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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-502

No. COA21-791

Filed 19 July 2022

Davie County, No. 14-JA-6

IN THE MATTER OF: J.L.L., Jr.

Appeal by Respondent-Appellant Father from orders entered 21 September 2021 and 2 November 2021 by Judge Jon W. Myers in Davie County District Court. Heard in the Court of Appeals 8 June 2022.

Jeffrey L. Miller for Respondent-Appellant Father.

Clemmons Family Law, by Holly M. Groce, for Petitioner-Appellee Davie County Department of Social Services.

Elon University Guardian ad Litem Appellate Advocacy Clinic, by Interim Dean Alan D. Woodlief, Jr., for the Guardian ad Litem.

JACKSON, Judge.

¶ 1 This case concerns the custody of Jack,[1] who was born in 2007. Respondent-Father appeals from the trial court's order adjudicating Jack as neglected and from the trial court's amended disposition order. Upon review, we affirm.

[1] We use pseudonyms for all the juveniles mentioned in this opinion to protect their privacy and for ease of reading. *See* N.C. R. App. P. 42(b).

I. Background

¶ 2 Jack is one of Respondent-Mother's nine children, eight of whom are minors. Respondent-Father is Jack's biological father.[2] Respondent-Father was confined in federal prison from 2008 until January 2021 for drug-related crimes. Upon release from prison, Respondent-Father began staying at Respondent-Mother's home several nights each week to build a relationship with Jack.

¶ 3 The family's history with DSS began in 2009, after Respondent-Father was incarcerated. Jack and his four oldest siblings were taken into DSS custody in 2014 due to substance abuse and domestic violence concerns involving Respondent-Mother and R. Carswell,[3] the father of some of Jack's siblings. Respondent-Mother satisfied her case plan, and the five children were returned to her custody in June 2015.

¶ 4 A separate juvenile proceeding concerning four of Jack's younger siblings—Annie, Ronnie, Apple, and Audrey—was initiated in November 2020. Respondent-Mother had left those four children in the care of R. Carswell despite DSS' prior warning not to do so. R. Carswell was discovered to be intoxicated and failing to properly supervise the children. The four children were removed from Respondent-Mother's custody and were adjudicated neglected juveniles on 29 January 2021. Jack

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[2] Though the Orders and Respondent-Father's Notices of Appeal reference four juveniles, of these four juveniles Respondent-Father is the biological parent of Jack only, and therefore this appeal pertains only to Jack. Respondent-Mother did not appeal.

[3] R. Carswell is believed to be the father of Adele, Annie, Ronnie, Apple, and Audrey.

was not included in the proceeding and was not removed from his mother's custody at that time.

¶ 5 Following the January adjudication, Respondent-Mother worked with DSS to plan for the return of the four children to her custody on a staggered schedule. Respondent-Mother was pregnant with her ninth child at the time. Annie was the first child to return for a trial home placement on 3 May 2021, and Ronnie was allowed unsupervised weekend visits at that time. The remaining two children were scheduled to return to Respondent-Mother sometime after she gave birth. Respondent-Mother gave birth to Virginia on 16 May 2021.

¶ 6 DSS maintained regular weekly contact in the home due to Annie's recent return. On 6 May 2021, DSS received a report alleging that Jack had choked Ronnie and that Respondent-Father had responded by choking Jack to teach him a lesson.[4] DSS investigated but did not remove any of the children. Instead, DSS established a voluntary safety plan regarding discipline and supervision with Respondent-Mother and Respondent-Father. The plan prohibited physical discipline of the children except for spanking with an open hand.

[4] The report was not offered or received for the truth of the matter asserted at the hearing, but rather received only to explain the subsequent actions of DSS regarding the children.

¶ 7 DSS received another report on 23 May 2021 alleging that Respondent-Father had punched Jack's older brother, then sixteen-year-old Robert, in the presence of Annie and Ronnie. The incident stemmed from Robert's behavior the night before. After Respondent-Mother had gone to bed, Robert snuck out of the house and brought his ten-year-old sister, Annie, to a party next door at R. Minor's[5] house. Robert and Annie may have consumed alcohol at the party. When Respondent-Mother awoke around 1:30 a.m. to feed the newborn Virginia, she discovered the two children were gone. She began looking for them and found Annie being walked home by two other people. Respondent-Mother found Robert at the party, but he refused to leave. She returned home, sent Annie to bed, and returned to bed herself.

¶ 8 Around 7:30 a.m. the following morning, Respondent-Mother found Robert sitting on the couch with his girlfriend. Annie and Ronnie were also present when Respondent-Mother confronted Robert about taking his sister to a party. Respondent-Mother stated during the adjudication hearing that Robert grabbed her and punched her, and that she responded by punching him. Respondent-Father heard the disturbance and intervened by pulling Robert off of Respondent-Mother and restraining him. Robert called 911 for assistance and was treated at the hospital for a swollen eye, busted lip, and bloody nose. Respondent-Father was later charged

[5] R. Minor is the father of Virginia.

with assault for the incident. The trial court found that it was not clear who had caused Robert's injuries, but that they were caused by an adult in the home. Jack was not in the room when this incident occurred and only became aware of it when he saw Robert's bloody nose.

¶ 9 Following its investigation of this incident, DSS filed juvenile petitions on 1 June 2021 and obtained nonsecure custody of Jack, Robert, Adele, and Virginia. Annie, Ronnie, Apple, and Audrey remained in DSS custody.

¶ 10 The matter came for adjudication on 16 August 2021 before the Honorable Jon W. Myers in Davie County District Court. At the conclusion of the hearing, the trial court adjudicated Jack, Robert, Adele, and Virginia as neglected, and Robert and Adele as dependent. The original disposition order, entered 21 September 2021, did not include visitation between Respondent-Father and Jack.

¶ 11 Respondent-Father entered timely written notice of appeal from the trial court's adjudication and disposition orders on 20 October 2021. On 2 November 2021, the trial court entered an amended disposition order, which granted Respondent-Father at least two supervised two-hour visits with Jack each week. Respondent-Father appealed the amended disposition order on 30 November 2021.

II. Standard of Review

¶ 12 We review an order adjudicating a juvenile neglected to determine whether the trial court's findings of fact are supported by clear and convincing evidence, and

whether those findings support the conclusions of law. *In re T.N.H*, 372 N.C. 403, 406, 831 S.E.2d 54, 58 (2019). "Whether a child is 'neglected' is a conclusion of law which must be supported by adequate findings of fact." *In re McLean*, 135 N.C. App. 387, 390, 521 S.E.2d 121, 123 (1999). We review the trial court's conclusions of law *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, we consider the matter anew and freely substitute our judgment for that of the trial court. *In re K.L.*, 272 N.C. App 30, 36, 845 S.E.2d 182, 189 (2020).

III. Analysis

¶ 13 Respondent-Father argues the trial court erred in adjudicating Jack as neglected. First, he contends that the evidence was not clear and convincing, and second that the findings of fact were insufficient to support a conclusion that Jack was neglected. Specifically, Respondent-Father argues that the findings of fact did not establish that Jack suffered a lack of proper care, supervision, or discipline, that Jack resided in an environment injurious to his welfare, or that Jack suffered any physical, mental, or emotional impairment or substantial risk thereof. We disagree.

A. The Use of Abuse or Neglect of Siblings as a Basis for Neglect

¶ 14 Under the North Carolina Juvenile Code, a "neglected juvenile" is one "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). The statute notes that "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.* § 7B-101(15).

¶ 15 However, evidence of the abuse or neglect of another juvenile is not conclusive. "Rather, the statute affords the trial judge some discretion in determining the weight to be given such evidence." *In re Nicholson*, 114 N.C. App. 91, 94, 440 S.E.2d 852, 854 (1994). Although the statutory definition of a neglected juvenile does not explicitly require injury to the child, "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, 901-02 (1993) (internal marks omitted). "In determining whether a child is neglected based upon the abuse or neglect of a sibling, '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 D.B.J.*, 197 N.C. App. 752, 755, 678 S.E.2d 778, 780 (2009) (quoting *McLean*, 135 N.C. App. at 396, 521 S.E.2d at 127).

¶ 16 This Court has also required that the trial court identify "other factors to suggest that the abuse or neglect will be repeated." *In re J.C.B.*, 233 N.C. App. 641, 644, 757 S.E.2d 487, 489 (2014). Factors that North Carolina courts have considered when assessing the risk of future abuse or neglect include "exposing the child to acts

of domestic violence, abuse of illegal substances, and threatening or abusive behavior toward social workers and police officers in the presence of the child[]." *In re D.B.J.*, 197 N.C. App. at 755, 678 S.E.2d at 781. Another relevant factor is whether an adult in the home exhibits "a pattern of conduct either causing injury or potentially causing injury to the juvenile." *In re Stumbo*, 357 N.C. 279, 283, 582 S.E.2d 255, 258 (2003).

¶ 17 In *In re P.M.*, 169 N.C. App. 423, 610 S.E.2d 403 (2005), this Court affirmed the trial court's determination that P.M. was neglected based upon the neglect of P.M.'s four siblings. *Id.* at 428, 610 S.E.2d at 406-07. The trial court found that P.M.'s mother twice violated a court-ordered protection plan and failed to take responsibility for harm that befell her children as a result of her conduct. *Id.* at 425, 610 S.E.2d at 405. P.M.'s four siblings were adjudicated neglected when P.M.'s mother violated a DSS safety plan, resulting in sexual abuse of one of the siblings by a third party. *Id.* After P.M. was born, P.M.'s mother entered another safety plan with DSS, and a trial court left custody of P.M. with the mother, stating that "the plan should be followed." *Id.* (emphasis omitted). When the mother violated this safety plan, the court adjudicated P.M. neglected based on the mother's repeated violations and failure to accept responsibility for the consequences of her actions. *Id.* at 425-26, 610 S.E.2d at 405. This Court held that this pattern of behavior was sufficient to support the determination that P.M. was neglected. *Id.* at 427, 610 S.E.2d at 406.

¶ 18 In contrast, in *In re J.C.B.*, 233 N.C. App 641, 757 S.E.2d 487, this Court reversed an adjudication of three juveniles as neglected based upon the abuse of a fourth juvenile in the home. The trial court made few findings of fact regarding the three juveniles in question, and "wholly failed to make any finding of fact that [the three juveniles] were either abused themselves or were aware of [the abuse]." *Id.* at 644, 757 S.E.2d at 489. Additionally, the trial court made no findings of fact regarding other factors indicating a risk of repeated abuse. *Id.* at 644, 757 S.E.2d at 489-90. This Court therefore determined that the findings of fact did not support a conclusion that there was a "substantial risk" of abuse or neglect of the three juveniles. *Id.* at 644-45, 757 S.E.2d at 490.

¶ 19 These cases demonstrate this Court requires findings of fact regarding a risk of future neglect of the juvenile in question when a neglect adjudication is based upon the neglect or abuse of another juvenile in the home. Additionally, a pattern of behavior on the part of the adult or adults in the home may be used to support a neglect adjudication if the trial court determines the pattern indicates a risk of repeated abuse or neglect.

B. The Adjudication of Jack as Neglected

¶ 20 The trial court made the following relevant findings of fact in support of adjudicating Jack neglected:

3a. The Department has a long history with the family

dating back to 2009. [Robert, Jack, and Adele] have been in the custody of the Department in [sic] 2014-2015. Custody of those children was restored to Respondent Mother in 2015.

3b. Respondent Mother has four other children who are currently in the custody of the Department. Respondent Mother has a ninth child who just attained the age of majority.

3c. When the children were removed previously, the issues that needed to be addressed were domestic violence, parenting, substance use and improper supervision. Respondent Mother addressed these concerns in 2015 and the children were restored to her.

3d. The Department became involved again with the family in 2020 when Respondent Mother left four of her children with [R. Carswell] at a local motel. The Department had previously warned Respondent Mother that [R. Carswell] was not an appropriate child-care arrangement for the children because of [his] substance use and violence between he and Respondent Mother. . . .

3e. While in the care of [R. Carswell], [R. Carswell] became so intoxicated that the four children were left in the motel with no supervision. The children were adjudicated as neglected juveniles on January 29, 2021.

3f. At a permanency planning hearing on May 3, 2021, the Court allowed the child, [Annie], to be placed in a trial home placement with Respondent Mother. The other three children were to be returned to Respondent Mother in stages so that Respondent Mother could have time to recover from giving birth to the ninth child, [Virginia]. [Annie] was placed in a trial home placement with Respondent Mother on May 3, 2021. On May 6, 2021 the Department received a report that [Respondent-Father] had allegedly choked [Jack]. The Department put into place a safety plan with the family where Respondent

Mother and [Respondent-Father] agreed to not use physical discipline on the children, except for a spanking on the bottom with an open hand.

3g. While the previous investigation remained open, the Department received another report on May 23, 2021. The report alleged that [Respondent-Father] had punched [Robert] in the cave [sic] and that the child had marks and bruises. The child, [Robert], was taken to the hospital for treatment of a swollen eye, busted lip and bloody nose. [Robert] called 911 to get assistance.

3h. Deputy Justin Sherrill arrived at the home in response to an alleged assault. He observed the child, [Robert], and [Robert's] girlfriend at the home. He observed [Robert] to have a swollen eye and busted lip. [Respondent-Father] was charged with inflicting the injuries.

. . .

3j. Respondent Mother stated that on May 23, 2021, [Robert] took [Annie] to a party at the neighbor's house after Respondent Mother went to bed. [Annie], age 10, consumed alcohol while at the party. The neighbor is [R. Minor], the father of [Virginia]. Respondent Mother stated she was tired from having a newborn and did not know [Robert] and [Annie] left her house. . . .

3k. At approximately 7:30 am, [Robert] was sitting on the couch with his girlfriend. Respondent Mother states that she struck [Robert] and that [Robert] was fighting back with her. [Respondent-Father] broke up the fight between the two.

3l. Deputy Sherill stated that when he asked Respondent Mother what happened to [Robert], Respondent Mother stated "He deserved it. Let him hit me again. He's lucky I didn't [] kill him right now. I'm gonna beat his [] ass, best thing he needs to do is to get out of my

[] house."

. . .

3n. During the altercation between Respondent Mother, [Respondent-Father] and [Robert], the children [Jack, Ronnie, Annie, Robert, and Robert's] girlfriend were all in the home.

3o. Respondent Mother has previously identified [R. Minor] as a support for her. Respondent Mother indicates she has no concerns for [R. Minor]. [R. Minor] is currently incarcerated.

. . .

3r. The Court finds that there is a substantial history of DSS involvement with this family. In this instance, Respondent Mother signed a safety plan that prohibited the use of force with the children. That plan was admittedly violated although Respondent Mother blames the child, [Robert], for the violation.

3s. Respondent Mother had previously left four children in the care of [R. Carswell] in violation of DSS' instruction to her. Respondent Mother left the children at the Scottish Inn with [R. Carswell] and two other adults meaning seven people were in the motel room. Respondent Mother acknowledged that [R. Carswell] has a substance abuse issue and she is not aware of any treatment he received. The Court is concerned that Respondent Mother does not make appropriate child care arrangements for the children and the children are ultimately not supervised properly.

. . .

3u. The Court acknowledges that the juvenile code is concerned about the status of the children and not who inflicted [Robert's] injuries. The Court is concerned about the acts and omissions that led to the child's injuries. This

> all occurred while [Annie] was in a trial home placement with Respondent Mother and [Ronnie] was visiting.
>
> 3v. While it is in dispute between the child, Respondent Mother and [Respondent-Father] about who inflicted the injuries, it is clear that the child was injured. Further, it is clear that [Annie] went to the home of [R. Minor] during the night and alleged to have consumed alcohol. It is also clear that on May 23 when the incidence [sic] occurred, there was a safety plan in place that prohibited such discipline.
>
> 3w. The Court finds that the environment in which the children were residing was injurious and that the children did not receive proper care and supervision. . . .
>
> 4. That the court finds the evidence alleged in the juvenile petition to be true based upon clear, cogent, and convincing evidence.

¶ 21 Respondent-Father argues that the evidence admitted in this case is not "fully convincing" of Jack's status as a neglected juvenile. We are unpersuaded.

¶ 22 Respondent-Father is correct that no convincing evidence tends to show Jack had suffered any physical, mental, or emotional impairment. There was, however, evidence Jack faced a "substantial risk of such impairment as a consequence of the failure to provide 'proper care, supervision, or discipline.'" *Safriet*, 112 N.C. App. at 752, 436 S.E.2d at 902. Clear and convincing evidence tended to show Jack resided "in a home where another juvenile has been subjected to abuse or neglect by an adult who regularly lives in the home," N.C. Gen. Stat. § 7B-101(15), and that other factors existed to indicate a risk of future neglect.

¶ 23 First, although not conclusive, it is relevant that Jack's four younger siblings were removed from Respondent-Mother's custody in November 2020 and subsequently adjudicated neglected. As stated in *Nicholson*, 114 N.C. App. at 94, 440 S.E.2d at 854, "the trial judge [has] some discretion in determining the weight to be given such evidence." Further, the evidence of Robert's injuries, including photographs, oral testimony, and written descriptions, was sufficiently clear and convincing to find that Robert "was involved in an altercation with an adult from which he sustained an injury." Jack was living in Respondent-Mother's house at the time of the altercation, and Respondent-Father also stayed in the home three to four nights each week. Thus, regardless of who inflicted Robert's injuries, Jack was living "in a home where another juvenile ha[d] been subjected to abuse or neglect by an adult who regularly live[d] in the home." N.C. Gen. Stat. § 7B-101(15). Although Respondent-Father argues that Jack was not involved in the earlier adjudication and was not witness to the incident with Robert, our cases show that a juvenile does not need to be present for or aware of the abuse or neglect of a sibling in order to be adjudicated neglected. *See, e.g.*, *McLean*, 135 N.C. App at 396, 521 S.E.2d at 127 (affirming the neglect adjudication of an infant based partially on the death of an older sibling before the infant was born).

¶ 24 Second, there was sufficient evidence for the trial court to appropriately address "the historical facts of the case." *McLean*, 135 N.C, App. at 396, 521 S.E.2d

at 127. The foster care supervisor testified, and Respondent-Mother confirmed, that DSS previously removed five of Respondent-Mother's children, including Jack, for concerns including improper supervision. The foster care supervisor also testified, and Respondent-Mother confirmed, that four other children were removed from Respondent-Mother's custody due to improper care and supervision. Regarding that case, the foster care supervisor stated that the department "had previously been involved and advised respondent mother not to allow [R. Carswell] to supervise the minor children based on concerns for his drug use." Yet Respondent-Mother "consistently identified him as a provider of supervision." Additionally, the foster care supervisor testified that Respondent-Mother expressed concerns about R. Minor providing alcohol to her children and being sexually inappropriate with Adele, but Respondent-Mother testified that she had no concerns about her children interacting with R. Minor. These instances are clear and convincing evidence in support of the trial court's finding that "the children are ultimately not supervised properly."

¶ 25 Respondent-Father argues that evidence of the safety plan put in place by DSS following the 6 May 2021 incident, in which Respondent-Father was reported to have choked Jack, was not clear and convincing because neither the plan itself nor its specific terms were received into evidence. It is true that the report precipitating DSS' initial investigation was not offered for the truth of the matter asserted, and no clear evidence tends to show Respondent-Father choked Jack. However, three

individuals testified a safety plan was in place at the time of the incident with Robert on 23 May 2021. As such, sufficient evidence establishes a safety plan was in place during the 23 May incident. Additionally, Respondent-Mother testified that she punched Robert during their altercation. This is clear and convincing evidence that the safety plan, in which Respondent-Mother and Respondent-Father agreed to of no physical discipline with the exception of spanking with an open hand, was violated, regardless of who initiated the contact.

¶ 26 Ultimately, Respondent-Father argues that the trial court's findings of fact do not support its conclusions of law because there are no findings that specifically address any actual impairment to Jack. Respondent-Father specifically challenged Findings 3a-h, j-l, n, r, s, u, and v as not supporting the trial court's conclusions of law. We are again unpersuaded.

¶ 27 When viewed as a whole, the trial court's findings "suggest that the neglect or abuse will be repeated." *In re J.C.B.*, 233 N.C. App. at 644, 757 S.E.2d at 489. The court noted multiple instances of improper care or supervision of Respondent-Mother's children—see Findings 3a-f, j-l, r, s—that indicate a pattern of behavior potentially causing injury to all of the children. As we held in *In re P.M.*, 169 N.C. App. 423, 610 S.E.2d 403, the neglect or abuse of a sibling combined with an injurious pattern of behavior on the part of a parent is sufficient to adjudicate a juvenile neglected. Unlike the trial court in *In re J.C.B.*, 233 N.C. App 641, 757 S.E.2d 487,

this trial court did find the presence of "other factors" indicating the neglect would be repeated, specifically other instances of improper care or supervision.

¶ 28 Additionally, Respondent-Father argues that Finding 4 is "a wholesale reference to allegations in a juvenile petition" without making any specific finding of ultimate fact. Respondent-Father relies on our holding in *In re Anderson*, 151 N.C. App 94, 97, 564 S.E.2d 599, 602 (2002) in doing so. However, this case is distinguishable. In *Anderson*, the finding at issue stated that "[t]he grounds *alleged* for terminating the parental rights are as follows: [The order then lists in subsections a combination of grounds and case history.]," without any mention of truth or falsity. *Id.* (emphasis in original). Here, the trial court does not merely state that facts were alleged but finds that they are "true based upon clear, cogent, and convincing evidence." This is a finding, not a "mere recitation[] of allegations." *Id.* Respondent-Father does not challenge the sufficiency of the evidence for Finding 4.

¶ 29 Lastly, we note that Finding 3w is mislabeled, and we now reclassify it properly as a conclusion of law.[6] As such, we review it *de novo*. The conclusion of law that "the environment in which the children were residing was injurious and that the children did not receive proper care and supervision" is supported by findings of

[6] "When this Court determines that findings of fact and conclusions of law have been mislabeled by the trial court, we may reclassify them, where necessary, before applying our standard of review." *In re Foreclosure of Gilbert*, 211 N.C. App. 483, 487-88, 711 S.E.2d 165, 169 (2011) (citations omitted).

injury to Robert and multiple instances of improper care or supervision of Respondent-Mother's children—see Findings 3c-g, j-l, r, s. This pattern of improper care and supervision demonstrates a substantial risk that the neglect will be repeated in regard to all of Respondent-Mother's children, including Jack. Thus, we agree with the trial court's conclusion.

IV. Conclusion

¶ 30 For the foregoing reasons, we affirm the trial court's adjudication of Jack as a neglected juvenile, thereby affirming the amended disposition order as well.

AFFIRMED.

Judges DILLON and TYSON concur.

Report per Rule 30(e).