IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-1179

Filed: 4 June 2019

Henderson County, Nos. 17 JA 212-13

IN THE MATTER OF: I.G.A., D.A.A.

Appeal by respondent-father from orders entered 13 August 2018 by Judge Emily Cowan in Henderson County District Court. Heard in the Court of Appeals 9 May 2019.

Deputy County Attorney Rebekah P. Spaulding for petitioner-appellee Henderson County Department of Social Services.

Administrative Office of the Courts, by GAL Appellate Counsel Matthew D. Wunsche, for guardian ad litem.

Parent Defender Wendy C. Sotolongo, by Assistant Parent Defender J. Lee Gilliam, for respondent-appellant father.

ZACHARY, Judge.

Respondent-father appeals from orders of the trial court adjudicating his daughter "Ivy"[1] to be a neglected juvenile, adjudicating his daughter "Diana" to be an abused and neglected juvenile, and maintaining the girls in the custody of the Henderson County Department of Social Services ("HCDSS"). *See* N.C. Gen. Stat. §

[1] We use pseudonyms chosen by the parties to refer to the juveniles.

7B-101(1) and (15) (2017). With regard to Diana's adjudication and disposition, we affirm. With regard to Ivy, we vacate the trial court's orders and remand for further proceedings.

Diana was born in November 2004 to respondent-father and Ms. A. "Respondent-mother" is Diana's stepmother and caretaker.[2] Respondent-mother gave birth to Ivy in April 2017. At the time these proceedings commenced, respondent-father had custody of Diana, and Ms. A. had not been in contact with the child for approximately eight years.

On 19 December 2017, HCDSS filed juvenile petitions seeking adjudications of abuse and neglect as to Diana and neglect as to Ivy. The petitions alleged that in November of 2017, Diana disclosed three episodes of inappropriate sexual conduct committed by respondent-father while he was intoxicated by alcohol. The petitions described additional unsafe conduct by respondent-father while he was intoxicated, including holding Ivy, driving Diana to the grocery store, and pointing "several weapons" in the home. It was also alleged that respondent-father had been charged with driving under the influence on 13 October 2017. According to HCDSS, respondent-mother acknowledged respondent-father's drinking, but "stated that when [he] drinks, she encourages [him] to go drink in the garage so he will not bother

[2] Although Ms. A. is named as the respondent-parent in Diana's case, we refer to respondent-father's current wife as "respondent-mother" for simplicity's sake, as neither mother is a party to this appeal.

or scare [the children]." Following Diana's disclosures, respondent-father agreed to move out of the home as part of a family safety plan. Diana and Ivy remained in the home with respondent-mother.

After several continuances, the trial court held a hearing on the petitions on 14 June and 12 July 2018. Upon findings of fact made by "clear and convincing evidence," the court adjudicated Diana to be abused and neglected and Ivy to be neglected, as defined by N.C. Gen. Stat. § 7B-101(1) and (15). At disposition, the court awarded legal custody of Ivy to respondent-mother and legal custody and placement authority of Diana to HCDSS. The court "expressly authorized," but did not require, Diana's continued placement with respondent-mother. Respondent-father was awarded supervised visitation with Ivy on the condition that he have no contact or be in the home with Diana during the visits. Respondent-father's visitation with Diana was made contingent upon supervision by Diana's therapist or the therapist's designee, as well as a written determination by the therapist that such visits are in Diana's best interest. The court also imposed various requirements upon each respondent as a condition of reunification. Respondent-father timely filed notice of appeal.

I. Standard of Review

This Court reviews an adjudication of abuse, neglect, or dependency under N.C. Gen. Stat. § 7B-807 to determine whether the trial court's findings of fact are

supported by "clear and convincing competent evidence" and whether the findings of fact support the 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 evidence and are "binding on appeal." *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991). Erroneous findings that are not necessary to sustain the adjudication are deemed harmless. *In re T.M.*, 180 N.C. App. 539, 547, 638 S.E.2d 236, 240 (2006). The determination that a juvenile is abused, neglected, or dependent within the meaning of the Juvenile Code is a legal conclusion we review *de novo*. *In re V.B.*, 239 N.C. App. 340, 341, 768 S.E.2d 867, 868 (2015).

We are bound by a trial court's dispositional findings if they are supported by any competent evidence. *See In re J.N.S.*, 207 N.C. App. 670, 678, 704 S.E.2d 511, 517 (2010); *see also* N.C. Gen. Stat. § 7B-901(a) (2017) (allowing dispositional hearings to be "informal" and authorizing the trial court to "consider any evidence, including hearsay . . ., that the court finds to be relevant, reliable, and necessary to determine the needs of the juvenile and the most appropriate disposition"). The trial court's choice of an appropriate disposition following an adjudication of abuse, neglect, or dependency is reviewed "only for abuse of discretion." *In re B.W.*, 190 N.C. App. 328, 336, 665 S.E.2d 462, 467 (2008).

II. Adjudicatory Findings of Fact

Respondent-father first claims that "two of the trial court's crucial adjudicatory findings [of fact] are not supported by the evidence."[3] Initially, he challenges the finding "that conditions which led to the filing of the petition[s] and HCDSS involvement continue to exist." Respondent-father notes he "voluntarily moved out of the home" before HCDSS filed the petitions in this cause and had not returned at the time of the hearing. As the only evidence of allegations of abuse or neglect involved his conduct in the home, respondent-father insists the court's finding is erroneous.

Under N.C. Gen. Stat. § 7B-802, "the purpose of the adjudication hearing is to adjudicate the existence or nonexistence of any of the conditions alleged in a petition." *In re A.B.*, 179 N.C. App. 605, 609, 635 S.E.2d 11, 15 (2006) (citation and internal quotation marks omitted); *see also In re V.B.*, 239 N.C. App. at 344, 768 S.E.2d at 869 ("[P]ost-petition evidence generally is not admissible during an adjudicatory hearing for abuse, neglect, or dependency."). While we agree with respondent-father that HCDSS adduced no evidence of abusive or neglectful conditions in the home at the time of the hearing, the contested finding is immaterial to the trial court's

[3] Although the trial court entered separate adjudicatory orders for Diana and Ivy, the challenged findings of fact are essentially identical in the two orders.

adjudication.[4] Accordingly, we disregard it for purposes of our review. *See In re J.R.*, 243 N.C. App. 309, 312, 778 S.E.2d 441, 444 (2015).

Respondent-father next challenges the trial court's finding that Diana's three accounts of his improper sexual conduct toward her were "consistent with each other." The court found:

> 9. On November 14, 2017, [Diana] told to [her] guidance counselor at school and later wrote a letter about sexual contact by her father. On November 15, 2017, [Diana] had a Child Medical Exam where she relayed information about sexual contact by her father. All three of the accounts made by [Diana] were consistent with each other.

Respondent-father contends that the court heard no evidence about the specific content of Diana's oral disclosure to her guidance counselor and thus had no basis to find it consistent with the letter Diana wrote at the counselor's behest or with the account Diana gave during her Child Medical Exam. Respondent-father further points to discrepancies between certain details included in Diana's written account of the incidents and those described by Dr. Travis Johnson, an expert in child abuse, in his testimony about Diana's statements during her Child Medical Exam.

As with the previously contested finding, the trial court's finding that Diana's accounts of respondent-father's actions "were consistent with each other" is unnecessary to the court's adjudications of abuse and neglect. The court affirmatively

[4] We interpret the trial court's finding to mean that, at the time of the hearing, respondent-father had yet to address his issues with alcohol and his sexual abuse of Diana. Nevertheless, the content of the finding is not material to the adjudication.

found that "[t]here were three incidents of sexual contact by the father over approximately one year." It made additional findings describing respondent-father's behavior on each occasion. These findings of fact obviate the issue of whether Diana's depictions of the events were entirely consistent.

To the extent respondent-father claims a lack of evidence that Diana's oral disclosure to her guidance counselor was consistent with her resulting letter, we find the following passage of Diana's testimony sufficient to support the court's finding:

> Q. . . . So you went to your guidance counselor and you asked to talk to her, is that correct?
>
> A. Yes.
>
> Q. And then you wrote her the letter, correct?
>
> A. Yes. She asked me to.
>
> Q. She asked you to?
>
> A. Yes.
>
> Q. And so *was that what you had told her initial -- what was in the letter*?
>
> A. *Yes*.

(Emphases added). Similarly, although Dr. Johnson did not differentiate between Diana's oral and written disclosures to the guidance counselor, he attested to "[t]he consistency . . . of what [Diana] disclosed [to the counselor] with what she shared in

our [Child Medical Exam] interview[.]" This evidence supports a finding that Diana's three accounts were consistent.

Respondent-father purports to identify "several inconsistencies" in Diana's accounts of respondent-father's conduct, to wit: (1) unlike her statement at her Child Medical Exam interview, Diana's letter to her guidance counselor does not indicate the number of incidents in which respondent-father engaged or the "specific time" at which they occurred, merely stating he would come into her bedroom "at night"; (2) Diana's letter does not mention respondent-father touching her breast or kissing her on the lips, as she disclosed at her Child Medical Exam; (3) although Diana's letter states respondent-father touched her vagina, she stated during her Child Medical Exam that he "tried to touch [her] vagina" and got "close" to doing so; and (4) Diana's letter describes respondent-father's penis as "sticking out" rather than "hanging out" as she stated during her Child Medical Exam.

However, with the exception of whether respondent-father actually made contact with Diana's genitals, these variances do not reflect "inconsistencies" between her statements, but rather merely differing degrees of detail.[5] We conclude that the trial court's finding is fully supported by the evidence. *See generally In re Helms*, 127 N.C. App. at 511, 491 S.E.2d at 676 ("In a non-jury neglect adjudication, the trial

[5] For example, in her letter, Diana wrote, "[m]y dad, will touch my breast and vagina[,]" while during her Child Medical Exam interview, she stated, "[my dad] tried to touch my vagina."

court's findings of fact supported by clear and convincing competent evidence are deemed conclusive, even where some evidence supports contrary findings.").

III. Expert Opinion Testimony

Respondent-father next claims that the trial court erred by allowing Dr. Johnson to offer his expert opinion that Diana was "abused" when her physical examination revealed no signs of sexual abuse. *See* N.C. Gen. Stat. § 8C-1, Rule 702(a) (2017) ("If scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert . . . may testify thereto in the form of an opinion . . . ."). Respondent-father cites the familiar doctrine articulated by our Supreme Court in *State v. Stancil*, 355 N.C. 266, 559 S.E.2d 788 (2002) (per curiam):

> In a sexual offense prosecution involving a child victim, the trial court should not admit expert opinion that sexual abuse has *in fact* occurred because, absent physical evidence supporting a diagnosis of sexual abuse, such testimony is an impermissible opinion regarding the victim's credibility. However, an expert witness may testify, upon a proper foundation, as to the profiles of sexually abused children and whether a particular complainant has symptoms or characteristics consistent therewith.

Id. at 266-67, 559 S.E.2d at 789 (citations omitted).

By stipulation of the parties, Dr. Johnson was admitted as an expert witness in the areas of "child abuse and child medical exams." He testified he performed a thorough physical examination of Diana on 15 November 2017 and "did not find any

specific findings during [the] exam." He then recounted Diana's depiction of three episodes during the previous year in which respondent-father came into her bedroom in the middle of the night and engaged in "sexual" conduct toward her.

Following this testimony, counsel for HCDSS asked Dr. Johnson whether he had an opinion based on a reasonable degree of medical certainty whether or not Diana was abused. Respondents objected, asserting that "the [c]ourts have said multiple times that a doctor can't render an opinion about sexual abuse absent physical manifestations of that abuse." After confirming that Dr. Johnson had been asked whether he believed Diana was abused, not whether she was sexually abused, the trial court overruled the objection. Dr. Johnson then averred, "Yes, I have an opinion, and it's in my opinion that the child was abused." When respondents repeated their objection, the trial court allowed a *voir dire* hearing on the issue.

On *voir dire*, respondents elicited the following statements from Dr. Johnson:

> [COUNSEL FOR RESPONDENT-FATHER:] Dr. Johnson, when you said "in cases of this type of abuse," what were you referring to?
>
> A. Abuses of a sexual nature.
>
> [COUNSEL FOR RESPONDENT-FATHER]: Thank you. I would continue with my objection.
>
> . . . .
>
> [COUNSEL FOR RESPONDENT-MOTHER:] Just for purposes of my client, I would just ask you the same question as [father's counsel] that when you say "type of

> abuse in this situation," you're talking about sexual abuse, is that correct?
>
> A. Yes.
>
> [COUNSEL FOR RESPONDENT-MOTHER:] Okay. And you're not distinguishing a different -- you would call . . . any sort of attempts as also falling within that sexual abuse definition?
>
> A. Correct.

The trial court sought clarification from the witness, as follows:

> THE COURT: Okay. So when [HCDSS] asked you the blanket question of abuse and you gave an opinion that there was abuse, in your opinion, that included emotional or it did not include emotional?
>
> THE WITNESS: Correct.
>
> THE COURT: It did include emotional?
>
> THE WITNESS: Yes.

After reviewing the caselaw, the trial court reiterated its original ruling that Dr. Johnson was forbidden to offer an opinion as to whether Diana was sexually abused, but could opine about whether she had experienced abuse more generally.

The trial court explained its view that the rule enunciated in *Stancil*

> doesn't mean [Dr. Johnson] can't talk about abuse and the evidence that was presented to him. It just means he can't form an opinion that's admissible in court that the child was a victim of sexual abuse. That's the limitation.
>
> . . . .

> I don't see how him talking about the activity that this child disclosed to him and the tie to alcoholism -- I don't see how that's barred by any of those cases that you showed me.

Dr. Johnson subsequently testified that Diana's exposure to respondent-father "drinking rum, whiskey, and beer every night" was "an adverse childhood event . . . in itself" increasing her risk for "multiple medical problems." However, he did not indicate that respondent-father's level of alcohol consumption alone constituted "abuse."

We agree with respondent-father that the trial court's attempt to distinguish Dr. Johnson's opinion that Diana was "abused" from an opinion that she was "sexually abused" amounts to a "distinction without a difference" under *Stancil*. Although Dr. Johnson made reference to Diana's concerns about respondent-father's alcohol use and his "be[ing] out in the garage with a gun" while intoxicated, it is abundantly clear that Dr. Johnson based his opinion that Diana was abused on respondent-father's sexual misconduct toward her. That respondent-father's sexual behavior also constitutes emotional abuse does not change the fact that Dr. Johnson's opinion amounted to an endorsement of Diana's account of respondent-father's actions. Absent any physical evidence supporting his expert opinion, this testimony was inadmissible. *See Stancil*, 355 N.C. at 267, 559 S.E.2d at 789.

Notwithstanding our ruling on admissibility, we conclude that the admission of Dr. Johnson's opinion testimony was harmless error. The doctrine in *Stancil*

applies specifically to "sexual offense prosecution[s] involving a child victim," i.e., cases typically tried before a jury. *Id.* at 266, 559 S.E.2d at 789. As we have explained,

> [t]he mere admission by the trial court of incompetent evidence over proper objection does not require reversal on appeal. Rather, the appellant must also show that the incompetent evidence caused some prejudice. In the context of a bench trial, an appellant must show that the court relied on the incompetent evidence in making its findings. Where there is competent evidence in the record supporting the court's findings, we presume that the court relied upon it and disregarded the incompetent evidence.

In re Morales, 159 N.C. App. 429, 433, 583 S.E.2d 692, 695 (2003) (citation omitted); *accord Best v. Best*, 81 N.C. App. 337, 341-42, 344 S.E.2d 363, 366 (1986), *disavowed in non-pertinent part by Petersen v. Rogers*, 337 N.C. 397, 403-04, 445 S.E.2d 901, 905 (1994).

Here, the trial court made the following findings regarding respondent-father's conduct toward Diana and Dr. Johnson's findings at the Child Medical Exam:

> 9. On November 14, 2017, [Diana] told [her] guidance counselor at school and later wrote a letter about sexual contact by her father. On November 15, 2017, [Diana] had a Child Medical Exam where she relayed information about sexual contact by her father. All three of the accounts made by the juvenile were consistent with each other.
>
> 10. There were three incidents of sexual contact by the father over approximately one year.
>
> 11. At the first incident, the father came into

> [Diana's] room in the middle of the night and woke [Diana] up and kissed her on the lips "like he kisses [respondent-mother]".
>
> 12. At the second incident, the father came into [Diana's] bedroom in the middle of the night and tried to touch [her] breast and vagina but [she] pushed his hand away.
>
> 13. At the third incident, the father came into [Diana's] bedroom in the middle of the night and exposed his penis to [Diana] and again tried to touch her in a sexual manner.
>
> . . . .
>
> 18. Dr. Johnson spoke to [Diana] and [respondent-mother] and conducted a physical exam of the juvenile.
>
> 19. [Diana] had no physical evidence of any of the sexual incidents she described. However, no physical evidence was likely to be found since the contact would not necessarily have left physical evidence and the incidents had occurred over the course of a year ending at least a week prior to the physical exam.
>
> 20. Dr. Johnson found [Diana] to be articulate, at or above average intelligence, with no mental or developmental deficiencies and to understand the difference between truth and falsehood.

Absent from the court's findings is any reference to, or crediting of, Dr. Johnson's opinion that Diana was abused.

The trial court's findings about respondent-father's three episodes of sexual conduct toward Diana are supported by competent evidence in the form of Dr. Johnson's testimony recounting Diana's statements during the Child Medical Exam.

The court expressly ruled Diana's statements admissible under the "medical diagnosis" exception to the hearsay rule—a ruling not challenged by respondent-father. *See* N.C. Gen. Stat. § 8C-1, Rule 802(4) (2017). Moreover, this evidence was corroborated by Diana's prior consistent statements to her guidance counselor. Under *Morales*, we presume that the court did not rely on Dr. Johnson's opinion testimony in making its findings. Respondent-father's argument is overruled.

IV. Adjudication of Neglect

Respondent-father claims the evidence and the trial court's findings of fact do not support its conclusion that Ivy is a neglected juvenile as defined by N.C. Gen. Stat. § 7B-101(15). Though conceding that Diana's abuse and neglect "may be considered" in determining whether Ivy also experienced neglect in the home, respondent-father argues Diana's status as an abused and neglected juvenile, "standing alone, is not sufficient to support an adjudication of neglect" as to her sibling. *In re N.G.*, 186 N.C. App. 1, 9, 650 S.E.2d 45, 51 (2007) (acknowledging that evidence of prior abuse of one child in the home, "standing alone, is not sufficient to support an adjudication of neglect" as to a newborn sibling who has yet to live in the home), *aff'd per curiam*, 362 N.C. 229, 657 S.E.2d 355 (2008). Moreover, respondent-father contends, the evidence and the trial court's findings show no "harm or substantial risk of harm to Ivy" resulting from either his sexual contact with Diana or his alcohol use.

At the time HCDSS filed the petitions in this cause,[6] the Juvenile Code defined a "neglected juvenile" as, *inter alia*, one "who does not receive proper care, supervision, or discipline from the juvenile's parent . . . or who lives in an environment injurious to the juvenile's welfare[.]" N.C. Gen. Stat. § 7B-101(15). As respondent-father observes, "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." *In re Padgett*, 156 N.C. App. 644, 648, 577 S.E.2d 337, 340 (2003) (citation and quotation marks omitted). "Similarly, in order for a court to find that the child resided in an injurious environment, evidence must show that the environment in which the child resided has resulted in harm to the child or a substantial risk of harm." *In re K.J.B.*, 248 N.C. App. 352, 354, 797 S.E.2d 516, 518 (2016).

Subsection 7B-101(15) expressly provides that "[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." N.C. Gen. Stat. § 7B-101(15). "[W]hile the abuse of a child in the home is clearly relevant in determining whether another child is neglected, the statute 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." *In*

[6] Effective 1 October 2018, N.C. Gen. Stat. § 7B-101(15) was amended by N.C. Session Law 2018-68, pt. VIII, § 3.1(b) (June 25, 2018).

re McLean, 135 N.C. App. 387, 395, 521 S.E.2d 121, 126 (1999) (citation and quotation marks omitted). "Rather, the statute affords the trial judge some discretion in determining the weight to be given such evidence." *In re Nicholson*, 114 N.C. App. 91, 94, 440 S.E.2d 852, 854 (1994).

In addition to the previously quoted findings regarding respondent-father's sexual contact with Diana, the trial court found the following facts in support of its conclusion that "Ivy is [a] neglected child as defined by N.C. Gen. Stat. §[ ]7B-101":

> 11. The father drinks several alcoholic drinks each night while around [Ivy] and [her] siblings.
>
> 12. The father holds [Ivy] when he is drunk and while drunk he also shows the juveniles his guns.
>
> . . . .
>
> 16. [Respondent-]mother admitted to the father's escalating alcohol use and that when drinking the father gets boisterous and unruly and she encourages him to not be around [Ivy] and her siblings.

We agree with respondent-father that the evidence does not support a finding that he showed his guns to Ivy, although he did show the guns to Diana.[7] These findings are otherwise binding on appeal. *Koufman*, 330 N.C. at 97, 408 S.E.2d at 731.

We agree with respondent-father that the trial court's findings are insufficient to support its adjudication of Ivy as neglected. The court made no finding that Ivy

[7] It appears that Finding 12 contains a scrivener's error in pluralizing "juveniles"—the finding is otherwise drawn verbatim from Diana's adjudicatory order.

suffered any "physical, mental, or emotional impairment" as a result of respondent-father's conduct or that she was at "substantial risk" of such an impairment. *In re C.M.*, 183 N.C. App. 207, 210, 644 S.E.2d 588, 592 (2007). This Court has held 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." *Padgett*, 156 N.C. App. at 648, 577 S.E.2d at 340. Here, however, we conclude the evidence would permit, but not compel, the requisite finding, in view of the discretion accorded to trial courts under *Nicholson*, 114 N.C. App. at 94, 440 S.E.2d at 854.

We reject respondent-father's assertion that the evidence is insufficient to establish any harm or substantial risk of harm to Ivy as a result of his conduct in the home. The evidence and the court's findings show respondent-father's patently harmful and reckless conduct toward Diana while intoxicated, his drunken handling of Ivy, and the escalating nature of his alcohol use as described by respondent-mother. Indeed, respondent-father concedes his act of showing Diana his guns while drunk supports her adjudication as neglected, "[g]iven the danger inherent in guns and natural adolescent curiosity." We believe a trial court could reasonably find these conditions also placed Ivy at a substantial risk of harm.

In addition to the error identified by respondent-father, we note that the trial court also failed to identify which theory of neglect in N.C. Gen. Stat. § 7B-101(15) the court relied upon in adjudicating Ivy as neglected. *See In re T.M.M.*, 167 N.C.

App. 801, 803-04, 606 S.E.2d 416, 417-18 (2005) (remanding for additional findings where "the order in this case . . . does not reference any of the several statutory grounds for determining neglect"). Accordingly, we vacate the adjudicatory order in file number 17 JA 212 and remand for the entry of additional findings of fact on the question of Ivy's status as neglected. *See In re S.C.R.*, 217 N.C. App. 166, 170, 170, 718 S.E.2d 709, 712, 713 (2011); *In re F.G.J.*, 200 N.C. App. 681, 695, 684 S.E.2d 745, 755 (2009).

V. Sex-Offender Assessment

Finally, respondent-father objects to the portion of the two dispositional orders requiring him to obtain a sex-offender assessment and comply with any treatment recommendations. Section 7B-904 of the Juvenile Code provides in relevant part:

> At the dispositional hearing or a subsequent hearing the court may determine whether the best interests of the juvenile require that the parent . . . undergo psychiatric, psychological, or other treatment or counseling directed toward remediating or remedying behaviors or conditions that led to or contributed to the juvenile's adjudication . . . . If the court finds that the best interests of the juvenile require the parent . . . [to] undergo treatment, it may order that individual to comply with a plan of treatment approved by the court . . . .

N.C. Gen. Stat. § 7B-904(c) (2017).

Having affirmed Diana's adjudication as abused, we hold the trial court did not abuse its discretion in ordering respondent-father to submit to an evaluation and

treatment addressing his sexual abuse of his daughter. Accordingly, we affirm the dispositional order in file number 17 JA 213.

Because we are vacating and remanding Ivy's adjudication, we must also vacate and remand the resulting dispositional order. *See In re S.C.R.*, 217 N.C. App. at 170, 718 S.E.2d at 713. We note, however, that the trial court may consider respondent-father's sexual abuse of Diana in determining whether Ivy is a neglected juvenile under N.C. Gen. Stat. § 7B-101(15), and that his sexual abuse may thus be deemed to have "contributed" to any neglect of Ivy. N.C. Gen. Stat. § 7B-904(c).

VI. Conclusion

The orders entered by the trial court in 17 JA 213 are hereby affirmed. We vacate the orders entered in 17 JA 212 and remand for further proceedings consistent with this opinion.

AFFIRMED IN PART; VACATED IN PART AND REMANDED.

Judges STROUD and INMAN concur.

Report per Rule 30(e).