IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-661

No. COA22-8

Filed 4 October 2022

Randolph County, Nos. 20 JA 106–09

IN THE MATTERS OF: C.L.K., E.R.K., J.A.S., R.L.T.

Appeal by respondent-mother from orders entered 3 May 2021 and 11 August 2021 by Judge Scott C. Etheridge in Randolph County District Court. Heard in the Court of Appeals 19 September 2022.

Lauren Vaughan for petitioner-appellee Randolph County Department of Social Services.

David A. Perez for respondent-appellant mother.

Ellis & Winters LLP, by Steven A. Scoggan, for guardian ad litem.

PER CURIAM.

¶ 1 Respondent appeals the trial court's orders adjudicating her children Carlie and Jennifer abused, neglected, and dependent; adjudicating her children Edward and Richard[1] neglected and dependent; and continuing custody of all four children with the Randolph County Department of Social Services. Her sole argument on appeal is that the trial court erred in ceasing reunification efforts. For the reasons

[1] We use pseudonyms to protect the juveniles' identities and for ease of reading.

explained below, we affirm the trial court's orders.

Facts and Procedural History

¶ 2 Respondent is the mother of Carlie, Edward, Jennifer, and Richard. On 10 July 2020, the Randolph County Department of Social Services received a report that thirteen-year-old Jennifer had been sexually assaulted by Respondent's boyfriend, Mr. K., who is the biological father of Carlie and Edward. At the time, Mr. K. lived with Respondent and the children. On 13 July 2020, DSS conducted a safety assessment and identified the alleged sexual assault as well as the unhygienic and unsafe state of the home as needs requiring intervention. Respondent stated that she was willing and able to protect the children from Mr. K. Respondent entered into a safety agreement with DSS, agreeing to remove Mr. K. from the home and prevent contact between him and the children, clean the home, and place the children with a temporary safety placement until the home was safe for their return.

¶ 3 On 11 August 2020, Jennifer underwent a child medical evaluation, where she disclosed that Mr. K. began touching her breasts, butt, and vagina, both over and under her clothes, when she was eight years old. She also reported that Mr. K. had masturbated in front of her while showing her pornographic videos, began forcing her to perform oral sex on him when she was eleven years old, and had anal sex with her on numerous occasions, the last time being in April 2020. Jennifer indicated that as she got older, Mr. K. would give her money to engage in sexual activity.

¶ 4 Jennifer stated that she told Respondent about the abuse in April or May 2020, but Respondent did not report the abuse, and Mr. K. remained in the home until July 2020, when Jennifer's call to 911 triggered DSS's involvement. Jennifer stated that Respondent confronted Mr. K., who at first denied the accusations, but then admitted to their truth. Jennifer reported that Mr. K. was not supposed to have any contact with her and her siblings, but he spent time with the family a few days before the medical evaluation. Jennifer stated that Respondent made the children turn off their phones to prevent the police from tracking them, and she told the children to not call Mr. K. by his name. Edward then spent the night with Mr. K., and Respondent later took Carlie to see him. Jennifer reported that Respondent was angry with her for reporting the abuse and told Jennifer that DSS would take the children if she told the truth at the medical evaluation. Jennifer reported that Respondent took her phone, and she would only return it if Jennifer lied at the medical evaluation and said the abuse did not happen. Respondent reported to DSS and at the medical evaluation that Jennifer often lied, and she did not believe Jennifer's accusations against Mr. K.

¶ 5 Following Jennifer's child medical evaluation, DSS filed juvenile petitions alleging that Carlie, Edward, and Richard were neglected juveniles, and Jennifer was an abused and neglected juvenile, based on the allegations of Jennifer's sexual abuse, Respondent's violation of the safety plan, and the unsafe conditions of the home. DSS

obtained nonsecure custody and placed the children in foster homes.

¶ 6 Fifteen-year-old Richard and five-year-old Edward had child medical evaluations on 20 August 2020. Edward reported that Richard, Jennifer, and Carlie had touched his penis or licked his penis and butt. Edward also reported that Richard showed him pornographic images. The examiner was concerned that both Richard and Edward were neglected and had been sexually abused.

¶ 7 Four-year-old Carlie's foster mother expressed concern about her dental health and low weight, and she was seen by a pediatric dentist in August 2020. The dentist reported that Carlie had the "worst case of dental decay, neglect and infection" he had seen in twenty-six years of practice. All twenty of Carlie's teeth required surgical removal. DSS also reestablished routine medical care for Carlie's multiple conditions, including severe scoliosis, acute and chronic respiratory failure, failure to thrive, a tracheostomy, a gastrostomy tube for feeding, a prior surgical repair of her heart that required monitoring, and delays requiring speech and occupational therapy. Carlie had not received care for her conditions for over a year.

¶ 8 Based on the information obtained from the children's evaluations, DSS filed juvenile petitions on 27 January 2021 alleging all four children were abused, neglected, and dependent juveniles. The petitions alleged that Mr. K. had been charged with felony statutory sex offense and felony indecent liberties with a child based on his abuse of Jennifer; Richard had reported physical abuse by Mr. K.;

Jennifer had reported physical abuse by Respondent; Edward reported inappropriate touching from his siblings and had been exhibiting sexualized behaviors; and Jennifer and Richard both expressed fear of returning to Respondent and Mr. K.'s care. The petitions further alleged that Respondent had failed to provide necessary medical care for Carlie's multiple medical diagnoses, and her failure to treat Carlie's scoliosis and tooth decay resulted in worsening conditions that required surgery to remediate.

¶ 9 The trial court held an adjudication hearing on the petitions on 24 March 2021. The trial court entered an order on 3 May 2021 adjudicating Jennifer and Carlie to be abused, neglected, and dependent juveniles and adjudicating Edward and Richard to be neglected and dependent juveniles. The trial court held the disposition hearing on 19 May 2021. In the disposition order, the trial court found and concluded that reasonable efforts for reunification between Respondent and the children "shall not be required," pursuant to N.C. Gen. Stat. § 7B-901(c)(1)(a) and (f). The court determined it was in the children's best interests that DSS be relieved of reunification efforts with Respondent.[2]

Analysis

¶ 10 Respondent's sole argument on appeal is that the trial court erred in ceasing reunification efforts because the disposition order failed to include the findings

[2] The order also relieved DSS of efforts to reunify Carlie and Edward with Mr. K., but Mr. K. is not a party to this appeal.

required by N.C. Gen. Stat. § 7B-901(c)(1). "This Court reviews an order that ceases reunification efforts to determine whether the trial court made appropriate findings, whether the findings are based upon credible evidence, whether the findings of fact support the trial court's conclusions, and whether the trial court abused its discretion with respect to disposition." *In re C.M.*, 183 N.C. App. 207, 213, 644 S.E.2d 588, 594 (2007). "An abuse of discretion occurs when the trial court's ruling is so arbitrary that it could not have been the result of a reasoned decision." *In re J.H.*, 373 N.C. 264, 268, 837 S.E.2d 847, 850 (2020).

¶ 11 The trial court may cease reunification efforts at the initial disposition hearing following an adjudication of abuse, neglect, or dependency under limited circumstances. Relevant to this case, N.C. Gen. Stat. § 7B-901(c) provides that:

> If the disposition order places a juvenile in the custody of a county department of social services, the court shall direct that reasonable efforts for reunification as defined in G.S. 7B-101 shall not be required if the court makes written findings of fact pertaining to any of the following, unless the court concludes that there is compelling evidence warranting continued reunification efforts:
>
> (1) A court of competent jurisdiction determines or has determined that aggravated circumstances exist because the parent has committed or encouraged the commission of, or allowed the continuation of, any of the following upon the juvenile:
>
> a. Sexual abuse.
>
> . . .

> f. Any other act, practice, or conduct that increased the enormity or added to the injurious consequences of the abuse or neglect.

N.C. Gen. Stat. § 7B-901(c)(1).

¶ 12 Here, the trial court found there was "clear, cogent, and convincing evidence that reasonable efforts for reunification" between Respondent and the children "shall not be required because a court of competent jurisdiction determined that aggravated circumstances" existed where (1) Respondent "committed or encouraged the commission of, or allowed the continuation of" Jennifer's sexual abuse, pursuant to N.C. Gen. Stat. § 7B-901(c)(1)(a), and (2) Respondent's "act, practice, or conduct [ ] increased the enormity or added to the injurious consequences" of the abuse and neglect of Carlie and Jennifer, and the neglect of Edward and Richard, pursuant to N.C. Gen. Stat. § 7B-901(c)(1)(f). Respondent contends that the trial court "never actually found and identified 'any act, practice, or conduct . . . that increased the enormity or added to the injurious consequences of the abuse or neglect,'" as required by Section 7B-901(c)(1)(f). She asserts the statute "does not allow a trial court to simply regurgitate the statutory language," and that the court must "specifically identif[y]" the conduct within the same finding that includes the statutory language, citing *In re A.W.*, 377 N.C. 238, 2021-NCSC-44, ¶ 31–32, for support.

¶ 13 Respondent's argument is without merit. In *In re A.W.*, our Supreme Court concluded that sufficient evidence supported the trial court's finding that the parents

"consistently worked together to conceal what happened" in the death of their child, and this "conduct increased the enormity and added to the consequences of neglect." *Id.* But there is no language to suggest that the "act, practice, or conduct" must be contained within the finding that references N.C. Gen. Stat. § 7B-901(c)(1)(f).

¶ 14 Here, while the four findings of fact that reference N.C. Gen. Stat. § 7B-901(c)(1) do not include Respondent's specific "act, practice, or conduct," the court made 280 other findings of fact, many of which extensively detail the abuse and neglect suffered by the children, as well as Respondent's actions and conduct that "increased the enormity or added to the injurious consequences of the abuse [and] neglect." The court found that Respondent knew that Mr. K. was sexually abusing Jennifer, but she "discredit[ed]" Jennifer's disclosure, chose to allow Mr. K. to remain in the home with all the children for months, and violated the safety plan after he left the home, resulting in an unsafe environment that continually put the children at risk for sexual abuse. Respondent failed to provide dental care for the children, resulting in extensive efforts to remediate the decay and infection and prevent future complications with Richard and Edward's teeth. Respondent was aware of the unconscionable level of decay in Carlie's teeth, yet she still refused to obtain appropriate care, which will "likely" result in long-term implications to Carlie's dental development and could have resulted in her death. Respondent knew Carlie had extensive medical needs, but she refused to obtain appropriate care, including having

Carlie's feeding tube and tracheostomy replaced and having Carlie casted to slow the progression of her scoliosis.

¶ 15 Respondent does not challenge any of these findings, and thus they are binding on appeal. *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991). Respondent's history of ignoring the health and safety of the children supports the trial court's findings that her actions and conduct increased the enormity or added to the injurious consequences of the abuse or neglect the children suffered under her care. *See In re A.W.*, ¶ 32.

¶ 16 Respondent also challenges a portion of the court's finding of fact 262, which indicated DSS sought a cessation of reunification efforts with Respondent because the children had "either been severely neglected, physically or sexually abused, or abuse[d] by [being] in [an] environment that created a substantial risk of serious physical injury . . . by other than accidental means." Respondent contends the court erred in finding the children were "severely neglected" because the court did not find "severe neglect" at adjudication.

¶ 17 Respondent's argument is based upon a mischaracterization of finding of fact 262 and is without merit. The finding contains the trial court's summation of DSS's dispositional assessments and recommendations contained in their pretrial report; the finding does not constitute the trial court's determination that the children were "severely neglected." To the extent that it is a recitation of evidence, we disregard

finding of fact 262. *In re N.D.A.*, 373 N.C. 71, 75, 833 S.E.2d 768, 772 (2019).

¶ 18 Regardless, finding of fact 262 is unnecessary for our analysis. The trial court made extensive, unchallenged written findings of fact pertaining to, and specifically identifying, Respondent's acts and conduct "that increased the enormity or added to the injurious consequences of the abuse or neglect," as required by N.C. Gen. Stat. § 7B-901(c)(1)(f). These findings support the court's determination that efforts to reunify Respondent with the children were not required. Accordingly, we affirm the trial court's adjudication and disposition orders.

AFFIRMED.

Panel consisting of Judges DILLON, DIETZ, and HAMPSON.

Report per Rule 30(e).