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IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-627

No. COA21-270

Filed 16 November 2021

Guilford County, Nos. 20 JA 39, 20 JA 43

IN RE: C.L.M., Jr., N.L.R.-C.

Appeal by Respondent-Fathers from order entered 15 February 2021 by Judge Angela C. Foster in Guilford County District Court. Heard in the Court of Appeals 22 September 2021.

Mercedes O. Chut for Guilford County Department of Health and Human Services.

Kimberly Connor Benton for Respondent-Appellant Father McCoy.

Garron T. Michael for Respondent-Appellant Father Cannon.

Michelle FormyDuval Lynch for guardian ad litem.

GRIFFIN, Judge.

¶ 1 Respondent-Appellant Fathers Mr. McCoy and Mr. Cannon (together, "Fathers") appeal from the trial court's order adjudicating their minor children C.L.M., Jr. ("Chris"), and N.L.R.-C. ("Noah")[1], respectively, to be neglected juveniles

[1] We use pseudonyms throughout to protect the identity of the juveniles and for ease of reading. N.C. R. App. P. 42(c).

and granting legal and physical custody of the children to the Guilford County Department of Health and Human Services ("DHHS"). Fathers contend that the trial court erred in adjudicating their children to be neglected because the evidence did not show impairment or a risk of impairment to their children immediately prior to the filing of DHHS's petition alleging neglect. Alternatively, Mr. McCoy contends that the trial court imposed improper conditions in its disposition and erred by denying the placement of Chris with a paternal relative. We affirm.

I. Factual and Procedural History

¶ 2 Mother and her children first became involved with DHHS in June 2012, following a report alleging neglect due to lack of care of the children. DHHS was repeatedly involved with Mother and her children from 2012 to 2019 due to repeated reports of domestic violence between Mother and the children's fathers, as well as lack of care of the children. In one instance in 2015, DHHS responded to reports that Mr. Cannon had physically disciplined Noah inappropriately and left visible marks on Noah's body. The trial court convicted Mr. Cannon of misdemeanor child abuse as a result of this incident.

¶ 3 Throughout 2019, Mother had difficulties maintaining living arrangements that provided electricity and running water for herself and the children. Mother rented a home for a portion of the year, but she and the children were forced to live in a hotel because the rental home was infested with rats. Mother was unable to

afford both monthly rent and hotel fees during this time and was ultimately evicted from the rental home for failure to pay rent. Between November 2019 and March 2020, Mother and the children lived periodically in Mother's vehicle and in hotels.

¶ 4 In March 2020, DHHS received a report that Chris; Noah; their three minor half-siblings Anne, Kate, and David; and Mother were homeless and, as a result, all five children were missing school and were in poor physical and mental health. At this time, Chris was approximately ten-months-old and Noah was approximately eight-years-old. Following a meeting with DHHS on 17 March 2020, Noah, Anne, Kate, and David were placed in the care of Ms. Little, a relative of Anne, Kate, and David. Chris was not placed in Ms. Little's home at that time because he had been staying with Ms. Collins, Chris's paternal aunt, for about three weeks. On 19 March 2020, DHHS was notified that the children were no longer staying in Ms. Little's home because Mr. Cannon had picked up Noah and Mr. Williamson, the father of Anne, Kate, and David, had picked up his three children.

¶ 5 On 26 and 27 March 2020, DHHS learned that Kate had been inappropriately physically disciplined while in Mr. Williamson's care. Kate explained to DHHS that multiple bruises on her body were the result of corporal punishment by Mr. Williamson, and informed DHHS that Ms. Little had used corporal punishment in her home, as well.

¶ 6 On 6 April 2020, DHHS filed petitions alleging that all five children were

neglected and dependent juveniles. All five children were removed from their placements and placed into the non-secure custody of DHHS at that time.

¶ 7 The trial court conducted hearings on DHHS's neglect and dependency petitions on 12 November 2020. During the adjudication hearing, the social worker investigating the case, the social worker's supervisor, and Mother testified regarding DHHS's investigation into the juveniles' circumstances, including their interactions with Mother and Fathers. On 15 February 2021, the court entered an order adjudicating all five children to be neglected juveniles, granting legal and physical custody of all the children to DHHS, and setting for each child a permanent plan of reunification. Fathers timely appeal.

II. Analysis

¶ 8 Fathers both argue that the trial court erred in adjudicating their respective child to be a neglected juvenile because the evidence did not show that their child suffered impairment or were at a risk for impairment in their placement at that time. Further, Mr. McCoy contends the trial court erroneously imposed conditions on Mr. McCoy and denied an appropriate placement of Chris in its disposition order. We address each argument.

A. Adjudication of Neglect

¶ 9 We first address Fathers' contention that Chris and Noah were erroneously adjudicated to be neglected juveniles based upon insufficient evidence that the

juveniles suffered impairment or were at a risk for impairment at the time DHHS filed its petition alleging neglect.

¶ 10 We review a trial court's adjudication of neglect to determine "(1) whether the findings of fact are supported by clear and convincing evidence, and (2) whether the legal conclusions are supported by the findings of fact." *In re C.C.*, 260 N.C. App. 182, 185, 817 S.E.2d 894, 897 (2018) (citation and quotation marks omitted). "Findings of fact that are supported by competent evidence or are unchallenged by the appellant are binding on appeal." *Id.* "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). "[C]onclusions of law are reviewable de novo on appeal." *In re J.S.L.*, 177 N.C. App. 151, 154, 628 S.E.2d 387, 389 (2006) (citation and quotation marks omitted).

¶ 11 Section 7B-101(15) defines a "neglected juvenile" to be any juvenile who does not live in an environment where they are safe and where they receive proper care:

> Any juvenile less than 18 years of age . . . (ii) 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. . . . 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). Additionally, our courts require "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 Stumbo*, 357 N.C. 279, 283, 582 S.E.2d 255, 258 (2003) (citation and quotation marks omitted). "[T]he clear and convincing evidence in the record must show *current circumstances* that present a risk to the juvenile." *In re J.A.M.*, 372 N.C. 1, 9, 822 S.E.2d 693, 698 (2019) (emphasis added). "Section 7B-101(15) affords the trial court some discretion in determining whether children are at risk for a particular kind of harm given their age and the environment in which they reside." *In re C.M.*, 183 N.C. App. 207, 210, 644 S.E.2d 588, 592 (2007) (internal quotation marks omitted).

¶ 12 "In determining whether a child is neglected, the determinative factors are the circumstances and conditions surrounding the child, not the fault or culpability of the parent." *In re Montgomery*, 311 N.C. 101, 109, 316 S.E.2d 246, 252 (1984). "[T]he fact that the parent loves or is concerned about his child will not necessarily prevent the court from making a determination that the child is neglected." *Id.* Further, the trial court may also consider evidence of neglect of the juvenile's siblings and any "determination of the weight to be afforded to evidence of prior abuse or neglect of another child is committed to the sound discretion of the trial court." *In re S.H.*, 217

N.C. App. 140, 143, 719 S.E.2d 157, 159 (2011).

¶ 13 Mr. McCoy does not specifically challenge any of the trial court's findings of fact, but does contend that the trial court failed to make any findings of fact expressly stating that it found Chris was impaired or at risk of impairment. Mr. McCoy is correct that the trial court did not make such a finding. However, though the trial court's findings must show that allowing a juvenile to remain in their parents' custody "would be contrary to the juvenile's health and safety[,]" N.C. Gen. Stat. § 7B-507 (2019), the trial court is not required to use particular language in its findings as long as it is clear that evidence of the juvenile's circumstances showed impairment or a substantial risk of future impairment. *See In re L.M.T.*, 367 N.C. 165, 168, 752 S.E.2d 453, 455 (2013) ("The trial court's written findings must address the statute's concerns, but need not quote its exact language."). The trial court's failure to make explicit findings regarding a juvenile's impairment is not error where the evidence and unchallenged findings of fact support such a finding. *In re Safriet*, 112 N.C. App. 747, 753, 436 S.E.2d 898, 902 (1993).

¶ 14 Mr. Cannon contends that finding of fact 27 of the trial court's order is "in part unsupported by the evidence presented on adjudication." Finding of fact 27 states:

> 27. On March 20, 2020, [the social worker] contacted [Mr. Cannon] to schedule a home visit, but Mr. Cannon refused to meet with [the social worker]; however, Mr. Cannon agreed to allow [the social worker] to FaceTime with him and [Noah]. Mr. Cannon reported to [the social worker]

> that he had no plans to return [Noah] to [Mother].

Mr. Cannon argues the evidence did not support that he "refused to meet with [the social worker]." However, the evidence presented on adjudication showed that Mr. Cannon refused to meet with the social worker in the manner that she requested. The social worker's supervisor testified that they needed to conduct an in-person meeting with Mr. Cannon at his home because DHHS had concerns stemming from Mr. Cannon's child abuse conviction. During the roughly two weeks that Noah was in Mr. Cannon's custody prior to the filing of DHHS's petition, the social worker was only allowed to view Mr. Cannon's home through a single FaceTime conversation with Mr. Cannon. Finding of fact 27 shows that the trial court weighed the evidence presented and determined the FaceTime visit did not constitute a "meeting" sufficient to assuage DHHS's concerns. We will not disturb the trial court's weighing of competent evidence on appeal. *See In re C.C.*, 260 N.C. App. at 185, 817 S.E.2d at 897.

¶ 15 Fathers do not otherwise challenge any of the trial court's findings of fact or the evidence presented at the hearing supporting the findings regarding neglect.[2] Rather, Fathers contend that the findings do not support the trial court's conclusions

[2] Mr. Cannon also references finding of fact 20, in which the trial court noted that the children were currently in the custody of DHHS because they, in part, "lack[ed] [an] appropriate alternative care provider." We address the appropriateness of Mr. Cannon as an alternative care provider as it relates to the trial court's conclusions of law.

of law regarding Chris and Noah because Chris and Noah were not in the care of Ms. Little and/or Mr. Williamson at the time relevant to this case. Therefore, Fathers contend, their respective children were not subjected to corporal punishment and were effectively removed from any risk of impairment in the care of Ms. Collins and Mr. Cannon.

¶ 16 We first note that it is proper for the trial court to consider evidence supporting an adjudication of neglect for a child's siblings when determining whether that child is neglected as well. *In re S.H.*, 217 N.C. App. at 143, 719 S.E.2d at 159. Mr. Williamson and Ms. Little's use of corporal punishment toward David, Kate, and Anne made DHHS reasonably concerned for the safety of each of Mother's children.

¶ 17 Further, regardless of where the children were placed just prior to the filing of DHHS's petition, the trial court's findings of fact support its adjudication of neglect with respect to Chris and Noah. Fathers insist that "[t]he court's determination Chris [and Noah were] neglected was solely based upon what happened to [their] siblings, not because of [their] own circumstances." Rather, the trial court also heard evidence regarding the children's homelessness and their poor mental and physical health. Undisputed findings of fact in the trial court's order show that Mother and the children had been homeless for four to five months; Mother had struggled to maintain housing with electricity and running water for over a year; the school-aged children had been unable to attend school during that time; the children were in poor physical

and mental health; and that, at the time that DHHS's petition was filed, Mother "had no income" and "did not have any means to care for the juveniles, and she could not provide housing for herself or the juveniles." Chris and Noah were placed with Ms. Collins and Mr. Cannon, respectively, only two to five weeks before DHHS filed its petition alleging neglect. The Record does not indicate why Chris and Noah were not placed outside of Mother's care prior to this time, during the past year of Mother's housing struggles. These recent placements do not wholly and permanently alleviate the concerns arising from the court's undisputed findings of fact.

¶ 18 Fathers' arguments rest on notions that no risk of impairment existed in Chris and Noah's current circumstances at the time the petition was filed. We are not persuaded. The trial court also found that Ms. Collins's and Mr. Cannon's homes were not suitable and appropriate placements for Chris and Noah.

¶ 19 Though DHHS had previously given approval for Chris to stay with Ms. Collins for some time, it ultimately found that her home was not an appropriate placement for Chris due to "concerns regarding Ms. Collins'[s] involvement with her children's father and his criminal record" and Ms. Collins's "limited income." Mr. McCoy cites this Court's decision in *In re B.P.*, arguing that the court may not find neglect where the parent voluntarily arranged an appropriate placement for their child prior to DHHS involvement. *In re B.P.*, 257 N.C. App. 424, 433–34, 809 S.E.2d 914, 918–19 (2018). *In re B.P.* is distinguishable from this case. In *In re B.P.*, "the evidence and

findings . . . demonstrate[d that], prior to the filing of the petition, [the mother] placed [the juvenile] in a home which was found by both DSS and the trial court to be appropriate." *In re B.P.*, 257 N.C. App. 424, 433, 809 S.E.2d 914, 919 (2018). Here, although Mother did initially place Chris with Ms. Collins two to three weeks before DHHS became involved, the trial court ultimately did not find Ms. Collins's home to be an appropriate placement.

¶ 20 The social worker investigating this case also initially indicated that the children's Fathers could pick them up from Ms. Little's home prior to the filing of DHHS's petition. Nonetheless, DHHS had concerns regarding the appropriateness of Mr. Cannon's home as a placement for Noah. DHHS was never able to conduct a thorough examination of Mr. Cannon's home apart from the single FaceTime conversation with Mr. Cannon. DHHS admitted into evidence records of Mr. Cannon's 2015 conviction for misdemeanor child abuse of Noah. Mr. Cannon contends repeatedly that the Record contained no evidence of additional negative interactions between Mr. Cannon and Noah, no evidence that Mr. Cannon's home was in fact inappropriate, and no evidence that Mr. Cannon had contributed to other circumstances supporting neglect. Our Supreme Court has previously rebutted the sentiment that an adjudication of neglect could not occur where only one parent was actively involved in the juvenile's circumstances which caused DHHS's concerns. *See In re S.D.*, 374 N.C. 67, 75, 839 S.E.2d 315, 322 (2020).

¶ 21 The trial court's adjudication of Chris and Noah to be neglected juveniles was not based solely on any particular actions of Mother nor Fathers, nor was the adjudication based solely on improper care rendered to David, Kate, and Anne by Mr. Williamson and Ms. Little. *In re J.A.M.*, 372 N.C. at 10, 822 S.E.2d at 699 (upholding neglect adjudication where trial court considered siblings' neglect adjudications as well as "the presence of other factors").

¶ 22 The trial court reached its conclusion based upon the totality of the children's current circumstances and was not required to find that both Mother and Fathers had each affirmatively contributed to the children's circumstances in order to adjudicate neglect. We hold that the trial court's undisputed findings of fact regarding Chris and Noah's circumstances, irrespective of the fault of any parent, support its adjudication of Chris and Noah to be neglected juveniles. *See In re Montgomery*, 311 N.C. at 109, 316 S.E.2d at 252.

B. Disposition Requirements

¶ 23 Mr. McCoy also contends the trial court erred in its disposition regarding Chris by "requiring [Mr. McCoy] to comply with all the terms and conditions of his service agreement with [DHHS] and denying placement of Chris with his paternal aunt."

1. Terms of Service Agreement

¶ 24 It appears from the Record that Mr. McCoy has not properly preserved the trial court's decision to order compliance with his service agreement for appellate review.

During the disposition hearing, Mr. McCoy objected only to the frequency of visitation recommended by the trial court. Mr. McCoy is not allowed to advance a new argument on appeal that was not heard before the trial court below. 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 if the specific grounds were not apparent from the context.").

¶ 25 Even if this argument was preserved, the trial court did not err by ordering compliance with the terms of Mr. McCoy's service agreement. At a disposition hearing, the trial court may order a parent to "attend and participate in parental responsibility classes" and to "[t]ake appropriate steps to remedy conditions in the home that led to or contributed to the juvenile's adjudication or to the court's decision to remove custody of the juvenile from the parent." N.C. Gen. Stat. § 7B-904(d1) (2019).

¶ 26 On 28 April 2020, Mr. McCoy voluntarily entered into a case plan with DHHS, in which he agreed to "obtain and maintain stable and appropriate housing"; "complete a parenting psychological evaluation"; "obtain and maintain stable and gainful employment"; "complete a substance abuse assessment"; "submit[] to a psychiatric assessment"; "complete a DVIP program for offenders of domestic violence"; and "not incur any criminal charges." As of the 12 November 2020

adjudication hearing in this case, Mr. McCoy had not substantially complied with the terms of his case plan. For this reason, the trial court ordered him to "comply with the terms and conditions of his service agreement with [DHHS], if he desires reunification."

¶ 27 Mr. McCoy admits in his brief on appeal that it was appropriate for the court to order that he comply with a number of the requirements in his service agreement. However, Mr. McCoy contends, the Record was "devoid of any evidence that [Mr. McCoy] needed a parenting psychological evaluation, a substance abuse, psychiatric, or domestic violence assessments." We disagree. Evidence in the Record showed that Mr. McCoy was "supposed to be on medication" for mental health concerns, but it had "been a while since [he] took it." When asked to conduct a substance abuse screening, Mr. McCoy did not comply, behaved angrily, and spoke obscenities toward screening staff. Further, Chris was placed with Ms. Collins prior to the filing of DHHS's petition in this case in part because Mr. McCoy was incarcerated at that time. Mr. McCoy's criminal history includes conviction for assault on a female. It was reasonable for the trial court to conclude that assessments regarding Mr. McCoy's mental health, use of drugs, and domestic violence would be beneficial to a goal of "alleviat[ing] any condition that directly or indirectly contributed to causing [Chris's] removal from the parental home." *In re B.O.A.*, 372 N.C. 372, 381, 831 S.E.2d 305, 312 (2019). The trial court did not abuse its discretion by ordering Mr. McCoy to

comply with the terms he voluntarily agreed to in his service agreement.

2. Placement with Ms. Collins

¶ 28 We also hold that the trial court did not abuse its discretion by concluding that "it is in the best interest of [Chris] that the paternal aunt, [Ms. Collins], not be reconsidered as a placement option for [Chris]."

¶ 29 Following an adjudication of neglect, "[t]he [trial] court has broad discretion to fashion a disposition from the prescribed alternatives in N.C. Gen. Stat. § 7B-903(a), based upon the best interests of the child." *In re B.W.*, 190 N.C. App. 328, 336, 665 S.E.2d 462, 467 (2008) (citation omitted); N.C. Gen. Stat. § 7B-903(a) (2019). If the juvenile is to be placed outside of the parents' home, "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." N.C. Gen. Stat. § 7B-903(a1) (2019). "If the court finds that the relative is willing and able to provide proper care and supervision in a safe home, 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." *Id.* "We review a trial court's determination regarding the best interests of a child under an abuse of discretion standard." *In re L.C.*, 253 N.C. App. 67, 81, 800 S.E.2d 82, 92 (2017) (citation omitted).

¶ 30 The social worker testified at the 12 November 2020 petitions hearing that she conducted an initial home study on Ms. Collins's home and determined that it would

be an appropriate placement for Chris, though documentation for this initial home study was never presented to the court. At a nonsecure custody hearing earlier on 9 April 2020, the trial court ordered a second home study on the home of Ms. Collins. The second home study showed that Ms. Collins lived in a two-bedroom, one-bathroom apartment with her two children, did not have her own transportation, and did not have monthly income sufficient to support another child.

¶ 31 Further, the social worker's supervisor expressed concerns that Mr. Brockman, Ms. Collins's ex-boyfriend and the father of her children, lived with Ms. Collins. Both Ms. Collins and Mr. Brockman possessed criminal records. The Record showed that Ms. Collins had called the police regarding a domestic dispute with Mr. Brockman in November 2020. Despite Ms. Collins's insistence that she was no longer in a relationship with Mr. Brockman, Mr. Brockman was present in Ms. Collins's home on each of the two occasions that the social worker's supervisor reviewed the home and the supervisor found material on Ms. Collins's social media accounts which indicated that she was still seeing Mr. Brockman. The trial court did not abuse its discretion by finding that Ms. Collins was not able to provide proper care and supervision in a safe home due to "concerns regarding Ms. Collins'[s] involvement with her children's father and his criminal record" and Ms. Collins's "limited income."

III. Conclusion

¶ 32 The trial court did not abuse its discretion by adjudicating Chris and Noah to

be neglected juveniles. The evidence showed that the children were at a substantial risk for impairment, irrespective of any fault attributed to Fathers. Further, the trial court did not abuse its discretion in ordering Mr. McCoy to comply with conditions reasonably aimed at alleviating DHHS's concerns and in refusing to reconsider placement of Chris with Ms. Collins. The trial court's order is affirmed.

AFFIRMED.

Judges ARROWOOD and CARPENTER concur.

Report per Rule 30(e).