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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-150

Filed: 17 March 2020

Sampson County, Nos. 17 JA 90-93

IN THE MATTER OF: J.C., L.N.B., Q.J.C., Z.N.W.

Appeal by Respondents from adjudicatory orders entered on 16 July 2018 by Judge William M. Cameron, III, and dispositional orders entered 7 November 2018 by Judge Michael C. Surles in Sampson County District Court. Heard in the Court of Appeals 27 February 2020.

Warrick, Bradshaw and Lockamy, P.A., by Frank L. Bradshaw, for Petitioner-Appellee Sampson County Department of Social Services.

Robert W. Ewing for Respondent-Appellant Mother.

Mercedes O. Chut for Respondent-Appellant Father.

GAL Appellate Counsel Matthew D. Wunsche, for guardian ad litem.

DILLON, Judge.

Respondents appeal from orders adjudicating J.C., L.N.B., Q.J.C., and Z.N.W. (“Jessica, Lauren, Quentin, and Zoe”)¹ neglected juveniles, and dispositional orders

¹ Pseudonyms are used to protect the identities of the juveniles and for ease of reading. See N.C. R. App. P. 42(b)(1).

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continuing custody of the juveniles with the Sampson County Department of Social Services (“DSS”) and ordering that Respondent-Father (“Father”) have no visitation. After careful review, we affirm in part, and reverse and remand in part.

I. Background

Respondents have a lengthy history with DSS dating back to 2011. They have been the subject of multiple investigations related to sexual abuse, improper discipline, improper care, improper supervision, and substance abuse. Respondent-Mother (“Mother”) is the mother of all four juveniles. Father is the biological father of Jessica and Quentin.

In 2011 and 2015, Zoe disclosed that she was sexually abused by Father. In 2015, after DSS substantiated Zoe’s claims of sexual abuse by Father, DSS recommended that Father never be left alone with the juveniles.

However, on 3 June 2017, DSS received a report that Mother had allowed Father continued unsupervised access to Zoe and that Father had sexually abused Zoe while Mother was at work and Father was supervising the children. Zoe alleged that the abuse had occurred on multiple occasions, and her siblings were able to corroborate parts of her story. DSS also learned that Zoe had told Mother of the sexual abuse, but Mother never reported the abuse to DSS or law enforcement. Accordingly, on 18 August 2017, DSS filed petitions claiming that Zoe was an abused, neglected and dependent juvenile, and that Jessica, Lauren and Quentin were

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neglected and dependent juveniles. DSS obtained non-secure custody of the juveniles on the same date.

Nine months later, in May 2018, an adjudicatory hearing was held. The trial court adjudicated Zoe to be an abused and neglected juvenile, and Jessica, Lauren, and Quentin were adjudicated neglected juveniles. At disposition, the trial court ordered that: (1) custody of the juveniles remain with DSS; (2) the primary permanent plan for the juveniles be reunification; (3) Mother have supervised visitation with the juveniles; and (4) Father have no contact with Zoe and Lauren, and no visitation with Jessica and Quentin. Respondents appeal.²

II. Analysis

We first review the trial court's adjudicatory orders. "The role of this Court in reviewing a trial court's adjudication of neglect . . . is to determine (1) whether the findings of fact are supported by clear and convincing evidence, and (2) whether the legal conclusions are supported by the findings of fact[.]" *In re T.H.T.*, 185 N.C. App. 337, 343, 648 S.E.2d 519, 523 (2007) (internal quotation marks omitted) (citation

² On 27 February 2019, the guardian ad litem moved to dismiss Father's appeal due to his purported failure to sign the notice of appeal. The Rules of Appellate Procedure provide that "both the trial counsel and appellant must sign the notice of appeal[.]" *In re L.B.*, 187 N.C. App. 326, 328, 653 S.E.2d 240, 242 (2007), *aff'd per curiam*, 362 N.C. 507, 666 S.E.2d 751 (2008) (quoting N.C. R. App. P. 3A(a) (2007)) (internal quotation marks omitted). The failure of a parent to sign the notice of appeal is a jurisdictional default. *See id.* at 331-32, 653 S.E.2d at 244.

Here, though, Father's counsel signed the first page of the notice of appeal, and Father signed the second page under the heading of verification. Therefore, Father did sign the notice of appeal. Accordingly, we deny the motion to dismiss and dismiss the petition for writ of certiorari as being unnecessary.

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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.” *Id.* at 343, 648 S.E.2d at 523. We review the trial court’s conclusions of law *de novo* on appeal. *See In re Pope*, 158 N.C. App. 491, 494, 581 S.E.2d 144, 146 (2003).

Here, the trial court made the following findings of fact relevant to its determination that the juveniles were neglected:

6. That [Zoe] disclosed sexual abuse in 2011 when she was only four (4) years of age but the matter was unsubstantiated due to the inability of the Juvenile to provide details concerning the events that transpired.
7. That in 2015, [Zoe] again disclosed that [Father] touched [her] inappropriately and the matter was transferred to in-home services which resulted in the case being closed with recommendations that [Father] should not be left alone with any of the children.
8. That the Respondent Mother was personally told not to leave the Juvenile[s] . . . alone with [Father].
9. That the most recent report was received by [DSS] on June 3, 2017.
10. That after [Zoe] again made a disclosure of sexual abuse by [Father] the [Mother] reported to [DSS] that she did not want anything else to do with [Zoe] and asked [DSS] about relinquishing her parental right with respect to [Zoe].
11. That after making an initial disclosure [Zoe] was taken to Sampson Regional Medical Center whereupon she made a disclosure that [Father] had sex with her.
12. That . . . a child abuse pediatrician . . . treated [Zoe]

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and based upon her examination of [Zoe] as well as the description of events as told by [Zoe] testified that [Zoe] exhibits characteristics of other children who have been sexually abused.

13. That [Zoe] also testified and provided a clear description of the sexual abuse she suffered from [Father] including actual sexual intercourse and other inappropriate sexual relations.

14. That [Jessica, Lauren, and Quentin] were home at least on one occasion when [Zoe] was being sexually assaulted but were in a separate room.

15. That [Zoe, Jessica, Lauren, and Quentin] were left alone with [Father].

16. That [Zoe] was sexually abused five to ten times over a course of several months ending in May of 2017.

17. That [Mother] did not intentionally do anything to harm the children herself but her inattention and failure to detect repeated sexual abuse illustrated that she did not exercise the care of a reasonable person given the known threats to her children.

18. That [Mother] maintained a relationship with [Father] despite the prior warnings and concerns.³

Unchallenged findings of fact are deemed to be supported by the evidence and are binding on appeal. *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991). Furthermore, we address only those findings necessary to support the adjudication of neglect. *See In re T.M.*, 180 N.C. App. 539, 547, 638 S.E.2d 236, 240

³ There are minor variations in the numbering of the findings of fact between the different orders for each of the juveniles. For ease of reference, we will refer to the findings as enumerated in Jessica's adjudication order.

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(2006) (erroneous findings that are unnecessary to support adjudication of neglect do not constitute reversible error).

We first consider Father’s contention that findings of fact 6, 7, and 10-13 were mere recitations of testimony and the allegations in the petition. He contends that the trial court failed to uphold its obligation to resolve conflicts in the evidence. *See In re C.L.C.*, 171 N.C. App. 438, 446, 615 S.E.2d 704, 708 (2005), *aff’d per curiam in part and disc. review improvidently allowed in part*, 360 N.C. 475, 628 S.E.2d 760 (2006). We are not persuaded.

Our Juvenile Code places a duty on the trial court as the adjudicator of the evidence. It mandates that “[t]he court shall take evidence, find the facts, and shall adjudicate the existence or nonexistence of any of the circumstances set forth in G.S. 7B-1111 which authorize the termination of parental rights of the [R]espondent.” N.C. Gen. Stat. § 7B-1109(e) (2017). Section 1A-1, Rule 52(a)(1) of the North Carolina General Statutes provides in pertinent part: “In all actions tried upon the facts without a jury . . . the court shall find the facts specially and state separately its conclusions of law[.]” N.C. Gen. Stat. § 1A-1, Rule 52(a)(1) (2017). Furthermore, the North Carolina Supreme Court has stated that:

while Rule 52(a) does not require a recitation of the evidentiary and subsidiary facts required to prove the ultimate facts, it does require *specific findings* of the ultimate facts established by the evidence, admissions and stipulations which are determinative of the questions

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involved in the action and essential to support the conclusions of law reached.

Quick v. Quick, 305 N.C. 446, 452, 290 S.E.2d 653, 658 (1982) (emphasis in original).

In *C.L.C.*, the respondent similarly argued that the trial court failed to make sufficient findings of fact, but instead merely recited the testimony of witnesses at the hearing. This Court, applying Rule 52(a)(1) and citing *Quick*, determined that:

While the trial court did include findings of fact that summarized the testimony, the court also made the necessary ultimate findings of fact. There is nothing impermissible about describing testimony, so long as the court ultimately makes its own findings, resolving any material disputes. The testimony summaries were not the ultimate findings of fact; those findings were found elsewhere in the order.

C.L.C., 171 N.C. App. at 446, 615 S.E.2d at 708.

Here, the trial court's order went beyond reciting the allegations of the petition and the testimony of the witnesses, and resolved material disputes in the evidence. In particular, the trial court found as fact that Father sexually abused Zoe on five to ten different occasions during 2017. Furthermore, as argued by the guardian ad litem, although the trial court's findings do recite the testimony of various witnesses, the findings serve the purpose of demonstrating the process of logical reasoning the trial court went through to arrive at its determination that Zoe was sexually abused. Accordingly, we find no error in these findings.

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We next consider Father’s contention that the trial court inaccurately labeled Zoe’s testimony. Father contends that Zoe “did not put a label on the things she claimed [Father] did to her,” but merely stated that he “ ‘touched’ her ‘private area’ with his ‘thing.’ ” He thus argues that the trial court erred by characterizing his action as a “sexual assault” or “sex abuse.” We are not persuaded.

“Sexual abuse is a broad term that could easily be construed . . . to include both an assault on the victim in an attempt to rape her as well as the completed offense.” *State v. Couser*, 163 N.C. App. 727, 732, 594 S.E.2d 420, 424 (2004); *see also Black’s Law Dictionary*, 10 (9th ed. 2009) (defining “sexual abuse” as “[a]n illegal or wrongful sex act, esp. one performed against a minor by an adult”). Similarly, in North Carolina, the term “ ‘sexual assault’ does not carry a precise legal definition involving elements of intent as well as acts, nor does it have a legal meaning that varies from the common understanding of the term.” *State v. Jennings*, 333 N.C. 579, 601, 430 S.E.2d 188, 198 (1993). Under the Federal Rules of Evidence, “sexual assault” is defined to include any crime involving contact, without consent, between any part of the defendant’s body or genitals and another person’s body or genitals. Fed. R. Evid. 413(d)(2)-(3) (2019). Here, Zoe testified at the hearing that Father took her into a room, pulled down her pants and underpants, and made genital to genital contact with her. Although Zoe may not have used the terms sexual assault or sexual abuse

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to describe Father's actions, we conclude the trial court did not err by using this specific terminology in its findings of fact.

We next consider Father's challenges to findings 6, 8, 10, 11, 13, 15, 16, and 18 as being unsupported by the evidence. We address each finding in turn.

First, Father argues that finding of fact 6 is unsupported by the evidence because there was no evidence that Zoe disclosed sexual abuse in 2011. Father contends that the evidence demonstrates only that "someone" made a report to DSS and that the report was unsubstantiated. We disagree. At the adjudicatory hearing, a DSS social worker supervisor testified that in 2011, it had received a report that Zoe had been sexually abused, and Zoe "made some disclosures" in regards to Father. Zoe was only four years old at the time and DSS was unable to substantiate her allegations and closed the case. It is the trial judge's duty to "weigh and consider all competent evidence, and pass upon the credibility of the witnesses, the weight to be given their testimony and the reasonable inferences to be drawn therefrom." *In re Whisnant*, 71 N.C. App. 439, 441, 322 S.E.2d 434, 435 (1984). Based on the testimony at the adjudicatory hearing, we conclude the trial court could properly infer that Zoe disclosed that Father sexually abused her in 2011.

Father next challenges the trial court's finding of fact number 8 that Mother was "personally" told not to leave the juveniles alone with him. Father contends that the finding does not include the context of the discussion or the date of when it was

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communicated, and claims that the requirement was imposed after the occurrence of all the events leading to the 18 August 2017 petition. However, a DSS social worker who had been assigned to Zoe's case in 2015 testified that Mother was told that Father was not to have unsupervised contact with the children "prior to this [most recent] case." Thus, the evidence at the hearing directly supports this finding of fact.

Father argues that finding of fact number 10, regarding Mother seeking to relinquish her parental rights, is misleading because Mother subsequently recanted her attempted relinquishment. Nevertheless, despite this recantation, the trial court's finding is directly supported by the record because a social work supervisor for DSS testified that she had spoken with the mother on the night the case was initiated, and the mother "stated that she wanted nothing more to do with [Zoe], and she immediately started asking about relinquishment rights." Although Father asserts that the trial court should have made a finding of fact regarding Mother's recantation, "a trial court need not include detailed findings as to all of the evidence presented[.]" *In re B.C.T.*, ___ N.C. App. ___, ___, 828 S.E.2d 50, 57 (2019); *see also New Hanover Child Support Enf't v. Rains*, 193 N.C. App. 208, 210, 666 S.E.2d 800, 802 (2008) ("While the trial court is not required to make detailed findings of fact on all evidence presented, we need sufficient findings to determine on appeal the facts the trial court used to support its judgment.").

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We next consider Father’s challenges to findings of fact number 11 and 13. In finding of fact 11, the trial court found that Zoe disclosed that Father “had sex with her.” Father contends there is no evidence that Zoe made this report, only that someone made a report that a social worker described as sexual abuse, and DSS was unable to substantiate the report. We disagree. The court reports submitted by DSS state that Zoe “consistently disclosed that [Father] had sex with her multiple times[.]” Thus, there was sufficient evidence in the record to support the trial court’s finding of fact.

Father similarly challenges finding of fact number 13 on the basis that there was insufficient evidence to support the trial court’s finding that he had “sexual intercourse” with Zoe. The guardian ad litem concedes, and we agree, that Zoe’s testimony does not describe “sexual intercourse.” Zoe testified that Father did not penetrate her and only touched her on the “surface.” For purposes of defining sexual offenses, sexual intercourse requires the existence of penetration. *See State v. Fletcher*, 370 N.C. 313, 329, 807 S.E.2d 528, 540 (2017) (concluding that “the references to vaginal and anal intercourse contained in N.C.G.S. § 14-190.13(5)(b) assume the existence of a penetration requirement.”). Accordingly, there is insufficient evidence to support this portion of the trial court’s finding of fact. The remainder of finding of fact 13, however, remains intact.

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Father further contends that findings of fact 15 and 18⁴ are unsupported by the evidence. Specifically, Father contends they are misleading in that they “imply that [he] routinely had the exclusive care of the children, and [Mother] knew [he] was alone with the children when the purported sexual abuse occurred.” However, a DSS court report states that during forensic interviews it was able to establish that, despite Mother having been previously warned not to leave the children alone with Father, this safety agreement was violated on multiple occasions. Additionally, a social work supervisor with DSS testified at the adjudicatory hearing that on the day the children were removed from the home, they were again found alone in the home with Father. Thus, these findings are supported by the evidence presented. As noted previously, it is the trial court’s duty to weigh the evidence, determine the credibility of the witnesses, and make all reasonable inferences from the evidence presented. *Whisnant*, 71 N.C. App. at 441, 322 S.E.2d at 435.

Father next argues that the evidence does not support finding of fact number 16 regarding the frequency and timing of the alleged abuse. We disagree. Zoe testified that the occurrences happened on five to ten occasions during the 2017 school year. Thus, her testimony directly supports the trial court’s findings of fact.

⁴ We note that in Father’s brief, he refers to these findings as findings of fact 17 and 20, but because we are referring to the findings as enumerated in Jessica’s adjudication order, there is a variance.

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We next consider Respondents’ arguments concerning whether the trial court properly adjudicated Jessica, Lauren, and Quentin as neglected juveniles. Respondents both argue that the trial court failed to find, and the evidence failed to demonstrate, that the juveniles suffered any physical, mental, or emotional impairment or were exposed to a substantial risk of impairment. Respondents assert that all of the evidence and the trial court’s findings related solely to Zoe’s alleged sexual abuse, and no evidence was presented that Jessica, Lauren, and Quentin were impacted or even aware of the abuse.

A “[n]eglected juvenile” is defined in N.C. Gen. Stat. § 7B-101(15) as:

A juvenile who does not receive proper care, supervision, or discipline from the juvenile’s parent, guardian, custodian, or caretaker; or who has been abandoned; or who is not provided necessary medical care; or who is not provided necessary remedial care; or who lives in an environment injurious to the juvenile’s welfare; . . . or who has been placed for care or adoption in violation of law. . . .

N.C. Gen. Stat. § 7B-101(15).⁵ To sustain an adjudication of neglect, this Court has stated that the alleged conditions must cause the juvenile some physical, mental, or emotional impairment, or create a substantial risk of such impairment. *See In re Safriet*, 112 N.C. App. 747, 752, 436 S.E.2d 898, 901-02 (1993). This Court has also

⁵ Subsection 7B-101(15) was amended effective 1 October 2018 to include within the definition of “neglected juvenile” a minor who is the victim of human trafficking. *See* An Act to Amend Various Provisions Under the Laws Governing Adoptions and Juveniles, S.L. 2018-68, §§ 8.1(b), 9.1, ___ N.C. Sess. Laws ___, ___ (June 25, 2018). We apply the version of the statute extant when the petition in this case was filed on 18 August 2017. We note the 2018 amendment did not alter the applicable portions of subsection 7B-101(15).

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stated, however, that “[w]here there is no finding that the juvenile has been impaired or is at substantial risk of impairment, there is no error if all the evidence supports such a finding.” *In re Padgett*, 156 N.C. App. 644, 648, 577 S.E.2d 337, 340 (2003).

Here, the trial court did not make a finding of fact that Respondents’ actions caused the juveniles’ harm or put them at substantial risk of impairment. We conclude, however, while there was no evidence that Jessica, Lauren, and Quentin suffered any impairment, all the evidence supports a finding that they were at substantial risk of harm. *Id.* at 648, 577 S.E.2d at 340. Zoe had been the victim of suspected sexual abuse by Father, and Mother was specifically warned not to leave the juveniles alone with him. Nevertheless, despite the prior suspected abuse and the safety plan put in place to protect her children, Mother not only continued her relationship with Father, she left the children alone with Father on multiple occasions. As a consequence of Mother’s decision to continue her relationship and her failure to comply with the safety plan, Father sexually assaulted Zoe on five to ten occasions in 2017. Furthermore, Jessica, Lauren, and Quentin were present in the home and left unsupervised on at least one occasion while Father was sexually abusing Zoe. Additionally, as found by the trial court, Father was able to continue his abuse of Zoe for several months without being detected by Mother. Given Father’s prior abuse of Zoe, “[Mother’s] inattention and failure to detect repeated sexual abuse illustrates that she did not exercise the care of a reasonable person given the known

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threats to her children.” Finally, Mother’s initial reaction upon learning of the sexual abuse was to seek to terminate her relationship with Zoe by relinquishing her parental rights. On these facts, we conclude that Jessica, Lauren and Quentin were at a substantial risk of “impairment as a consequence of [Respondents’] failure to provide proper care, supervision, or discipline.” *In re Stumbo*, 357 N.C. 279, 283, 582 S.E.2d 255, 258 (2003) (internal quotation marks omitted) (citation omitted). Accordingly, we hold the trial court properly concluded they were neglected juveniles.

Father next argues that the trial court erred by terminating visitation with Jessica and Quentin without making any findings of fact to support its decision. Specifically, he argues that the trial court failed to make any findings of fact that his visits with Jessica and Quentin would not be in their best interests or contrary to their health and safety. We agree.

“This Court reviews the trial court’s dispositional orders of visitation for an abuse of discretion.” *In re C.M.*, 183 N.C. App. 207, 215, 644 S.E.2d 588, 595 (2007). “Abuse of discretion results where the court’s ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision.” *State v. Hennis*, 323 N.C. 279, 285, 372 S.E.2d 523, 527 (1988).

We initially note DSS’s argument that Father did not preserve this argument for appellate review by failing to object to the trial court’s order at the conclusion of the dispositional hearing directing that he have no contact with any of the juveniles.

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However, this Court has held that “a party [is not] required to object at the [dispositional] hearing or raise a motion in order to preserve this type of question for appellate review.” *In re E.C.*, 174 N.C. App. 517, 520, 621 S.E.2d 647, 650 (2005), *superseded on other grounds by statute*, 2013 N.C. Sess. Law 129, § 23-24 (N.C. 2013), as recognized in *In re N.B.*, 240 N.C. App. 353, 364, 771 S.E.2d 562, 570 (2015). Therefore, we conclude that Father was not required to object to the trial court’s order forbidding visitation in order to preserve this issue for appellate review.

“An order that removes custody of a juvenile from a parent, guardian, or custodian or that continues the juvenile’s placement outside the home shall provide for appropriate visitation as may be in the best interests of the juvenile consistent with the juvenile’s health and safety[.]” N.C. Gen. Stat. § 7B-905.1(a). A parent is entitled to visitation “in the absence of findings that a parent has forfeited her right to visitation or that it is in the child’s best interest to deny visitation[.]” *In re C.P.*, 181 N.C. App. 698, 706, 641 S.E.2d 13, 18 (2007) (citation omitted). When an order removes custody of a juvenile from a parent under N.C. Gen. Stat. § 7B-905.1(a), if the trial court determines that visitation by that parent would be inappropriate, the court must “address that issue in its dispositional order” and “specifically determine that such a plan would be inappropriate in light of the specific facts under consideration.” *In re K.C.*, 199 N.C. App. 557, 562, 681 S.E.2d 559, 563 (2009).

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Here, the only findings in the dispositional order concerning Father were that he was still incarcerated due to his pending charges for statutory rape and indecent liberties related to the crimes alleged by Zoe, and that due to his incarceration, he was unable to complete his service agreement. The trial court made no findings, however, that he had forfeited his right to visitation with Jessica and Quentin, that visitation would be inappropriate, or that it was in their best interests that Father be denied visitation. The trial court simply stated that there would be no visitation. Accordingly, we reverse this portion of the order and remand for entry of additional findings to support the denial of visitation to Father, or entry of an appropriate visitation schedule consistent with Section 7B-905.1(b).

AFFIRMED IN PART; REVERSED AND REMANDED IN PART.

Judges BRYANT and ARROWOOD concur.

Report per Rule 30(e).