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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-459

Filed: 17 March 2020

Beaufort County, No. 18 JA 47

IN THE MATTER OF: S.R.

Appeal by Respondent-Father from Orders entered 18 January 2019 and 15 February 2019 by Judge Regina R. Parker in Beaufort County District Court. Heard in the Court of Appeals 18 February 2020.

*Miller & Audino, LLP, by Jay Anthony Audino, for petitioner-appellee Beaufort County Department of Social Services.*

*Fox Rothschild LLP, by Kip David Nelson and Zack Dawson, for guardian ad litem.*

*Jacky Brammer for respondent-appellant.*

HAMPSON, Judge.

**Factual and Procedural Background**



Respondent-Father (Respondent)<sup>1</sup> appeals from a Juvenile Adjudication Order (Adjudication Order) adjudicating Respondent's son, Steve,<sup>2</sup> neglected and abused and a Disposition Order (Disposition Order) continuing custody of Steve with the Beaufort County Department of Social Services (DSS), continuing placement of Steve with his maternal aunt and uncle (Aunt and Uncle), and ceasing reunification efforts with Respondent. The Record before us tends to show the following:

Respondent and Mother are the parents of Steve, who was born on 6 February 2017. Mother also had two children from a previous relationship—Ashley and Eric.<sup>3</sup> When DSS filed its juvenile petitions in this case, Ashley was six years old and Eric was ten years old. Since at least 2014, Respondent and Mother lived in a house together with the three children.

On 22 June 2018, DSS obtained nonsecure custody of Steve, Ashley, and Eric and filed juvenile petitions alleging all three children were abused and neglected. DSS filed the petitions after investigating a child protective services report (CPS Report) on 5 June 2018, which alleged Eric told Mother he had sexual relations with a neighboring ten-year-old boy; “[t]he boys had seen some videos and they were acting out what they saw on the video;” Mother had removed Eric from the home to ensure

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<sup>1</sup> The mother (Mother) is not a party to this appeal. Thus, all references to Respondent are to Respondent-Father.

<sup>2</sup> A pseudonym chosen by the parties to protect the identity of the juvenile.

<sup>3</sup> Pseudonyms used by the parties.



he would not do anything to the other children in the home; and Mother stated what occurred between the two boys was “consensual.”

After receiving the CPS Report, a social worker from DSS made initial contact with the family on 7 June 2018 and learned “Mother [had] walked into the [children’s] bedroom and saw [Eric’s] mouth on the crotch of [Ashley’s] underwear while [Eric] was playing with his penis.” The social worker also discovered this was not the only instance of Eric performing a sex act on Ashley and that Eric had also had sexual experiences with three other boys. Ashley disclosed she had informed Respondent and Mother of Eric touching her, but neither parent did anything about it. Ashley also told DSS that Respondent had performed sex acts on her and that Mother was aware of this yet failed to stop it. Both children also revealed they have seen Respondent, Mother, and another woman (Alana) having sex multiple times, and when confronted about this, Mother laughed and stated “it is perfectly normal for children to walk in and see their parent having sex.” When DSS first took Steve from Respondent and Mother and placed him with his Aunt and Uncle, Aunt and Uncle reported he had a “swollen” penis the size of an adult finger, and there were concerns Steve may have been sexually abused. Aunt also reported Ashley told her Respondent used a nail file on Steve’s penis.

On 19 December 2018, the trial court held an adjudication hearing. At the conclusion of this hearing, the trial court adjudicated all three children abused and



neglected. On 18 January 2019, the trial court entered its written Adjudication Order concluding all three children were abused and neglected juveniles.

On 6 February 2019, the trial court held a dispositional hearing, receiving additional evidence and argument for disposition of the three children. Thereafter, the trial court entered its Disposition Order on 15 February 2019. Regarding Steve, the trial court found aggravated circumstances, determined reunification efforts should not be required, and ordered Steve remain in his current placement with Aunt and Uncle. Respondent filed timely Notice of Appeal from both the Adjudication and Disposition Orders.

### **Issues**

The dispositive issues on appeal are (I) whether the trial court's Findings of Fact are supported by clear and convincing evidence; (II) whether the trial court's Findings of Fact support its Conclusion of Law that Steve is an abused juvenile; and (III) whether the trial court erred in its Disposition Order by ceasing reunification efforts with Respondent and by continuing placement of Steve with Aunt and Uncle.

### **Standard of Review**

We review an adjudication under N.C. Gen. Stat. § 7B-807 to determine whether the trial court's findings of fact are supported by "clear and convincing evidence" and whether the trial court's findings, in turn, support its conclusions of law. *In re Helms*, 127 N.C. App. 505, 511, 491 S.E.2d 672, 676 (1997) (citations



omitted). “Clear and convincing evidence is evidence which should fully convince.” *In re J.A.G.*, 172 N.C. App. 708, 712, 617 S.E.2d 325, 329 (2005) (citation and quotation marks omitted). “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.” *In re T.H.T.*, 185 N.C. App. 337, 343, 648 S.E.2d 519, 523 (2007) (citation omitted), *aff’d on other grounds*, 362 N.C. 446, 665 S.E.2d 54 (2008). Further, “[t]he findings need to be stated with sufficient specificity in order to allow meaningful appellate review.” *In re S.C.R.*, 217 N.C. App. 166, 168, 718 S.E.2d 709, 712 (2011) (citation omitted). Erroneous findings, however, will not undermine an adjudication that is otherwise supported by proper findings. *See In re T.M.*, 180 N.C. App. 539, 547, 638 S.E.2d 236, 240 (2006) (citation omitted). “The conclusion that a juvenile is abused, neglected, or dependent is reviewed *de novo*.” *In re V.B.*, 239 N.C. App. 340, 341, 768 S.E.2d 867, 868 (2015) (citation omitted).

“All dispositional orders of the trial court after abuse, neglect and dependency hearings must contain findings of fact based upon the credible evidence presented at the hearing.” *In re Weiler*, 158 N.C. App. 473, 477, 581 S.E.2d 134, 137 (2003) (citation omitted). “The district court has broad discretion to fashion a disposition from the prescribed alternatives in N.C. Gen. Stat. § 7B-903(a), based upon the best interests of the child. . . . We review a dispositional order only for abuse of discretion.” *In re B.W.*, 190 N.C. App. 328, 336, 665 S.E.2d 462, 467 (2008) (citations omitted).



**Analysis**

**I. Challenged Findings of Fact**

Respondent contends the trial court erred in concluding Steve was an abused juvenile as defined by N.C. Gen. Stat. § 7B-101(1) because its conclusion is not supported by proper findings of fact based upon clear and convincing evidence. First, Respondent offers what is in essence a blanket challenge to numerous Findings of Fact<sup>4</sup> made by the trial court, contending “any references to ‘children,’ ‘juveniles,’ or ‘family’ in [these Findings] are not supported by clear and convincing evidence as referring to Steve, were not specifically found referring to Steve, and are so generalized as to not enable appellate review.” In context, however, it is apparent the vast majority of these Findings are intended to relate to the allegations of abuse and neglect specifically regarding Ashley and Eric.<sup>5</sup> Further, after a thorough review of the Record, these Findings are supported by clear and convincing evidence and thus binding on appeal. *See In re T.H.T.*, 185 N.C. App. at 343, 648 S.E.2d at 523 (citation omitted).

Respondent next specifically challenges the following Findings of Fact:

27. On July 25, 2018, [Steve] was seen at TEDI Bear Children’s Advocacy Center. During the evaluation, [Steve] was found to have a swollen penis, which raised a concern for possible sexual abuse. [Steve’s] home environment consisted of situation wherein both of his siblings were sexually abused,

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<sup>4</sup> Specifically, Respondent challenges Findings 4-6, 8-11, 13-26, 28-38, 40-67, 70-71, 73-76, and 79-82.

<sup>5</sup> The Adjudication Order adjudicated all three juveniles.



the home was dilapidated, unsafe with rats and rat feces and cockroaches.

68. While [Steve] is not able to be interviewed, he has been exposed to the same chaotic home environment as the other children. His behaviors are consistent with being exposed to over-sexualized, free-for-all that was allowed to occur in the family residence.

69. [Steve] was in the home during all the events described herein.

72. Mother and [Respondent] contributed to [Steve] displaying the following behaviors:

- a. In June 2018, he began humping things.
- b. He has severe temper tantrums that result in him turning blue and passing out.
- c. He put his hands on other's privates.
- d. He wants to be held all the time; and, he is very clingy.

Regarding Finding 27, Respondent contends this Finding is not supported by clear and convincing evidence because Steve's injury was not discovered at this specific evaluation. However, the TEDI Bear Report, which was admitted into evidence during the adjudication hearing, revealed "[t]here were findings of [a] swollen penis when [Steve] first went into care that are concerning for possible sexual abuse . . . [and that t]here is a chance that [Steve] may have been sexually abused as well." This Report noted Steve's medical examination on 25 July 2018 did not show any continuing signs of injury to Steve at that time. Dr. Amy James (Dr. James) also testified, "[t]here were some reports that [Steve] had an infection in his penis at one



point, and there was a report that [Respondent] used a nail file or a similar object on [Steve's] penis.” Accordingly, the TEDI Bear Report and Dr. James’s testimony show Steve had an infection in his penis at the time DSS took Steve from Respondent’s home. Therefore, when read in this context, Finding 27 simply states that during Steve’s TEDI Bear evaluation, Steve was found to previously have had a swollen penis when he was taken from Respondent’s care. Finding 27 is thus supported by clear and convincing evidence and binding on appeal. *See id.* (citation omitted).

As for Findings 68 and 69, Respondent contends no competent evidence was presented that Steve was “exposed to [an] over-sexualized, free-for-all” or was present “in the home during all the events described herein.” However, the trial court heard extensive testimony detailing the conditions all three children were subjected to in Respondent’s home. Although most of the sexual allegations involved Eric or Respondent perpetrating on Ashley, both Eric and Ashley told DSS they had seen Respondent and Mother having sex as well as both parents having sex with Alana. Both Ashley and Eric also told DSS that Respondent and Mother had engaged in domestic violence in the home. Further, a social worker with DSS testified all three siblings slept in the same bedroom. Given Steve’s age, his inability to talk, and his close proximity to the alleged events, clear and convincing evidence supports the trial court’s Findings 68 and 69 that Steve was present during the alleged events and exposed to substantially the same sexual behavior in the home as Eric and Ashley.



Lastly, Respondent argues Finding 72 should be disregarded as improper post-petition evidence. However, the North Carolina Rules of Appellate Procedure require a party must “present[ ] to the trial court a timely request, objection, or motion, stating the specific grounds for the ruling the party desired the court to make” in order to preserve the issue for appellate review. N.C.R. App. P. 10(a)(1). When no objection was made to the improper admission of evidence in the trial court, this Court will not consider the objection for the first time on appeal. *See In re A.S.*, 190 N.C. App. 679, 689, 661 S.E.2d 313, 319 (2008) (holding the parents’ challenge to the consideration of facts from their other children’s cases was not preserved because neither parent objected to the evidence at trial (citation omitted)), *aff’d per curiam*, 363 N.C. 254, 675 S.E.2d 361 (2009). Here, Respondent failed to object to the admission of this post-petition evidence regarding Steve’s behavior while in his Aunt and Uncle’s home; therefore, this issue is not properly preserved for appellate review. *See id.* (citation omitted).

Further, Dr. James in her Report noted Aunt and Uncle reported Steve was “humping things” in June of 2018; Steve “has a temper tantrum so severe that he turns blue and passes out at least once per week and that this usually occurs when he is told, ‘No’ or does not get his way”; Steve “only wants to be held, virtually 24/7, and has to be made to walk”; and Steve “puts his hands-on other people’s privates, daily.” This Report constitutes clear and convincing evidence supporting Finding 72.



In addition, Dr. James testified Steve has “engaged in some sexualized behaviors” and that “[m]any children who have been sexually abused engage in sexually inappropriate behaviors.” Accordingly, the trial court’s Findings of Fact 27, 68, 69, and 72 are supported by clear and convincing evidence and therefore binding on appeal. *See In re T.H.T.*, 185 N.C. App. at 343, 648 S.E.2d at 523 (citation omitted).

## II. Adjudication of Abuse

Respondent next argues the trial court’s Findings do not support its Conclusion of Law that Steve is an abused juvenile. An abused juvenile is defined, in pertinent part, as one whose parent, guardian, custodian, or caretaker “[i]nflicts or allows to be inflicted upon the juvenile a serious physical injury by other than accidental means . . . [or c]reates or allows to be created a substantial risk of serious physical injury to the juvenile by other than accidental means[.]” N.C. Gen. Stat. § 7B-101(1)(a)-(b) (2019).

In Finding 77, the trial court found in part: “Mother and [Respondent] have created or allowed to be created a substantial risk of serious physical injury to the juveniles by other than accidental means in that they have created a home environment with no sexual boundaries.” Respondent correctly points out this portion of Finding 77 is more appropriately labeled an “ultimate finding,” which is essential to support the trial court’s Conclusion of Law that Steve is an abused juvenile. *See In re H.J.A.*, 223 N.C. App. 413, 418, 735 S.E.2d 359, 363 (2012) (“The



trial court must find the ultimate facts essential to support the conclusions of law.” (alterations, citation, and quotation marks omitted)). Respondent contends the trial court’s Findings do not support the Conclusion Steve is an abused juvenile.

As detailed *supra*, the trial court’s Findings of Fact are supported by clear and convincing evidence. These Findings establish (1) when Steve was taken from Respondent’s home, he had a “swollen penis” that “raised a concern for possible sexual abuse”; (2) “[Steve’s] home environment consisted of [a] situation wherein both of his siblings were sexually abused, the home was dilapidated, unsafe”; (3) Steve had been exposed to the same “chaotic home environment[.]” which included Respondent, Mother, and Alana having sex in front of the children; and (4) after being removed from Respondent’s home, Steve engaged in “sexualized behaviors” that Dr. James testified were typical for “children who have been sexually abused[.]” In addition, the trial court found Respondent had forced Eric to perform sex acts on Ashley and Respondent had also performed sex acts on Ashley. Mother admitted she was aware of some of these acts yet failed to intervene. When viewed in its entirety, the trial court’s Findings support its ultimate Finding that Respondent created or allowed to be created a substantial *risk* of serious physical injury to Steve by other than accidental means.<sup>6</sup> Accordingly, this ultimate Finding, and the underlying Findings

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<sup>6</sup> We note Respondent contends it was error for the trial court to consider certain evidence regarding Respondent’s juvenile record. However, because this evidence, and the trial court’s corresponding Findings of Fact, is not necessary to the trial court’s conclusion of abuse given the



of Fact that support it, supports the trial court's Conclusion Steve was an abused juvenile.<sup>7</sup> Therefore, we affirm this portion of the Adjudication Order.

### III. Reunification Efforts

In his final argument, Respondent argues the trial court erred during the dispositional stage in two respects. First, Respondent contends the trial court abused its discretion by ceasing reunification efforts with Steve. Second, Respondent asserts the trial court abused its discretion by continuing placement of Steve with Aunt and Uncle. We address each in turn below.

N.C. Gen. Stat. § 7B-901(c) authorizes the elimination of reunification efforts at an initial disposition following an adjudication of abuse, neglect, or dependency under limited circumstances. Section 7B-901(c), as relevant to the present case, provides:

(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 [N.C. Gen. Stat.] § 7B-101 shall not be required if the court makes written findings of fact pertaining to any of the following, unless the court

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substantial other evidence supporting an adjudication of abuse, we do not address this argument by Respondent. See *In re T.M.*, 180 N.C. App. at 547, 638 S.E.2d at 240 (“When . . . ample other findings of fact support an adjudication of [abuse], erroneous findings unnecessary to the determination do not constitute reversible error.” (citation omitted)).

<sup>7</sup> Respondent also challenges another ultimate Finding of the trial court as not supported by clear and convincing evidence as to Steve—Finding 78: “Mother and [Respondent] have committed, permitted, and encouraged the commission of a sex or pornography offense by, with or upon the juveniles in violation of the criminal law.” When viewed in context, we read this Finding as applying to the other two half siblings. Assuming *arguendo* this Finding relates to Steve and is not supported by clear and convincing evidence, the trial court's other ultimate Finding 77 nevertheless supports the trial court's Conclusion that Steve is an abused juvenile. See *id.* (citation omitted); see also N.C. Gen. Stat. § 7B-101(1)(a)-(g) (listing seven *independent* grounds for adjudicating a juvenile as abused).



concludes there is compelling evidence warranting continued reunification efforts:

- (1) A court of competent jurisdiction determines or 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:

. . . .

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

N.C. Gen. Stat. § 7B-901(c) (2019).

Here, the trial court relieved DSS of further reunification efforts based on Section 7B-901(c)(1)(f), concluding as follows:

21. The Court finds the following aggravating factors as it relates to [Respondent]:

. . . .

- g. [Respondent's] behavior constitutes an act, practice or conduct that increases the enormity and adds to the injurious consequences of the abuse and neglect. Primarily, Mother and [Respondent] created a sexualized free-for-all environment wherein each parent had sex with each other and with their girlfriend in front of the children, [Respondent] had sex with [Steve's] half-siblings, the children were shown pornography, and as a result, this child currently has an inappropriate understanding of sexual norms.

. . . .



40. Specifically, the following facts are [Respondent's] practices and conduct that have increased the enormity and added to the injurious consequences of the abuse and neglect to which this child has been exposed: the chronic nature of [Respondent's] sexual depravity; . . . [Respondent] committing sexual acts upon [Steve's] siblings, forcing them to have sex with each other, and filming these incidents; [Respondent] engaging in behavior in front of [Steve] that has resulted in the child humping objects, touching other[s] private parts, having severe temper tantrums, and being overly clingy; [Respondent] engaging in sex, domestic violence in front of [Steve]; [Respondent] exposing the child to pornography; and [Respondent] exposing the child to HIV. In addition, the home was in an [uninhabitable] condition, [Steve] suffered severe neglect in the home, and [Steve] himself was likely sexually abused.

Respondent argues these Findings are not supported by credible and competent evidence. As for the post-petition evidence of Steve's behavior, a trial court is expressly permitted to consider such evidence at a dispositional hearing. *See id.* § 7B-901(a); *see also In re A.B.*, 179 N.C. App. 605, 609, 635 S.E.2d 11, 15 (2006) (explaining "post-petition evidence is admissible for consideration . . . in the dispositional hearing"). In addition, a social worker from DSS testified at the dispositional hearing to Steve's post-petition behavior, which constitutes clear and convincing evidence supporting the trial court's Findings in this regard. Further, as discussed *supra*, plenary competent evidence was presented to the trial court showing Respondent engaged in sex acts with Steve's half-sister; Respondent forced Eric to perform sex acts on Ashley and filmed these encounters; Respondent, Mother, and Alana had sex with each other in front of the children; Steve had a swollen penis



when he was taken from Respondent's home, which was suggestive of sexual assault; Steve engaged in sexualized behaviors after being removed from the home; and Respondent's home was in an uninhabitable condition.

This credible and competent evidence supports the trial court's Findings that at least one statutory aggravating factor exists warranting termination of reunification efforts—namely, Respondent engaged in “practices and conduct that have increased the enormity and added to the injurious consequences of the abuse and neglect” of Steve. *See* N.C. Gen. Stat. § 7B-901(c)(1)(f). This Finding 40 in turn supports the trial court's conclusion reunification efforts with Respondent are not required. As the trial court did not conclude “there is compelling evidence warranting continued reunification efforts[,]” *Id.* § 7B-901(c), the trial court was required to direct DSS to cease reunification efforts with Respondent based on its Finding of an aggravating circumstance under Section 7B-901(c)(1)(f). *Id.* Accordingly, the trial court did not abuse its discretion by ceasing reunification efforts with Respondent.

Lastly, Respondent argues the trial court abused its discretion by placing Steve with Aunt and Uncle “without finding that they can provide a safe home because [the trial court] did not make findings addressing the potential danger of placing Steve with his older sister, Ashley.”

Under N.C. Gen. Stat. § 7B-903(a1), the trial court must determine “whether a relative of the juvenile is willing and able to provide proper care and supervision of



the juvenile in a safe home.” *Id.* § 7B-903(a1) (2019). A “safe home” is defined as “[a] home in which the juvenile is not at substantial risk of physical or emotional abuse or neglect.” *Id.* § 7B-101(19). Although the trial court is required to “address the substance of the statutory requirements” in its written dispositional order, the trial court “need not recite the statutory language verbatim.” *In re L.M.T.*, 367 N.C. 165, 165-66, 173, 752 S.E.2d 453, 454, 458 (2013) (explaining the statute must “be applied practically so that the best interests of the child—the polar star in controversies over child neglect and custody—are the paramount concern”).

Here, the trial court made the following Findings regarding Steve’s continued placement with Aunt and Uncle in its Disposition Order:

11. [Steve’s] placement was based upon Mother’s input from a child and family team meeting wherein [Respondent] did not participate. The placement was made so that the siblings, [Ashley] and [Steve], could remain together.
12. In the past six months, [Steve] has done well in his placement, adjusted to the home, and has developed appropriately. His prior behaviors have decreased as he has remained in the placement.
13. [Respondent] has requested that the home of the paternal grandfather . . . be considered as a placement for the child. A placement in that home is not appropriate for the child.
- . . . .
28. [Steve’s] placement with [Aunt and Uncle] is the least restrictive, most family like setting available to this child as they are relatives, ready, willing and able to care for this child and his sibling[, Ashley].



29. [Aunt and Uncle] are ensuring that [Steve's] basic needs are met. It is appropriate for [Steve] to remain in his present placement.

30. [Steve's] present circumstances, needs and wishes:

- a. [Steve] is 2 years old. He has been placed into the home of [Aunt and Uncle]. This placement is going well.
- b. [Aunt and Uncle] have two children of their own; and, they care for this child's sibling, [Ashley].
- c. [Steve] humps pillows. It appears that he is mimicking behaviors that he has observed, which is consistent with the exposure he had in Mother and [Respondent's] home.
- d. When [Steve] misbehaves, he will "lock up" when redirected as if he is afraid of what his caretakers will do next. It appears his response is consistent with receiving prior physical abuse.

In addition, the trial court heard testimony at the dispositional hearing regarding Ashley's behavior and need for continued therapy. A social worker from DSS testified Aunt and Uncle are supervising Steve and Ashley "very, very closely" and the children stay in separate bedrooms. The social worker also testified since starting therapy, Ashley has not had any inappropriate sexual behaviors "in quite some time" because Aunt and Uncle "kind of nipped it in the bud" and would talk to Ashley about what was and was not appropriate behavior. While the Order may not "recite the statutory language verbatim[.]" the trial court's Order nevertheless



“address[ed] the substance of the statutory requirements” and concluded placement with Aunt and Uncle was in Steve’s best interest. *Id.* at 165-66, 752 S.E.2d at 454. Therefore, we hold the trial court did not abuse its discretion by continuing placement of Steve with Aunt and Uncle.

**Conclusion**

Accordingly, for the foregoing reasons, we affirm the trial court’s Adjudication and Disposition Orders.

AFFIRMED.

Chief Judge McGEE and Judge BRYANT concur.

Report per Rule 30(e).