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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-230

No. COA21-574

Filed 5 April 2022

Onslow County, Nos. 20-JA-111, 20-JA-112

IN THE MATTER OF: S.M. and D.M.

Appeal by Respondent from order entered 16 June 2021 by Judge Sarah C. Seaton in Onslow County District Court. Heard in the Court of Appeals 9 March 2022.

Richard Penley for Petitioner-Appellee Onslow County Department of Social Services.

Garron T. Michael for Respondent-Appellant.

New South Law Firm, by Valerie L. Bateman, for Appellee Guardian Ad Litem.

COLLINS, Judge.

¶ 1 Respondent-Mother appeals from an order adjudicating her daughters to be neglected juveniles and granting custody to Petitioner Onslow County Department of Social Services. Because the trial court's findings of fact do not support the adjudication of neglect, we vacate the order and remand to the trial court.

I. Background

¶ 2 Respondent is the mother of two daughters: Sharon, born in July 2017, and

Denise, born in December 2019.[1] On 22 July 2020, Petitioner Onslow County Department of Social Services ("OCDSS") filed a juvenile petition alleging that Sharon and Denise were neglected because they did not "receive proper care, supervision, or discipline" and "live[d] in an environment injurious to [their] welfare."

¶ 3 Petitioner alleged in pertinent part:

> 7. The respondent mother has a history with the Onslow County Department of Social Services. She has one other child that was removed from her care in Onslow County Juvenile Court File #: 19 JA 72.
>
> 8. The juvenile [Sharon] was placed in a temporary safety placement with the maternal grandmother . . . in June 2019. The respondent mother gave birth to the juvenile [Denise] while in prison and placed the juvenile with the maternal grandmother . . . in December 2019.
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> 9. The Onslow County Department of Social Service has been working an In-Home Family Service Plan with the respondent mother since she was released from prison in March 2020. The respondent mother has not been fully compliant with the plan.
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> 10. The respondent was asked to drug screen on multiple occasions for the Department. The respondent mother failed to show for any of these screens.
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> 11. The respondent mother completed a substance abuse assessment and a domestic violence assessment but has not followed through with any of the recommendations of those assessments.

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[1] We use pseudonyms to protect the identities of the juveniles. *See* N.C. R. App. P. 42(b).

12. The respondent mother has not completed a comprehensive clinical assessment.

13. The respondent mother had a supervised visit with the juveniles on July 1, 2020. Social worker JoAnna Welch was supervising the visit. The visit was at a park and the respondent went to the restroom during the visit and came back from the restroom with a mark on her arm. The respondent mother is believed to have used drugs while she was in the restroom.

14. The Department received a report on July 16, 2020 regarding issues of substance abuse.

15. When the Department attempted to initiate and assess the allegations of substance abuse on July 17, 2020 the juveniles were unable to be located. The Department attempted to initiate with the temporary safety placement [the maternal grandmother] but she indicated that the juveniles were with their paternal grandmother . . . . The Department attempted to locate the juveniles with [the paternal grandmother] and she informed the Department with the respondent mother had taken [sic] the juveniles.

16. The respondent mother violated the Family Service plan by taking the juvenile [Sharon] unsupervised.

17. The Department was not able to locate the juveniles until July 21, 2020. The juveniles were located with the maternal grandmother . . . .

18. The respondent mother did not have contact with the Department while she had the juveniles in her care.

19. At the time this petition was filed the respondent mother did not have any alternative temporary safety provider. The respondent mother became upset with the social worker and hung up the phone while the social worker was attempting to speak with the respondent

> mother.
>
> 20. The Department took twelve hour custody of the juveniles at 9:40pm on July 21, 2020.

The trial court granted Petitioner nonsecure custody of Sharon and Denise. The trial court continued Sharon and Denise in nonsecure custody on 22 July 2020, 28 July 2020, 27 August 2020, 21 September 2020, 20 October 2020, 20 November 2020, 5 January 2021, 26 January 2021, and 8 February 2021.

¶ 4 The trial court held an adjudication hearing on 11 March 2021. Petitioner presented the testimony of three OCDSS employees: assessment social worker Christine Bryant, permanency planning social worker JoAnna Welch, and in-home services social worker Cathy Frederick. Upon concluding that Sharon and Denise were neglected juveniles, the trial court held a disposition hearing.

¶ 5 The trial court entered a Juvenile Adjudication and Disposition Order on 16 June 2021. The trial court made the following adjudicatory findings of fact concerning the allegations of neglect:

> 11. The Onslow County Department of Social Services called Christine Bryant, Joanna Welch, and Cathy Frederick to testify as to adjudication in this matter. Based on their testimony, the evidence presented and the verified petition, the Court makes the following findings of fact for adjudication by clear, cogent, and convincing evidence to wit:
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> a. The respondent mother has a history with the Onslow County Department of Social Services. She

has one other child that was removed from her care in Onslow County Juvenile Court File #: 19 JA 72.

b. The juvenile [Sharon] was placed in a temporary safety placement with the maternal grandmother . . . in June 2019. The respondent mother gave birth to the juvenile [Denise] while in prison and placed the juvenile with the maternal grandmother . . .in December 2019.

c. The Onslow County Department of Social Service has been working an In-Home Family Service plan with the respondent mother since she was released from prison in March 2020. The respondent mother has not been fully compliant with the plan.

d. The respondent mother completed a substance abuse assessment and a domestic violence assessment but has not followed through with any of the recommendations of those assessments.

e. The respondent mother has not completed a comprehensive clinical assessment.

f. The respondent mother had a supervised visit with [her son] on July 1, 2020. [Sharon and Denise] were also present at the visit. Social worker JoAnna Welch was supervising the visit. The visit was at a park and the respondent went to the restroom during the visit and came back from the restroom with a mark on her arm. The respondent mother appeared more alert once she returned to the visit. The respondent mother is believed to have used drugs while she was in the restroom.

g. The Department received a report on July 16, 2020 regarding issues of substance abuse.

h. When the Department attempted to initiate and

> assess the allegations of substance abuse on July 17, 2020 the juveniles were unable to be located. The Department attempted to initiate with the temporary safety placement [the maternal grandmother], but she indicated that the juveniles were with their paternal grandmother . . . . The Department attempted to locate the juveniles with [the paternal grandmother], and she informed the Department with the respondent mother had taken [sic] the juveniles.
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> i. The respondent mother has come to the Department of Social Services on the morning of July 17, 2020 and indicated to the front desk that she had COVID.
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> j. The Department was not able to locate the juveniles until July 21, 2020. The juveniles were located with the maternal grandmother . . . .
>
> k. The respondent mother did not have contact with the Department while she had the juveniles in her care.
>
> l. The respondent mother exposed the juveniles to COVID during the time she was unable to be located.
>
> m. The respondent father is a non-offending parent for purposes of adjudication.
>
> 12. The juveniles [Sharon and Denise] are neglected juveniles as defined by statute.

Based upon these findings of fact, the trial court concluded that Sharon and Denise were neglected juveniles. The trial court granted OCDSS custody of Sharon and Denise, ordered Respondent to comply with drug testing, and ordered Respondent to complete various courses and assessments. Respondent appealed to this Court.

II. Discussion

¶ 6 Respondent argues that many of the trial court's findings of fact are verbatim recitations of the allegations contained in the juvenile petition and are unsupported by clear and convincing evidence.

¶ 7 We review an adjudication of abuse, neglect, or dependency to determine whether the trial court's findings of fact are supported by "clear and convincing evidence," N.C. Gen. Stat. § 7B-807(a) (2021), and whether the findings of fact support the trial court's conclusions of law, *In re Helms*, 127 N.C. App. 505, 511, 491 S.E.2d 672, 676 (1997). "[W]hether a trial court's findings of fact support its conclusions of law is reviewed de novo." *In re J.S.*, 374 N.C. 811, 814, 845 S.E.2d 66, 71 (2020) (citation omitted).

¶ 8 The Juvenile Code provides that an adjudication order "shall contain appropriate findings of fact and conclusions of law." N.C. Gen. Stat. § 7B-807(b) (2021). "It is not enough that there may be evidence in the record sufficient to support findings which could have been made. The trial court must itself determine what pertinent facts are actually established by the evidence before it[.]" *Coble v. Coble*, 300 N.C. 708, 712, 268 S.E.2d 185, 189 (1980).

¶ 9 "[I]t is not per se reversible error for a trial court's fact findings to mirror the wording of a petition or other pleading prepared by a party." *In re J.W.*, 241 N.C.

App. 44, 48, 772 S.E.2d 249, 253 (2015). The reviewing court must

> 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. If we are confident the trial court did so, it is irrelevant whether those findings are taken verbatim from an earlier pleading.

Id. at 48-49, 772 S.E.2d at 253. "Ultimate facts are the final resulting effect reached by processes of logical reasoning from the evidentiary facts." *In re Anderson*, 151 N.C. App. 94, 97, 564 S.E.2d 599, 602 (2002) (quotation marks and citation omitted).

¶ 10 Here, the trial court's adjudicatory findings of fact do not "demonstrate[] 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." *In re J.W.*, 241 N.C. App. at 48, 772 S.E.2d at 253. Finding 11 sets forth all of the trial court's findings regarding neglect in fourteen subparagraphs; of these, subparagraphs (a), (b), (c), (d), (e), (f), (g), (h), (j), and (k) are verbatim or near-verbatim recitations of the allegations in the juvenile petition.

¶ 11 While the restatement of allegations from the petition is not by itself reversible error, in multiple instances the trial court also failed to make findings of ultimate fact. Finding 11(a) states that Respondent "has a history with" OCDSS and "has one other child that was removed from her care[.]" However, the trial court made no findings concerning the extent of Respondent's involvement with OCDSS. Nor did

the trial court make findings concerning the circumstances of the removal of Respondent's son from her care, though it received testimony and Petitioner introduced an Adjudication and Disposition Order from the proceeding concerning Respondent's son.

¶ 12 Findings 11(c) and (d) state that Respondent has "not been fully compliant with" her In-Home Family Service Plan and "has not followed through" with any recommendations from her substance abuse or domestic violence assessments. Yet these findings do not identify the specific recommendations Respondent failed to complete and do not demonstrate any particular harm to the juveniles resulting from Respondent's noncompliance.

¶ 13 Finding 11(f) states that Respondent was "believed to have used drugs" during a 1 July 2020 supervised visit with her children. The trial court did not find, however, that Respondent in fact used drugs on that date and made no other findings concerning drug abuse by Respondent or any consequent harm to the juveniles. *See In re O.W.*, 164 N.C. App. 699, 703, 596 S.E.2d 851, 854 (2004) ("A more appropriate example of an 'ultimate finding of fact' would have been for the court to state that '[the father] has a history of cocaine and crack use' or that '[the father] has a bad temper, he is impatient, he hollers at the baby and slaps her on her hands,' if it found these facts were true.").

¶ 14 Other portions of the trial court's findings are unsupported by clear and

convincing evidence. Finding 11(h) states that on 17 July 2020, "[t]he Department attempted to initiate with the temporary safety placement [maternal grandmother,] but she indicated that the juveniles were with their paternal grandmother[.]" Neither the paternal grandmother nor the maternal grandmother testified at the adjudication hearing. Bryant testified that she undertook efforts to locate the juveniles, but the trial court sustained Respondent's hearsay objection when Bryant began to testify to a conversation with the maternal grandmother. Frederick testified that when she assisted Bryant in attempting to locate the juveniles, the maternal grandmother was not at home and she did not make a further attempt to contact the maternal grandmother. The trial court's finding that the maternal grandmother indicated that the juveniles were with the paternal grandmother is therefore unsupported by clear and convincing evidence. Finding 11(h) further states that on 17 July 2020, the paternal grandmother "informed the Department with the respondent mother had taken [sic] the juveniles." There was no evidence that the paternal grandmother informed the Department that Respondent had taken the juveniles. Bryant testified only that the paternal grandmother informed her that Respondent was staying at the paternal grandmother's home with the juveniles. The trial court's finding that the paternal grandmother informed the Department that Respondent had taken the juveniles is unsupported by clear and convincing evidence.

¶ 15 The only findings concerning neglect that did not recite allegations from the

petition were that (1) Respondent informed Petitioner that she had COVID on 17 July 2020, (2) Respondent "exposed the juveniles to COVID during the time she was unable to be located," (3) the juveniles' father "is a non-offending parent for purposes of adjudication," and (4) the juveniles "are neglected juveniles as defined by statute." The statement that the juveniles "are neglected juveniles as defined by statute" is a conclusion of law, not a finding of fact. *In re H.P.*, 2021-NCCOA-299, ¶ 34. The finding that Respondent informed Petitioner that she had COVID was supported by clear and convincing evidence—Frederick testified that Respondent presented for a drug test on 17 July 2020 and "informed the staff . . . that she just came from the hospital and tested positive for COVID-19." *See* N.C. Gen. Stat. § 8C-1, Rule 801(d) (2021) ("A statement is admissible as an exception to the hearsay rule if it is offered against a party and it is . . . his own statement[.]"). However, there is no support for the trial court's finding that Respondent exposed the juveniles to COVID. As Respondent argues, there was no evidence showing the level of contact Respondent had with the juveniles during this period, nor any evidence of precautions that Respondent took or failed to take.

¶ 16 The trial court recited multiple allegations from the juvenile petition verbatim or near-verbatim in its adjudicatory findings of fact, failed to make ultimate findings regarding pertinent facts, and made findings unsupported by clear and convincing evidence. We therefore vacate the Adjudication and Disposition Order and remand

to the trial court for entry of an order containing appropriate findings of fact and conclusions of law based on those findings. *See In re C.L.H.*, 376 N.C. 614, 2021-NCSC-1, ¶ 17 (vacating and remanding for "further proceedings, including the entry of a new order containing findings of fact and conclusions of law," where the trial court's adjudicatory findings were insufficient to support its conclusions of law (quotation marks and citations omitted)); In re O.W., 164 N.C. App. at 704, 596 S.E.2d at 854 (remanding where the trial court failed to make sufficient ultimate findings of fact).

III. Conclusion

¶ 17 Because the trial court's Adjudication and Disposition Order does not contain sufficient findings of fact to support the adjudication of neglect, we vacate the order and remand for further proceedings.

VACATED AND REMANDED.

Judges DIETZ and TYSON concur.

Report per Rule 30(e).