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IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-671

No. COA21-338

Filed 7 December 2021

Cumberland County, No. 20 JA 205

IN THE MATTER OF: K.R.

Appeal by Respondent Mother from order entered on 24 March 2021 by Judge Caitlin Evans in Cumberland County District Court. Heard in the Court of Appeals 16 November 2021.

Patrick A. Kuchyt for the Petitioner-Appellee Cumberland County Department of Social Services.

Dorothy Hairston Mitchell for the Respondent-Appellant.

Brooks, Pierce, McLendon, Humphrey & Leonard, L.L.P., by Daniel F. E. Smith, for the Guardian ad Litem.

JACKSON, Judge.

¶ 1 Respondent Mother ("Mother") appeals from the trial court's order adjudicating her daughter, Kim,[1] neglected. We affirm the order of the trial court.

I. Background

[1] We use pseudonyms to refer to the juvenile discussed in this opinion to protect the juvenile's privacy and for ease of reading. *See* N.C. R. App. P. 42(b).

¶ 2 Kim was born on 18 June 2020 and tested positive for THC[2] at birth. The Cumberland County Department of Social Services ("DSS") filed a petition alleging that Kim was neglected and dependent on 24 June 2020. Kim has three older siblings that were adjudicated neglected on 11 July 2018, prior to her birth. The older siblings' adjudication was based on the youngest sibling testing positive for THC at birth, Mother's unemployment, and unstable housing.

¶ 3 The petition concerning Kim came on for adjudication and disposition before the Honorable Caitlin Evans in Cumberland County District Court on 19 October 2020. The trial court adjudicated Kim neglected but dismissed the allegations of dependence. The court entered an order to that effect on 24 March 2021.

¶ 4 Mother entered timely written notice of appeal from the trial court's order.

II. Analysis

¶ 5 In her sole argument on appeal, Mother contends that the trial court erred in adjudicating Kim neglected because no evidence was presented at adjudication of the harm Kim suffered from being born with THC in her body. We disagree.

A. 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

[2] Tetrahydrocannabinol ("THC") is a psychoactive substance found in marijuana. Marijuana and THC are both Schedule VI controlled substances under the North Carolina Controlled Substances Act, N.C. Gen. Stat. § 90-94 (2019), unless the THC is present in industrial hemp, which contains only trace amounts of THC, *id.* § 106-568.51(7) (defining industrial hemp as any variety of cannabis plant containing less than 0.3% THC).

> supported by "clear and convincing competent evidence" and whether the court's findings support its conclusions of law. The "clear and convincing" standard is greater than the preponderance of the evidence standard required in most civil cases. Clear and convincing evidence is evidence which should fully convince. Findings of fact unchallenged by the appellant are binding on appeal.

In re K.L., 272 N.C. App. 30, 36, 845 S.E.2d 182, 188-89 (2020) (internal marks and citation omitted).

¶ 6 "Whether a child is neglected is a conclusion of law which must be supported by adequate findings of fact." *In re R.L.G.*, 260 N.C. App. 70, 75, 816 S.E.2d 914, 918 (2018) (citation omitted). "[W]e review a trial court's conclusions of law de novo." *In re K.L.*, 272 N.C. App. at 36, 845 S.E.2d at 189 (citation omitted). "Under a de novo review, this Court considers the matter anew and freely substitutes its own judgment for that of the lower tribunal." *Id.* (internal marks and citation omitted).

B. Neglect of a Newborn

¶ 7 "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). Under the Juvenile Code, "neglected juvenile" is defined to include a juvenile "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) (emphasis added). Even though

> [t]he statute is silent on whether the juvenile, to be neglected, must sustain some injury as a consequence of the failure to provide "proper care, supervision, or discipline[,]" . . . this Court has consistently required 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 Safriet, 112 N.C. App. 747, 752, 436 S.E.2d 898, 901 (1993) (internal marks and citation omitted). "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) (internal marks and citation omitted).

C. Exposure to a Controlled Substance in Utero Constitutes Actual Impairment

¶ 8 Our Court addressed a remarkably similar argument to the one Mother makes here in *In re G.T.*, 250 N.C. App. 50, 791 S.E.2d 274 (2016), *aff'd*, 370 N.C. 387, 808 S.E.2d 142 (2017). There, the mother stipulated that she had used marijuana, methamphetamine, and cocaine while she was pregnant. *Id.* at 51-52, 791 S.E.2d at 275-76. When the petition was filed alleging that her child was neglected and dependent, the child "had a rapid heartbeat and was showing signs of withdrawal." *Id.* at 51, 791 S.E.2d at 275. The trial court adjudicated the juvenile neglected and dependent. *Id.*

¶ 9 On appeal, the mother argued "that none of the trial court's findings of fact relate[d] to her care of [her child], show[ed] that [her child] suffered an impairment, or prove[d] a nexus between her drug use and any harm to [her child]." *Id.* at 52, 791 S.E.2d at 276. We rejected the argument, reasoning that the mother's admission to using illegal drugs while pregnant "establish[ed] that [her child] suffered actual exposure to controlled substances while in utero." *Id.* at 54, 791 S.E.2d at 277. We therefore held that the trial court's findings related to the mother's drug use while pregnant supported the court's conclusion that the child "did not receive proper care, supervision, or discipline from his parent and that he lived in an environment injurious to his welfare[,]" and that exposure to controlled substances in utero constitutes an actual impairment of a juvenile. *Id.*

¶ 10 Similarly, in *In re L.G.I.*, 227 N.C. App. 512, 742 S.E.2d 832 (2013), the mother admitted to testing positive for morphine the day she gave birth and to using illegal drugs while pregnant. *Id.* at 513, 742 S.E.2d at 834. The juvenile was born with an opiate addiction and was treated with morphine to alleviate withdrawal symptoms. *Id.* at 514, 742 S.E.2d at 834. The mother had an extensive DSS history, which included two prior adjudications of neglect and dependency of two other children the mother exposed to illegal drugs while she was pregnant. *Id.* We rejected the mother's challenges to the order on adjudication and affirmed the trial court's adjudication of neglect. *Id.* at 516, 742 S.E.2d at 835 (internal marks omitted).

¶ 11 Finally, in *In re M.J.G.*, 168 N.C. App. 638, 608 S.E.2d 813 (2005), the mother tested positive for marijuana the day she gave birth and admitted to using marijuana less than a month beforehand. *Id.* at 642, 608 S.E.2d at 816. The mother had an older child who had been adjudicated abused and neglected and was in DSS custody at the time the second child was born. *Id.* DSS obtained nonsecure custody of the newborn before she was released from the hospital. *See id.* We held that the trial court's adjudication of neglect of the newborn was supported by the court's findings that the mother tested positive for marijuana the day the baby was born, that her older child had been adjudicated abused and neglected, and that the mother was unemployed. *Id.* at 647, 608 S.E.2d at 818.

D. Finding of Fact 11

¶ 12 Mother challenges the evidentiary support for two portions of the trial court's eleventh finding of fact. Finding of Fact 11 states:

> 11. The Court makes the following findings of fact by clear, cogent, and convincing evidence:
>
> > (a) The Cumberland County Department of Social Services (CCDSS) received a Child Protective Services (CPS) referral on 06/19/2020 concerning the safety of the juvenile.
> >
> > (b) Respondent Mother did not name the biological father of the child nor has she provided any identifying information as to a potential father. The juvenile is not of Indian descent.
> >
> > (c) On June 18, 2020, the child [Kim] was born in the

hospital and at the time of her delivery she tested positive for THC and Respondent Mother also tested positive for THC.

(d) At the time of the juvenile's birth, Respondent Mother had two other children who were previously in foster care, and one other child who was living with his father.

(e) At the time of the juvenile's birth, Respondent Mother had planned on placing [Kim] with the maternal grandmother . . . . [The maternal grandmother] was caring for the juvenile's two older siblings.

(f) By and through her own testimony, Respondent Mother admitted that she has used marijuana since the year 2018; however, she stated that she is not currently using marijuana.

(g) On June 22, 2020, the maternal grandmother . . . contacted the Department and spoke with Megan Phillips to determine why Respondent Mother was home, but [Kim] was not. Ms. Phillips sent the investigative Social Worker to maternal grandmother's home. Respondent Mother and [the maternal grandmother] were both present at the home and they entered into a temporary safety agreement at that time. Respondent Mother agreed to submit to substance treatment. The maternal grandmother agreed to supervise Respondent Mother's visitation, as well as agreed upon specific times for visits, agreed to follow all recommendations of the Department, and agreed to safe sleeping practices.

(h) At [the] time of the juvenile's birth Respondent Mother was not employed. She has a history of unstable employment. By and through her own testimony, Respondent Mother stated that she was

employed at a temp agency January 2020 through February 2020, then in March 2020 worked at Best Buy. She lost her job at Best Buy and was receiving unemployment benefits.

(i) On July 11, 2018, Respondent Mother's three older children were adjudicated neglected based on the youngest child testing positive for marijuana shortly after his birth on March 21, 2018. Respondent Mother tested positive for marijuana on March 21, 2018 as well.

(j) On September 5, 2018, at the Disposition hearing for the juvenile's older siblings . . . this Court ordered that Respondent Mother should engage in substance abuse treatment and counseling and follow all recommendations, obtain and maintain stable housing, obtain and maintain stable employment, submit to random urinalyses, and enroll in, successfully complete, and demonstrate knowledge from age appropriate parenting classes.

(k) The conditions that brought the older children into care were Respondent Mother's issues with substance abuse, unstable employment, and unstable housing.

(l) On August 18, 2018, Respondent Mother completed a random drug screen that was positive for marijuana.

(m) On October 17, 2018, at the Initial Permanency Planning hearing this Court found that Respondent Mother was not a fit or proper person for the care, custody, or control of the older juvenile. . . .

(n) At the time of the filing of this petition two of Respondent Mother's older children . . . remain in the care of the Department and were placed with the maternal grandmother . . . .

> (o) Respondent Mother's continued use of marijuana may be linked to her unstable housing and unemployment.

Mother specifically challenges the portion of Finding of Fact 11(f) stating that "[b]y and through her testimony, Respondent Mother admitted that she has used marijuana since the year 2018" and the entirety of Finding of Fact 11(o) regarding the potential link between Mother's marijuana use and unstable housing and employment.

¶ 13 Evidence of Mother's marijuana use during pregnancy was introduced at disposition through various sources. Mother was DSS's first witness, and she admitted that both she and Kim tested positive for THC at the time of Kim's birth. She then testified that she had three other children, two of whom were in DSS custody, and one of whom was in his father's custody. She also testified as follows regarding her marijuana use:

> [DSS:] Okay. How long have you been using marijuana?
>
> [MOTHER:] I'm not using marijuana.
>
> [DSS:] Okay. Do you have a history of using marijuana?
>
> [MOTHER:] 2018.
>
> [DSS:] Okay. So just for the past two years?
>
> [MOTHER:] Uh-huh. I wouldn't call it a history, but yes, I guess.
>
> [DSS:] Okay.

¶ 14 Social Worker M. Phillips was DSS's second witness. Social Worker Phillips testified that Kim's three older siblings were adjudicated neglected because the youngest of these three children also tested positive for marijuana at the time of birth. Mother also tested positive for marijuana that day. Mother admitted at the prior adjudication that she used marijuana during her previous pregnancy, and the trial court admitted the order adjudicating her other three children neglected at the 19 October 2020 adjudication regarding Kim. Social Worker Phillips went on to express her concerns about Mother's marijuana use as follows:

> [DSS:] And were you present for the respondent mother's testimony?
>
> [SOCIAL WORKER:] Yes.
>
> . . .
>
> [DSS:] And does that give you any concerns as to [Kim]?
>
> [SOCIAL WORKER:] That's correct.
>
> [DSS:] And why is that?
>
> [SOCIAL WORKER:] Due to mom continually smoking marijuana.
>
> [DSS:] And how could that impact [Kim]?
>
> [SOCIAL WORKER:] Just because she has a history of this unstable housing, unstable employment, and that her substance abuse could be playing a factor in the reason why she is not able to maintain those things.
>
> [DSS:] And so you believe that her continued use of marijuana is impacting her ability to have stable housing

> and stable employment?
>
> [SOCIAL WORKER:] It could be a factor, yes.
>
> [DSS:] Okay. And what is your opinion based upon?
>
> [SOCIAL WORKER:] Just based off the fact that she hasn't been able to maintain those things.
>
> [DSS:] Okay. And when you said she has not been able to maintain those things, are you talking about employment and housing?
>
> [SOCIAL WORKER:] Correct.
>
> [DSS:] Prior to the petition in the underlying case of the other juveniles?
>
> [SOCIAL WORKER:] That's correct.
>
> [DSS:] So do you continue to believe that substance abuse, stable housing – lack of stable housing and lack of employment would be an issue in [Kim's] case as well?
>
> [SOCIAL WORKER:] That's correct.

¶ 15 Ignoring the other evidence of her marijuana use and the potential link between her marijuana use and her unstable housing and employment, Mother seizes on her vague and ambiguous answer to the question of whether she had a history of using marijuana, arguing that her answer, "2018," does not support the trial court's finding regarding her marijuana use since 2018. Yet, there was considerably more evidence of her marijuana use in the record than her mention of the year 2018 in response to DSS's question about her history of marijuana use: (1) on 21 March 2018, she tested positive for marijuana the day she gave birth to a previous child, who also

tested positive for marijuana that day; (2) on 18 June 2020, she tested positive for marijuana when she gave birth to Kim, who also tested positive for marijuana that day; and (3) on 18 August 2018, she tested positive for marijuana during a random drug screen. Moreover, after Mother replied to the question of whether she had a history of using marijuana by stating "2018," counsel for DSS asked a follow-up question, "So just for the past two years?" whereupon Mother answered, "Uh-huh. I wouldn't call it a history, *but yes, I guess*." (Emphasis added.) We hold that this evidence, along with Social Worker Phillips's testimony regarding the potential link between Mother's unstable housing and employment, amply supported the trial court's challenged findings regarding Mother's marijuana use and the potential link between Mother's unstable housing and employment and her marijuana use.

E. The Trial Court's Adjudication of Neglect

¶ 16 Exposure to a controlled substance in utero constitutes an actual impairment of a juvenile for the purpose of a neglect adjudication. *In re G.T.*, 250 N.C. App. at 54, 791 S.E.2d at 277. In this case, as in *In re G.T.*, Mother's admission to using a controlled substance while pregnant established that Kim "suffered actual exposure to [a] controlled substance[] while in utero." *Id.* Mother's admission to using marijuana while pregnant with Kim's older sibling also established an actual impairment of the older sibling, and both together would have supported a finding regarding a substantial risk of future impairment of Kim, though the trial court did

not make such a finding. *See id.* As in *In re L.G.I.*, Mother had a DSS history that included adjudications of neglect of Kim's older siblings based on Mother exposing Kim's older sibling to illegal drugs while pregnant. *See* 227 N.C. App. at 514, 742 S.E.2d at 834. Finally, as in *In re M.J.G.*, the trial court's adjudication of neglect of Kim was supported by the trial court's findings that Mother tested positive for THC the day Kim was born, that her other children had been adjudicated neglected, and that Mother had unstable employment and housing. *See* 168 N.C. App. at 647, 608 S.E.2d at 818. We therefore hold that the trial court's findings related to Mother's drug use while pregnant supported the court's finding that Kim "did not receive proper care, supervision[,] or discipline and lived in an environment injurious to the juvenile's welfare due to Respondent Mother's continued use of illegal substances, and ongoing issues with unstable housing and unemployment[,]" and the trial court's adjudication of neglect was amply supported by these findings.

III. Conclusion

¶ 17 For the reasons stated above, we affirm the order of the trial court.

AFFIRMED.

Chief Judge STROUD and Judge ARROWOOD concur.

Report per Rule 30(e).