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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-389

No. COA21-787

Filed 7 June 2022

Watauga County, No. 20 JA 34

IN THE MATTER OF: J.S., III

Appeal by Respondents from order entered 24 September 2021 by Judge Hal Harrison in Watauga County District Court. Heard in the Court of Appeals 24 May 2022.

di Santi Capua & Garrett, PLLC, by Chelsea Bell Garrett, for Appellee Watauga County Department of Social Services.

W. Michael Spivey for Respondent-Appellant Father.

Mary McCullers Reece for Respondent-Appellant Mother.

North Carolina Administrative Office of the Courts, Guardian ad Litem Division, by Michelle FormyDuval Lynch, for guardian ad litem.

GRIFFIN, Judge.

¶ 1 Respondents appeal from an order adjudicating their minor child, John[1], a

[1] We use a pseudonym to protect the identity of the juvenile and for ease of reading. *See* N.C. R. App. P. 42(b).

neglected and dependent juvenile. Respondents argue that the evidence presented at trial and the trial court's findings of fact do not support an adjudication of neglect or dependency. We hold that the trial court's findings of fact support its adjudication of John as neglected and dependent and affirm the trial court's order.

I. Factual and Procedural Background

¶ 2 On 11 May 2021, the Watauga County Department of Social Services filed an amended juvenile petition alleging that John was a neglected and dependent juvenile. The petition alleged, *inter alia*, that a domestic violence incident had occurred between Respondents, that Respondents had failed multiple drug screenings, that Respondent Mother believed Respondent Father suffered from schizophrenia, and that Mother had left Father to stay at a domestic violence shelter. At the time the amended petition was filed, Respondents had another child who was in the custody of DSS pursuant to a prior adjudication.

¶ 3 On 11 August 2021, a hearing was held on the amended petition, after which the trial court entered an order adjudicating John a neglected and dependent juvenile. Respondents timely filed notice of appeal from the trial court's order.

II. Analysis

¶ 4 Respondents argue that the evidence presented at trial and the trial court's findings of fact do not support an adjudication of neglect or dependency.

¶ 5 We review adjudications of abuse, neglect, and dependency "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) (citations and internal quotation marks omitted). "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." *Id.* "[W]e review a trial court's conclusions of law *de novo*[.]" *In re M.H.*, 272 N.C. App. 283, 286, 845 S.E.2d 908, 911 (2020) (citation omitted).

A. Neglect

¶ 6 Respondents argue that "[t]he trial court's findings of fact—some unsupported by clear and convincing evidence, others failing to resolve conflicts in the evidence—were insufficient to support an adjudication of neglect." We disagree and conclude that the trial court's findings of fact support an adjudication of neglect.

¶ 7 N.C. Gen. Stat. § 7B-101(15) defines a "[n]eglected juvenile" in pertinent part as:

> Any juvenile less than 18 years of age . . . whose parent, guardian, custodian, or caretaker does any of the following:
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> a. Does not provide proper care, supervision, or discipline.
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> b. Has abandoned the juvenile.
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> c. Has not provided or arranged for the provision of necessary medical or remedial care.

> . . .
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> e. Creates or allows to be created a living environment that is injurious to the juvenile's welfare.

N.C. Gen. Stat. § 7B-101(15) (2021).

¶ 8 "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." *Id.* "The fact of prior abuse, standing alone, however, is not sufficient to support an adjudication of neglect. Instead, this Court has generally required the presence of other factors to suggest that the neglect or abuse will be repeated." *Matter of K.L.*, 272 N.C. App. 30, 51, 845 S.E.2d 182, 197 (2020) (citations omitted). These factors "include the presence of domestic violence in the home and current and ongoing substance abuse issues, unwillingness to engage in recommended services or work with or communicate with DSS regarding the prior abuse or neglect, and failing to accept responsibility for prior adjudications[.]" *Id.* at 51–52, 845 S.E.2d at 197–98 (citations omitted). "In neglect cases involving newborns," as in the case at bar, "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 based on the historical facts of the case." *Matter of J.A.M.*, 372 N.C. 1, 9–10, 822 S.E.2d 693, 699 (2019) (citation and internal quotation marks omitted).

¶ 9 In this case, the trial court's adjudication order contained the following unchallenged findings of fact:

> a. Neither parent was present for this hearing on either August 11 or its continuation to August 12, 2021 and were reported to be residing in Tennessee. Respondent [M]other asked her attorney to request that she be permitted to testify by phone but did not provide an explanation for why she would not come to [c]ourt. Her request is denied.
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> b. The Respondents have another child, M.[S.], currently in custody of DSS[.]
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> . . .
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> d. As part of their case plans for [an older sibling of John's], both parents agreed to take regular drug screens. Respondent Mother provided screens on 2/3, 2/16[,] 3/3[,] 3/10, 3/12, [and] 3/17 of 2021 and all we[re] positive for cannabinoids. Respondent Mother has admitted to smoking hemp. She has not taken a drug screen since March 17, 2021. On 2/9/21, Respondent Mother admitted to using Delta-8.
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> e. Respondent Father's drug screens have been fairly consistent. On 3/2 and 3/9 of 2021, they were positive for cannabinoids. On 4/8, 4/16, and 4/23 they were positive for ethyl glucuronide (a metabolite of ethanol[)]. Three tests indicated abnormal Creatinine levels which indicates possible dilution or [a] substituted sample.
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> . . .
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> h. . . . [Social Worker] Blalock began doing twice weekly home visits to more closely monitor the family. Because Respondent Mother stated the physical incident was not recent and she did not feel she was in danger, DSS did not feel it had sufficient cause to remove the Juvenile in

February.

. . .

j. On 3/24/21, DSS received a call from Respondent Mother during which she sounded very upset; she agreed to allow a female Social Worker to come pick her up with [John] and come to DSS.

. . .

q. Arrangements were made by DSS for someone from the local domestic violence shelter to come speak to Respondent Mother and to take her to the shelter with [John].

. . .

s. As a result of these events, DSS took custody of the juvenile.

. . .

v. Social Worker Finn previously worked at the shelter prior to going to work for DSS and testified that the domestic violence shelter is only for victims of domestic violence defined as individuals in a romantic or familial relationship[]and not third parties like landlord/ tenants, roommates, for example.

w. [Social Worker] Blalock used to work in behavioral mental health prior to going to work for DSS and has both administer[ed], read and interpreted drug screens in the[] regular course of business and this Court adopts the holding in *Barber v. Babcock and Wilcox Construction Company*, specifically finding that authentication could be established by the witness's knowledge of and relationship to the test were sufficient to qualify him as a qualified other witness. The [c]ourt finds that this witness, Mr. Blalock,

> has testified to his previous employments and other places where he would have been regularly involved in dealing with drug test results, as to the specimen and as to the results. Therefore, the drug screens are admissible under the business record exception to hearsay.

¶ 10 The trial court also found that "these parents are not in compliance with their existing case plans for their other child." Respondents challenge this latter finding as unsupported by the evidence presented at trial. However, when asked whether Mother was "compliant with her case plan on [her older child] with regard to taking drug screens[,]" a social worker testified, "No, she is not. She has not been in compliance since March of [2021]. She sent me in a text message, when I reminded her of her case plan requirements, that she was advised not to take drug screens until the adjudication." Accordingly, the trial court's finding that Mother was not in compliance with her case plan is supported by the evidence.

¶ 11 Based on the foregoing findings, the trial court appropriately adjudicated John as neglected. At the time the amended juvenile petition was filed, Respondents' older sibling was in the custody of DSS because of a prior adjudication, Mother was not in compliance with her case plan regarding the older sibling, a domestic violence incident had occurred between Respondents, and Respondents' drug screens repeatedly indicated substance abuse. Each of these factors support the adjudication of John as neglected. *See Matter of K.L.*, 272 N.C. App. 30, 51–52, 845 S.E.2d 182, 197–98 (2020) (citations omitted) ("[F]actors that suggest that the neglect or abuse

will be repeated include the presence of domestic violence in the home and ongoing substance abuse issues, unwillingness to engage in recommended services or work with or communicate with DSS regarding prior abuse and neglect, and failing to accept responsibility for prior adjudications[.]" (citations omitted)).

¶ 12 "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." *Matter of E.P.-L.M.*, 272 N.C. App. 585, 596, 847 S.E.2d 427, 436 (2020) (citation and internal quotation marks omitted). This Court will not disturb the trial court's ruling on appeal so long as "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." *In re J.W.*, 241 N.C. App. 44, 48, 772 S.E.2d 249, 253 (2015). We hold that the trial court did so here and that Respondents' argument is without merit.

B. Dependency

¶ 13 Respondents argue that "[t]he trial court erred in concluding that John was dependent where the findings did not support this conclusion."

¶ 14 N.C. Gen. Stat. § 7B-101(9) defines a "[d]ependent juvenile" in pertinent part as "[a] juvenile in need of assistance or placement because . . . the juvenile's parent . . . is unable to provide for the juvenile's care or supervision and lacks an appropriate alternative child care arrangement." N.C. Gen. Stat. § 7B-101(9). "Under this

definition, the trial court must address both (1) the parent's ability to provide care or supervision, and (2) the availability to the parent of alternative child care arrangements." *In re P.M.*, 169 N.C. App. 423, 427, 610 S.E.2d 403, 406 (2005). "Findings of fact addressing both prongs must be made before a juvenile may be adjudicated as dependent, and the court's failure to make these findings will result in reversal of the court." *In re L.C.*, 253 N.C. App. 67, 80, 800 S.E.2d 82, 91–92 (2017) (citation omitted).

¶ 15 With respect to prong (1), the trial court made the following findings of fact:

> j. On 3/24/21, DSS received a call from Respondent Mother during which she sounded very upset; she agreed to allow a female Social Worker to come pick her up with [John] and come to DSS.
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> k. When picking up Respondent Mother, DSS learned that the landlord's sister was on the property and very upset that the landlord was allowing Respondents to reside on the property without her knowledge. This issue was a concern previously raised by this Court as the Respondents had no lease or other legally enforceable right to their housing.
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> . . .
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> q. Arrangements were made by DSS for someone from the local domestic violence shelter to come speak to Respondent Mother and to take her to the shelter with [John].
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> . . .
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> s. As a result of these events, DSS took custody of the

> juvenile.
> . . .
>
> v. Social Worker Finn previously worked at the shelter prior to going to work for DSS and testified that the domestic violence shelter is only for victims of domestic violence defined as individuals in a romantic or familial relationship[]and not third parties like landlord/ tenants, roommates, for example.

¶ 16 Respondents challenge finding (k) above as unsupported by the evidence. However, testimony at trial indicated that after "the owner of th[e] property" at which Respondents lived "discover[ed] [Respondents] living at this house," she became upset that Respondents were living on the property. Testimony also tended to show that Respondents lacked a "signed lease" and that the lack of a lease "was previously discussed[,]" including in prior court proceedings involving Respondents. The evidence at trial thus supports finding of fact (k). *See In re B.O.A.*, 372 N.C. 372, 379, 831 S.E.2d 305, 310 (2019) (stating that "[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").

¶ 17 We hold that the foregoing findings adequately addressed "the parent's ability to provide care or supervision." *In re P.M.*, 169 N.C. App. at 427, 610 S.E.2d at 406. The trial court found as fact that "Respondents had no lease or other legally enforceable right to their housing[,]" and this finding was adequately supported by testimony at trial, as discussed *supra*. Moreover, Mother was living at the domestic

violence shelter and taking John to the shelter with her because of a domestic violence incident that occurred between Respondents. Accordingly, there was clear and convincing evidence and adequate findings of fact to indicate that Respondents were unable to provide proper care or supervision for John at the time the juvenile petition was filed.

¶ 18 With respect to an alternative child care arrangement, the trial court found that "[n]either parent suggested an appropriate alternative care provider for [John]." Respondent's argue that "[t]his finding is not supported by the evidence." However, Respondents point to nothing in the record or transcript to support their contention, and our review indicates that Respondents did not suggest an alternative care arrangement for John. Respondents further argue that "the issue is not whether the parents 'suggested' an alternative care arrangement[;] it is whether they *have* an alternative care arrangement." "Our courts have, however, consistently held that in order for a parent to have an appropriate child care arrangement, *the parent must have taken some action to identify viable alternatives*." *In re L.H.*, 210 N.C. App. 355, 364, 708 S.E.2d 191, 197 (2011) (emphasis added); *see also In re J.D.L.*, 199 N.C. App. 182, 188, 681 S.E.2d 485, 490 (2009) ("A conclusion that a juvenile is dependent may be supported by evidence that the parent is unable to care for the child *or to suggest* an appropriate alternative placement for the child." (emphasis added)). Respondents' argument is therefore without merit.

III. Conclusion

¶ 19 For the foregoing reasons, we affirm the order of the trial court.

AFFIRMED.

Chief Judge STROUD and Judge DILLON concur.

Report per Rule 30(e).