IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-542

No. COA21-161

Filed 5 October 2021

Rowan County, No. 20 JA 46-48

IN THE MATTER OF: P.C., P.H., P.H.

Appeal by Respondent from orders entered 31 August 2020 and 15 October 2020 by Judge Beth Dixon in Rowan County District Court. Heard in the Court of Appeals 11 August 2021.

Wendy C. Sotolongo, Parent Defender, by J. Lee Gilliam, Assistant Parent Defender, for Respondent-Appellant Mother.

Jane R. Thompson for Rowan County Department of Social Services.

Nelson Mullins Riley & Scarborough LLP, by Reed J. Hollander and Andrew D. Brown, for guardian ad litem.

DILLON, Judge.

¶ 1 Respondent Amanda Hipple ("Mother") appeals from the trial court's adjudication and disposition orders entered 31 August 2020 and 15 October 2020, respectively.

I. Background

¶ 2 Mother gave birth to Piper in 2005 and Patrick in 2008.[1] In 2016, Mother's boyfriend, Mr. Calloway, began living with her and the two children. Mr. Calloway is the father of Mother's third child, Parker, who was born in 2019.[2] In February of 2020, Rowan County Department of Social Services ("DSS") received a report concerning Mother's oldest daughter, Piper. The report alleged that Mr. Calloway had been inappropriately touching Piper. Specifically, Piper reported "feeling uncomfortable because Mr. Calloway had been stretching her" legs. Piper allegedly had a medical condition that benefited from stretching. However, Piper reported that Mr. Calloway's thumb had touched her private area, he had "looked down between her legs when he was stretching her," and had caused her underwear to rip by putting his fingers in her underwear. She reported feeling his sex organs on her buttocks or the back of her leg as he "stretched" her.

¶ 3 Piper reported this behavior to her mother several weeks before DSS received its report. In response, Mother called a family meeting at the maternal grandmother's home with Mr. Calloway present. Once DSS became involved, an initial safety plan was put into place providing that Piper would stay at the maternal grandmother's home if she was uncomfortable around Mr. Calloway. The safety plan

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

[2] Mr. Calloway is not the father of Mother's other two children.

was then revised to prohibit contact between Piper and Mr. Calloway. Mother claimed that Piper was living at the maternal grandmother's home full time, but DSS suspected that Piper and Mr. Calloway were continuing to have contact at Mother's home. Mother refused to sign the revised safety agreement, at which point DSS chose to file juvenile petitions concerning all three children.

¶ 4 On 25 February 2020, DSS filed petitions in Rowan County District Court alleging that Parker and Patrick were neglected and that Piper was abused and neglected. In its Adjudication Order ("Adjudication Order"), the trial court found Parker and Patrick to be neglected juveniles and Piper to be an abused and neglected juvenile. In its Disposition Order ("Disposition Order"), the trial court ordered custody of Parker and Piper to remain with DSS with visitation in its discretion. Custody of Patrick was awarded to his father, Mr. Kelly. The trial court ordered Mother to complete a parenting program, maintain employment, and submit to random and supervised drug testing.

II. Analysis

¶ 5 Mother makes several arguments on appeal. We address each in turn.

A. Standard of Review

¶ 6 An adjudication order is reviewed to determine whether "the trial court's findings of fact are supported by clear, cogent, and convincing evidence and whether those findings support the trial court's conclusions of law. A trial court's finding of

fact that is supported by clear, cogent, and convincing evidence is deemed conclusive even if the record contains evidence that would support a contrary finding." *In re B.O.A.*, 372 N.C. 372, 379, 831 S.E.2d 305, 310 (2019) (internal citation omitted). "Findings of fact not challenged by respondent are deemed supported by competent evidence and are binding on appeal." *In re T.N.H.*, 372 N.C. 403, 407, 831 S.E.2d 54, 58 (2019).

¶ 7 We review a dispositional order for an abuse of discretion. *In re A.B.C.*, 374 N.C. 752, 762, 844 S.E.2d 902, 910 (2020). "Abuse of discretion results where the court's ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision." *Id*. at 762, 844 S.E.2d at 910.

B. Adjudication Order

¶ 8 Mother argues that the adjudication order does not demonstrate adequate fact-finding and "only regurgitates the allegations of the petition and does not accurately reflect the evidence." We disagree.

¶ 9 "[I]t is not *per se* reversible error for a trial court's findings of fact to mirror the wording of a party's pleading. It is a longstanding tradition in this State for trial judges to rely upon counsel to assist in order preparation." *In re J.W.*, 241 N.C. App. 44, 45, 772 S.E.2d 249, 251 (2015) (internal quotation marks and citation omitted). Rather, we 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." *Id.* at 45, 772 S.E.2d at 251.

¶ 10 While Mother recites numerous findings of fact in her appellate brief, she only directly argues that the following are unsupported:[3]

- "Mr. Calloway took it upon himself to 'help' [Piper] with stretching her legs." (Finding #1)
- "Mr. Calloway would come into [Piper's] room to stretch her legs at night, sometimes multiple times during the night." (Finding #2)
- "[Piper] caught [Mr. Calloway] several times staring at her between her legs." (Finding #2)
- "Mr. Calloway pressed his thumb into her vaginal area under her panties, making skin to skin contact with her vagina." (Finding #2)
- "Mr. Calloway would comment that [Piper] was very flexible." (Finding #2)
- "[Mother] minimized [Piper's] abuse and acted as if she did not believe [Piper]." (Finding #3)
- "[Piper] has been deeply and negatively impacted by the abuse by [Mr. Calloway] and the way her mother has treated her since her disclosures . . . She does not feel supported by her mother." (Finding #5)

¶ 11 We have examined the record and conclude that the trial court made independent findings after considering the evidence. Our jurisprudence makes it clear that it is not error for the trial court to borrow language from the parties'

[3] "Issues not presented in a party's brief, or in support of which no reason or argument is stated, will be taken as abandoned." N.C. R. App. P. 28(b)(6).

pleadings if the record shows that the court independently considered the evidence. *See J.W.*, 241 N.C. App. at 45, 772 S.E.2d at 251.

¶ 12 Although Mother takes issue with the fact that a DSS social worker was "the sole witness at the adjudication hearing," she did not testify in opposition or present evidence in rebuttal. Therefore, the testimony of the DSS social worker constitutes the evidence. We conclude that the following clear, cogent, and convincing evidence supports the challenged findings of fact:

- Finding #1 is fully supported by the social worker's testimony that "Mr. Calloway had been stretching her [legs]."

- Finding #2 is partially supported by testimony that "She reported that she pretended to be asleep a lot so when he did come into the room he would leave if he knew that she was asleep. . . . [I]t was always right before bed time is what [Piper] reported." This finding is also supported by testimony that the stretching happened "several times" and that Mr. Calloway's "thumb had made contact with the lips on her vagina."

- Finding #3 is fully supported by testimony that "She reported when she first told her mom what was going on her mother threw her on top of the bed and jumped on top of her in a playing fashion. . . . [Piper] had spoke[n] to her mother and her mother didn't take it serious[ly] until she had a complete break down."

- Finding #5 is fully supported by the previous testimony and by testimony that "[Piper] reported she felt guilty because even though this affected her it also affects her siblings. [Piper] reported that she knows what its like to not have a father in her life so she felt really bad about coming forward about everything and [Parker] was not going to get to be around her father anymore."

¶ 13 We find no evidence in the record that Mr. Calloway stated that Piper was "very flexible" as the trial court found in Finding of Fact #2. However, our Court has

repeatedly stated that the inclusion of an erroneous finding unnecessary to the determination of neglect or abuse is not error when ample other findings support the adjudication. *In re T.M.*, 180 N.C. App. 539, 547, 638 S.E.2d 236, 240 (2006). Therefore, we dismiss Mother's argument.

C. Adequacy of Findings

¶ 14 Mother further argues that the findings in the adjudication order are inadequate as a matter of law to support the adjudication of abuse as to Piper. We disagree.

¶ 15 The statutory definition of an abused juvenile includes "any juvenile less than 18 years of age . . . whose parent, guardian, custodian, or caretaker . . . commits, permits, or encourages the commission of . . . taking indecent liberties with the juvenile, as provided in [N.C. Gen. Stat. §] 14-202.1." N.C. Gen. Stat. § 7B-101(1)(d) (2020). Contrary to Mother's contention, the trial court is not required to find that the specific sexual offense occurred, but merely the underlying facts supporting an ultimate finding of the applicable sexual crime. *See In re L.M.T.*, 367 N.C. 165, 169, 752 S.E.2d 453, 456 (2013) (stating that the trial court's findings of fact did not need to quote the precise language of the statute so long as they embraced the substance of the statutory provisions).

¶ 16 The crime of taking indecent liberties with children is defined in N.C. Gen. Stat. § 14-202.1(a) (2020):

> (a) A person is guilty of taking indecent liberties with children if, being 16 years of age or more and at least five years older than the child in question, he either:
>
> > (1) Willfully takes or attempts to take any immoral, improper, or indecent liberties with any child of either sex under the age of 16 years for the purpose of arousing or gratifying sexual desire; or
> >
> > (2) Willfully commits or attempts to commit any lewd or lascivious act upon or with the body or any part of member of the body of any child of either sex under the age of 16 years.

¶ 17 Here, the trial court made adequate findings to satisfy the elements of taking indecent liberties with children. In part, the trial court found that Mr. Calloway "had been touching [Piper] inappropriately," that Piper "caught [Mr. Calloway] several times staring at her between her legs," that "Mr. Calloway pressed his thumb into her vaginal area under her panties, making skin to skin contact with her vagina," and that Mr. Calloway "would get behind her [and] she felt his private part on her bottom." As these findings of fact satisfy the elements of the crime of taking indecent liberties, the trial court did not err in adjudicating Piper to be abused. *See* N.C. Gen. Stat. § 7B-101(1)(d).

D. Adjudications for Patrick and Parker

¶ 18 Mother further argues that the adjudications for Patrick and Parker were solely derived from incidents involving Piper, and that there was no convincing evidence that Patrick and Parker were at a substantial risk of harm. We disagree.

¶ 19 In relevant part, our General Statutes define a neglected juvenile as:

> **(15) Neglected juvenile.** -- Any 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; or the custody of whom has been unlawfully transferred under G.S. 14-321.2; or who has been placed for care or adoption in violation of law. In determining whether a juvenile is a neglected juvenile, it is relevant whether that juvenile lives in a home where another juvenile has died as a result of suspected abuse or neglect or *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) (emphasis added). Our Court has "generally required the presence of other factors to suggest that the neglect or abuse will be repeated." *In re J.C.B.*, 233 N.C. App. 641, 644, 757 S.E.2d 487, 489 (2014). For example, where a trial court made findings of fact that a parent failed to follow court-ordered protection plans and refused to take responsibility for "harm that befell her children as a result of her conduct[,]" we upheld an adjudication of neglect. *In re P.M.*, 169 N.C. App. 423, 427, 610 S.E.2d 403, 406 (2005).

¶ 20 Mother argues that the trial court relied solely on Mr. Calloway's abuse of Piper in order to adjudicate Piper's siblings neglected. We agree that evidence of abuse or neglect of only one child cannot support adjudications of other children in the household. However, in this case, the record reveals that Mother failed to follow

DSS safety plans, refused to sign the revised safety agreement, and did not believe or support Piper when she first made her allegations of abuse. Unchallenged Finding of Fact #6 also reveals a history of domestic violence between Mother and Mr. Calloway, who was present in the home with all three juveniles. Similar facts supported an adjudication of neglect in *P.M.*, 169 N.C. App. at 427, 610 S.E.2d at 406, and we conclude that they are sufficient to support the adjudications of neglect for Patrick and Parker in this case. The trial court did not err in adjudicating Patrick and Parker to be neglected juveniles.

E. Disposition Order

¶ 21 Finally, Mother argues that the trial court erred when it waived further reviews as to Patrick and ordered random drug screening at disposition for Mother. We agree. We, therefore, remand those portions of the Disposition Order so that the trial court may change those conditions accordingly.

¶ 22 First, we conclude that the trial court erred in waiving further reviews as to Patrick. N.C. Gen. Stat. § 7B-906.1(k), which is applicable to review and permanency planning hearings, provides that "if at any time custody is placed with a parent . . . the court shall be relieved of the duty to conduct periodic judicial reviews of the placement." However, this hearing was an initial disposition hearing. "When the court determines that reunification efforts are not required [at an initial disposition hearing,] the court shall order a permanent plan as soon as possible, after providing

each party with a reasonable opportunity to prepare and present evidence. The court shall schedule a permanency planning hearing within 30 days to address the permanent plans[.]" *Id.* § 7B-901(d). Therefore, at the permanency planning stage, the trial court could have taken the action of waiving further reviews, but not before.

¶ 23 As to the drug screening requirement, our Court has clarified that a trial court is not limited in a dispositional order to imposing conditions directly related to a juvenile's removal from the parents' custody or leading to their adjudications of abuse, neglect, or dependency. *In re S.G.*, 268 N.C. App. 360, 372, 835 S.E.2d 479, 488 (2019) (citing *B.O.A.*, 372 N.C. at 381, 831 S.E.2d at 311). However, the trial court should only impose conditions "it believes are *relevant* to addressing the issues that led to a child's removal—at any time and based upon new or existing evidence—so long as it does not abuse its discretion." *Id.* at 372, 835 S.E.2d at 488 (emphasis added).

¶ 24 In this case, there is no evidence in the record that drug abuse led to the juveniles' removal from their parents' custody or to their ultimate adjudications of abuse and neglect. In its appellate brief, DSS noted no opposition to the removal of the drug screening requirement from the Disposition Order. Counsel for the guardian ad litem ("GAL") did not respond to Mother's argument. Accordingly, we remand that portion of the Disposition Order so that the trial court may remove the requirement for random supervised drug screening.

III. Conclusion

¶ 25 We conclude that the trial court did not err in making its findings of fact or in its adjudications regarding Patrick and Parker. However, the trial court erred in the Disposition Order by (1) waiving further reviews as to Patrick and (2) requiring Mother to submit to random supervised drug testing. We direct the trial court on remand to modify its Disposition Order accordingly.

AFFIRMED IN PART, REMANDED IN PART.

Judges INMAN and CARPENTER concur.

Report per Rule 30(e).