

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA22-371

Filed 18 April 2023

Onslow County, Nos. 20 JA 185-86

IN THE MATTER OF: S.G., P.G.

Appeal by respondent-mother from orders entered 28 October 2021 by Judge Sarah C. Seaton and 24 January 2022 by Judge James W. Bateman, III, in Onslow County District Court. Heard in the Court of Appeals 4 April 2022.

*Onslow County Department of Social Services, by Richard Penley, for petitioner-appellee.*

*Anné C. Wright for respondent-appellant mother.*

*Brooks, Pierce, McLendon, Humphrey & Leonard, L.L.P., by Daniel F. E. Smith, for the guardian ad litem.*

PER CURIAM.

Respondent-mother appeals from the trial court's order adjudicating her minor children, S.G. ("Sophie") and P.G. ("Parker"),<sup>1</sup> neglected and the disposition order which granted Sophie and Parker's father primary custody of the children and

---

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

transferred the matter to a civil custody action under Chapter 50 of the General Statutes. After careful review, we affirm.

I. Background

On 4 December 2020, Onslow County Department of Social Services (“DSS”) obtained nonsecure custody of respondent-mother’s children upon the filing of a juvenile petition.<sup>2</sup> The petition alleged Sophie and Parker to be neglected and dependent and alleged Parker to be abused based on reports of child-on-child sexual abuse in the home.

The petition alleged that on 7 July 2020, DSS “received a report regarding child on child sexual abuse and neglect” in the home. The petition stated that Parker reported to respondent-mother that Chase “had sexually molested him[,]” and Chase, who had a history of “acting out sexually” at school and had been caught watching pornography on personal and school-issued devices, admitted to molesting Parker.

On 10 July 2020, respondent-mother and respondent-father, father of Kelly but not of Sophie, Parker, and Chase,<sup>3</sup> “completed a safety plan assessment with [DSS] and agreed to not leave any of the children unsupervised with” Chase, to obtain therapy for Chase, and to follow any recommendations provided by the therapist. Despite the safety plan agreement, on 21 July 2020, respondent-mother informed

---

<sup>2</sup> Four children, all respondent-mother’s, were involved in the juvenile petition, including eight-year-old Sophie, six-year-old Parker, four-year-old K.H. (“Kelly”), and thirteen-year-old C.M. (“Chase”); however, the instant appeal relates only to Sophie and Parker.

<sup>3</sup> Respondent-father is not a party to this appeal.

DSS that respondent-father caught Chase “doing inappropriate things” with Kelly, and Chase was removed from the home that evening. During this incident, respondent-mother had been asleep, and respondent-father had been in another room working, leaving Chase unsupervised with Kelly. On 22 July 2020, respondent-mother and respondent-father “agreed to ensure ‘eyes on’ supervision” for Chase, be aware of what he was doing at all times, install door alarms on all bedrooms and bathrooms, and allow the children to be interviewed at the Child Advocacy Center (“CAC”).

According to the petition, CAC interviews with the family members were conducted in July and August 2020. Kelly informed the interviewer that Chase tried to make her perform oral sex on him and that Parker had sexually assaulted her by vaginal intercourse. Respondent-father told the interviewer that Kelly had asked him to touch her inappropriately and when he refused, she told him that Chase “rubs” her private areas. Chase reported to CAC that respondent-father physically and verbally abused him. Respondent-mother reported that she was a victim of childhood sexual abuse and admitted to smoking marijuana. Parker disclosed that Chase had sexually assaulted him by anal intercourse. At the end of Parker’s interview, respondent-mother was again instructed not to leave Chase unsupervised with the other children. Respondent-mother and respondent-father installed door alarms at DSS’s request.

Following the CAC interviews, the case was transferred to “[i]n-[h]ome services” with recommendations for respondent-mother to: (1) “complete a comprehensive clinical assessment” focusing on substance abuse and diagnostic testing with the provider of her choice; (2) participate in therapy to address her childhood trauma; (3) complete parenting classes; (4) not leave Chase unsupervised with the other children; (5) obtain therapy for Chase; and (6) follow the recommendations of her and Chase’s providers. According to the petition, as of the petition filing date, none of these recommendations had been followed.

On 2 December 2020, DSS “received another report regarding child on child sexual abuse and neglect” in the home. Upon investigation, DSS learned that respondent-father was left to supervise the children while respondent-mother was out running errands, but he fell asleep, leaving the children unsupervised. Upon respondent-mother’s return home, the front door was locked, and she had to beat on the door to be let inside. Once respondent-father answered the door, both parents “saw [Chase] run across the hallway naked from the waist down.” When respondent-father went into Parker’s bedroom, he found Parker putting on his underpants.

On 3 and 4 December 2020, Parker, Sophie, and Kelly were re-interviewed at CAC. Parker “disclosed that [Chase] continue[d] to touch his private areas, and to sexually assault him[,]” and both Parker and Kelly told the interviewer Chase had continued to sexually abuse them since their last interview. Despite being aware of the ongoing sexual abuse within the home, both respondent-mother and respondent-

father continued to leave Chase home unsupervised with the other children. The petition therefore asserted that “[t]he parents ha[d] not taken appropriate steps to address [Chase]’s sexual abuse of the other juveniles in the home, or to address [Chase]’s sexual allegations[,]” and thus Chase and Sophie were dependent and neglected juveniles, and Kelly and Parker were abused, dependent, and neglected juveniles.

On 22 September 2021, the matter of adjudication came on for a hearing in Onslow County District Court, Judge Seaton presiding. At the hearing, social worker Veronica Ortiz (“Ms. Ortiz”) testified about some of the allegations from the petition. Following the hearing in open court and in an order entered 28 October 2021, the trial court adjudicated all four children neglected. The adjudication was based on findings that respondent-mother and respondent-father “did not take appropriate steps to address [Chase]’s actions against the other juveniles in the home[,]” and that “[t]he juveniles d[id] not receive proper care, supervision or discipline[.]”

The dispositional hearing was held 15 November 2021 in Onslow County District Court, Judge Bateman, presiding. At the beginning of the hearing, respondent-mother’s attorney stipulated “to the court report and the factual basis that’s contained in the court report.” Stacy Jones (“Ms. Jones”) testified on behalf of DSS. Ms. Jones testified that the department was asking Parker and Sophie be released to the custody of their father, who resided out of state. Furthermore, DSS recommended the custody of Parker and Sophie “to be transferred to Chapter 50 and

be vested with” their father. Respondent-mother and Parker and Sophie’s father had also reached a visitation agreement that they requested be “stipulated [to] and read into the record and made a part of the order.” In open court and an order entered 24 January 2022, the trial found it was in the best interest of Sophie and Parker to be placed in the primary custody of their biological father who resides in Maryland, with respondent-mother having secondary custody and visitation rights. The trial court also transferred Parker and Sophie’s case to a civil custody order pursuant to Chapter 50. Respondent-mother timely appealed.

## II. Discussion

On appeal, respondent-mother raises two issues: (1) the trial court’s adjudication of Sophie and Parker as neglected is not supported by clear, cogent, and convincing evidence because the trial court based its findings of fact on the allegations in the petition and not on admissible evidence presented during the adjudication hearing; and (2) in its disposition, the trial court erroneously awarded primary custody of Sophie and Parker to their father without making sufficient findings of fact to support that it was in their best interest and to support the transfer of the case to a Chapter 50 civil custody action.

### A. Standard of Review

Our appellate courts “review an adjudication under N.C. Gen. Stat. § 7B-807 . . . to determine whether the trial court’s findings of fact are supported by ‘clear and convincing competent evidence’ and whether the court’s findings support its

conclusions of law.” *In re K.L.*, 272 N.C. App. 30, 36, 845 S.E.2d 181, 187 (2020). “[W]e review a trial court’s conclusions of law de novo[.]” *Id.* “Findings of fact unchallenged by the appellant are ‘binding on appeal.’” *Id.* (quoting *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991)). Even if some findings of fact are not supported by the evidence, if “ample other findings of fact support an adjudication of neglect, erroneous findings unnecessary to the determination do not constitute reversible error.” *In re T.M.*, 180 N.C. App. 539, 547, 638 S.E.2d 236, 240-41 (2006) (affirming an adjudication of neglect where “the erroneous findings are in no way necessary to the court’s conclusion that” the juvenile was neglected).

B. Adjudication

Respondent-mother first challenges the adjudication of Sophie and Parker as neglected because “[t]he trial court erred in attempting to use the petition as evidence to support its findings of fact[.]” and “[a] trial court may not find as fact that which was not presented as evidence at trial.” 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).

Here, the findings of fact in the Adjudication Order that are directly based on evidence presented at the hearing are sufficient to support ultimate findings that, in turn, support the adjudication of Sophie and Parker as neglected juveniles. At the adjudication hearing, Ms. Ortiz testified as to many of the allegations in the petition. Significantly, she testified that respondent-mother was “already aware of the concerns” regarding Chase prior to the initial incident in July 2020. Furthermore, Ms. Ortiz testified that respondent-mother was specifically asked to supervise Chase at all times and never leave him alone with the other children in the home.

Despite knowing Chase was sexually abusing the younger children in the home, he was again left unsupervised with Parker and “caught perpetrating” him. Furthermore, Ms. Ortiz made it clear that DSS became involved because Chase was sexually abusing his siblings, and despite requests for the parents to supervise the children so he would not have access to them, they failed to do so. Accordingly, the trial court found that respondent-mother and respondent-father “did not take appropriate steps to address [Chase]’s actions against the other juveniles in the home[.]” and that “[t]he juveniles d[id] not receive proper care, supervision or discipline[.]”

The trial court’s findings of fact demonstrated there had been repeated reports of child-on-child sexual abuse in respondent-mother’s home, including after DSS became involved and issued warnings to respondent-mother to keep the perpetrator away from the younger children and referred her to services. Still, respondent-



mother failed to properly supervise the perpetrator in accordance with the plan. These findings, supported by clear, cogent, and convincing evidence, support the trial court's conclusion that Sophie and Parker are neglected juveniles under N.C. Gen. Stat. § 7B-101(15). *See In re K.W.*, 192 N.C. App. 646, 656, 666 S.E.2d 490, 497 (2008) (affirming an adjudication of neglect where the mother was not enforcing the safety plan of keeping the juvenile away from her father who had sexually abused her in the past). Accordingly, we affirm the trial court's order adjudicating Sophie and Parker neglected juveniles.

C. Disposition

Respondent-mother also argues that the trial court erred in awarding custody of Parker and Sophie to their father “without making sufficient findings of fact to support the determination that doing so was in their best interest.” Respondent-mother further contends the trial court erred in failing to make findings which support the transfer of the case to Chapter 50, and which support the contention that State intervention was no longer needed for Sophie and Parker, despite her acknowledgment that she agreed to the proposed custody agreement during the hearing. We address each argument in turn.

1. Best Interest Analysis

Respondent-mother first challenges whether the trial court made sufficient findings of fact to support that granting primary custody to Sophie and Parker's

father and secondary custody to her was in their best interests, notwithstanding her agreement to this arrangement.

At the disposition phase, “the juvenile’s parent . . . shall have the right to present evidence, and . . . may advise the court concerning the disposition they believe to be in the best interests of the juvenile. The court may consider any evidence . . . that the court finds to be relevant, reliable, and necessary[.]” N.C. Gen. Stat. § 7B-901(a) (2022). There is no burden of proof upon either DSS or the parents during a dispositional hearing. *In re Shue*, 311 N.C. 586, 597, 319 S.E.2d 567, 574 (1984). “The district court has broad discretion to fashion a disposition from the prescribed alternatives in N.C. Gen. Stat. § 7B-903(a), based upon the best interests of the child.” *In re B.W.*, 190 N.C. App. 328, 336, 665 S.E.2d 462, 467 (2008) (citation omitted).

Here, based upon the counsel’s representations of the agreement, and the court report and exhibits introduced at the dispositional hearing, which respondent-mother’s attorney stipulated to, the trial court found that the children were adjudicated neglected, the father was the non-offending parent, the children were attending weekly therapy and were doing well in his care, the children expressed a preference to remain with their father, and respondent-mother was making progress on her case plan but was continuing to work on it at that time. Additionally, respondent-mother agreed to the proposed custody arrangement. We hold that these findings are sufficient to support the best interest determination to award primary custody to the children’s father, and we cannot say based on these findings that the

trial court abused its discretion in granting their father primary custody of Sophie and Parker.

2. Continued Need for State Intervention

Respondent-mother also argues the trial court failed to make the necessary finding that State intervention was no longer required to transfer this juvenile matter under Chapter 7B to a civil custody action under Chapter 50 of the General Statutes. We disagree.

Section 7B-911 states that, when the trial court awards custody to a parent at the disposition phase and terminates jurisdiction in the juvenile proceeding and initiates a new civil custody action under Chapter 50 of the General Statutes, in addition to making “findings and conclusions” to support the custody award, the court must find that “[t]here is not a need for continued State intervention on behalf of the juvenile through a juvenile court proceeding.” N.C. Gen. Stat. § 7B-911(c)(1)-(c)(2)(a) (2022). “We review an order’s compliance with statutory requirements *de novo*.” *In re S.M.L.*, 272 N.C. App. 499, 517, 846 S.E.2d 790, 802 (2020) (citation omitted).

This Court has held that the trial court errs where it fails to find that “[t]here is not a need for continued State intervention” as required by N.C. Gen. Stat. § 7B-911(c)(2)(a), and such error requires remand. *See In re S.M.L.*, 272 N.C. App. at 519, 846 S.E.2d at 803; *In re J.D.M.-J.*, 260 N.C. App. 56, 59-61, 817 S.E.2d 755, 758-59 (2018). Here, the trial court specified in its order that:

1. [Father], will have the primary custody of the juveniles

with [respondent-mother] having secondary custody of the children and visitation rights.

2. The jurisdiction of the case will be transferred to Chapter 50, . . . .

. . . .

5. That the Agency, guardian ad litem, and all attorneys of record in this matter be released.

Based on these findings, it is clear the court did not intend for the State to have continued involvement with Sophie and Parker. *See In re J.D.M.-J.*, 260 N.C. App. at 60, 817 S.E.2d at 757 (finding similar sentences in a custody order support the conclusion that State intervention was no longer necessary but ultimately remanding due to inconsistent language that the trial court needed to reconcile); *In re A.S.*, 182 N.C. App. 139, 144, 641 S.E.2d 400, 403-404 (2007) (upholding an order that failed to contain an explicit finding under N.C. Gen. Stat. § 7B-911(c)(2)(a) but made findings from which this Court could infer that the trial court no longer considered DSS intervention necessary). Unlike in *In re J.D.M.-J.*, here there are no inconsistent findings in the trial court's order. Rather, this case is analogous to *In re A.S.*, where the trial court's findings can be inferred. Accordingly, we find this argument to be without merit.

3. Sufficiency of Details Regarding Visitation

Lastly, respondent-mother contends that the Disposition Order must be vacated because it lacks sufficient details regarding visitation to comply with the

requirement in N.C. Gen. Stat. § 7B-905.1 that “any order providing for visitation shall specify the minimum frequency and length of the visits and whether the visits shall be supervised.” N.C. Gen. Stat. § 7B-905.1(c) (2022). This is incorrect.

The trial court properly terminated jurisdiction in the abuse, neglect, and dependency proceeding at the disposition phase by opening a new Chapter 50 civil custody case under N.C. Gen. Stat. § 7B-911, thus N.C. Gen. Stat. § 7B-905.1 regarding visitation rights was not applicable. *See In re S.M.L.*, 272 N.C. App. at 519, 846 S.E.2d at 803. Accordingly, the trial court did not need to comply with N.C. Gen. Stat. § 7B-905.1, and the acceptance of the visitation schedule stipulated to by respondent-mother was not error. *See id.*

### III. Conclusion

For the foregoing reasons, we hold the trial court did not err.

AFFIRMED.

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

Report per Rule 30(e).