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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-664

No. COA22-42

Filed 4 October 2022

Cumberland County, No. 21 JA 125

IN THE MATTER OF: T.G., Juvenile

Appeal by Respondent-Mother from the Adjudication and Disposition Order entered 14 October 2021 by Judge Cheri Siler Mack in Cumberland County District Court. Heard in the Court of Appeals 19 September 2022.

*Patrick A. Kuchyt for petitioner-appellee Cumberland County Department of Social Services.*

*North Carolina Administrative Office of the Courts, by Michelle FormyDuval Lynch, for respondent-appellee Guardian ad litem.*

*Garron T. Michael, Esq., for respondent-appellant mother.*

PER CURIAM.

¶ 1

Respondent-Mother appeals from an Order adjudicating her minor child, T.G. (“Todd”), to be neglected.<sup>1,2</sup> After careful review, we affirm.

**Background**

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<sup>1</sup> A pseudonym has been used throughout the opinion to protect the identity of the juvenile and for ease of reading.

<sup>2</sup> Respondent-Father is not a party to the appeal.

¶ 2

On 6 May 2021, the Cumberland County Department of Social Services (“DSS”) filed a Petition alleging then-six-year-old Todd to be a neglected juvenile. Petition allegations included: Respondent-Mother had a history of mental health issues, suicidal tendencies, and traumatic brain injury from a past physical attack; Respondent-Mother was not receiving any treatment for these issues and routinely smoked marijuana; Respondent-Mother had a history of domestic violence with her then-boyfriend; Todd had frequently been present during verbal and physical fights between Respondent-Mother and boyfriend and observed them drinking alcohol before such altercations; while Todd was left in boyfriend’s care, boyfriend would leave Todd home alone for extended periods of time; Todd was experiencing nightmares but Respondent-Mother had not had him evaluated; and Respondent-Mother was set to lose her residence at the end of the month due to her disruptive behaviors, a frequent law enforcement presence, and allowing boyfriend to stay in the home in violation of the lease, and Respondent-Mother had not found a new place for her and Todd to live. The Petition alleged that Todd was “at risk of imminent irreparable harm if he remain[ed] in the physical custody of Respondent[-]Mother.”

¶ 3

Based on the allegations in the Petition, the trial court found a reasonable basis to believe the juvenile was exposed to a substantial risk of physical injury because the parent created conditions likely to cause injury or abuse or had failed to provide, or is unable to provide, adequate supervision or protection. Accordingly, the

court granted DSS nonsecure custody of Todd. The court also ordered DSS to conduct a home study on Todd's maternal grandfather.

¶ 4

As of the 12 May 2021 hearing, Respondent-Mother had been offered services including a mental health assessment, medication management, and domestic violence classes but had not completed any of the services. The trial court also found Respondent-Mother had been charged with child endangerment when she attempted to flee with Todd after the original nonsecure custody order was entered. In the order continuing DSS's nonsecure custody of Todd entered following the 12 May 2021 hearing, the trial court directed DSS to place Todd with his maternal grandfather and awarded Respondent-Mother one hour of supervised visitation per week.

¶ 5

On 10 August 2021, Respondent-Mother, her attorney, a DSS social worker, a DSS staff attorney, a Guardian ad litem attorney advocate, and a Guardian ad litem program supervisor or volunteer signed a "Stipulation Agreement and Written Agreement for Stipulation of Facts Pursuant to 7B-807" ("Stipulation Agreement").

¶ 6

Stipulated facts included: (1) Respondent-Mother has a history of mental illness; (2) in February 2020, Respondent-Mother was involuntarily committed; (3) Respondent-Mother had sustained a traumatic brain injury from a past physical attack; (4) Respondent-Mother was not receiving mental health treatment as of the date of the Petition; (5) Respondent-Mother occasionally smoked marijuana; (6) on 24 April 2021, Respondent-Mother reported to law enforcement officers, who had

responded to her residence based on a report of domestic violence, that her boyfriend had hit her in the mouth and stomach, and pulled her out of the shower by her hair; (7) Respondent-Mother's boyfriend accused her of being irate and throwing items out of the home; (8) Todd was in the living room of the home at the time of the altercation; (9) officers observed Respondent-Mother acting hostile, raising concerns for Todd's safety; (10) Respondent-Mother was screaming in an attempt to provoke her boyfriend and was irate with the officers; (11) Respondent-Mother and her boyfriend admitted to a history of domestic violence between them; (12) Respondent-Mother left Todd in her boyfriend's care, who left Todd alone for extended periods of time; (13) Todd had a history of nightmares and waking up frightened, up to and including the date of the Stipulation Agreement; (14) Respondent-Mother's lease expired over two months prior to the Stipulation Agreement and her landlord would not renew the lease due to her disruptive behaviors, frequent law enforcement presence at the home, and because she allowed her boyfriend to stay at the home in violation of the lease agreement; and (15) Respondent-Mother had not found anywhere new to live after the lease expired.

In its Adjudication and Disposition Order entered 14 October 2021, the trial court found Respondent-Mother willfully and voluntarily entered into the Stipulation Agreement, and Respondent-Mother further assented to the agreed facts in court under oath. The trial court accepted the stipulated facts into evidence, made findings

of fact based on the stipulated facts, and found that the evidence presented rose to the level of neglect pursuant to N.C. Gen. Stat. § 7B-101(15), in that Todd lived in an environment injurious to his welfare, and that he did not receive proper care, supervision, or discipline from Respondent-Mother. Accordingly, the court adjudicated Todd a neglected juvenile. The trial court's disposition decreed that the legal and physical custody of Todd would remain with DSS, Todd would remain with his maternal grandfather, and Respondent-Mother was ordered to enter into a case plan with DSS and was awarded one hour of supervised visitation per week. Respondent-Mother timely appealed.

¶ 8

Respondent-Mother's appellate counsel states he has "conducted a conscientious and thorough review of the record on appeal[] [and a]fter this review, . . . has concluded that the record contains no issue of merit on which to base an argument for relief." Therefore, pursuant to North Carolina Rule of Appellate Procedure 3.1(e), counsel filed a "no-merit brief" and identified one issue that might arguably support the appeal. As required by Rule 3.1(e), counsel provided Respondent-Mother with the brief, the transcript of proceedings at the trial court, the record on appeal, and a letter advising her that she may file a pro se brief to support her appeal within 30 days after the no-merit brief. The time for Respondent-Mother to file her pro se brief has now elapsed and she has not filed a brief supporting her appeal.

**Analysis**

¶ 9 Rule 3.1(e) requires this Court to undertake an independent review of any issues contained in a no-merit brief. *In re L.E.M.*, 372 N.C. 396, 402, 831 S.E.2d 341, 345 (2019).

**I. Standard of Review**

¶ 10 When reviewing an adjudication of neglect, this Court determines whether the trial court's findings of fact are supported by clear and convincing evidence and whether the court's legal conclusions are supported by its findings of fact. *See In re C.M.*, 198 N.C. App. 53, 59, 678 S.E.2d 794, 798 (2009). Findings of fact which are "supported by clear and convincing competent evidence are deemed conclusive [on appeal], even where some evidence supports contrary findings." *Id.*; *see also In re K.S.*, 380 N.C. 60, 65, 2022-NCSC-7, ¶ 10 (observing that where the trial court's findings of fact were based on facts stipulated to by the parties, the findings were "supported by sufficient evidence"). The trial court's conclusions of law are reviewed de novo. *In re J.S.L.*, 177 N.C. App. 151, 154, 628 S.E.2d 387, 389 (2006).

**II. Stipulation Agreement**

¶ 11 The issue that Respondent-Mother's counsel identified as arguably supporting the appeal is whether the trial court erred by adjudicating Todd a neglected juvenile based on the evidence provided in the Stipulation Agreement, where Respondent-Mother was initially reluctant to agree with the stipulations during the adjudication

hearing. The Record, however, also reflects the trial court undertook measures to ensure Respondent-Mother's assent to the stipulations. The trial court: allowed Respondent-Mother to confer with her attorney; at various points, expressed the court's willingness to permit Respondent-Mother to pursue a hearing on the contested facts; and directly inquired of Respondent-Mother as to whether she freely and voluntarily consented to the stipulations. The trial court also undertook to read portions of the stipulations edited by agreement of the parties into the record noting the amendments.

¶ 12 After an independent review of the issue identified in the no-merit brief and in light of our consideration of the entire Record, we are satisfied the trial court's adjudication of Todd as a neglected juvenile was supported by competent evidence and based on proper legal grounds. *See In re K.S.*, 380 N.C. at 65, 2022-NCSC-7, ¶ 10; *In re L.E.M.*, 372 N.C. at 402, 831 S.E.2d at 345.

### **Conclusion**

¶ 13 Accordingly, we affirm the trial court's 14 October 2021 Adjudication and Disposition Order.

AFFIRMED.

Panel consisting of Judges DILLON, DIETZ, and HAMPSON.

Report per Rule 30(e).