

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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

No. COA22-389

Filed 21 February 2023

Alamance County, Nos. 20 JA 46, 20 JA 155-56

IN THE MATTER OF: M.G.B., T.J.B., H.E.D.

Appeal by respondent-father from order entered 16 February 2022 by Judge Larry D. Brown, Jr., in Alamance County District Court. Heard in the Court of Appeals 30 January 2023.

*Alamance County Department of Social Services, by Jamie L. Hamlett, for petitioner-appellee Alamance County Department of Social Services.*

*Freedman Thompson Witt Ceberio & Byrd PLLC, by Christopher M. Watford, for respondent-father appellant.*

*North Carolina Administrative Office of the Courts, by Matthew D. Wunsche GAL Appellate Counsel, for Guardian ad Litem.*

PER CURIAM.

Respondent-father (“respondent”) appeals from an adjudication and disposition order adjudicating M.G.B. (“Mary”), T.J.B. (“Travis”), and H.E.D. (“Holly”)<sup>1</sup> (collectively “the children”), to be neglected juveniles and Holly to be an

---

<sup>1</sup> Pseudonyms are used to protect the juveniles’ identities and for ease of reading.

abused juvenile and continuing custody of the children with the Alamance County Department of Social Services (“DSS”). For the following reasons, we affirm the trial court’s order.

I. Background

Holly was born in September 2016 to Ms. C-D and respondent.<sup>2</sup> Travis was born in December 2017 and Mary was born in July 2020 to Ms. E (“mother”) and respondent.<sup>3</sup> The children’s family has significant history with DSS. In 2020, all three children were adjudicated neglected due to respondent’s substance abuse issues and domestic violence between mother and respondent. That same year, the trial court granted the paternal grandmother (“grandmother”) full legal and physical custody of Travis. In 2021, the trial court granted grandmother and respondent joint custody of Holly and Mary. Since then, the children have lived in grandmother’s home with their paternal great uncle (“uncle”), who has a previous criminal charge for indecent exposure. At the time DSS became involved, respondent had been residing at grandmother’s home for about a month.

Sometime in July 2021, Holly began complaining of discomfort and itching around her stomach, needing to urinate frequently, and vaginal discharge. On 21 July 2021, grandmother took Holly to the doctor where she tested negative for a yeast infection. Because Holly’s symptoms persisted, grandmother took her to the

---

<sup>2</sup> Holly’s mother is deceased.

<sup>3</sup> Mother is not a party to this appeal.

doctor again on 4 August 2021, where Holly tested positive for the sexually transmitted infection gonorrhea.

Around 7 August 2021, DSS received the report that Holly had tested positive for gonorrhea. DSS gave grandmother the option for the children to stay in the family home or for respondent and the uncle to stay in the home. Grandmother decided she did not want respondent or uncle to be “without entertainment” and “without cable[,]” so it would be best to place the children with a family friend.

Grandmother and respondent were “adamant that the only people that were around the children were them[,]” and uncle, although he resided in the residence, was never alone with the children. Respondent and uncle underwent testing for sexually transmitted diseases. Respondent tested positive for gonorrhea and chlamydia, and uncle tested negative for any sexually transmitted diseases. Respondent provided several explanations to law enforcement for how Holly could have contracted gonorrhea, including that respondent’s urine from inside the toilet could have splashed onto her, that she contracted gonorrhea by sitting on a toilet seat, or that respondent ejaculated into a towel and Holly used the towel to dry off after taking a bath. Despite his positive test for gonorrhea, grandmother “continued to deny there was a possibility of sexual abuse.”

On 9 August 2021, grandmother picked the children up from the family friend and took them to UNC Hospital for medical testing without consulting DSS, despite knowing they had an open case and an investigation was imminent. Grandmother

told medical staff she wanted the children tested for “venereal diseases” because she believed Holly’s positive gonorrhea test was inaccurate and she wanted to clear the names of the men in the household.

At UNC Hospital, the children underwent sexual assault nurse examiner (“SANE”) evaluations by nurse Tamara Matheson (“Nurse Matheson”). During the examination, Holly presented with “redness, swelling, and abnormal discharge” in the vaginal area. Mary also presented with abnormal discharge. Holly again tested positive for gonorrhea, but Travis and Mary tested negative for any sexually transmitted diseases. After the examinations of the children, DSS instructed UNC staff that the children were to be discharged to the family friend, and “not the grandmother,” who had become uncooperative and was detained by UNC police, “cite[d] and release[d].”

On 10 August 2021, DSS filed petitions alleging the children were neglected juveniles and Holly was an abused juvenile and obtained nonsecure custody of the children. The petitions alleged grandmother was “persistent that nobody hurt the children and was in denial regarding [Holly] having [g]onorrhea.” The petitions detailed DSS’ concerns that grandmother was “not placing the physical or emotional well-being of the juveniles first.” Furthermore, the petitions stated the children were “at risk of significant emotional and/or physical harm if they were returned to” grandmother’s or respondent’s care.

During forensic interviews in August 2021, Holly disclosed that respondent

touched her with his “ding ding[,]” and identified a “ding ding” as a penis on a diagram. Holly also stated respondent hit her, and when asked where respondent hit Holly, she pointed to her vaginal area. Holly stated this “happened more than once and [respondent] said” not to tell anyone. On 14 September 2021, at the request of DSS, Dr. Andrea Theodore (“Dr. Theodore”) conducted a Child Medical Evaluation (“CME”) of Holly and Travis.<sup>4</sup> During her CME, Holly reported that respondent had touched her genital area with his hand more than once.

The matters came on for adjudication and disposition hearings in the Alamance County District Court on 17 November 2021, 18 November 2021, and 19 January 2022, Judge Brown presiding. DSS presented three witnesses at the adjudication hearing: Nurse Matheson, Dr. Theodore, and Social Worker Latisha Logan (“Ms. Logan”). Grandmother also testified on her own behalf.

During the adjudication, Nurse Matheson described the special steps taken when conducting a sexual assault examination on a child, “so that it’s not traumatizing for them.” Nurse Matheson also spoke about how a SANE examination can be invasive, and how, although the exam itself might not be traumatizing, nurses “have to be careful not to re-traumatize patients.” Dr. Theodore, tendered as an expert in pediatrics, also testified about her examinations of the children.

Dr. Theodore testified that despite grandmother and respondent’s

---

<sup>4</sup> Mary was too young for a CME.

explanations for how Holly contracted gonorrhea, from a toilet seat or a towel, those explanations were unlikely. Rather, Dr. Theodore explained the most likely cause of transmission was sexual abuse, and based on her examination and Holly's medical history, she provided a medical diagnosis of "sexual abuse by [respondent][.]" At the close of DSS' evidence, respondent's attorney made a motion to dismiss the neglect petitions as to Travis and Mary. Respondent's motion was denied.

During the adjudication, grandmother also spoke. Grandmother testified that when she took the children to the doctors on 9 August, she requested they be checked for "venereal disease[s][.]" and she did not specifically request a SANE examination or even know what SANE stood for at the time. Grandmother stated she expected the doctors "to look at [the children][.]" to "check their urine and blood" and "check to see [if any of the children were] torn anywhere, bruised, scratched, or any of that stuff." Grandmother further stated she "wanted" a physical examination done on the children, not only to clear respondent's name, but also because of "rumors" going around. Grandmother, when asked in court whether she thought it was possible respondent abused Holly, stated, "[i]f you want to know the truth, . . . no, I don't." Lastly, grandmother confirmed she took the children to UNC despite knowing that DSS was going to begin their investigation "[b]ecause of the rumors[.]"

Following the hearings, the trial court adjudicated all three children neglected and Holly abused, in open court on 19 January 2022 and in a Juvenile Adjudication and Disposition Order filed 16 February 2022. Custody of the children was vested

with DSS. Respondent filed notice of appeal on 22 February 2022.

## II. Discussion

On appeal, respondent argues the trial court erred in adjudicating Travis and Mary as neglected juveniles because the adjudications were based solely on Holly's abuse<sup>5</sup>, without individualized findings that Mary and Travis suffered harm or a substantial risk of impairment, and therefore the trial court's disposition as to Mary and Travis should be vacated. We disagree.

"The allegations in a petition alleging that a juvenile is abused, neglected, or dependent shall be proved by clear and convincing evidence." N.C. Gen. Stat. § 7B-805 (2022). This Court reviews an adjudication order "to determine whether the findings are supported by clear, cogent and convincing evidence and the findings support the conclusions of law." *In re Montgomery*, 311 N.C. 101, 111, 316 S.E.2d 246, 253 (1984) (citation omitted). The trial court's conclusions of law are reviewed *de novo*. *In re M.H.*, 272 N.C. App. 283, 286, 845 S.E.2d 908, 911 (2020) (citation omitted).

### A. Neglect Adjudication

Respondent first argues the trial court erred in adjudicating Travis and Mary as neglected juveniles because the adjudications were based solely on Holly's abuse, without individualized findings that Mary and Travis suffered harm or a substantial

---

<sup>5</sup> Respondent does not challenge the trial court's adjudication of Holly as an abused and neglected juvenile.

risk of impairment.

Respondent argues eight of the trial court's 144 total findings are not supported by clear, cogent, and convincing evidence. Respondent challenged findings 51, 60, 61, 68, and 69, which deal with grandmother's purpose for taking the children to UNC Hospital on 9 August 2021, finding 143 which deals with the culpability of respondent, and findings 142 and 144, which deal with the risk of an injurious environment to Travis and Mary. The remaining findings are unchallenged and therefore binding on appeal. *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991) (citations omitted). We address respondent's challenges in turn.

1. Findings 51, 60, 61, 68, and 69

Respondent first argues Findings 51, 60, 61, 68, and 69 "essentially state that . . . grandmother . . . intentionally took the children to UNC Hospital for the purpose of 'exposing' Travis and Mary to SANE evaluations[.]" and such findings are not supported by "the underlying evidence."

These findings state:

51. On August 9, 2021, [grandmother] took [Holly] and her siblings to UNC Hospital for sexual assault examinations and for [Holly] to be re-tested for gonorrhea.

. . . .

60. [Grandmother] was aware there was an open child protective services case and law enforcement involvement. Despite this knowledge, [grandmother] decided to expose all three children to SANE



*Opinion of the Court*

evaluations because she wanted to clear her brother's and son's names.

61. On or about August 9, 2021, [grandmother] picked up the minor children from [the family friend] and took them to UNC to get sexual assault exams.

. . . .

68. When [grandmother] decided to take the minor children for SANE evaluations, she did not contact [DSS] to see if she should take the children to the hospital. [Grandmother] told Social Worker Logan, [grandmother] wanted to clear up what was happening.
69. That SANE evaluations can be traumatic for minor children and nurses work to try to lessen the trauma to the children. Most of [the] time when a nurse finds out about abuse, it is not within the 72-hour time frame in order to get a physical evaluation of the assault. If the assault did not occur within 72 hours, a SANE exam is not completed but, in this case, [grandmother] requested that the SANE evaluation be completed.

Respondent further contends the evidence presented showed that grandmother only wanted the children to be examined; she could not have foreseen taking the children for testing would rise “to the level of a SANE evaluation[.]” Respondent’s arguments are without merit, as these findings are supported by clear, cogent, and convincing evidence.

Although grandmother testified she did not know what the medical acronym SANE stood for and may not have explicitly requested a SANE exam when she presented the children to UNC Hospital, grandmother also testified she requested

the children be checked for “venereal disease[s][,]” and she expected the doctors “to look at [the children][,]” to “check their urine and blood” and “check to see [if any of the children were] torn anywhere, bruised, scratched, or any of that stuff.” This testimony indicated grandmother knew the examinations of the children would be intrusive sexual assault examinations. Grandmother further testified she “wanted” physical examinations done on the children even though she was aware there was an open DSS case, and their investigation was about to begin. Additionally, grandmother signed documents authorizing SANE exams to be performed on the children.

Respondent claims this authorization does not mean grandmother was aware “of exactly what type of exam she authorized based on her limited, non-medical background.” This contention is likewise without merit. Nurse Matheson specifically testified that each child was examined individually with grandmother in the room. Had grandmother been concerned with the nature of the physical examinations, or for the impact of the examinations on the children, she could have stopped the examinations after the first child was evaluated. However, more concerned about respondent’s reputation and the “rumors” she was hearing than the well-being of the children, grandmother proceeded to subject each child to a SANE examination.

Therefore, the unchallenged findings of fact establish grandmother’s purpose in bringing the children to UNC Hospital was to subject the children to sexual assault exams and testing to clear the name of respondent and the uncle, and not for any

benefit to the children. Accordingly, we reject respondent's challenges to findings 51, 60, 61, 68, and 69.

2. Finding 143

Next, respondent argues the trial court's finding which states "[Holly] has experienced sexual abuse and her father is the perpetrator[,] is not a proper finding of fact because the determinative issue in a juvenile adjudication is the status of the child and not the "fault or culpability of the parent." Furthermore, respondent contends the trial court "exceeded its authority" in making this finding and it should, therefore, not be considered on appeal. In making this argument, respondent relied on *In re Montgomery*, which states "[i]n determining whether a child is neglected, the determinative factors are the circumstances and conditions surrounding the child, not the fault or culpability of the parent." *In re Montgomery*, 311 N.C. 101, 109, 316 S.E.2d 246, 252 (1984).

While respondent correctly quotes *In re Montgomery*, he does not cite anything from that case, or any other authority, that would prohibit the trial court from making the type of finding challenged here. Nor did respondent provide any case law that states such a finding is outside the authority of the trial court. In fact, this finding as to the likely source of Holly's sexually transmitted infection is relevant to the abuse and neglect status of the children and was supported by clear, cogent, and convincing evidence. Accordingly, we hold respondent's argument is without merit.

3. Findings 142 and 144 and Adjudication of Neglect as to Travis and Mary

Lastly, respondent argues Findings 142 and 144 are not supported by clear, cogent, and convincing evidence. These findings state:

142. The younger two minor children were in the home and exposed to an injurious environment.

. . . .

144. [Mary] and [Travis] have been exposed to a substantial risk of physical injury or sexual abuse because the father and grandmother have created conditions likely to cause injury or abuse and failed to provide adequate supervision or protection.

Because these ultimate findings form the basis of the trial court's neglect adjudication, we consider respondent's challenge to the adjudication together with his challenge to these findings.

In challenging the trial court's findings and adjudication, respondent asserts that the evidence presented at the adjudication hearing supported only three possible ways Travis and Mary could have been neglected: (1) by being exposed to the SANE exam; (2) grandmother choosing to remove them from the family home to place them with a family friend; and (3) by living in the home where Holly was abused. We find the trial court's findings of facts are supported by clear, cogent, and convincing evidence, and the adjudication of Travis and Mary as neglected is supported by clear and convincing evidence.

a. SANE Exam

Respondent contends that the evidence presented by DSS did not establish

that the SANE exams harmed Travis and Mary because Nurse Matheson testified that “she did not believe the process traumatized the children.” Respondent is correct that Nurse Matheson testified that she did not believe the SANE exams traumatized the children, however, there was sufficient evidence to show the exams created a substantial risk of harm. Social Worker Logan testified that grandmother subjected three-year-old Travis and one-year-old Mary to sexual assault examinations at UNC Hospital without consulting DSS.

Nurse Matheson also testified that UNC staff must take special care not to “re-traumatize patients” during SANE examinations. Their protocol when they have pediatric patients is to call “Child Life[,]” an organization of trained individuals who stay with the children and distract them during the examination. Relying on this testimony, the trial court found “SANE evaluations can be traumatic for minor children[.]” Accordingly, the trial court properly considered grandmother’s insistence on having the children go through unnecessary SANE exams when determining whether they were exposed to an injurious environment and neglected as a matter of law.

b. Children’s Placement

Respondent also contends that Travis and Mary were not harmed when grandmother chose to remove them from the family home and allow respondent and uncle to remain. Respondent argues this decision was within grandmother’s custodial rights and was not harmful to the children.

Social Worker Logan testified that DSS gave grandmother two options when it received the report that Holly tested positive for gonorrhea: (1) the children could stay in the family home and respondent and uncle would leave, or (2) respondent and uncle could stay in the family home and the children would be placed elsewhere. Grandmother chose to remove the children from their family home and place them in a foreign environment in favor of allowing respondent and uncle to remain, because she did not want uncle to be “in an environment where he did not have any entertainment[,]” and did not want respondent or uncle “to be without cable.” Furthermore, grandmother did not believe respondent did anything wrong. From her testimony, it was clear grandmother was more concerned about the comfort of respondent than the well-being of the children.

Therefore, that grandmother’s goal of protecting respondent and the uncle resulted in the children being placed at a substantial risk of impairment through grandmother’s actions is supported by clear, cogent, and convincing evidence, mainly in the form of her own testimony.

c. Abuse of Holly

Lastly, respondent argues that the trial court erred by adjudicating Travis and Mary as neglected based solely on the fact that they lived in the home where Holly was abused. This argument is without merit.

A “neglected juvenile” is, among other things:

Any juvenile less than 18 years of age . . . whose parent,

guardian, custodian, or caretaker does any of the following:

a. Does not provide proper care, supervision, or discipline.

. . . .

e. Creates or allows to be created a living environment that is injurious to the juvenile's welfare.

N.C. Gen. Stat. § 7B-101(15)(a), (e) (2022).

“[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.” *In re K.H.*, 281 N.C. App. 259, 266, 867 S.E.2d 757, 762 (2022) (citation and quotation marks omitted) (alteration in original). “In determining whether a juvenile is a neglected juvenile, 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.” N.C. Gen. Stat. § 7B-101(15) (emphasis added). “Since the statutory definition of a neglected child includes living with a person who has abused or neglected other children, and since this Court has held that the weight to be given that factor is a question for the trial court, the trial court . . . [i]s permitted, although not required, to conclude that [a sibling] was neglected based on evidence that [a parent] had abused [another sibling living in the household].” *In re C.M.*, 198 N.C. App. 53, 65, 678 S.E.2d 794, 801 (2009) (citation omitted).

This Court has repeatedly found that a child living in the home where a sibling

was abused is a neglected child. For example, in *In re N.K.*, this Court determined that “[t]he proper adjudication of the recent and disturbing abuse of [a child] while [his sibling] was in the same environment is clear and convincing competent evidence of the neglect of [the sibling].” *In re N.K.*, 274 N.C. App. 5, 10, 851 S.E.2d 389, 393 (2020). There, this Court found “the evidence establishing [the sibling’s] abuse is enough to substantiate that [the other sibling] lived in an environment injurious to his welfare, and thus was also a neglected juvenile.” *Id.* (citation omitted).

Furthermore, in *In re P.M.*, this Court affirmed the trial court’s adjudication of neglect for the siblings where they lived in the home where another sibling was abused. *In re P.M.*, 169 N.C. App. 423, 427, 610 S.E.2d 403, 406 (2005). There, the court considered the abuse of the sibling, but also the fact that respondent-mother refused “to take responsibility for harm that befell her children as a result of her conduct.” *Id.* Lastly, in *In re S.M.L.*, a case relied on by respondent, this Court noted “there [was] evidence which could support additional findings addressing the potential risk to [the sibling] based upon [another sibling’s] neglect, such as [r]espondent-[m]other’s continued refusal to believe [her daughter] was [sexually] abused[.]” *In re S.M.L.*, 272 N.C. App. 499, 517, 846 S.E.2d 790, 802 (2020). The Court in *In re S.M.L.*, ultimately reversed the adjudication, but only because the court failed to make the adequate factual findings. *Id.* Here, there are adequate factual findings, and the neglect of Mary and Travis has been shown by clear and convincing evidence.



In this case, the trial court determined that Holly was abused, a finding respondent does not challenge, thus, it was within the trial court's discretion to consider Travis and Mary neglected. *In re C.M.*, 198 N.C. App. at 65, 678 S.E.2d at 801. Still, the trial court did not solely rely on Holly's abuse, but rather considered other factors which suggested Travis and Mary would be exposed to a present risk of harm. For example, the fact that grandmother refused to take responsibility for the harm she brought to the children by subjecting them to SANE evaluations, her failure to put the children's well-being above respondent's, as discussed above, and grandmother's refusal to believe Holly was abused all demonstrate the children were in an injurious environment and subject to a substantial risk of harm independent of Holly's abuse.

Therefore, we conclude the trial court made sufficient findings that Travis and Mary were at substantial risk of physical, mental, or emotional impairment. Accordingly, these findings were sufficient to support the trial court's ultimate conclusion that Travis and Mary were neglected juveniles.

B. Disposition

We need not address respondent's second argument on appeal, requesting the trial court's dispositional orders regarding Mary and Travis be vacated, since this argument is premised on respondent's successful challenge to the trial court's neglect adjudication. As discussed above, this challenge was not successful. Accordingly, respondent's contention is without merit.

IN RE: M.G.B., T.J.B., H.E.D.

*Opinion of the Court*

III. Conclusion

We conclude the trial court's challenged findings of fact were supported by clear, cogent, and convincing evidence and such findings support the trial court's conclusion that Travis and Mary were neglected juveniles. Therefore, we affirm the trial court's adjudication and disposition order.

AFFIRMED.

Before a panel consisting of Judges ZACHARY, MURPHY, and ARROWOOD.

Report per Rule 30(e).