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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-313

No. COA21-571

Filed 3 May 2022

Onslow County, No. 20 JA 191

IN THE MATTER OF: K.L.M.F.J.

Appeal by respondent-mother from order entered 16 June 2021 by Judge Sarah C. Seaton in Onslow County District Court. Heard in the Court of Appeals 8 March 2022.

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

David A. Perez for Respondent-Appellant-Mother.

Stephen M. Schoeberle for Guardian ad Litem.

CARPENTER, Judge.

¶ 1

Respondent-Mother appeals from an adjudication and disposition order (the “Order”) adjudicating the juvenile, Keith,¹ neglected within the meaning of N.C. Gen. Stat. § 7B-101(15) and granting full custody of the juvenile to the Onslow County

¹ A pseudonym has been used to protect the identity of the child.

Department of Social Services (“DSS”). On appeal, Respondent-Mother argues the trial court erred in adjudicating Keith as neglected because the Order contains no findings of “severe or dangerous conduct or a pattern of conduct either causing injury or potentially causing injury to the juvenile.” Rather, Respondent-Mother contends the trial court’s findings are based on allegations of past neglect concerning her other children. After careful review, we affirm the Order.

I. Factual & Procedural Background

¶ 2 Keith was born on 10 July 2020. After he was discharged from the hospital as a newborn, Respondent-Mother agreed to temporarily place Keith with N.B., who had guardianship of one of Respondent-Mother’s older children. On 13 July 2020, three days after his birth, DSS received a report regarding the juvenile.

¶ 3 On 22 December 2020, while Keith was in the care of N.B., DSS filed a petition alleging Keith was a neglected juvenile. The petition named Respondent-Mother and, D.F.,² the purported father of Keith, as parties. The petition alleged, *inter alia*, Respondent-Mother: “has a long and ongoing history with [DSS] that includes losing custody of her seven other children”; told a DSS social worker when the case was opened that “she had some mental health diagnosis and was not currently being medicated”; has not completed the recommendations in her current case plan

² D.F. is not a party to this appeal.

including parenting classes, mental health services, and random drug screens; and has not remedied the conditions that led to the removal of her other children.

¶ 4

On 26 April 2021, adjudication and dispositional hearings were held before the Honorable Sarah C. Seaton. Respondent-Mother did not attend the hearings, and her counsel advised the trial court that Respondent-Mother had been released from the custody of the Onslow County Sheriff's Department the previous day. Social worker Xenia Kelley ("Social Worker Kelley"), who was assigned to Keith's case, testified on behalf of DSS at the hearing. On direct examination at the adjudication hearing, Social Worker Kelley testified as to DSS's reason for filing its petition alleging neglect of Keith:

During the case, [Respondent-Mother] was asked several times to engage in visitation with the child to—so that social worker could observe her interaction with the child. She was offered to move into . . . [N.B.'s] home, which she declined to do so during that time, so she's had very minimal visitation with [Keith]. Interaction with social worker has been consistent, but still sporadic. She has—she denied engaging, initially, in the parenting. And did not—she did not engage in the parenting that she started not till February of this year. I have not been able to get her to drug screen when asked.

¶ 5

Social Worker Kelley's testimony also tended to show the following: On 6 August 2020, Social Worker Kelley performed a home visit where Respondent-Mother was residing, and she could "smell the odor of marijuana coming from the home." Respondent-Mother did not live in the home of N.B.

¶ 6

Respondent-Mother had “sporadic” housing from August 2020 to December 2020. At the time DSS filed its petition, Respondent-Mother had begun parenting education but did not complete the parenting classes as requested in her case plan, and “declined . . . CSSA services” to assist with parenting. Social Worker Kelley was unable to confirm Respondent-Mother’s completion of mental health services because Respondent-Mother did not sign a consent form allowing the release of those medical records, although Respondent-Mother had previously signed a consent form, which DSS was “unable to use” to obtain these records. Furthermore, substance abuse was a continued concern for DSS due to Respondent-Mother’s history of abuse and criminal background, including recent drug charges.

¶ 7

Respondent-Mother has a “substantial child and protective service history” with DSS. She has not remedied or resolved the concerns which led to the removal of her other children. The parental rights of Respondent-Mother were terminated as to one of her children, and Respondent-Mother’s five other children had their guardianship granted to a nonparent. Respondent-Mother “had outstanding mental health and substance abuse concern[s],” and she did not follow through with DSS’s services when her child, A.L., was adjudicated neglected. From July 2020 to December 2020, Respondent-Mother provided “minimal” support for Keith, she did not consistently visit the juvenile, she did not participate in the day-to-day care of the juvenile, she did not show up for Keith’s medical appointments although she was

apprised of the dates and times, and she attended only part of one telephonic “child and family team meeting” held by DSS.

¶ 8

On cross-examination, Social Worker Kelley testified Keith was not “in an injurious environment” in N.B.’s home and was a healthy child. N.B. “had assumed caretaking responsibilities for [Keith]” since his birth, and N.B. was not named in DSS’s petition as a responsible individual with respect to the allegations of Keith’s neglect. Notwithstanding the temporary placement, Respondent-Mother “expressed interest in raising [Keith].”

¶ 9

After the close of evidence of the adjudication phase, the trial court orally announced Keith “is a neglected juvenile” on the grounds Keith “d[oes] not receive proper care, supervision, or discipline from the juvenile’s parent.” On 16 June 2021, the trial court entered its written Order, in which it made the following findings of fact with respect to the adjudication:

1. That the respondent parents, by and through their attorneys, did not contest adjudication and offered no evidence.
2. The Onslow County Department of Social Services offered as evidence in the adjudication the testimony of Social Worker . . . Xenia Kelley.
 - a. The Court by clear, cogent, and convincing evidence makes additional findings for purposes of adjudication, to wit:
 - i. Respondent mother has a long and ongoing history with The Onslow County Department of Social Services (the Department) that includes losing custody of her seven other children. The

Department still has custody of one of her children in file no.: 12-JA-94. Currently the mother does not have any of her children in her care.

- ii. The Department received a report concerning this juvenile on July 13, 2020.
- iii. At the initiation of the case, [Respondent-Mother] stated she has some mental health diagnosis and was not currently being medicated.
- iv. The juvenile is currently in the home of [N.B.], who also has guardianship of one of the respondent-mother's older children.
- v. On August 6, 2020, Social Worker Kelley initiated a home visit where [Respondent-Mother] was residing. While there, Ms. Kelley smelled the odor of marijuana coming from the home.
- vi. Throughout the case, [Respondent-Mother] has not had stable housing.
- vii. Since the initiation of this case, [Respondent-Mother] has been requested to complete parenting classes, seek ongoing mental health services, and provide her recommendations and treatment to the Department, and to submit to random drug screens. As of the date of the filing of this petition, [Respondent-Mother] has not completed any of the items on her case plan.
- viii. The respondent mother has not remedied nor resolved the concerns which led to the removal of previous children from the home, and she is not in a position to provide a safe and stable home for this child nor for his siblings.
- ix. Reunification efforts with the respondent mother as to her other seven children, have been ceased by Order of this Court.
- x. When the juvenile, [A.L.], was adjudicated neglected, the Court found that the respondent mother had outstanding mental health and substance abuse concerns and was not following

through with services offered to her. The respondent mother was court-ordered at that time, and continues to be court-ordered at File Number 12 JA 94, to follow through with services aimed at treating her mental health and substance abuse, and she has not complied with Orders of this Court nor with recommendations of the Department of Social Services.

- xi. Respondent mother has had her parental rights terminated to one of her children, and . . . five of her children have had their guardianship granted to a non-parent.
- xii. The respondent mother has not complied with orders of this Court nor has she remedied the circumstances that have led to the neglect of this juvenile's maternal siblings.
- xiii. Respondent mother's case has been open since July of 2020. Since July of 2020, respondent mother has visited with the child sporadically, has not provided any financial support or items to the placement provided, and does not participate in any day to day care of the juvenile.
- xiv. Respondent mother has not participated in any child and family team meetings to help create a plan for the juvenile's development and care.
- xv. Respondent mother refuses to give any consent to the Department to ensure her compliance with mental health providers.

¶ 10 Based on these findings, the trial court concluded Keith “is neglected within the meaning of [N.C. Gen. Stat.] § 7B-101(15), and that the same has been proven by clear, cogent, and convincing evidence.”

¶ 11 Respondent-Mother timely filed written notice of appeal from the Order.

II. Jurisdiction

¶ 12 This Court has jurisdiction to address Respondent-Mother’s appeal from the Order pursuant to N.C. Gen. Stat. § 7A-27(b)(2) (2021) and N.C. Gen. Stat. § 7B-1001(a)(3) (2021).

III. Issue

¶ 13 The sole issue on appeal is whether the trial court erred in adjudicating Keith a neglected juvenile pursuant to N.C. Gen. Stat. § 7B-101(15) (2021).

IV. Standard of Review

¶ 14 “The role of this Court in reviewing a trial court’s adjudication of neglect . . . is 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 T.H.T.*, 185 N.C. App. 337, 343, 648 S.E.2d 519, 523 (2007) (citation and quotation marks omitted), *aff’d as modified*, 362 N.C. 446, 665 S.E.2d 54 (2008); *see also* N.C. Gen. Stat. § 7B-805 (2021) (“The allegations in a petition alleging that a juvenile is abused, neglected, or dependent shall be proved by clear and convincing evidence.”). “Unchallenged findings of fact are deemed supported by competent evidence and are binding on appeal.” *In re M.E.S.*, 379 N.C. 275, 2021-NCSC-140, ¶ 9 (citation and quotation marks omitted). “The trial court’s conclusions 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).

V. Adjudication of Neglect

¶ 15 The Juvenile Code within the North Carolina General Statutes defines a “neglected juvenile” as “[a]ny juvenile less than 18 years of age . . . whose parent guardian, custodian, or caretaker,” *inter alia*, “[d]oes not provide proper care, supervision, or discipline.” N.C. Gen. Stat. § 7B-101(15)(a).

¶ 16 In interpreting N.C. Gen. Stat. § 7B-101(15), “this Court has stated the alleged conditions must cause the juvenile some physical, mental, or emotional impairment or create a substantial risk of such impairment” in order for the Court “[t]o sustain an adjudication of neglect” on appeal. *In re B.P.*, 257 N.C. App. 424, 433, 809 S.E.2d 914, 919 (2018) (quotation marks 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) (citation and quotation marks omitted). However, “the fact of prior abuse, standing alone, is not sufficient to support an adjudication of neglect.” *In re N.G.*, 186 N.C. App. 1, 650 S.E.2d 45 (2007), *aff’d*, 362 N.C. 229, 657 S.E.2d 355 (2008). “Where there is no finding that the juvenile has been impaired or is at substantial risk of impairment, there is no error if all the evidence supports such a finding.” *In re Padgett*, 156 N.C. App. 644, 648, 577 S.E.2d 337, 340 (2003) (citation omitted).

¶ 17 On appeal, Respondent-Mother challenges only finding of fact 2(a)(x). Thus,

the remaining seventeen “[u]nchallenged findings are deemed supported by competent evidence and are binding on appeal.” *See In re M.E.S.*, 379 N.C. 275, 2021-NCSC-140, ¶ 9. Respondent-Mother argues finding of fact 2(a)(x) is erroneous because the finding references DSS file number 12 JA 94, and the trial court struck any reference to the adjudication of Keith’s brother, A.L., based on the motion by Respondent-Mother’s counsel.

¶ 18 Finding of fact 2(a)(x) provides:

When the juvenile, [A.L.], was adjudicated neglected, the Court found that the respondent mother had outstanding mental health and substance abuse concerns and was not following through with services offered to her. The respondent mother was court-ordered at that time, and continues to be court-ordered at File Number 12 JA 94, to follow through with services aimed at treating her mental health and substance abuse, and she has not complied with Orders of this Court nor with recommendations of the Department of Social Services.

¶ 19 We agree the following findings contained in finding 2(a)(x) are not “supported by clear and convincing evidence”: “[t]he respondent mother was court ordered at that time, and continues to be court-ordered at File Number 12 JA 94, to follow through with services aimed at treating her mental health and substance abuse, and she has not complied with Orders of this Court” *See In re T.H.T.*, 185 N.C. App. at 343, 648 S.E.2d at 523. When Social Worker Kelley was asked on direct examination if, “[a]t the most recent permanency planning hearing for [A.L.] in the week of March

29, 2021, [Respondent-Mother was] still ordered to follow through with services and with treating her mental health and substance abuse,” Social Worker Kelley responded, “I cannot completely answer that question.” Counsel for DSS responded, “Has she—oh, no, no, no, sorry.” Respondent-Mother’s counsel then requested the trial court strike any reference to the adjudication file number 12 JA 94, which the trial court allowed. Therefore, these findings are not supported by competent evidence. *See id.* at 343, 648 S.E.2d at 523.

¶ 20 We conclude the remaining findings within finding of fact 2(a)(x) are “supported by competent evidence.” *See In re T.H.T.*, 185 N.C. App. at 343, 648 S.E.2d at 523. During direct examination, Social Worker Kelley responded, “yes” when she was asked if the trial court found “the Respondent Mother had outstanding mental health and substance abuse concern[s] and was not following through with the services offered to her” when Keith’s brother A.L. was adjudicated neglected. Additionally, Social Worker Kelley’s testimony tended to show Respondent-Mother lived in a home where marijuana was being used. Social Worker Kelley also testified Respondent-Mother had not completed parenting education and had not allowed DSS to confirm her mental health services. This testimony provided competent evidence to support the findings Respondent-Mother “had outstanding mental health and substance abuse concerns and was not following through with services offered to her,” and she did not follow the “recommendations of the Department of Social Services.”

See In re T.H.T., 185 N.C. App. at 343, 648 S.E.2d at 523.

¶ 21 Respondent-Mother relies on *In re B.P.*, 257 N.C. App. 424, 809 S.E.2d 914 (2018), in support of her argument the Order should be reversed on the ground the trial court did not specify “the purported past neglect” of Keith in its findings on which it based the adjudication. DSS maintains *In re K.J.D.*, 203 N.C. App. 653, 692 S.E.2d 437 (2010), and its progeny of cases support Keith’s adjudication of neglect.

¶ 22 In *In re K.J.D.*, a petition was filed alleging the juvenile was neglected. 203 N.C. App. at 653, 692 S.E.2d at 439. At the time the petition was filed, the child was living with his grandparents, with whom he had been placed in a kinship placement due to the respondent-mother’s failure to care for the child. *Id.* at 661, 692 S.E.2d at 444. The trial court adjudicated the juvenile neglected and found as fact, *inter alia*, the respondent mother: had not completed her recommended anger management program or mental health treatment, did not have independent housing, was in jail for approximately nineteen days, had not maintained stable housing or employment, and had failed to correct the conditions that led to the removal of her minor child. *Id.* at 655–56, 692 S.E.2d at 440. The trial court also made the ultimate finding the child would be “at substantial risk of harm” if she or the juvenile’s father removed the child from his placement. *Id.* at 661, 692 S.E.2d at 444. The Court held the findings of fact supported the trial court’s neglect adjudication. *Id.* at 661, 692 S.E.2d at 444.

¶ 23 In *In re B.P.*, the trial court made the following relevant findings of fact: the

respondent-mother had informed the social worker of her mental health diagnosis, and the respondent-mother “provided no proof of mental health treatment or therapy involvement”; the respondent-mother was in jail pending a court date on her criminal charges; the respondent-mother’s parental rights were terminated as to her two older children; and the respondent-mother had another child who was placed in foster care, and then later placed with the child’s father. *In re B.P.*, 257 N.C. App. at 428–29, 809 S.E.2d at 916–17.

¶ 24 The *In re B.P.* Court concluded “there was insufficient evidence to support a finding that [the respondent-mother] was not attending *any* therapy or mental health treatment.” *Id.* at 431, 809 S.E.2d at 918. As to the finding regarding respondent-mother’s criminal charges, the Court concluded this finding was not supported by the evidence because it did not reflect the fact the charges were later dismissed. *Id.* at 430, 809 S.E.2d at 918. Next, the Court concluded the findings pertaining to past court orders were proper because “the trial court employed a process of ‘logical reasoning.’” *Id.* at 432, 809 S.E.2d at 918–19. The Court held the remaining findings of fact did not support an adjudication of neglect because “the trial court failed to make a finding the alleged neglectful conditions caused [the juvenile] impairment, or put her at substantial risk of impairment.” *Id.* at 433, 809 S.E.2d at 919.

¶ 25 The *In re B.P.* Court expressly distinguished the case from *In re K.J.D.*:

First, we note in *K.J.D.*, the mother placed the juvenile in

a kinship arrangement at the behest of DSS. Here, unlike the mother in *K.J.D.*, Respondent voluntarily placed [the juvenile] with Mr. and Mrs. M. on her own, without DSS's input. Furthermore, the uncontested findings in *K.J.D.* which supported the adjudication of neglect included the mother's: continuing inability to care for the child; inability to correct the conditions which led to the placement of the child in kinship care; continuing assaultive behavior; failure to complete counseling to address anger issues or her mental disorder; and lack of stable house or employment. Moreover, the trial court in *K.J.D.* made the ultimate finding the juvenile would be at substantial risk of harm if removed from kinship placement and returned to the mother's care. Such supported findings are mostly absent from the case *sub judice*. Consequently, we conclude the trial court erred by adjudicating [the child] a neglected juvenile.

Id. at 434, 809 S.E.2d at 920.

¶ 26 Respondent-Mother contends the trial court, like the trial court in *In re B.P.*, did not “directly ma[k]e a finding that any alleged neglectful conditions caused Keith any impairment, or substantial risk of impairment.” Additionally, she argues all the evidence does not support an adjudication of neglect. Similarly, the guardian *ad litem* acknowledges the trial court made no specific finding as to the juvenile's impairment or substantial risk of impairment but asserts the evidence and other findings of fact in the Order support such a finding of fact or conclusion of law. The guardian *ad litem* and DSS both argue this Court should affirm the Order.

¶ 27 It is not entirely clear from the record whether Respondent-Mother's placement of Keith in the care of N.B. was wholly voluntary or whether DSS played

a part in the placement. Nonetheless, the trial court considered the kinship placement when it orally announced findings as to the conditions on which it based the neglect adjudication:

In this case the Court understands that [Respondent-Mother] was in agreement that the child be with [N.B.]. There's no evidence that [Respondent-Mother] placed the child there. It sounds like the Department placed the child [with N.B.]. The evidence that the Court heard was that . . . [Respondent-Mother] was not able to be located when this child needed medical care. That the . . . parent would not show up at the medical appointments to sign so this child could have medical care. That would be, in this Court's opinion, improper care from the parent.

¶ 28 We note *In re K.J.D.* differs from the instant case because there, the trial court made the ultimate finding that the juvenile was “at substantial risk of harm.” *See In re K.J.D.*, 203 N.C. App. at 661, 692 S.E.2d at 444; *In re Padgett*, 156 N.C. App. at 648, 577 S.E.2d at 340. Our Supreme Court addressed in *In re J.A.M.* the issue of whether a specific “ultimate finding” is required in an adjudication order for neglect. 372 N.C. 1, 822 S.E.2d 693 (2019).

¶ 29 The Supreme Court affirmed the Court of Appeals' decision of *In re J.A.M.*, 259 N.C. App. 810, 816 S.E.2d 901 (2018), *aff'd*, 372 N.C. 1, 822 S.E.2d 693 (2019). The Court concluded the Court of Appeals' majority, on remand, properly held three of the trial court's findings of fact were “supported by clear and convincing evidence and . . . support[ed] a conclusion that J.A.M. presently faced substantial risk in her living

environment.” *In re J.A.M.*, 371 N.C. at 10, 822 S.E.2d at 699. The findings of fact demonstrated the respondent-mother:

(1) continued to fail to acknowledge her role in her rights being terminated to her six other children, (2) denied the need for any services for J.A.M.’s case, and (3) became 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

Id. at 10, 822 S.E.2d at 699 (citing *In re J.A.M.*, 259 N.C. App. at 816, 816 S.E.2d at 905).

¶ 30 This Court reasoned the evidence before the trial court on which it based its findings was “consistent with a substantial risk of future injury in the home,” despite the trial court’s failure to make an ultimate finding as to the juvenile’s impairment or substantial risk of impairment. *Id.* at 817, 816 S.E.2d at 905. The dissenting opinion noted “[t]he [trial] court did not find J.A.M. had suffered from any neglect or abuse, or that there is any future probability that she is at substantial risk to suffer from any physical, mental, or emotional impairment as a consequence of living in Respondent-mother’s home.” *Id.* at 820, 816 S.E.2d at 907 (Tyson, J., dissenting).

¶ 31 Nevertheless, the Supreme Court affirmed the majority opinion, concluding: (1) the trial court’s adjudication order “included present risk factors in addition to an evaluation of past adjudications involving other children”; and (2) the Court of Appeals’ “majority properly applied the appropriate standard of review in affirming

the trial court's order." *In re J.A.M.*, 372 N.C. at 11, 822 S.E.2d at 700.

¶ 32 Although the matter of *In re J.A.M.* did not involve a kinship placement of a juvenile, the case concerned a petition alleging neglect of a newborn who was otherwise healthy and properly cared for, despite the respondent-mother's extensive history of child neglect. 259 N.C. App. at 821, 816 S.E.2d at 908. Thus, we find the Supreme Court's decision in *In re J.A.M.* instructive in our determination of whether the trial court in this case made sufficient findings of fact in its Order.

¶ 33 Here, the trial court properly considered the "historical facts of the case" and assessed the "substantial risk of future abuse" Respondent-Mother currently posed to Keith. *See In re J.A.M.*, 372 N.C. at 9, 822 S.E.2d at 698–99. In its Order, the trial court included "present risk factors." *See id.* at 11, 822 S.E.2d at 700. The relevant findings show Respondent-Mother: did not follow the recommendations outlined in her case plan, including recommendations to address mental health, parenting, and substance abuse issues; could not, at the time of adjudication, provide safe and stable housing for her children; has not provided support to Keith's placement provider; and had not remedied or resolved the conditions that led to the removal of her other children from her home.

¶ 34 The trial court also included "an evaluation of past adjudications" of Respondent-Mother's other children by finding: reunification efforts with her other seven children have ceased pursuant to court orders; in the adjudication order

regarding Respondent-Mother's son A.L., the court found Respondent-Mother had outstanding mental health and substance abuse issues and has not followed the services offered to her; Respondent-Mother has not complied with the previous recommendations of DSS; Respondent-Mother had her parental rights terminated as to one of her children; and five of Respondent-Mother's children have had their guardianship granted to a non-parent. *See id.* at 11, 822 S.E.2d at 700.

¶ 35 With the exception of a single finding contained in finding of fact 2(a)(x), the trial court's findings are deemed supported by clear and convincing evidence and "are binding on appeal." *See In re T.H.T.*, 185 N.C. App. at 343, 648 S.E.2d at 523; *In re M.E.S.*, 379 N.C. 275, 2021-NCSC-140, ¶ 9. We conclude the evidence upon which the trial court based its findings "is consistent with a substantial risk of future injury" in Respondent-Mother's home. *See In re J.A.M.*, 259 N.C. App. at 817, 816 S.E.2d at 905. Therefore, the findings support a conclusion Keith faced substantial risk of impairment in Respondent-Mother's home. *See In re J.A.M.*, 371 N.C. at 10, 822 S.E.2d at 699. In adjudicating the juvenile as neglected, the trial court properly exercised its role in weighing the evidence and determining witness credibility. *See In re S.C.R.*, 198 N.C. App. 525, 531, 679 S.E.2d 905, 909 (2009) ("[I]t is the duty of the trial judge to consider and weigh all of the competent evidence, and to determine the credibility of the witnesses and the weight to be given their testimony.").

¶ 36 Next, Respondent-Mother argues "[t]here is no evidence [she] tried at any point

to disrupt the stability of Keith’s placement with [N.B.]” DSS contends Respondent-Mother’s argument “closely resembles” the argument put forth by the respondent-mother in *In re K.J.D.*, 203 N.C. App. 653, 692 S.E.2d 437.

¶ 37 Our Court in *In re K.J.D.* addressed the question of whether a juvenile may be adjudicated as neglected *by a parent* where the child is living with a non-parent caretaker or guardian. After comparing cases of termination of parental rights based on neglect—where a child is usually not living in the home for a period of time—and neglect adjudication cases—where the child was placed in kinship placement as an infant—the Court explained “the evidence needed to demonstrate ‘neglect’” under these two sets of circumstances is the same. *Id.* at 660, 692 S.E.2d at 443.

The court should consider evidence of changed conditions in light of the evidence of prior neglect and the probability of a repetition of neglect. The determinative factors must be the best interests of the child and the fitness of the parent to care for the child *at the time of the [adjudication] proceeding*.

Id. at 660, 692 S.E.2d at 443 (quotations omitted and alteration in original).

¶ 38 As discussed above, the trial court considered factors as to the “best interests of the child and the fitness of [Respondent-Mother, who was the parent] to care for the child at the time of the [adjudication] proceeding,” and determined Respondent-Mother was unable to care for the juvenile. *See id.* at 660, 692 S.E.2d 443. Therefore, the trial court did not err by concluding Keith was a juvenile who had been neglected

by his mother, despite the juvenile being safe and healthy in the care of a temporary service placement at the time of the adjudication proceeding.

VI. Conclusion

¶ 39 We hold the trial court did not err in adjudicating Keith as neglected because the trial court made sufficient findings of fact, which were supported by clear and convincing evidence and based on evidence relating to the current circumstances of Respondent-Mother that presented substantial risk of future neglect to Keith. The findings in turn support the conclusion of law that Keith is a neglected juvenile.

AFFIRMED.

Judges GORE and GRIFFIN concur.

Report per Rule 30(e).