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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-660

No. COA21-758

Filed 4 October 2022

Scotland County, No. 21 JA 1

IN THE MATTER OF: C.C.

Appeal by respondent-father from orders entered 5 May 2021 and 11 June 2021 by Judge Amanda L. Wilson in Scotland County District Court. Heard in the Court of Appeals 19 September 2022.

Brandi Jones Bullock for petitioner-appellee Scotland County Department of Social Services.

N.C. Administrative Office of the Courts, Guardian Ad Litem Program, by Staff Counsel Michelle FormyDuval Lynch, for guardian ad litem.

J. Thomas Diepenbrock for respondent-appellant father.

PER CURIAM.

¶ 1

Respondent-father (“Father”) appeals from the trial court’s adjudicatory and dispositional orders entered on 5 May 2021 and 11 June 2021, respectively, that adjudicated his daughter, C.C. (“Catherine”),¹ to be an abused and neglected juvenile and continued her custody with petitioner Scotland County Department of Social

¹ A pseudonym to protect the identity of the juvenile and for ease of reading.

Services (DSS). We affirm.

I. Background

¶ 2

On 5 January 2021, DSS filed a petition seeking nonsecure custody of fifteen-year-old Catherine, alleging that she was an abused and neglected juvenile. Specifically, the petition alleged as follows: DSS began an investigation upon its receipt of a report on 16 November 2020 that Catherine was being sexually abused by Father. Catherine was removed from her parents' home and placed with her paternal step-grandfather. Catherine disclosed that Father had been molesting her since she was six years old. Catherine's mother soon began to doubt the allegations, requested that Catherine take a polygraph test, and notified DSS that she was going to move back into the home with respondent-father. Catherine's mother admitted to marijuana use and tested positive for THC on a requested drug screen.

¶ 3

On 23 November 2020, Catherine completed a Child Medical Evaluation (CME) at The Butterfly House, which concluded that "[Catherine's] story was consistent with a child who ha[d] been sexually assaulted." Despite safety plan directives that no one was to discuss the case with or mention Father to Catherine, Catherine reported on 4 January 2021 that "she d[id] not feel safe and comfortable with continued contact with her mother due to her mother's continued blaming and discussion of the sexual abuse."

¶ 4

The matter was heard on 1 April 2021. At the conclusion of the adjudicatory

portion of the hearing, the trial court rendered its decision that Catherine was an abused and neglected juvenile and continued the dispositional portion of the hearing.

¶ 5

The following month, on 5 May 2021, the trial court entered an order adjudicating Catherine to be an abused juvenile “in that [her] parent, guardian, custodian, or caretaker has committed, permitted, or encouraged the commission of a sex or pornographic offense by, with, or upon [her] in violation of the criminal law” and a neglected juvenile “in that [she] did not receive proper care or supervision from the parents, and that she lives in an environment injurious to [her] welfare[.]” Catherine’s adjudication was based on findings consistent with the allegations in the juvenile petition, including that Catherine had been sexually abused in the home by Father beginning when she was six years old and continuing until she was removed from the home at age fifteen; that the mother initially believed Catherine’s allegations but then changed her mind; and that there was routine marijuana use in the home while Catherine and her brother were present.

¶ 6

The matter came back on for the dispositional portion of the hearing on 13 May 2021. On 11 June 2021, the trial court entered a dispositional order that continued legal and physical custody of Catherine with DSS and ordered there be no contact between the parents and Catherine. Father appeals.

II. Analysis

¶ 7 On appeal, Father seeks to vacate the adjudicatory and dispositional orders based on alleged errors during the adjudicatory hearing.

¶ 8 This Court generally reviews an adjudication order “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), *aff’d as modified*, 362 N.C. 446, 665 S.E.2d 54 (2008). Here, however, Father does not argue the trial court’s findings regarding the sexual abuse and the conditions in the home are unsupported by the evidence, or that the trial court’s conclusions that Catherine was an abused and neglected juvenile are unsupported by the findings. He instead argues (1) the trial court erroneously considered a DSS predisposition report for adjudicatory purposes and (2) he was deprived of a fundamentally fair adjudication proceeding in violation of his constitutional rights. We address these issues in turn.

A. DSS Report

¶ 9 Section 7B-808(a) provides that “[n]o predisposition report shall be submitted to or considered by the court prior to the completion of the adjudicatory hearing.” N.C. Gen. Stat. § 7B-101(a) (2021). In its adjudication order, the trial court found that a “court report dated April 1, 2021” was among the items received by the court. The “court report dated April 1, 2021” appears to refer to a “Court Report for

Adjudication/Disposition” prepared by DSS for the hearing on the juvenile petition scheduled for 1 April 2021.

¶ 10 Father argues it was error for the trial court to receive and consider the DSS predisposition report because it was never properly admitted into evidence at the adjudicatory hearing, nor could it have been under N.C. Gen. Stat. § 7B-808(a). DSS and the guardian ad litem (GAL) do not dispute that the report was inadmissible for adjudicatory purposes, and agree with respondent-father that the DSS report was not admitted into evidence at the adjudicatory hearing. However, DSS and the GAL contend that the inclusion of the report in the list of evidence received by the trial court in finding of fact five was merely a scrivener’s error because the record reflects the trial court did not receive or consider the DSS report for adjudication.

¶ 11 Based on our own review of the record, we are convinced the trial court did not improperly receive and consider the DSS report for adjudicatory purposes. The copy of the DSS report prepared for the 1 April 2021 hearing included in the record on appeal was not marked as an exhibit for the adjudicatory hearing, and there is nothing in the adjudicatory hearing transcript to show that the DSS report was offered or admitted into evidence.² The only mention of the DSS report in the

² The record shows that a similar DSS report was admitted as DSS exhibit number one at the dispositional hearing, which was continued from 1 April 2021 to 13 May 2021. Given that adjudicatory and dispositional portions of a hearing on a juvenile petition are

adjudicatory hearing transcript occurred during Father’s cross-examination of the DSS investigator. Father’s counsel attempted to question the DSS investigator using the report, but DSS objected because the report had not been introduced into evidence. The trial court sustained the objection, instructing Father’s counsel to “move along.” There was no further mention of the DSS report during the adjudicatory hearing. We are satisfied from the record that the DSS report was not received by the trial court in violation of N.C. Gen. Stat. § 7B-808(a).

¶ 12 Nevertheless, assuming *arguendo* the trial court did erroneously receive the DSS report as evidence without it being offered or admitted at the adjudicatory hearing, Father has not shown the trial court considered the report to his prejudice. *See In re Mashburn*, 162 N.C. App. 386, 391, 396–97, 591 S.E.2d 584, 588–89, 594–92 (2004) (reviewing the trial court’s consideration of inadmissible evidence in support of a juvenile adjudication for harmless error and determining there was no prejudicial error where the respondent-parent failed to demonstrate the trial court considered dispositional evidence for adjudicatory purposes); *see also In re A.L.T.*, 241 N.C. App. 443, 446–47, 774 S.E.2d 316, 318 (2015) (acknowledging a trial court in a bench trial is presumed to have disregarded incompetent evidence and holding there

often conducted at the same session of court, *see* N.C. Gen. Stat. § 7B-901(a) (2021) (“The dispositional hearing shall take place immediately following the adjudicatory hearing and shall be concluded within 30 days of the conclusion of the adjudicatory hearing.”) It is not surprising that DSS prepared a report for the hearing scheduled for 1 April 2021.

was no prejudicial error in a juvenile adjudication where the adjudication was not based on the inadmissible evidence).

¶ 13 Father contends the DSS report was prejudicial because it included information about his criminal history and DSS's request to be relieved of reunification efforts, which he asserts were of interest to the trial court and may have impacted the adjudication. However, he only directs this Court to finding of fact twenty-four to support his contention that the trial court considered the DSS report. In finding of fact twenty-four, the trial court found that Father "was removed from the sex offender list a year ago and previously served time for a sexual assault of some nature." Father incorrectly asserts there was no evidence besides the DSS report to support the portion of finding of fact twenty-four that he "was removed from the sex offender list a year ago."

¶ 14 A review of the record shows that finding of fact twenty-four is fully supported by evidence besides the DSS report. Specifically, Father's own witness testified during the adjudicatory portion of the hearing that Father had previously been incarcerated for a prior sex offense that involved a minor, and Catherine's CME report, which was the only exhibit admitted at the adjudicatory hearing,³ included

³ Father's only objection to the admission of the CME report at the adjudicatory hearing was to a reference to him as the perpetrator. Upon agreement of the parties, "alleged" was added before perpetrator, and the report was admitted into evidence without further objection. Respondent-father raises no issues with the CME report on appeal.

information that Father had a felony history and “was on the SOR until last year.” While reviewing the CME report during the adjudicatory hearing, the trial court specifically noted that it understood “SOR” to mean sexual offender registry, and the witness confirmed that the information was provided during the CME. Because finding of fact twenty-four is supported by unchallenged evidence besides the DSS report, Father’s reliance on the finding to establish prejudice from the DSS report fails. Father has not shown any prejudice that would have resulted from the trial court’s erroneous receipt of the DSS report.

B. Fundamentally Fair Adjudication Proceeding

¶ 15

Father also argues he was deprived of his right to a fundamentally fair adjudicatory proceeding in contravention of the Juvenile Code and his constitutional right to due process. *See* N.C. Gen. Stat. § 7B-100(1) (2021) (providing a purpose of Juvenile Code is “[t]o provide procedures for the hearing of juvenile cases that assure fairness and equity and that protect the constitutional rights of juveniles and parents[.]”); *see also In re K.N.*, 181 N.C. App. 736, 737, 640 S.E.2d 813, 814 (2007) (requiring a State to provide parents with fundamentally fair procedures). He directs this Court to statements by the trial court about the seriousness of the sexual abuse allegations—that the allegations were “extremely concerning[.]” “would certainly be felonies,” “could send [him] to prison for the rest of [his] life[.]” and should be investigated. Father contends the statements reflect the judge’s bias and pre-judging

of the case and demonstrate a violation of his right to due process.

¶ 16 Notably, Father did not object to the trial court’s statements when they were made and never raised the issue below.⁴ It is well settled that issues not presented to the trial court, including constitutional issues, will not be reviewed for the first time on appeal. *In re S.C.R.*, 198 N.C. App. 525, 530, 679 S.E.2d 905, 908 (2009); *see also* N.C. R. App. P. 10(b)(1) (“In order to preserve an issue for appellate review, a party must have presented to the trial court a timely request, objection, or motion, stating the specific grounds for the ruling the party desired the court to make if the specific grounds were not apparent from the context.”) He has thus failed to preserve this argument for review, and we need not address the issue.

III. Conclusion

¶ 17 Having determined the trial court’s finding that the DSS report was received for adjudication was harmless error and Father waived his argument as to the fairness of the proceedings by failing to raise it in the trial court, and because Father does not otherwise contest the trial court’s adjudicatory findings and conclusions, we affirm the trial court’s order adjudicating Catherine to be an abused and neglected

⁴ We believe it is important to note the context in which the statements were made. The trial court made the statements during instructions to Father informing him of his Fifth Amendment right against self-incrimination. In that context, the statements did not reflect bias or prejudgment of the of the case; but were accurate statements about the seriousness of the allegations that were important to ensuring respondent-father understood his Fifth Amendment right, which he invoked.

IN RE C.C.

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Opinion of the Court

juvenile.

AFFIRMED.

Judges DILLON, DIETZ and HAMPSON served on the panel.

Report per Rule 30(e).