

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-422

No. COA21-798

Filed 21 June 2022

Wake County, Nos. 20JA174-75

IN THE MATTER OF: K.L. & V.P.L.

Appeal by Respondent-Appellant Mother from orders entered 9 April 2021 and 3 August 2021 by Judge V.A. Davidian, III, in Wake County District Court. Heard in the Court of Appeals 24 May 2022.

Robert W. Ewing for Respondent-Appellant Mother.

Mary Boyce Wells for the Petitioner-Appellee Wake County Health and Human Services.

Kilpatrick Townsend & Stockton LLP, by Susan H. Boyles and Ami P. Patel, for the Guardian ad Litem.

JACKSON, Judge.

¶ 1

Respondent-Appellant Mother appeals from the trial court's order adjudicating her children Kathy and Vicky¹ abused and neglected and from the trial court's order on disposition. After careful review, we affirm.

I. Background

¹ We use a pseudonym to protect the juveniles' privacy and for ease of reading. See N. C. R. App. P. 42(b).

¶ 2 In October 2020, Respondent-Mother and her husband lived in Raleigh with their two daughters, Kathy and Vicky. Kathy was born in August 2020 and Vicky was born in March 2019.

¶ 3 At 9:47 pm on 30 October 2020, Raleigh police received a 911 call that a shooting had occurred at the home of Respondent-Mother and her husband. Upon arrival, officers found the latter deceased in a chair in one of the bedrooms. He had been shot in the eye and was slouched in the chair, covered in blood. A handgun was located on the bed next to him.

¶ 4 While officers were inside the apartment, Respondent-Mother sat outside with Kathy and Vicky. Officers held Kathy as Respondent-Mother tried to console Vicky, who was very distraught. An officer later testified Respondent-Mother appeared calm and stated over and over that she shot her husband because he raped her daughter.

¶ 5 Respondent-Mother was then transported to the police station for questioning while Kathy and Vicky were taken to the Wake County Department of Human Services (“WCHS”). After being advised of her Miranda rights, Respondent-Mother again admitted that she had shot her husband at close range. Respondent-Mother was described as “calm and collected, even smiling through large portions of the interview,” except for getting upset when specifically talking about shooting her husband. She also stated that both children were present in the bedroom during the shooting. Kathy was in a crib directly behind the chair in which her father was shot.

Vicky was on the bed where the gun was eventually found, about two to three feet away from the chair.

¶ 6 Additionally, Respondent-Mother again alleged in the interview that she shot her husband after he confessed to sexually assaulting Kathy and Vicky, claimed he was John Wayne, and stated that he had enough and encouraged her to shoot him. However, Respondent-Mother also told police that her husband had never admitted to sexually assaulting the children, but that unspecified people and family members had given her the information. After the interviewing detective repeatedly asked Respondent-Mother who told her that her husband was sexually assaulting their children (and other children as well), she responded, “Nobody. God ruled. He did. The Virgin Mary did.” The allegations of sexual abuse have never been substantiated.

¶ 7 Upon completion of the interview, Respondent-Mother was arrested and charged with murder.

¶ 8 On 2 November 2020, WCHS filed juvenile petitions alleging that Kathy and Vicky were abused, neglected, and dependent. Additionally, WCHS obtained nonsecure custody of Kathy and Vicky and placed the children in foster care while WCHS assessed potential long-term familial placements. While in foster care, Vicky was reported to initially have issues eating as well as a fear of the bedroom and bed in her foster home. In fact, she was only able to fall asleep in her foster mother’s arms. She was also reported as suffering from nightmares and being triggered by

flashing blue lights. As such, she was given melatonin and a weighted blanket as sleep aids and was referred to Hope Services for mental health services. A clinician at Hope Services recommended Child Parent Psychotherapy for trauma, which Vicky attended weekly. Later, she was diagnosed with Acute Stress Disorder.

¶ 9 The matter came on for adjudication on 10 March 2021 before the Honorable V.A. Davidian, III, in Wake County District Court. At the conclusion of the hearing, the trial court adjudicated Kathy and Vicky abused and neglected. The court entered an Adjudication Order on 8 April 2021.

¶ 10 The matter proceeded to disposition shortly after the adjudication hearing and subsequently on 23 April 2021 and 7 May 2021. At the conclusion of the hearings, the trial court ordered that the children remain in WCHS custody until they could be placed with their paternal uncle in Tennessee.

¶ 11 Respondent-Mother entered timely written notice of appeal on 16 August 2021.

II. Standard of Review

¶ 12 We review adjudication orders to determine whether the trial court's findings of fact are supported by clear and convincing evidence, and whether the findings of fact support the trial court's conclusions of law. *In re C.B.*, 245 N.C. App. 197, 199, 783 S.E.2d 206, 208 (2016). The trial court's conclusions of law are reviewed *de novo*. *In re K.J.D.*, 203 N.C. App. 653, 657, 692 S.E.2d 437, 441 (2010). "Under a *de novo* review, the court considers the matter anew and freely substitutes its own judgment

for that of the lower tribunal.” *In re A.K.D.*, 227 N.C. App. 58, 60, 745 S.E.2d 7, 8 (2013) (citation omitted).

¶ 13 “An appellate court’s review of the sufficiency of the evidence is limited to those findings of fact specifically assigned as error.” *In re P.M.*, 169 N.C. App. 423, 424, 610 S.E.2d 403, 404 (2005). “Findings of fact not challenged by respondents are deemed supported by competent evidence and are binding on appeal. 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.” *In re D.M.*, 375 N.C. 761, 767, 851 S.E.2d 3, 9 (2020) (cleaned up). In this case, Respondent-Mother does not challenge the trial court’s findings of fact, so they are presumed to have been based on clear and convincing evidence. *In re P.M.*, 169 N.C. App. at 424, 610 S.E.2d at 404.

III. Analysis

¶ 14 We first review the trial court’s adjudication of Kathy and Vicky as neglected. The Juvenile Code defines “neglected juvenile” in pertinent part as a juvenile “whose parent, guardian, custodian, or caretaker . . . [d]oes not provide proper care, supervision, or discipline[]” or “[c]reates or allows to be created a living environment that is injurious to the juvenile’s welfare.” N.C. Gen. Stat. § 7B-101(15)(ii)(a), (e) (2021). To adjudicate a child neglected, our courts have “required that there be some physical, mental, or emotional impairment of the juvenile or a substantial risk of such

impairment as a consequence of [a parent's] failure to provide proper care, supervision, or discipline.” *In re Stumbo*, 357 N.C. 279, 283, 582 S.E.2d 255, 258 (2003) (internal marks and citation omitted). A substantial risk is sufficient: no actual harm is required. *See In re Helms*, 127 N.C. App. 505, 512, 491 S.E.2d 672, 676 (1997); *In re T.S.*, 178 N.C. App. 110, 113, 631 S.E.2d 19, 22 (2006); *In re K.H.*, 2022-NCCOA-3, ¶ 14, 867 S.E.2d 757, 762 (citation omitted) (“[F]or a court to find that the child resided in an injurious environment, evidence must show that the environment in which the child resided has resulted in harm to the child or a substantial risk of harm.”).

¶ 15 Here, the trial court made the following findings of fact pertaining to the adjudication of Kathy and Vicky as neglected:

10. On October 30, 2020, the mother shot and killed the children’s father following a domestic dispute while the children were present in the home. The shooting occurred in the mother and father’s bedroom. The youngest child, [Kathy], was lying in a crib directly behind the chair that the father was sitting in when he was shot. [Vicky] was on a bed located approximately two to three feet away from the father.

11. Police officers found the father slumped over the chair with his upper body soaked in blood and confirmed that he was dead.

12. The mother told responding law enforcement officers that she shot the father in the eye because he sexually molested [Vicky]. However, the mother’s story regarding why she shot him varied through several subsequent

interviews with detectives and social workers. She presented with a calm demeanor and frequently smiled during her initial interviews with law enforcement and Wake County Human Services.

13. The children resided at the home with their mother and [father] in Wake County at the time of the shooting.

14. The mother was immediately arrested and remains incarcerated at the Wake County Detention Center awaiting trial. Soon after she was placed in the back seat of a police vehicle for transport to the jail, she called her brother and stated that she killed [the father.]

15. Following the mother's arrest, Raleigh police took the children to the Wake County Human Services office building for temporary placement. The two-year-old child was crying and hard to console.

...

17. The mother displayed complete disregard for the children's welfare by intentionally shooting the father despite the children's close proximity. The children were placed at a substantial risk of physical, mental and emotional impairment.

¶ 16 Respondent-Mother argues that shooting her husband is an incident that standing alone is insufficient to show the children did not receive proper care, supervision, or discipline and that they lived in an environment injurious to their welfare. We disagree.

¶ 17 Our Court is required to review the conduct of parents on "a case-by-case basis considering the totality of the evidence[.]" *In re L.T.R.*, 181 N.C. App. 376, 384, 639 S.E.2d 122, 127 (2007), remembering "that not every act of negligence on the part of

parents or other care givers constitutes ‘neglect’ under the law and results in a ‘neglected juvenile.’” *In re Stumbo*, 357 N.C. at 283, 582 S.E.2d at 258. However, in this case, Respondent-Mother’s one act of violence created a substantial risk of impairment to Kathy and Vicky.

¶ 18 As the trial court found, both children were present in the room at the time of the shooting, with Kathy in a crib directly behind the chair where the husband sat and Vicky only two or three feet away. Such a proximity to gunfire endangered, at a minimum, the children’s physical safety, if not their mental and emotional wellbeing as well. At that moment, Respondent-Mother acutely failed to properly care for Kathy and Vicky and thereby created a substantial risk of impairment as a result. Furthermore, we have previously affirmed an adjudication of neglect based on one incident of parental misconduct that involved less severe circumstances. *See In re D.C.*, 183 N.C. App. 344, 353, 644 S.E.2d 640, 645 (2007) (“[R]espondent left her sixteen month old daughter alone in a Super 8 motel room for more than thirty minutes at four o’clock in the morning.”).

¶ 19 Ultimately, Respondent-Mother displayed a lack of parental concern by shooting her husband in front of Vicky and near both children. “An individual’s lack of parental concern for his child is simply an alternate way of stating that the individual has failed to exercise proper care, supervision, and discipline as to that child.” *In re J.L.K.*, 165 N.C. App. 311, 318, 598 S.E.2d 387, 392 (2004) (internal

marks and citation omitted). Our Court has previously determined that a parent showed a lack of concern by firing a gun in close proximity to their child. *See In re J.L.K.*, 165 N.C. App. at 319, 598 S.E.2d at 392 (2004) (affirming the termination of a father’s parental rights on the grounds of neglect and abandonment in part because the father showed up intoxicated at the mother’s home and “fired a gun into [the] residence while J.L.K., then approximately five months old, was inside”).

¶ 20 Accordingly, since Respondent-Mother’s single act of shooting her husband created a substantial risk of impairment, we hold that the trial court’s findings of fact support its conclusion that Kathy and Vicky are neglected juveniles pursuant to N.C. Gen. Stat. § 7B-101(15).

¶ 21 Because we affirm the trial court’s adjudication of Kathy and Vicky as neglected, we in turn affirm the trial court’s dispositional order without reviewing the trial court’s adjudication of Kathy and Vicky as abused. Accordingly, we decline to reach Respondent-Mother’s challenge to the abuse adjudication.

IV. Conclusion

¶ 22 For the foregoing reasons, we affirm the trial court’s orders on adjudication and disposition.

AFFIRMED.

Judges INMAN and ZACHARY concur.

Report per Rule 30(e).