alongside such abuse, in close proximity and over an extended period of time, placed respondent's children in an environment injurious to their welfare. It was unnecessary to determine that respondents' children were at risk of future abuse similar to that experienced by Ryan.[8]

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[8] For the same reason, we need not address respondents' attempt to distinguish what they refer to as "other derivative neglect cases" such as *In re McLean*, 135 N.C. App. 387, 521 S.E.2d 121 (1999), in which a newborn child was adjudicated neglected before ever entering the home based on the respondent-parents' abuse of another child in the home.

Respondents also cite *In re Nicholson*, 114 N.C. App. 91, 440 S.E.2d 852 (1994), in which we held the trial court did not abuse its discretion in dismissing a petition alleging that a child three and one-half years of age was neglected based on the respondent-father's prior conviction of involuntary manslaughter for the death of an infant child by shaken baby syndrome. *Id.* at 93-94, 440 S.E.2d at 853-54. Although *Nicholson* involved the statutory predecessor to N.C.G.S. § 7B-101(15), our decision reflects the deference accorded to the trial court's weighing of evidence of abuse of another child in the home:

> It is clear from [N.C.G.S. §] 7A-517(21) that evidence of abuse of another child in the home is relevant in determining whether a child is a neglected juvenile. However, it . . . does not require the removal of all other children from the home once a child has either died or been subjected to sexual or severe physical abuse. Rather, the statute affords the trial judge some discretion in determining the weight to be given such evidence. We believe the trial court in the case at hand complied with the statute and considered the evidence as a relevant factor in determining whether Ashley was a neglected juvenile. In reaching its decision, the court set forth the facts surrounding Nicholas' death, and noted that there is no threat of shaken-baby syndrome as to Ashley, and that there is no evidence that Ashley was ever abused.

Id. at 94, 440 S.E.2d at 854. Nothing in our analysis in *Nicholson* would bar the trial court from deeming the circumstances of Ryan's abuse sufficient to render respondents' children neglected juveniles under N.C.G.S. §7B-101(15). Respondents' exception to the adjudications is overruled.

V. Respondents' Appeal from the Disposition Order

Respondents claim the trial court erred by ceasing DSS's reunification efforts as part of its initial Disposition Order without making the findings required for this outcome under N.C.G.S. § 7B-901(c) (2017). We agree.

"We review a trial court's disposition order only for an abuse of discretion." *In re L.Z.A.*, __ N.C. App. __, __, 792 S.E.2d 160, 170 (2016). "If the trial court's findings of fact are supported by competent evidence, they are conclusive on appeal." *In re Weiler*, 158 N.C. App. 473, 477, 581 S.E.2d 134, 137 (2003) (citations omitted). However, " '[i]ssues of statutory construction are questions of law, reviewed *de novo* on appeal. Under a *de novo* review, the Court considers the matter anew and freely substitutes its own judgment for that of the lower tribunal.' " *In re J.B.*, __ N.C. App. __, __, 809 S.E.2d 353, 357 (2018) (quoting *State v. Coakley*, 238 N.C. App. 480, 492, 767 S.E.2d 418, 426 (2014)). "When a trial judge acts under a misapprehension of the law, this constitutes an abuse of discretion." *State v. Nunez*, 204 N.C. App. 164, 170, 693 S.E.2d 223, 227 (2010).

As respondents contend, the trial court's authority to cease reunification efforts in its initial Disposition Order is limited to the circumstances prescribed in N.C.G.S. § 7B-901(c), which provides as follows:

> (c) If the disposition order places a juvenile in the custody of a county department of social services, the court shall direct that reasonable efforts for reunification as defined in G.S. 7B-101 shall not be required if the court makes

written findings of fact pertaining to any of the following, unless the court concludes that there is compelling evidence warranting continued reunification efforts:

(1) A court of competent jurisdiction has determined that aggravated circumstances exist because the parent has committed or encouraged the commission of, or allowed the continuation of, any of the following upon the juvenile:

a. Sexual abuse.

b. Chronic physical or emotional abuse.

c. Torture.

d. Abandonment.

e. Chronic or toxic exposure to alcohol or controlled substances that causes impairment of or addiction in the juvenile.

f. Any other act, practice, or conduct that increased the enormity or added to the injurious consequences of the abuse or neglect.

(2) A court of competent jurisdiction has terminated involuntarily the parental rights of the parent to another child of the parent.

(3) A court of competent jurisdiction has determined that (i) the parent has committed murder or voluntary manslaughter of another child of the parent; (ii) has aided, abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of the child or another child of the parent; (iii) has committed a felony assault resulting in serious bodily injury to the child or another child of the parent; (iv) has committed sexual abuse against the child or another child of the parent; or (v) has been required to

> register as a sex offender on any government-administered registry.

Id. Moreover, at the time of the dispositional hearing, the statute required that the determinations contemplated by N.C.G.S. § 7B-901(c) "must have already been made by a trial court" in "a prior court order." In *In re G.T.*, __ N.C. App. __, __, 791 S.E.2d 274, 279 (2016), *aff'd per curiam*, 370 N.C. 387, 808 S.E.2d 142 (2017).

The trial court made findings in the Adjudication Order that, if specifically designated as such, might have supported its authority to relieve DSS of reunification efforts with regard to respondents' children pursuant to N.C.G.S. § 7B-901(c). *See G.T.*, __ N.C. App. at __, 791 S.E.2d at 279 ("We conclude that the language [in N.C.G.S. § 7B-901(c)] at issue is clear and unambiguous and that in order to give effect to the term 'has determined,' it must refer to a prior court order."). However, although the court in its Disposition Order took judicial notice of the Adjudication Order, it erred insofar as it relieved DSS of reunification efforts pursuant to N.C.G.S. § 7B-901(c) without the necessary, *specific* finding in the Disposition Order that "a court of competent jurisdiction has determined[9] that aggravat[ing] circumstances exist" based on the enumerated list to cease reunification efforts. *See id.* (The word "shall" indicates "the legislature intended the statute to be implemented" in such a

[9] Our legislature has since amended N.C.G.S. § 7B-901(c) on 25 June 2018, to allow the trial court to make the determination *at the initial dispositional hearing*. *See* N.C. Sess. Law 2018-86, § 2 (June 25, 2018). This amendment governing initial dispositional hearings applies to all disposition orders *effective* on or after 25 June 2018 and is inapplicable as a matter of law to the Disposition Order in this case filed on 22 January 2018.

way that the trial court *must make the* "*necessary determination*, as long as it is a court of competent jurisdiction." (emphasis added)).

We recognize that the trial court combined the dispositional hearing with the permanency planning hearing, and that our permanency planning statute, N.C.G.S. § 7B-906.2(b) (2017), allows the court to cease reunification efforts and forgo reunification as a primary or secondary permanent plan upon "written findings that reunification efforts clearly would be unsuccessful or would be inconsistent with the juvenile's health or safety." *Id.* However, we have expressly held that the requirements of N.C.G.S. § 7B-901(c) may not be avoided in favor of "the more lenient requirements of N.C.G.S. § 7B-906.2(b) simply by combining dispositional and permanency planning matters in a single order." *In re J.M.*, __ N.C. App. __, __, 804 S.E.2d 830, 841 (2017), *disc. review improvidently allowed*, __ N.C. __, 813 S.E.2d 847 (2018). Absent a valid finding under N.C.G.S. § 7B-901(c), we must "vacate that portion of the trial court's order that released DSS from further reunification efforts" and remand for entry of an appropriate initial disposition and permanent plan consistent with this opinion. *Id.*

VI. Conclusion

The Adjudication Order is hereby affirmed. We affirm the Disposition Order in part, reverse it in part insofar as it relieves DSS of further reunification efforts and

eliminates reunification from the permanent plan, and remand for further proceedings.

AFFIRMED IN PART; REVERSED AND REMANDED IN PART.

Judges DIETZ and INMAN concur.

Report per Rule 30(e).