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IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-246

No. COA21-54

Filed 1 June 2021

Wayne County, No. 20 JA 36

IN THE MATTER OF:

N.C.

Appeal by respondent-mother from order entered 6 October 2020 by Judge Ericka Young James in Wayne County District Court. Heard in the Court of Appeals 11 May 2021.

Baddour, Parker, Hine, & Hale, P.C., by E.B. Borden Parker, and White & Allen, PA, by Delaina Davis Boyd, for petitioner-appellee Wayne County Department of Social Services.

Winston & Strawn LLP, by Stacie C. Knight, for guardian ad litem.

Anné C. Wright for respondent-appellant mother.

ZACHARY, Judge.

¶ 1 Respondent-Appellant Mother appeals from an order adjudicating her child, Noelle,[1] to be neglected, and continuing Noelle's placement in the custody of

[1] In accordance with the parties' briefs, we refer to the subject juvenile and her brother by the pseudonyms adopted by the parties.

Petitioner-Appellee Wayne County Department of Social Services ("DSS"). After careful review, we affirm the trial court's order.

I. Background

¶ 2 On 13 April 2020, DSS filed a juvenile petition alleging that Noelle lived in an environment injurious to her welfare, and therefore was a neglected juvenile. The petition alleged that on 9 September 2019, Mother brought her older child, Jack, age 20 months, to the emergency department of Wayne UNC Hospital. There, Jack was unresponsive, and he was diagnosed with a subdural hematoma, a skull fracture, and parenchymal brain injury. The doctors determined that Jack's injuries were inconsistent with Mother's explanation; instead, the doctors believed that Jack's injuries were "abusive" and suspected that they might have been symptomatic of "shaken baby syndrome or blunt force trauma to the head." Based on the swelling on Jack's head, the medical staff suspected that the injury had occurred at least a day prior to his hospitalization. A neurologist later determined that as a result of the injury, Jack suffered permanent scarring on the left side of his brain, putting him at risk of future seizures.

¶ 3 Based on Jack's injuries and the doctors' determinations regarding their cause, DSS first placed Jack in the custody of his paternal great-aunt, and subsequently placed him in the custody of licensed foster parents. By order entered 30 March 2020, Jack was adjudicated abused and neglected. In April 2020, Mother gave birth to

Noelle. DSS took custody of Noelle at the hospital and placed her in the care of licensed foster parents.

¶ 4 The juvenile petition alleged that Mother and Respondent-Father[2] had very little support to assist them in parenting, and that Father worked from 3:00 p.m. to 11:00 p.m., "leaving [Mother] alone with the newborn [Noelle] during this time." The petition further alleged that Mother and Father (together, "Respondents") had been "uncooperative with parts of their court[-]ordered services, and . . . had inconsistent communication" with DSS.

¶ 5 On 20 August 2020, this matter came on for hearing in Wayne County District Court before the Honorable Ericka Y. James. DSS presented the testimony of Lauren Rockwell, a forensic interviewer and contract provider for the State in the Child and Family Evaluation program, who had conducted a Child and Family Evaluation at DSS's request. Ms. Rockwell interviewed DSS employees and a law enforcement officer involved in Jack's and Noelle's investigations; foster care workers; family members; and Respondents. The trial court admitted the Child and Family Evaluation in this matter into evidence over Mother's objection. Father stipulated to the facts alleged in the petition. The trial court also took judicial notice of the order adjudicating Jack as abused and neglected, and of the pending criminal action

[2] Father has not appealed the order adjudicating Noelle as neglected, and he is not a party to this appeal.

against Mother for misdemeanor child abuse regarding Jack. At the conclusion of the adjudication hearing, the trial court adjudicated Noelle as neglected.

¶ 6 On 6 October 2020, the trial court entered its order adjudicating Noelle as neglected. On 7 October 2020, Mother filed timely written notice of appeal.

II. Analysis

¶ 7 Mother raises several arguments challenging the trial court's adjudication of Noelle as a neglected juvenile. She argues that findings of fact 15, 16, and 17 are not supported by clear and convincing evidence because they are based on hearsay and post-petition evidence. She also challenges finding of fact 23 as not supported by clear and convincing evidence because it is based on testimony that was stricken from the record. Finally, Mother argues that the remaining unchallenged findings of fact do not support a conclusion of neglect. After careful review, we conclude that the trial court's findings are supported by clear and convincing evidence, and that they, in turn, support a conclusion of neglect.

A. Standard of Review

¶ 8 We review a trial court's adjudication of neglect to determine "whether the findings of fact are supported by clear and convincing evidence" and "whether the legal conclusions are supported by the findings of fact[.]" *In re Gleisner*, 141 N.C. App. 475, 480, 539 S.E.2d 362, 365 (2000) (citation and internal quotation marks omitted). Whether a child is neglected is a conclusion of law, *In re McLean*, 135 N.C. App. 387,

390, 521 S.E.2d 121, 123 (1999), which we review de novo, *In re K.J.D.*, 203 N.C. App. 653, 657, 692 S.E.2d 437, 441 (2010).

B. Findings of Fact

¶ 9 Mother challenges findings of fact 15, 16, and 17 as not supported by clear and convincing evidence because they are based on Ms. Rockwell's hearsay testimony regarding what other people told her during her interviews. However, neither parent objected to any of Ms. Rockwell's testimony on hearsay grounds. Mother has therefore failed to preserve this issue for appellate review. *See* N.C.R. App. P. 10(a)(1) ("In order to preserve an issue for appellate review, a party must have presented to the trial court a timely request, objection, or motion, stating the specific grounds for the ruling the party desired the court to make[.]"); *In re F.G.J., M.G.J.*, 200 N.C. App. 681, 693, 684 S.E.2d 745, 753–54 (2009) (concluding that respondents waived a claim that testimony was hearsay when they did not object on hearsay grounds at trial); *In re Ivey*, 156 N.C. App. 398, 403–04, 576 S.E.2d 386, 390 (2003) (same). Accordingly, this argument is overruled.

¶ 10 Mother also challenges findings of fact 15, 16, and 17 as not supported by clear and convincing evidence because they are based on irrelevant post-petition evidence. We disagree.

¶ 11 Generally, "post-petition evidence . . . is not admissible during an adjudicatory hearing for abuse, neglect, or dependency." *In re V.B.*, 239 N.C. App. 340, 344, 768

S.E.2d 867, 869 (2015). "This is because the purpose of an adjudicatory hearing is to determine only the existence or nonexistence of any of the conditions alleged in a petition." *Id.* at 344, 768 S.E.2d at 869–70 (citation and internal quotation marks omitted). However, this bar on post-petition evidence applies to *facts* that occur after the filing of the petition, not to *evidence that documents facts* that occurred prior to filing. *Id.* at 344, 768 S.E.2d at 870. Thus, evidence of "a fixed and ongoing circumstance," as opposed to "a discrete event or one-time occurrence," is not inadmissible as irrelevant post-petition evidence. *Id.* (citation omitted). For example, in *V.B.*, our Court concluded that evidence of the results of a paternity test conducted after the petition was filed was not irrelevant post-petition evidence because "paternity is not a discrete event or one-time occurrence." *Id.* (internal quotation marks omitted). Rather, our Court reasoned that paternity "is a fixed and ongoing circumstance" that existed prior to the testing, and was therefore relevant to the proceeding. *Id.*

¶ 12 Similarly, here, although Ms. Rockwell conducted her interviews and evaluation after the juvenile petition's filing, her testimony was not based on any "discrete event or one-time occurrence" after the filing of the petition. *Id.* Instead, the challenged findings recount events that occurred prior to the filing of the juvenile petition. The challenged findings are as follows:

> 15. That [Father] told Lauren Rockwell that he does not

> believe that [Mother] could parent both children or even one child at this time.
>
> 16. That Lauren Rockwell had concerns about the way [Mother] had struck [Jack] right after he had been discharged from the hospital and that she had done this in a public place. She was also pulling glue from [Jack]'s hair after he had a severe skull fracture and after she had been told not to do this.
>
> 17. That [Father] had expressed to Lauren Rockwell that [Mother] had left [Jack] alone in the bathtub and that he had told her not to do it again, although what brought [Jack] to the Court's attention was when [Mother] again left him in the bathtub.

¶ 13 Ms. Rockwell testified that a few days after Jack was released from the hospital, bystanders reported seeing Mother hit Jack in a grocery store. While Ms. Rockwell *learned* about this incident during her evaluation, the incident *occurred* prior to the filing of the petition, shortly after Jack was released from the hospital in September 2019. Similarly, Jack's paternal great-aunt told Ms. Rockwell in an interview that she observed Mother picking glue from Jack's head, "causing him to wince in pain so soon after the child had a skull fracture." Again, this reported incident occurred shortly after Jack was released from the hospital in September 2019, prior to the petition's filing. Thus, finding of fact 16 is supported by clear and convincing evidence.

¶ 14 Finding of fact 17 is supported by clear and convincing evidence for similar reasons. During her interview with Father, Ms. Rockwell learned that he had

discovered that Mother had left Jack alone in the bathtub on several occasions prior to his hospitalization. Again, these incidents occurred prior to the filing of the juvenile petition.

¶ 15 We also conclude that finding of fact 15 is supported by clear and convincing evidence. While Ms. Rockwell's interview with Father occurred after the petition's filing, Father told her about Mother's general parenting abilities and related incidents that occurred prior to the filing of the petition. Father recounted discovering Jack alone in the bathtub, and hearing Mother yell at the child. He also told Ms. Rockwell that Jack had previously suffered a femur fracture. Based on these concerns, Father told Ms. Rockwell that he believed that Mother was "not ready to handle one child, much less two." We therefore disagree with Mother that finding of fact 15—that Father did not believe Mother was capable of caring for both children—is based on "irrelevant" post-petition evidence.

¶ 16 Mother further challenges finding of fact 23 as not supported by clear and convincing evidence because it is based on evidence that the trial court struck from the record. We disagree.

¶ 17 Finding of fact 23 provides:

> 23. That Lauren Rockwell had reviewed records of service providers and interviewed DSS workers. [Mother] was unwilling to talk to Lauren Rockwell about any of the items concerning [Jack.]

At the hearing, counsel for DSS asked Ms. Rockwell, "How would you characterize your conversations with the mother?" Ms. Rockwell began responding; however, counsel for Mother objected. Ms. Rockwell was testifying via WebEx, and her testimony became inaudible. The trial court then decided that "[t]he only thing to do is to start over and to strike that testimony from the record." The technological difficulties continued, and Ms. Rockwell did not repeat her answer to the question regarding her interview with Mother. However, on cross-examination, Ms. Rockwell did testify that Mother was "unwilling to talk with [her] about the history of the events." We therefore conclude that finding of fact 23 is supported by clear and convincing evidence.

C. Conclusion of Neglect

¶ 18 Having concluded that the challenged findings are supported by clear and convincing evidence, and accepting the unchallenged findings as so supported, *see Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991), we conclude that the trial court's findings support its conclusion that Noelle is a neglected juvenile.

¶ 19 "In North Carolina, juvenile abuse, neglect, and dependency actions are governed by Chapter 7B of the General Statutes, commonly known as the Juvenile Code." *In re A.K.*, 360 N.C. 449, 454, 628 S.E.2d 753, 756 (2006). DSS bears "the burden, at the adjudicatory hearing stage, to prove neglect . . . by clear and convincing evidence." *In re Evans*, 81 N.C. App. 449, 452, 344 S.E.2d 325, 327 (1986). The

Juvenile Code defines a "neglected juvenile" as

> [a]ny juvenile less than 18 years of age . . . whose parent, guardian, custodian, or caretaker does not provide proper care, supervision, or discipline; 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[.]

N.C. Gen. Stat. § 7B-101(15) (2019).

¶ 20 "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." *Id.* "In neglect cases involving newborns, 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 J.A.M.*, 372 N.C. 1, 9, 822 S.E.2d 693, 698–99 (2019) (citation and internal quotation marks omitted). However, "[t]he fact of prior abuse, standing alone, is not sufficient to support an adjudication of neglect. Instead, we require the presence of other factors to suggest that the neglect or abuse will be repeated." *Id.* at 9–10, 822 S.E.2d at 699 (citations and internal quotation marks omitted).

¶ 21 For example, in *McLean*, our Court affirmed a trial court's adjudication of a newborn as neglected where the parents intended to live with the newborn in the same residence where their older child had died; the father had been convicted of

causing the older child's death; the mother continued to support the father; the parents failed to cooperate with the social worker; and the parents expressed no concern for the newborn's future safety. 135 N.C. App. at 396, 521 S.E.2d at 127. Similarly, in *J.A.M.*, our Supreme Court affirmed a conclusion of neglect where the respondent-mother failed to acknowledge her role in the termination of her parental rights as to her other children; she denied the need for services for her newborn; and she remained involved with the father, "who had engaged in domestic violence[,] even though domestic violence was one of the reasons her children were removed from her home[.]" 372 N.C. at 10, 822 S.E.2d at 699 (citation omitted).

¶ 22 In the instant case, Mother argues that the trial court's findings do not support a conclusion of neglect. We disagree.

¶ 23 The trial court found that Jack had been adjudicated as abused and neglected, and that a criminal action against Mother for misdemeanor child abuse was pending. Further, the trial court found as fact that Father admitted the petition's allegations, which included that Jack had suffered a skull fracture, subdural hematoma, and a parenchymal brain injury that were indicative of child abuse and were not explained by Mother's account of the incident, and which placed him at greater risk for future seizures. In addition, the trial court found that Mother continued to inappropriately discipline Jack following his release from the hospital; that she picked at the glue on his head while he was recovering from a skull fracture; that Jack "was not being

properly cared for nor properly fed when in the home of" Mother and Father; and that Mother was unwilling to cooperate with Ms. Rockwell.

¶ 24 Because adjudications involving newborns "must of necessity be predictive in nature," we conclude that the trial court's findings support the court's conclusion that "there is a substantial risk of future abuse or neglect of [Noelle] based on the historical facts of the case." *Id.* at 9, 822 S.E.2d at 698–99 (citation omitted). We therefore affirm the trial court's adjudication of neglect.

III. Conclusion

¶ 25 For the foregoing reasons, we affirm the trial court's order adjudicating Noelle as a neglected juvenile.

AFFIRMED.

Judges MURPHY and CARPENTER concur.

Report per Rule 30(e).