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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-528

Filed: 7 July 2020

Guilford County, No. 18 JA 209

IN THE MATTER OF: A.V.I.

Appeal by respondent-mother from order entered 20 February 2019 by Judge Betty J. Brown in Guilford County District Court. Heard in the Court of Appeals 26 May 2020.

*Mercedes O. Chut for petitioner-appellee Guilford County Department of Health and Human Services.*

*Assistant Parent Defender Jacky Brammer for respondent-mother.*

*Parker Poe Adams & Bernstein LLP, by Jamie S. Schwedler, for guardian ad litem.*

BRYANT, Judge.

Where the trial court’s findings of fact were sufficient to support its conclusion that A.V.I. (hereinafter “Amanda”)<sup>1</sup> was a neglected and dependent juvenile, we affirm. Where the findings of fact and conclusions were sufficient to support the court’s order denying respondent-mother visitation with Amanda, we affirm the order. Where the trial court failed to consider respondent-mother’s sister as a potential placement for Amanda, we reverse and remand the matter for further findings of fact.

On 15 May 2018, petitioner Guilford County Department of Health and Human Services (hereinafter “GCDHHS”) filed a juvenile petition in the Guilford County District Court which alleged that Amanda—an infant two days old—was a neglected and dependent juvenile. The Guilford County District Court issued an order for nonsecure custody on 15 May 2018. In its order, the court found that “the juvenile was exposed to substantial risk of physical injury or sexual abuse because the parent . . . has created conditions likely to cause injury or abuse or has failed to provide or is unable to provide, adequate supervision or protection.” A guardian ad litem was appointed for Amanda and another appointed for respondent-mother. The matter came on for hearing during the 30 January 2019 session of Guilford County Juvenile Court. On 20 February 2019, the court entered its adjudication and disposition.

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<sup>1</sup> Pseudonyms have been used to protect the identity of the juveniles referenced herein as well as for ease of reading.

In its 20 February 2019 Adjudication and Disposition Order, the court found that respondent-mother and respondent-father<sup>2</sup> had a history with Child Protective Services, which dated back to 2016 and included allegations of domestic violence and respondent-mother's untreated mental health issues. At the time of the filing of the petition as to Amanda, respondent-father had a pending criminal indictment for felony indecent liberties with a child. Furthermore, the court noted that GCDHHS had concerns respondent-father could compromise the safety of Amanda, respondent-mother, and department staff. He had threatened a social worker, threatened to "shoot up" the building housing GCDHHS, and had failed to complete domestic violence counseling through the Domestic Violence Intervention Program. During a Child and Family Team meeting held on 18 May 2018, respondent-mother was asked if she had any alternative placement options for Amanda. Respondent-mother asked that her mother, Amanda's maternal grandmother, be assessed for placement. The court found that previously, Amanda's maternal grandmother had placement of Amanda's older sibling, Samantha, but asked that Samantha be removed from her care and placed in foster care. The court noted that Amanda's maternal grandmother would need to be contacted regarding her willingness and ability to have placement of Amanda and an updated home study would need to be completed. Based on these

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<sup>2</sup> Respondent-father did not appeal the underlying court orders and is not a party on appeal.

findings of fact, the trial court adjudicated Amanda neglected and dependent. The court immediately proceeded with a dispositional hearing.

During the dispositional hearing, the court received testimony and reports from the GCDHHS and the guardian ad litem. The court found that upon Amanda's discharge from the hospital, she was placed in a foster home. She was doing well in her placement, and all of her needs were being met. "[Amanda] appear[ed] happy and safe in the home." Amanda was in the same home as her older sibling, Samantha. Amanda's social worker had been monitoring her progress. The social worker described Amanda's case as "Light" and identified no developmental concerns. Amanda's daycare provider also identified no concerns, providing that Amanda continues to develop in the classroom setting. Amanda had appointments scheduled at a pediatric medical practice but was not old enough for dental appointments.

The court found that on 24 August 2018, respondent-mother had entered into a case plan with GCDHHS. She had agreed to the following plan components: obtain and maintain adequate housing; successfully address emotional and mental health issues; address parenting skills; manage employment and income; address domestic violence in her relationships; and address her then pending criminal charge of resist, delay, or obstructing a public officer.

As to obtaining and maintaining adequate housing, the court found that respondent-mother had reported on 17 September 2018 that she had moved into her

own residence, but on three occasions—20 and 24 November 2018 and 15 January 2019—respondent-mother refused a social worker entry into the residence. Respondent-mother reported that she would have to vacate the residence by 18 January 2019 but thereafter did not identify where she was residing.

As to successfully addressing emotional and mental health, the court found that respondent-mother has been diagnosed with post-traumatic stress disorder (PTSD). On 1 August 2018, respondent-mother was referred for outpatient mental health services. On 24 August 2018, respondent-mother was referred for psychiatric services. While respondent-mother was being treated for PTSD, her therapist noted that respondent-mother exhibited experiencing delusions and erratic behavior consistent with schizophrenia. On occasion, respondent-mother returned to her therapist's office when she did not have an appointment, became aggressive with office staff, and stated that she did have an appointment. After a discussion between respondent-mother's therapist and her psychiatrist, it was determined that respondent-mother may not be taking her medication. On 29 November 2018, respondent-mother reported to GCDHHS and informed her social worker that she was going school and that the social worker should contact "Ms. Washington" as respondent-mother had received "deport papers." Respondent-mother then exited the building with no mention of her minor children or visitation with them. The next day, respondent-mother returned to GCDHHS and demanded to see her minor

children. Being informed that it was not a visitation day, respondent mother took a physically aggressive posture before security asked her to leave the building. On 4 December 2018, respondent-mother's therapist informed her social worker that an involuntary commitment order (IVC) had been issued for respondent-mother based on respondent-mother's aggressive language and aggressive physical posturing. Respondent-mother's behavior was described as "psychotic." On 5 December 2018, respondent-mother was discharged from her therapist's service due to threatening conduct toward staff. On 20 December 2018, respondent-mother's social worker received a phone call from respondent-mother. The call was dropped and the social worker returned the call to the number from which it was dialed. A staff worker at Holly Hill Hospital greeted the social worker. On 4 January 2019, respondent-mother contacted her social worker and informed the social worker that respondent-mother had acquired a new mental health provider; the first appointment was scheduled for 9 January 2019. On 18 January 2019, respondent-mother's social worker sought to make contact with respondent-mother's new health care provider, Care Link. At the time of the dispositional hearing, the social worker had been unable to establish contact or obtain records from Care Link or Holly Hill Hospital, as respondent-mother had not provided her consent for records to be released.

As to parenting skills, respondent-mother completed a parenting evaluation on 23 February 2017. In accordance with the evaluation, it was recommended that

respondent-mother continue to cooperate with psychiatric care. By 20 March 2017, respondent-mother had completed the Parent Assessment Training and Education Program. Parenting communications between respondent-mother and Amanda's foster mother were no longer direct communications but were provided through a social worker due to respondent-mother's "overwhelming" communications. During visits with Amanda, respondent-mother rambled and constantly talked about topics that were hard for Amanda or the Community Support Services Technician workers to understand. On 21 November 2018, respondent-mother brought several used car seats, a stroller and a walker, as well as cleaning supplies: she stated that she wanted Amanda to clean out the items in order to learn good cleaning habits. Due to respondent-mother's changing behavior, her visitation with Amanda was modified and then suspended on 4 December 2018—the day respondent-mother's IVC order was issued. In reports filed with the court, GCDHHS recommended that respondent-mother's visitations with Amanda be suspended due to concerns regarding respondent-mother's delusions and erratic behavior. But even outside of visitations with Amanda, respondent-mother has continued to report to GCDHHS and present with delusional conduct, rapid speech, a distorted thought process, and on occasion, worn shopping totes as shoes.

As to employment/income management, the court found that on 21 November 2018, GCDHHS requested that respondent-mother provide her paystubs.

Respondent-mother stated that she was no longer employed but was enrolled at N.C. A & T State University studying sports medicine.

As to the issue of domestic violence and family relationships, the trial court found that on 5 September 2018, respondent-mother attempted to get a domestic violence protective order (DVPO) against respondent-father. The petition alleged that respondent-father harassed respondent-mother on her job and was asked to leave on multiple occasions by respondent-mother's supervisor. The DVPO was not granted. Respondent-mother failed to share this information with her social worker.

Respondent-father had not entered into a case plan with GCDHHS with regard to Amanda and had no visitation with her at the time of the hearing. Respondent-father had been banned from the GCDHHS premises and ordered against in-person contact with department staff on the basis of threatening behaviors.

The court ordered that legal and physical custody of Amanda remain with GCDHHS, with the agency having placement responsibility. GCDHHS was ordered to make reasonable efforts toward achieving reunification for Amanda. Visits between Amanda and respondent-mother and respondent father were suspended due to concerns for the risks and safety of Amanda. A permanency planning review hearing and a hearing for motions for visitation were also heard 30 January 2019.

On 20 February 2019 the court entered a separate order addressing the permanency planning review and motions for visitation (hereinafter "PPO"). In its



order, the court found that Amanda and her older sibling, Samantha, resided in the same foster home. Amanda's social worker had no developmental concerns regarding Amanda. The court determined that GCDHHS had taken steps to ensure that Amanda's foster parents were following reasonable and prudent parenting standards. The foster parents participated with Amanda in various age and developmentally appropriate activities. "It [was] not possible for [Amanda] to be returned to the home of [respondent-mother] within the next six months; [respondent-mother] experienced homelessness and ha[d] not [then] maintained housing . . . for more than six months." Moreover, respondent-mother exhibited "significant mental instability." GCDHHS did not recommend that Amanda be returned to respondent-mother. No one had been identified who was ready and able to take custody or guardianship of Amanda. In its 20 February 2019 PPO, the court concluded that it was in the best interest of Amanda that her primary permanent plan be changed to adoption with a concurrent secondary plan of reunification. It was contrary to Amanda's health and safety to be returned to respondent-mother's custody. Respondent-mother was not making adequate progress under her case plan." Foster-care placement for Amanda was appropriate. Respondent-mother's visitation with Amanda was ordered to remain suspended.

Respondent-mother appeals the trial court's 20 February 2019 order of adjudication and disposition.

On appeal, respondent-mother raises the following questions: whether the trial court erred by (I) adjudicating Amanda neglected; (II) adjudicating Amanda dependent; (III & IV) terminating visitation; and (V) failing to consider Amanda's maternal aunt a placement option.

*I*

Respondent-mother argues that the trial court erred by adjudicating Amanda a neglected juvenile where the court's findings of fact were "almost verbatim recitations" of the allegations set forth in GCDHHS's petition, vague, and supported by less than fifteen minutes of testimony. More specifically, respondent-mother contends that (A) the trial court failed to identify which ground of neglect under General Statutes, section 7B-101(15) was used to support an adjudication of neglect, (B) the findings of fact fail to establish a continuing pattern of neglect that would put Amanda at risk of neglect, (C) the court erroneously found that Amanda would face a current and substantial risk of future neglect if she was returned to respondent-mother's care, and (D) there was no clear and convincing evidence presented as "the entire adjudicatory hearing, closing arguments and judgment included, lasted roughly fifteen minutes and included only the testimony of one social worker." Respondent-mother argues that due to these alleged errors the trial court's adjudication and disposition order should be reversed and remanded. We disagree.

The role of this Court in reviewing a trial court's adjudication of neglect [ ] is to determine (1) whether the

*Opinion of the Court*

findings of fact are supported by clear and convincing evidence, and (2) whether the legal conclusions are supported by the findings of fact[.] 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 J.C.B.*, 233 N.C. App. 641, 644, 757 S.E.2d 487, 489 (2014) (alterations in original) (citations omitted).

Pursuant to our General Statutes, section 7B-101, a “neglected juvenile” is defined in pertinent part as

[a]ny juvenile less than 18 years of age . . . (ii) whose parent . . . lives in an environment injurious to the juvenile’s welfare . . . . In 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) (2019). “In cases of this sort [involving a newborn], the decision of the trial court must of necessity be predictive in nature, as the trial court must assess whether there is a substantial risk of future abuse or neglect of a child based on the historical facts of the case.” *In re N.G.*, 186 N.C. App. 1, 9, 650 S.E.2d 45, 50 (2007) (citation omitted). While it is relevant that a 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.G.S. § 7B-101(15), “[t]his Court has acknowledged . . . that ‘the fact of prior [neglect], standing alone, is not sufficient to support an adjudication of neglect.’” *J.C.B.*, 233 N.C. App. at 644, 757 S.E.2d at 489 (quoting

N.G., 186 N.C. App. at 9, 650 S.E.2d at 51). “[C]onduct that supports a conclusion that a child is neglected includes exposing the child to acts of domestic violence . . . and threatening or abusive behavior toward social workers and police officers in the presence of the children.” *In re D.B.J.*, 197 N.C. App. 752, 755, 678 S.E.2d 778, 781 (2009) (citation omitted).

A

Respondent-mother contends that the trial court’s adjudication order fails to specify which ground of neglect set forth under General Statutes, section 7B-101(15), by which the court adjudicated Amanda a neglected juvenile. Respondent-mother cites to *In re T.M.M.*, 167 N.C. App. 801, 803, 606 S.E.2d 416, 417–18 (2005) (holding reversible error where the trial court adjudicated a neglected juvenile without “reference [to] any of the several statutory grounds for determining neglect” and predicated its conclusion solely on the prior adjudication of two siblings which order had been reversed for inadequate findings of fact and conclusions of law). We find this case distinguishable.

While . . . there is no specific statutory criteria which must be stated in the findings of fact or conclusions of law . . . the trial court must, through “processes of logical reasoning,” based on the evidentiary facts before it, “find the ultimate facts essential to support the conclusions of law. The resulting findings of fact must be sufficiently specific to allow an appellate court to review the decision and test the correctness of the judgment.

*In re O.W.*, 164 N.C. App. 699, 702, 596 S.E.2d 851, 853 (2004) (citations omitted).

In adjudicating a juvenile a neglected juvenile, “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 Safriet*, 112 N.C. App. 747, 752, 436 S.E.2d 898, 901–02 (1993) (citation omitted). However, this Court has held that even where a trial court “failed to make any findings of fact concerning the detrimental effect of [the respondent-mother]’s improper care on [the juvenile]’s physical, mental, or emotional well-being,” there was no error where all the evidence supported such a finding. *Id.* at 753, 436 S.E.2d at 902.

Here, the trial court made the following finding of fact:

9. The parents have another juvenile, who is not the subject of this Petition who is currently in the legal and physical custody of the [GCDHHS]. Her name is [Samantha] . . . . [Samantha] was taken into the custody of the [GCDHHS] as a result of a petition filed on October 13, 2016. The conditions that brought [Samantha] into foster care included the mother’s untreated mental health issues, involuntary commitment, and domestic violence between the parents. On January 6, 2017, [Samantha] was adjudicated neglected and dependent.

. . . .

11. At the time of [Amanda]’s birth, the primary permanent plan for [Samantha] as ordered by the [c]ourt was adoption, with a concurrent secondary plan of reunification.

. . . .

13. [Respondent-mother] and [respondent-father] have prior Child Protective Services (CPS) history dating back to 2016, with allegations of domestic violence and untreated mental health issues for [respondent-mother].

Upon the conclusion of the trial court's adjudication that Amanda was a neglected and dependent juvenile, the court held a disposition hearing. In its 20 February 2019 order addressing the dispositional phase of its hearing, the court found that respondent-mother continued to exhibit mental health issues that ranged from PTSD, conduct consistent with schizophrenia, as well as physically aggressive posturing and aggressive language toward therapy staff and social workers. Because of her behavior, an IVC order had been issued in December 2018 in order to involuntarily commit respondent-mother, less than two months before the lower court's 30 January 2019 adjudication and disposition hearing.

Although the trial court's 20 February 2019 order fails to set forth the particular criteria the court utilized to establish Amanda as a neglected juvenile, as defined by General Statutes, section 7B-101(15), the court's findings of fact reflect a history of domestic violence involving Amanda's parents, a prior adjudication of neglect and dependency regarding Amanda's sibling, Samantha, and respondent-mother's ongoing mental health issues. Therefore, the court's findings of fact establish the substantial risk of future neglect based on the historical facts: respondent-mother lives in an environment injurious to Amanda's welfare. *See*

N.C.G.S. § 7B-101(15); *N.G.*, 186 N.C. App. at 9, 650 S.E.2d at 50. On this point, respondent-mother's argument is overruled.

B

Respondent-mother contends the trial court's findings of fact fail to establish a continuing pattern of conduct supporting a current risk of neglect. Respondent-mother argues that the trial court's findings of fact in support of its conclusion that Amanda was a neglected juvenile amount to a recitation of allegations in GCDHHS's petition.

"In the adjudicatory phase of a hearing to determine if a child is abused or neglected, the petitioner is required to prove allegations of abuse or neglect by 'clear and convincing evidence[.]' " *O.W.*, 164 N.C. App. at 701, 596 S.E.2d at 853 (citation omitted). "[T]he trial court's factual findings must be more than a recitation of allegations. They must be the specific ultimate facts . . . sufficient for the appellate court to determine that the judgment is adequately supported by competent evidence." *In re Anderson*, 151 N.C. App. 94, 97, 564 S.E.2d 599, 602 (2002) (second alteration in original) (citation omitted). However, "it is not *per se* reversible error for a trial court's fact findings to mirror the wording of a petition or other pleading prepared by a party." *In re J.W.*, 241 N.C. App. 44, 48, 772 S.E.2d 249, 253 (2015).

[T]his Court will examine whether the record of the proceedings demonstrates that the trial court, through processes of logical reasoning, based on the evidentiary facts before it, found the ultimate facts necessary to dispose

of the case. If we are confident the trial court did so, it is irrelevant whether those findings are taken verbatim from an earlier pleading.

*In re L.Z.A.*, 249 N.C. App. 628, 634, 792 S.E.2d 160, 166 (2016) (citation omitted).

Specifically, respondent-mother challenges findings of fact 9, 13, 15, and 16 as being mere recitations of the allegations in the GCDHHS petition for neglect and dependency. As findings of fact 9 and 13 have been set out above, we recite 15 here.

15. On May 14, 2018 a Child and Family Team meeting was held. . . . At the time of the meeting, the Team discussed the allegations in the report as well as the status of the parents' progress towards reunification with [Samantha]. [Respondent-mother] was asked if she had any alternative placement options. [Respondent-mother] requested that her mother . . . be assessed for placement of [Amanda]. No other placement options were provided. [Amanda's maternal grandmother] previously had placement of the juvenile's sister, [Samantha], but asked that [Samantha] be removed from her care and placed in foster care. [*Amanda's maternal grandmother*] *was not an appropriate placement option at the time of the filing of this petition*. An updated home study needed to be completed and [Amanda's maternal grandmother] needed to be contacted regarding her willingness and ability to have placement of [Amanda].

(emphasis added). Upon review of the record, we hold that the trial court's findings of fact 9, 13, and 15 are supported by the evidence presented. Therefore, the challenged findings of fact are upheld. *See id.* Finding of fact 16 regards respondent-father, who is not a party to this appeal; therefore, we do not address it. On this point, respondent-mother's argument is overruled.



In the alternative, respondent-mother argues that the trial court's findings of fact 9, 13, 15, and 16 are insufficient to support an adjudication of neglect. Specifically, respondent-mother contends the order fails to specify on what basis Amanda's sibling, Samantha, was adjudicated neglected and dependent.

We note that per finding of fact 9, recited above, Samantha was in the custody of GCDHHS due to respondent-mother's "untreated mental health issues, involuntary commitment, and domestic violence between the parents. On January 6, 2017, [Samantha] was adjudicated neglected and dependent." Moreover, we hold the findings of fact set forth in the adjudicatory phase of Amanda's hearing provide a sufficient basis to support the trial court's determination that Amanda was a neglected juvenile. *See* N.C.G.S. § 7B-101(15); *D.B.J.*, 197 N.C. App. at 755, 678 S.E.2d at 781; *N.G.*, 186 N.C. App. at 9, 650 S.E.2d at 50 ("In cases of this sort [involving a newborn], the decision of the trial court must of necessity be predictive in nature, as the trial court must assess whether there is a substantial risk of future abuse or neglect of a child based on the historical facts of the case." (citation omitted)). Respondent-mother's argument on this point is overruled.

C

Respondent-mother further contends that none of the adjudicatory findings of fact "address the required ultimate finding in a newborn case that Amanda would

face a current substantial risk of future neglect if returned to [respondent-mother]'s care because of a continuing pattern of conduct.

As stated,

there is no specific statutory criteria which must be stated in the findings of fact or conclusions of law . . . . The . . . findings of fact must be sufficiently specific to allow an appellate court to review the decision and test the correctness of the judgment.

*O.W.*, 164 N.C. App. at 702, 596 S.E.2d at 853 (citations omitted).

The findings of fact set forth in the adjudication portion of the trial court's 20 February 2019 order establish that Amanda's sibling, Samantha, was taken into custody by GCDHHS based on conditions that included respondent-mother's untreated mental health issues, involuntary commitment, and domestic violence between the parents. On 6 January 2017, Samantha was adjudicated a neglected and dependent juvenile. On 12 May 2018, respondent-mother gave birth to Amanda. Respondent-mother and respondent-father's history with Child Protective Services dated back to 2016. On 14 May 2018, a Child and Family Team meeting was held. Respondent-mother and, via telephone, her attorney were present. "[T]he Team discussed the allegations in the report as well as the status of the parents' progress toward reunification with [Samantha]." The team then discussed placement options for Amanda. Respondent-father was not notified of the Team meeting due to prior threats of violence against GCDHHS staff as well as a pending criminal indictment

for felony indecent liberties with a child. Moreover, respondent-father was not allowed contact with Samantha due to his prior threats, criminal charge, failure to make progress on his case plan, and failure to complete domestic violence counseling through the Domestic Violence Intervention Program. On these findings of fact, the trial court adjudicated Amanda a neglected and dependent juvenile.

The trial court's findings of fact are sufficiently specific to allow this Court to review the decision and test the correctness of the judgment. *See id.* Moreover, we hold the findings of fact sufficient to establish that Amanda would face a substantial risk of future neglect if returned to respondent-mother's care because of a continuing pattern of conduct. *See L.Z.A.*, 249 N.C. App. at 634, 792 S.E.2d at 166 (reasoning that where this Court is confident the record demonstrates that "through processes of logical reasoning, based on the evidentiary facts before it, [the trial court] found the ultimate facts necessary to dispose of the case . . . it is irrelevant whether those findings are taken verbatim from an earlier pleading" (citation omitted)). On this point, respondent-mother's argument is overruled.

D

Respondent-mother contends there was no clear and convincing evidence of neglect. Respondent-mother's strongest contention on this point is that "[t]he entire adjudicatory hearing, closing arguments and judgment included, lasted roughly fifteen minutes . . . ." Respondent-mother asserts that the social worker who testified

during the adjudication phase of the hearing “testified to the same information pertaining to neglect that is included in the petition and adjudicatory order . . . .”

“In a non-jury [abuse and] neglect adjudication, the trial court’s findings of fact supported by clear and convincing competent evidence are deemed conclusive, even where some evidence supports contrary findings.” *In re M.J.G.*, 168 N.C. App. 638, 643, 608 S.E.2d 813, 816 (2005) (alteration in original) (citation omitted).

In its 20 February 2019 order, the trial court states that “after sworn testimony and reports received, the court makes the following findings of fact by clear, cogent and convincing evidence.” We have held the trial court’s challenged findings of fact were supported by the evidence presented and the trial court’s conclusion that Amanda was neglected is supported by the findings of fact. Accordingly, we overrule respondent-mother’s argument.

## *II*

Next, respondent-mother argues that the trial court erred by adjudicating Amanda a dependent juvenile. Respondent-mother contends (A) the trial court’s findings of fact reflect no process of logical reasoning, (B) the order contains insufficient findings of fact to support either prong of the criteria for determining dependency, and (C) the record contains no clear and convincing evidence of dependency. We disagree.

Pursuant to our General Statutes, a “dependent juvenile” is defined as

[a] juvenile in need of assistance or placement because (i) the juvenile has no parent, guardian, or custodian responsible for the juvenile's care or supervision or (ii) the juvenile's parent, guardian, or custodian is unable to provide for the juvenile's care or supervision and lacks an appropriate alternative child care arrangement.

N.C.G.S. § 7B-101(9).

“Findings of fact addressing both prongs must be made before a juvenile may be adjudicated as dependent, and the court's failure to make these findings will result in reversal of the court.” *In re B.M.*, 183 N.C. App. 84, 90, 643 S.E.2d 644, 648 (2007). Moreover, although N.C.G.S. § 7B–101(9) uses the singular word “the [ ] parent” when defining whether “the [ ] parent” can provide or arrange for adequate care and supervision of a child, our caselaw has held that a child cannot be adjudicated dependent where she has at least “a parent” capable of doing so. *See In re J.A.G.*, 172 N.C. App. 708, 716, 617 S.E.2d 325, 332 (2005) (emphasis added).

*In re V.B.*, 239 N.C. App. 340, 342, 768 S.E.2d 867, 868 (2015).

A

Respondent-mother argues that the trial court's findings of fact fail to reflect a process of logical reasoning. Respondent-mother incorporates her argument as addressed in Issue I, sub-heading B.

As we have overruled respondent-mother's argument in Issue I, sub-heading B and respondent-mother does not make any further argument as to the current issue, we do not further consider this sub-issue.

B

Respondent-mother contends the findings of fact were not sufficient to satisfy either prong required for a conclusion of dependency. Respondent-mother contends there were no findings which address her ability to provide Amanda with care or supervision or whether an appropriate alternative childcare arrangement was available. We disagree, as the trial court made sufficient findings of respondent-mother's inability to care for Amanda and specific findings of fact that there was no alternative arrangement available.

As to whether the findings of fact are sufficient to satisfy both prongs of the dependency definition, respondent-mother contends that none of the findings given in support of the adjudication of dependency address her ability to care or supervise Amanda. Per her brief before this Court, "[t]he trial court's conclusion of law that '[Amanda] requires more adequate care and supervision than a parent can provide at this time,' . . . is more appropriately labeled as an ultimate finding of fact but is still insufficient as it does not address [respondent-mother's] ability to parent Amanda."

[T]he trial court must, through processes of logical reasoning, based on the evidentiary facts before it, find the ultimate facts essential to support [its] conclusions of law. The findings must be the specific ultimate facts . . . sufficient for the appellate court to determine that the judgment is adequately supported by competent evidence.

*V.B.*, 239 N.C. App. at 342, 768 S.E.2d at 869 (alterations in original) (citations omitted).

Here, the findings of fact addressing the adjudication portion of the court's 20 February 2019 order provided that Samantha was adjudicated neglected and dependent on 6 January 2017. Samantha had been subject to placement in the foster care system due to respondent-mother's untreated mental health issues, involuntary commitment, and the domestic violence between respondent-father and respondent-mother. Amanda was born in May 2018. On 14 May 2018, GCDHHS received a report that Amanda was a neglected juvenile due to an injurious environment. That same day a Child and Family Team meeting was held in which respondent-mother was present and represented by counsel. During the meeting the allegations of the report were discussed, as well as the status of respondents' reunification with Samantha. The trial court's findings of fact support the conclusion that respondent-mother was not able to provide for Amanda's care or supervision.

During the Child and Family Team meeting "[respondent-mother] was asked if she had any alternative placement options. [Respondent-mother] requested that her mother[, Amanda's maternal grandmother,] . . . be assessed for placement of [Amanda]." The court noted that the maternal grandmother had previously been a placement for Samantha; however, the maternal grandmother had directed that Samantha be removed from her care and placed in foster care. The court concluded that the maternal grandmother "was not an appropriate placement option at the time of the filing of th[e] petition; an updated home study needed to be completed and [the

maternal grandmother] needed to be contacted regarding her willingness and ability to have placement of [Amanda].” Respondent-mother provided no other placement options. Thus, there was no evidence to support the proposition that either respondent-mother or her proffered alternative care provider were able and willing to provide for Amanda’s care or supervision.

In addition to the finding that Samantha was taken into the foster care system in part due to the domestic violence between respondent-mother and respondent-father and a history with Child Protective Services that began in 2016, respondent-father “was not notified of the Child Family Team Meeting due to concerns that he would compromise the safety of the juvenile, [respondent-]mother and the Department’s staff.” The court’s findings of fact—recognizing a threat to Amanda’s safety from respondent-father—were sufficient to support the conclusion that respondent-father lacked the ability to provide care or supervision for Amanda.

Accordingly, we hold the trial court’s findings of fact support the conclusion that Amanda has no parent responsible for her care or supervision and that an appropriate alternative child care arrangement was unavailable. *See* N.C.G.S. § 7B-101(9).



Respondent-mother contends that the record contains no clear and convincing evidence of dependency. Respondent-mother's argument is substantially similar to the arguments set forth in Issue I, sub-argument D, above.

As we have overruled respondent-mother's arguments in Issue I, sub-heading D and respondent-mother's argument here is not materially different, we do not further consider this sub-issue.

Accordingly, the trial court's conclusion that Amanda was a dependent juvenile is affirmed.

### *III*

Next, respondent-mother argues that the trial court erred by terminating visitation between respondent-mother and Amanda where the court failed to make the required ultimate or evidentiary findings of fact. We disagree.

We note that in its 20 February 2019 order, after adjudicating Amanda a neglected and dependent juvenile, the trial court continues with findings of fact and conclusions applicable to the dispositional phase of the 30 January 2019 hearing. Following the dispositional component of the 20 February 2019 order, the court orders that respondent-mother's visitation with Amanda remain suspended.

We further note that also on 20 February 2019, the trial court filed an order as to a permanency planning review hearing and motions for visitation. In its 20 February 2019 permanency planning order, the Court also concluded that "[v]isits for

[respondent-mother] shall remain suspended, due to the risk and safety issues for [Amanda], pending further Orders of the [c]ourt.” On this record, respondent-mother did not have a right to appeal the trial court’s 20 February 2019 permanency planning order to this Court. See N.C. Gen. Stat. § 7B-1001(a) (2019) (“Right to appeal”). Accordingly, this issue is moot. See *In re D.S.*, 260 N.C. App. 194, 199, 817 S.E.2d 901, 905 (2018) (“A case is ‘moot’ when a determination is sought on a matter which, when rendered, cannot have any practical effect on the existing controversy.” (citation omitted)).

#### IV

Respondent-mother argues that the trial court erred by terminating visitation with Amanda without informing respondent-mother of her right to file a motion for review of the order terminating visitation.

Again, “[w]e review a dispositional order only for abuse of discretion. Questions of statutory interpretation are questions of law, which are reviewed *de novo* by an appellate court.” *In re J.P.*, 230 N.C. App. 523, 525, 750 S.E.2d 543, 545 (2013) (citations omitted).

Further, [w]hen, during the course of litigation it develops that the relief sought has been granted or that the questions originally in controversy between the parties are no longer at issue, the case should be dismissed, for courts will not entertain or proceed with a cause merely to determine abstract propositions of law.

*D.S.*, 260 N.C. App. at 199, 817 S.E.2d at 906 (citation omitted).

Pursuant to our General Statutes, section 7B-905.1 (“Visitation”), “[i]f the court retains jurisdiction, all parties shall be informed of the right to file a motion for review of any visitation plan entered pursuant to this section.” N.C. Gen. Stat. § 7B-905.1(d) (2019). In *Matter of J.L.*, \_\_\_ N.C. App. \_\_\_, 826 S.E.2d 258 (2019), the trial court did not waive future review hearings and retained jurisdiction over the juvenile’s case but failed to notify the respondent of her right to file a motion for review of the visitation plan—either in its order or in open court. This Court vacated the trial court’s visitation order and remanded the matter for further proceedings compliant with section 7B-905.1. *Id.* at \_\_\_, 826 S.E.2d at 268.

We acknowledge that, in the 20 February 2019 order in which the trial court adjudicated Amanda a neglected juvenile and ordered that respondent-mother’s visits with Amanda remain suspended, the court failed to note that respondent-mother had the right to file a motion for review of the suspended visitation. However, we note that also during the 30 January 2019 hearing, the trial court addressed permanency planning and scheduled a review hearing for 17 July, within six months of the 30 January 2019 hearing.<sup>3</sup> Moreover, per the court’s 20 February 2019 order addressing

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<sup>3</sup> See N.C. Gen. Stat. § 7B-906.1(a) (2019) (“Review and permanency planning hearing”) (“The court shall conduct a review hearing within 90 days from the date of the initial dispositional hearing held pursuant to G.S. 7B-901. Review hearings shall be held at least every six months thereafter. Within 12 months of the date of the initial order removing custody, there shall be a review hearing designated as a permanency planning hearing. Review hearings after the initial permanency planning hearing shall be designated as permanency planning hearings. Permanency planning hearings shall be held at least every six months thereafter or earlier as set by the court to review the progress made

the permanency planning review hearing and motions for visitation, the court provided that “[t]his matter shall come one for a Permanency Planning Hearing on July 17, 2019.” As discussed in Issue III, the 20 February 2019 order addressing permanency planning directs that respondent-mother’s visitations with Amanda were to remain suspended “pending further orders of the [c]ourt.” Thus, respondent-mother’s notice of her right to review the court’s order regarding visitation was not merely communicated, a hearing on the matter was scheduled. The relief respondent-mother seeks has been granted in the permanency planning review process. *See* N.C. Gen. Stat. § 7B-906.1(a) (2019) (“Review and permanency planning hearing”); *D.S.*, 260 N.C. App. at 199, 817 S.E.2d at 905–06. Accordingly, respondent-mother’s argument on this issue is overruled.

V

Lastly, respondent-mother argues that the trial court erred by failing to consider respondent-mother’s sister as a willing and able relative placement for Amanda and for failing to make a dispositional conclusion that it was not in Amanda’s best interests to be placed with respondent-mother’s sister. We agree.

Pursuant to our General Statutes, section 7B-903 (“Dispositional alternatives for abused, neglected, or dependent juveniles”),

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in finalizing the permanent plan for the juvenile, or if necessary, to make a new permanent plan for the juvenile.”).

[i]n placing a juvenile in out-of-home care under this section, the court shall first consider whether a relative of the juvenile is willing and able to provide proper care and supervision of the juvenile in a safe home. If the court finds that the relative is willing and able to provide proper care and supervision in a safe home, then the court shall order placement of the juvenile with the relative unless the court finds that the placement is contrary to the best interests of the juvenile.

N.C. Gen. Stat. § 7B-903(a1) (2019). *See also D.S.*, 260 N.C. App. at 200, 817 S.E.2d at 906 (holding that despite evidence in the record to resolve the issue of placing the juvenile with her maternal grandmother, where both parents supported the placement, the trial court's failure to make findings of fact and conclusions on whether the paternal grandmother was an appropriate placement in violation of the statutory preference for placements with a relative was reversible error).

Here, the record reflected that a court summary was prepared by social workers and filed with the court on 30 January 2019. In the court summary, respondent-mother's sister was identified as a relative who was a potential placement for Amanda. Respondent-mother's sister offered a sufficient home and was able to meet Amanda's ongoing needs financially. However, respondent-mother's sister was unable to take both siblings, Amanda and Samantha. GCDHHS recommended that the siblings be placed together and thus did not recommend that Amanda be placed with respondent-mother's sister.

Our General Statutes require that consideration be given to relatives in placing juveniles outside of the home, and where that relative is willing and able to provide proper care and supervision in a safe home, the court is to give the relative priority in placing the juvenile, in accordance with the juvenile's best interest. Here, the record contains evidence identifying respondent-mother's sister as a potential relative placement, however, the trial court's failed to make any findings of fact and conclusions regarding Amanda's placement with a relative. *See* N.C.G.S. § 7B-903(a1); *D.S.*, 260 N.C. App. at 200, 817 S.E.2d at 906. Accordingly, the portion of the trial court's 20 February 2019 adjudication and disposition order as to the placement of Amanda with the GCDHHS is remanded for further findings of fact.

AFFIRMED IN PART; REVERSED IN PART; AND REMANDED.

Judge YOUNG concurs.

Judge TYSON concurs in the result only.

Report per Rule 30(e).