

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-630

Filed: 18 August 2020

Johnston County, Nos. 18 JA 140–42

IN THE MATTER OF:

A.K., K.K., K.K.

Appeal by respondent from orders entered 6 February 2019 and 20 March 2019 by Judge Paul A. Holcombe, III, in Johnston County District Court. Heard in Court of Appeals 26 May 2020.

Jennifer S. O'Connor for petitioner-appellee Johnston County Department of Social Services.

Peter Wood for respondent-appellant mother.

Mobley Law Office, P.A., by Marie H. Mobley, for guardian ad litem.

DIETZ, Judge.

Respondent appeals an order adjudicating her children neglected and dependent. The trial court based that order on facts from a stipulation by Respondent. Respondent now contends that her stipulation in open court to a “factual basis” for the adjudication was invalid under the applicable juvenile statute. We agree that the

stipulation does not satisfy the statutory criteria and therefore vacate the trial court's order and remand for further proceedings.

Facts and Procedural History

On 17 July 2018, the Johnston County Department of Social Services filed juvenile petitions alleging that Respondent's three children were neglected and dependent. On 24 October 2018, Respondent appeared for an adjudication hearing regarding the petitions.

During this hearing, Respondent, through her counsel, indicated that she intended to stipulate to the facts alleged in the petitions. The trial court then asked Respondent whether she was "in fact going to stipulate that there's a factual basis, which is going to come from the petition." Respondent stated that "I don't really believe that they're neglected or dependent, but I'll go ahead and agree with his recommendation just to take the parenting class, random drug tests, and the psychological evaluation."

After some additional back-and-forth, the trial court reiterated the initial question: "do you want to stipulate that there is a factual basis for me to accept—" Before the court could finish, Respondent stated, "I do not want a hearing. I'll just take the stipulations."

The trial court then stated, "All right. Based upon that then, the Court is going to find that the Respondent Mother has stipulated there is a factual basis, which will

be drawn from the allegations in the petition.” The court later entered a written order adjudicating Respondent’s children neglected and dependent, making findings of fact based on the allegations in the petitions without receiving any testimony or other evidence at the hearing. Respondent appealed that adjudication order.

Analysis

In an order adjudicating a juvenile as abused, neglected, or dependent, the trial court must make findings of fact based on clear and convincing evidence in the record. N.C. Gen. Stat. §§ 7B-805, 7B-807(a)–(b). As a result, the court typically must hear witness testimony and receive various evidence concerning the children so that the court can make the necessary findings. *In re D.M.O.*, 250 N.C. App. 570, 572, 794 S.E.2d 858, 861 (2016).

But there is a statutory process by which the trial court can find facts through stipulation of the parties, without the need for review of the underlying evidence. Importantly, when our General Assembly created this statutory stipulation process, it included rules that are stricter than stipulations by litigants in many other legal contexts. Before the trial court may rely on stipulated facts to support adjudication in these juvenile proceedings, the court must either (1) receive a written stipulation addressing specific facts, signed by the appropriate party or (2) have those stipulated facts read into the record at the hearing:

If the court finds from the evidence, including stipulations by a party, that the allegations in the

Opinion of the Court

petition have been proven by clear and convincing evidence, the court shall so state. A record of specific stipulated adjudicatory facts shall be made by either reducing the facts to a writing, signed by each party stipulating to them and submitted to the court; or by reading the facts into the record, followed by an oral statement of agreement from each party stipulating to them.

N.C. Gen. Stat. § 7B-807(a).

Here, the trial court did not receive evidence and instead relied on a stipulation by Respondent and her counsel in open court. In that oral stipulation, Respondent purportedly “consented” to an adjudication of neglect and dependency but did not stipulate to any specific facts and expressly denied that her children were in fact neglected or dependent:

[PETITIONER’S COUNSEL]: It’s my understanding—
[Respondent] . . . is consenting to the adjudication of neglect and dependency based upon the allegations contained in the petition, and that the Court can . . . proceed to disposition.

[RESPONDENT’S COUNSEL]: That’s correct, Your Honor.

. . .

THE COURT: Okay. All right. Do you understand that we are here primarily for the purpose of adjudication and that it’s my understanding that they’re going to ask to proceed to disposition after that. Is that correct? Is that your understanding?

. . .

Opinion of the Court

[RESPONDENT]: Oh, yes. Yes, sir.

THE COURT: All right. Did you go over the allegations in the petition with your attorney, Mr. Schuup?

[RESPONDENT]: Yes.

THE COURT: Did he answer all of your questions?

[RESPONDENT]: Mr. Schuup? Yes, he did. Very good attorney. Thank you.

THE COURT: Okay. And specifically, did he explain to you that your two options, as it relates to adjudication, are that you could ask for a hearing, in which it would be the responsibility of the Department of Social Services to prove these allegations, or you can agree and stipulate that there is a factual basis from which the Court can then make a legal conclusion that . . . the children are neglected and dependent. That those are you[r] two options as it relates to adjudication. Did he explain that to you?

[RESPONDENT]: Yes.

THE COURT: All right. And it's my understanding that, based upon those two options and your review of the evidence, that you are in fact going to stipulate that there's a factual basis, which is going to come from the petition that you went over with Mr. Schuup, and the Court's then going to conclude that the children are neglected and dependent. Is that your understanding?

[RESPONDENT]: I guess.

THE COURT: What do you mean you guess?

[RESPONDENT]: I mean I don't really believe that they're neglected or dependent, but I'll go ahead and agree with his recommendation just to take the parenting class, random drug tests, and the psychological evaluation that [was]

Opinion of the Court

obtained illegally before it was completed. But yeah.

THE COURT: All right. Well, let's talk about that. If I accept your stipulation, which I am not required to do, then we would— and I find the children to be neglected and dependent, we would move to what's called the disposition. Did he talk to you about the disposition?

[RESPONDENT]: Yes.

...

THE COURT: Okay. So given all of that information, that you know what it is that they're going to ask for in the disposition and what it is they're asking for you to do and the fact that they're going to work reunification with you, do you want to have a hearing on adjudication, or do you want to stipulate that there is a factual basis for me to accept—

[RESPONDENT]: I do not want a hearing. I'll just take the stipulations.

...

THE COURT: All right. Based upon that then, the Court is going to find that the Respondent Mother has stipulated there is a factual basis, which will be drawn from the allegations in the petition, as part of the written order, and from which the Court will conclude then legally that the children are neglected and dependent within the meaning of North Carolina law and move to disposition.

In other legal settings, Respondent's stipulation to a "factual basis" for the court's ruling, based on the allegations in the initial pleading, might be sufficient to support the court's decision. *See, e.g., State v. Arrington*, 371 N.C. 518, 524, 819 S.E.2d 329, 333 (2018). But here, the General Assembly imposed stricter rules on the

Opinion of the Court

stipulation. Because Respondent did not submit a written stipulation, the statute required “[a] record of specific stipulated adjudicatory facts” to be made “by reading the facts into the record, followed by an oral statement of agreement from each party stipulating to them.” N.C. Gen. Stat. § 7B-807(a). That did not occur here. Although Respondent unequivocally asserted her desire to consent to entry of the adjudication order, she did not unequivocally indicate that she stipulated to all the allegations in the petition, or to any particular allegations. One evident purpose of the stipulation criteria in Section 7B-807 is to ensure that the stipulating parties expressly identify the particular facts to which they are stipulating. Because Respondent did not do so here, the stipulation fails to satisfy the necessary statutory requirements.

We recognize that many petitions in juvenile proceedings contain lengthy lists of factual allegations. When a respondent seeks to stipulate to the entire petition, reading all the allegations of that petition into the record during a juvenile hearing may be impractical. In those circumstances, the better practice, while remaining true to the express statutory language, is to submit a short, written stipulation with the petition attached, stating that the respondent stipulates to all facts alleged in the attached petition.

Because the purported stipulation in this case did not comply with the statute, we look to see if there is other evidence in the record that could support the trial court’s findings. There is not. The trial court did not receive any evidence in this case.

IN RE: A.K., K.K., K.K.

Opinion of the Court

Accordingly, we must vacate the trial court's order and remand either for entry of an appropriate statutory stipulation into the record, or for a hearing in which the court receives evidence and makes findings based on that evidence. *In re K.P.*, 249 N.C. App. 620, 624, 790 S.E.2d 744, 747 (2016).

Conclusion

We vacate the trial court's order and remand for further proceedings.

VACATED AND REMANDED.

Chief Judge McGEE and Judge COLLINS concur.

Report per Rule 30(e).