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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-1134

Filed: 21 July 2020

Robeson County, No. 19 JA 142

IN THE MATTER OF: L.G.

Appeal by Respondent-Father from Orders entered 3 September 2019 by Judge Angelica C. McIntyre in Robeson County District Court. Heard in the Court of Appeals 9 June 2020.

J. Edward Yeager, Jr. for petitioner-appellee Robeson County Department of Social Services.

North Carolina Administrative Office of the Courts, Guardian Ad Litem Division, by Michelle FormyDuval Lynch, for guardian ad litem.

Benjamin J. Kull for respondent-appellant.

HAMPSON, Judge.

Factual and Procedural Background

Respondent-Father (Respondent)¹ appeals from an Order on Adjudication (Adjudication Order) adjudicating Respondent's son Louis² neglected and an Order on Disposition (Disposition Order) continuing custody of Louis with the Robeson County Department of Social Services (DSS), continuing placement of Louis with his maternal great aunt and uncle, and requiring DSS to continue reunification efforts with Respondent. The Record before us tends to show the following:

Respondent and Mother are the parents of Louis, who was born on 8 May 2019. On or about 8 May 2019, DSS received a neglect referral alleging when Mother gave birth to Louis, he was positive for benzodiazepines and suboxone. Thereafter, DSS filed a Juvenile Petition (Petition) alleging Louis was a neglected juvenile because he “does not receive proper care, supervision, or discipline from [his] parent[s]” and “lives in an environment injurious to [his] welfare.” In its Petition, DSS also alleged Respondent and Mother's eldest child was placed into out-of-home placement with a relative due to allegations of neglect.

On 27 June 2019, the trial court held an adjudication hearing on DSS's Petition. Prior to the start of this hearing, counsel for Mother moved for a continuance because Mother “had a medical emergency [after being taken into

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

² A pseudonym chosen by the parties to protect the identity of the juvenile.

custody prior to the start of the hearing] and [had] been transported by EMS to the hospital[.]” The trial court denied Mother’s motion for a continuance.

The trial court then proceeded with the adjudication hearing, which lasted approximately sixteen minutes. DSS Social Worker Carla Rowdy (Rowdy) was the only witness to testify during the adjudication hearing. Rowdy testified she received a report on 8 May 2019, alleging when Mother gave birth to Louis, “[h]e was positive for benzos and Suboxone.”³ Based on this report, Rowdy visited Mother and Louis at the hospital.⁴

When Rowdy arrived at the hospital, she observed Louis was sleeping in his bassinet and was not receiving any type of treatment at that time. Rowdy testified at a subsequent visit to the hospital, she observed Louis “was in the NICU -- getting treatment in NICU, and he had to remain there.” When Rowdy first visited the hospital, she spoke with Respondent and asked if he had any concerns about his son, to which Respondent replied, “[n]o.”

At this first visit, Rowdy also spoke with Mother about her son Louis. Mother admitted to using substances while pregnant with Louis. Specifically, Rowdy testified—“[Mother] admitted to using cocaine, and she said that she had a

³ This report was not admitted into evidence. Instead, over Respondent’s objection, the trial court allowed Rowdy’s testimony regarding the report solely for the limited purpose of explaining how DSS first became involved in this case.

⁴ Rowdy did not testify as to when she visited the hospital, but the Record suggests this visit was on 8 May 2019.

prescription that she had received last year for Suboxone for seven strips.” Rowdy also testified Mother was asked to follow up with a substance abuse treatment provider but Mother had not complied with this request. Lastly, Rowdy testified Mother had “a case open regarding another child” who was “in foster care.”

DSS attempted several times to introduce into evidence Louis’s medical records. However, the trial court sustained Respondent’s objections to both the medical records and any testimony about their content. DSS also attempted to introduce an Adjudication Court Report (Report) into evidence, which also included Louis’s medical records. The trial court ruled it would “not accept the [Report] as to the medical records, but will as to the standard form.” This Report, however, is one page in length, lists the parents’ names and Louis’s name, and requests the trial court adjudicate Louis neglected.

After hearing arguments from counsel, the trial court announced its ruling as follows: “The Court does find by clear, cogent, and convincing evidence that [Louis] is neglected based off the testimony and [Mother’s] own admissions to the social worker that she had been consuming the substances of cocaine as well as Suboxone, that the child had to receive treatment in the neonatal ICU unit as a result.” Thereafter, the trial court held a dispositional hearing, heard extensive testimony, and concluded DSS shall continue with reunification efforts with Respondent and that physical and legal custody shall remain with DSS.

On 3 September 2019, the trial court entered its Adjudication and Disposition Orders in this case. Relevant to this appeal, the Adjudication Order contained twenty-two Findings of Fact—notwithstanding the paucity of evidence presented at the adjudication hearing—including:

1. That pursuant to N.C.G.S. 7B-801, this matter comes on for Adjudication upon a Petition and Non-Secure Custody Order, filed by [DSS] on May 14, 2019.
2. The mother of the child is [Mother]. The father of the child is [Respondent].
3. The child, [Louis], was born May 8, 2019 and he is one month old.
4. That the child, [Louis], is a neglected child pursuant to N.C.G.S. 7B-101 (15) in that the juvenile does not receive proper care, supervision, or discipline from the juvenile's parent, guardian, custodian, or caretaker; and lives in an environment injurious to the juvenile's welfare and lives in an environment injurious to the juvenile's welfare [sic].
5. On May 8, 2019, [DSS] received a neglect referral alleging that [Mother] gave birth to the child, [Louis,] and she was positive for benzodiazepines and suboxone.
6. On May 8, 2019, [Mother] admitted to [Rowdy] that she was taking Klonopin that she was prescribed a year ago due to not being able to sleep. [Mother] admitted to [Rowdy] that she was using cocaine in February, 2019.
7. On May 8, 2019, [Mother] denied to [Rowdy] that she was buying Suboxone off the street but stated that she received seven suboxone strips in September, 2018 from the emergency room that lasted her until she delivered [Louis].

8. On May 8, 2019, [Mother] denied to [Rowdy] that she had been refusing to complete drug screens at her prenatal visits and stated that she [was] just unable to urinate at that time.

9. On May 8, 2019, [Rowdy] learned that [Louis] was having withdrawal symptoms such as high pitch crying, trembles, and being hard to console.

10. On May 8, 2019, [Mother] denied that she was non-compliant with Family Treatment Court and Premier Behavioral Services. [Mother] stated to [Rowdy] that her drug screens were negative.

11. On May 8, 2019, [Rowdy] learned that [Mother] had a lapse in her substance services with Premier Behavioral Services but she still received her certificate of completion.

12. On May 8, 2019, [Rowdy] learned from Mr. Gordon Smith at Premier Behavioral Services that the recommendation from [Mother] at this time would be inpatient treatment.

13. On May 8, 2019, [Rowdy] learned from drug screens that [Mother] continued to test positive for benzodiazepines, cocaine, and high levels of suboxone.

14. On May 8, 2019, [Respondent] denied knowledge of [Mother] using any other drug except the seven suboxone strips that she received from the hospital.

15. On May 13, 2019, [Rowdy] learned that [Louis] was placed in the NICU and was being administered phenylbarbitol due to having withdrawal symptoms.

16. On May 13, 2019, [Mother] stated to Social Worker Felicia Williams that she did not know if she was going to participate in inpatient treatment.

17. [Mother] and [Respondent], have another child . . . in the custody of [DSS]. [Mother] is non-compliant on her case plan regarding the child[.]

18. At this time, the agency cannot ensure the safety and well-being of the children without court intervention.

19. That pursuant to N.C.G.S. 7B-507, [DSS] has made reasonable efforts in this matter to prevent or eliminate the need for placement with [DSS], to reunify this family, and to implement a permanent plan for the child as follows: [Rowdy] assisted [Mother] with transportation to substance abuse appointments and Family Treatment Court.

20. It is not possible for the children to be placed with the mother within the next six months and such a placement would be contrary to the welfare of said children.

21. The Court relies on and accepts into evidence the Adjudication Court Report, marked DSS Exhibit “A”, in making these findings and finds that said report to be both credible and reliable.

22. [Mother] was present for Court today; however, [Mother] was arrested for failure to appear in Family Treatment Court. [Mother] had a medical episode and EMS was called to take her to the hospital prior to [when] the hearing was held.

On 1 October 2019, Respondent filed timely Notice of Appeal from both the Adjudication Order and Disposition Order.

Issue

The dispositive issue on appeal is whether the Findings of Fact that are supported by clear and convincing evidence support the trial court’s Conclusion of Law in its Adjudication Order that Louis is a neglected juvenile.⁵

⁵ Respondent also contends the trial court erred in its Disposition Order by making a “best interest” finding required by a previous version of the law and that the trial court abused its discretion by entering the Disposition Order. However, given our ruling herein, we do not reach these issues regarding the Disposition Order and raised by Respondent in this appeal.

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).

Analysis

I. Findings of Fact

Given the very limited evidence presented at the sixteen-minute adjudication hearing, and as implicitly acknowledged by both DSS and the guardian *ad litem*, the vast majority of the trial court's Findings in its Adjudication Order are wholly unsupported by *any* evidence in the Record on adjudication. It appears, instead, in order to bolster the written Findings, the trial court relied on the more extensive evidence presented during the disposition hearing. To the extent the trial court relied on disposition evidence in making its adjudication Findings, this was improper. *See In re Mashburn*, 162 N.C. App. 386, 396, 591 S.E.2d 584, 591-92 (2004) (noting it would be improper for the trial court to consider disposition testimony during adjudication and to incorporate the disposition testimony into its findings of fact on adjudication (citation omitted)).

Rather, the trial court's Findings of Fact that are supported by clear and convincing evidence presented at the adjudication hearing establish the following: (1) Mother and Respondent are the parents of Louis, who was born on 8 May 2019; (2) on 8 May 2019, DSS received a neglect referral *alleging* when Mother gave birth to Louis, he was positive for benzodiazepines and suboxone; (3) on 8 May 2019, Mother "admitted to using cocaine [at some point during her pregnancy with Louis], and she said that she had a prescription that she had received last year for Suboxone for seven strips"; (4) on 13 May 2019, Rowdy learned Louis was placed in the NICU; and (5) Mother had "a case open regarding another child" who was "in foster care" for an

unspecified reason. Accordingly, the question becomes whether these limited facts support the trial court's Conclusion Louis was a neglected juvenile.

II. Adjudication of Neglect

A neglected juvenile is defined, in pertinent part, as one “whose parent, guardian, custodian, or caretaker does not provide proper care, supervision, or discipline; . . . or who lives in an environment injurious to the juvenile’s welfare[.]” N.C. Gen. Stat. § 7B-101(15) (2019) (“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.”). This Court has consistently required “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 order to adjudicate a juvenile neglected.” *In re McLean*, 135 N.C. App. 387, 390, 521 S.E.2d 121, 123 (1999) (citation and quotation marks omitted). Similarly, in order for a court to find that the child resided in an injurious environment, evidence must show that the environment in which the child resided or would reside has resulted or would result in harm to the child or a substantial risk of harm. *In re Helms*, 127 N.C. App. at 511, 491 S.E.2d at 676 (citation omitted). A trial court’s failure to make specific findings regarding a child’s impairment or risk of harm will not require reversal where the evidence supports such findings. *In re Padgett*, 156 N.C. App. 644, 648,

577 S.E.2d 337, 340 (2003) (citation omitted). Put another way, there must be evidence in the record to support a connection between the parent's actions or omissions giving rise to the allegation of neglect and the harm or risk of harm to the child. *See In re E.P., M.P.*, 183 N.C. App. 301, 306-07, 645 S.E.2d 772, 775-76, *aff'd per curiam*, 362 N.C. 82, 653 S.E.2d 143 (2007) (affirming a trial court's dismissal of a neglect petition where "there was no substantial evidence of any connection between the substance abuse and domestic violence and the welfare of [the] two children" (alteration in original) (quotation marks omitted)).

This is also true in cases where a newborn is exposed to illicit substances in utero. *See, e.g., In re L.G.I.*, 227 N.C. App. 512, 516, 742 S.E.2d 832, 835 (2013) (upholding the trial court's "order of adjudication [of neglect] based on [the infant's] positive morphine test [at birth] and [the mother's] use of illegal drugs while pregnant"); *In re G.T.*, 250 N.C. App. 50, 53-54, 791 S.E.2d 274, 277 (2016) (upholding adjudication of neglect where the mother admitted to using marijuana, cocaine, and methamphetamine while pregnant and at birth the child showed an elevated heart rate and symptoms of substance withdrawal, in addition to the father being incarcerated for threatening the mother, the mother's erratic behavior, and the mother's disregard for a domestic violence protective order against the father, which exposed the infant to a substantial risk of impairment), *aff'd per curiam*, 370 N.C. 387, 808 S.E.2d 142 (2017); *In re B.M.*, 183 N.C. App. 84, 89, 643 S.E.2d 644, 647

(2007) (affirming an adjudication of neglect where a nine-day-old infant was removed from the mother’s custody after testing positive for cocaine, the mother admitted to using cocaine prior to the juvenile’s birth, there was domestic violence between the parents, and the mother refused to sign a safety agreement); *In re M.J.G.*, 168 N.C. App. 638, 647, 608 S.E.2d 813, 818 (2005) (“The findings of fact that the mother tested positive for marijuana use on the day [the infant] was born, that another child had been adjudged abused and neglected, that the mother was unemployed, and that her whereabouts were unknown at the time the petition was filed support the conclusion that [the infant] was neglected.”).

Crucially, in this case, although the evidence established Mother admitted to using cocaine at some point during her pregnancy and the fact Louis was transferred to the NICU at some point after his birth, there was no evidence presented connecting these occurrences. No evidence was presented as to why Louis was transferred to the NICU. No evidence was presented as to Mother’s positive drug tests, ongoing substance-abuse problems, or failure to comply with ongoing drug treatments from which the trial court could make a determination Louis either suffered harm or was put at substantial risk of harm as a result of Mother’s drug use.

Frustratingly, given the trial court’s unsupported Findings of Fact—which detail Louis’s withdrawal symptoms and Mother’s history of ongoing drug usage, positive drug tests, and noncompliance with existing plans implemented by DSS—it

appears DSS *could* have introduced such evidence at adjudication. However, DSS simply failed to do so, including failing to lay a proper foundation for the introduction of medical records.⁶ Thus, there is no evidence to show Louis suffered any physical, mental, or emotional impairment or that he was at a substantial risk of such impairment as the result of Mother’s substance abuse. The fact is it was likely obvious to everyone in the courtroom during adjudication that Mother’s drug usage during pregnancy was extensive and ongoing and that her continued failure to seek recommended substance-abuse treatment or counseling had or was substantially likely to have a profoundly negative impact on the child. However, that does not alleviate the statutory requirement for DSS to prove the allegations in a neglect petition by clear and convincing evidence and for the trial court to make findings of fact supported by the evidence presented during the adjudication hearing to support a neglect adjudication. *See* N.C. Gen. Stat. §§ 7B-805; -807(a), (b) (2019).

Moreover, there was no evidence of any other factors that might have supported a neglect adjudication. Admittedly, Mother acknowledged she had “a case open regarding another child” who was “in foster care[,]” which could potentially be relevant to whether Louis was neglected. *See id.* § 7B-101(15) (explaining in an adjudication for neglect, “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

⁶ DSS makes no argument on appeal the trial court erred in excluding these medical records.

in the home” (emphasis added)). However, no testimony was presented showing why the other child was in foster care or whether that child “[had] been subjected to abuse or neglect[,]” thereby rendering this testimony standing alone insufficient to support a neglect adjudication. *Id.*; see also *In re J.C.B.*, 233 N.C. App. 641, 644, 757 S.E.2d 487, 489 (2014) (holding when a trial court relies on instances of past abuse or neglect to other children in adjudicating a child neglected, the trial court is required to find “the presence of other factors to suggest that the neglect or abuse will be repeated” (citations omitted)).

Based on the lack of evidence presented by DSS during the adjudication hearing to support the allegations in the Petition and the trial court’s limited Findings supported by the scant evidence presented by DSS, we are compelled to reverse the trial court’s adjudication of neglect. Because we reverse the trial court’s Adjudication Order, we must also reverse the Disposition Order. See *In re S.C.R.*, 217 N.C. App. at 170, 718 S.E.2d at 713.

Conclusion

Accordingly, for the foregoing reasons, we reverse the trial court’s Adjudication Order and Disposition Order.

REVERSED.

Judges BRYANT and INMAN concur.

Report per Rule 30(e).