

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA22-655

Filed 20 June 2023

Cumberland County, Nos. 20 JA 375-78

IN THE MATTER OF: L.M. JR., A.M., J.G.-T., Q.J. JR.

Appeal by Respondent-Mother from orders entered 11 January 2022 and 25 May 2022 by Judge Luis J. Olivera in Cumberland County District Court. Heard in the Court of Appeals 9 May 2023.

Patrick A. Kuchyt for Petitioner-Appellee Cumberland County Department of Social Services.

Rebekah W. Davis for Respondent-Appellant Mother.

Matthew D. Wunsche for guardian ad litem.

GRIFFIN, Judge.

Respondent-Mother appeals from an adjudication and temporary disposition order and a disposition order adjudicating her four children—Leo, Aria, Jacob, and

Quran¹—to be neglected. Mother argues the trial court erred as there was insufficient evidence to support a conclusion that the children were neglected. We hold the trial court did not err in adjudicating the children neglected.

I. Factual and Procedural History

Mother is the biological mother of Leo, Aria, Jacob, and Quran. However, only Jacob and Quran share the same father—Mr. Meadows. At all times relevant to this matter, Mother was in a relationship with Meadows, yet remained the primary parent of her children.

On 11 October 2020, Mother and Meadows were engaged in a physical altercation. Then, on 13 October 2020, Meadows asked Mother over to his aunt’s home, where he was currently residing. Once at the home, and in the presence of at least two of the children, Meadow’s aunt physically assaulted Mother. Finally, on 23 October 2020, Cumberland County Department of Social Services (“CCDSS”) received a video, which had been recorded in January 2020, of Mother and Meadows engaging in sexual activity with Leo present.

On 23 October 2020, upon receipt of a referral from Child Protective Services concerning the safety of the children, CCDSS became involved in the matter. Mother temporarily placed Jacob in the custody of his father and Leo and Quran with her mother. However, Mother remained uncooperative, failed to maintain contact with

¹ We use a pseudonym for ease of reading and to protect the identity of the juveniles. *See* N.C. R. App. P. 42(b).

CCDSS, and refused to divulge the location of Aria.

On 6 November 2020, CCDSS filed a petition alleging all four children were neglected. Upon entry of an order, CCDSS assumed nonsecure custody of the children. Mother began working on a case plan.

Nonsecure custody hearings began on 9 November 2020 and continued through 8 November 2021. The children were placed with Mother after a hearing on 14 April 2021 and remained in her custody through 14 October 2021, when they were again removed after Mother physically disciplined Quran and was consequently charged with misdemeanor child abuse. Mother continued working on her case plan.

On 7 December 2021, the petition came on for hearing before the Honorable Luis J. Olivera in Cumberland County District Court. At that time, Mother entered a stipulation agreement in which she agreed with CCDSS to stipulate to certain facts. On 11 January 2022, the trial court entered an adjudication and temporary disposition order adjudicating the children to be neglected based upon the stipulated facts and ordering legal and physical custody of the children remain with CCDSS. Subsequent disposition hearings were held on 9 February and 9 March 2022, and the trial court entered a disposition order on 25 May 2022. Again, the trial court ordered legal and physical custody of all four children should remain with CCDSS.

On 31 May 2022, Mother filed a notice of appeal from the 11 January 2022 adjudication and temporary disposition order and the 25 May 2022 disposition order pursuant to N.C. Gen. Stat. § 7B-1001(a)(3).

II. Standard of Review

We review a trial court’s adjudication 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); *see also In re J.A.M.*, 372 N.C. 1, 8, 822 S.E.2d 693, 698 (2019) (“In a non-jury neglect adjudication, the trial court’s findings of fact supported by clear and convincing competent evidence are deemed conclusive, even where some evidence supports contrary findings.” (internal marks and citations omitted)). Further, we review the trial court’s conclusions of law de novo. *In re C.B.C.*, 373 N.C. 16, 19, 832 S.E.2d 692, 695 (2019).

III. Analysis

Mother contends the trial court erred in concluding the children were neglected because there was insufficient evidence to support such a conclusion. Further, Mother specifically argues the facts to which she stipulated were the basis of the adjudication but did not “show improper care or a risk of physical, mental, or emotional impairment of any of the children.” We disagree.

North Carolina General Statute, section 7B-101(15), defines a neglected juvenile to be, among other things, a person, under the age of 18 whose parent “[d]oes not provide proper care, supervision, or discipline” or “[c]reates 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) (2021). While our Courts have required there be some impairment

or substantial risk of impairment to the child as a consequence of their parent's failure to provide proper care, discipline, or supervision, "the trial court need not wait for actual harm to occur to the child if there is a substantial risk of harm to the child in the home." *In re D.B.J.*, 197 N.C. App. 752, 755, 678 S.E.2d 778, 780 (2009) (internal marks and citations omitted). Further, our Court has consistently held a parent's exposition of domestic violence in the presence of their child to be an example of conduct which supports an adjudication of neglect. *Id.* at 755, 678 S.E.2d at 781; *see also In re A.S.*, 181 N.C. App. 706, 709–10, 640 S.E.2d 817, 819 (2007) (holding the trial court did not err in concluding the children were neglected and lived in an environment injurious to their welfare where evidence showed the mother had thrown household objects at the father and he had to call law enforcement as a result of her violent and erratic behavior).

Where there exists "a prior closed case with other children[.]" it, standing alone, is not sufficient to "support an adjudication of current or future neglect." *In re J.A.M.*, 372 N.C. at 9, 822 S.E.2d at 699. However, such evidence together with the presence of other factors, such as a parent's refusal to participate in helpful resources and denial of the need for such services, may be sufficient. *See Id.* at 9–10, 822 S.E.2d at 699.

In the instant case, the trial court's findings, to which Mother stipulated, indicate several instances of domestic violence. Findings of Fact 11(e) and (f) state:

e. On 10/11/20, [Mother] and [Father] engaged in a

Opinion of the Court

physical altercation with each other. During the altercation, [Father] hit [Mother] in the mouth and face several times and he was throwing furniture. [Father] threatened to pour gasoline in or around the home. Fayetteville police were called. [Mother] failed to press charges against [Father][.]

f. On 10/13/20, [Father] called [Mother] and asked her to go to the parental aunt's home where he was residing. While [Mother] was there, paternal aunt physically assaulted [Mother] in the presence of at least two of the children. A knife was involved in the altercation[.]

Further, several of the trial court's findings also indicate Mother was not cooperative and even unwilling to participate in recommended services. Finding of Fact 11(l) states, in relevant part:

1. It was reported that [Mother] has been uncooperative with CCDSS and has not maintained contact with the agency; she has not divulged where the child [Aria] can be located. [Mother] refuses to agree to new CCDSS safety plan for the children[.]

These findings identify the fact that Mother has not only exposed her children to instances of domestic violence, but also her unwillingness to cooperate with CCDSS and her resistance to proposed resources. Not only this, but in Finding of Fact 11(h), the trial court indicated Mother's preceding involvement with CCDSS as Quran had previously been in foster care. This evidence together with the trial court's findings which note the presence of other factors is sufficient to support an adjudication of neglect. As such, the trial court did not err in concluding the children were neglected.

IV. Conclusion

IN RE L.M. Jr., A.M., J.G.-T., Q.J. Jr.

Opinion of the Court

For the aforementioned reasons, we hold there was sufficient evidence to support an adjudication of neglect.

AFFIRMED.

Chief Judge STROUD concurs.

Judge WOOD dissents by separate opinion.

Report per Rule 30(e).

No. COA22-655 – *In re L.M.*

WOOD, Judge, dissenting.

The majority holds today that a child may be found neglected when the mother is the victim of assault, engages in sexual relations with her partner, inconveniences the Department of Social Services (“DSS”) *after* the alleged instances of neglect, and experienced a previous, unspecified encounter with DSS in which her child was in foster care for unknown reasons. These facts, taken as true, separately or combined, do not support a finding of neglect under Section 7B-101(15); the trial court erred when it held otherwise. I therefore respectfully dissent.

To begin, I highlight certain information from the case history. Mother gave birth to the four children referenced by the majority, Quran, Jacob, Aria, and Leo, in 2010, 2014, 2018, and 2019 respectively. Aria and Leo’s father is Meadows, with whom Mother had a relationship at the relevant times of this case.²

On 6 November 2020, DSS filed a petition alleging that the four children were neglected. Citing N.C. Gen. Stat. § 7B-101(15), DSS claimed that the children “do not receive proper care, supervision, or discipline” and “live in an environment injurious to [their] welfare.” DSS alleged facts similar to those to which Mother would later stipulate at the adjudication hearing.

² I do not address the circumstances and orders surrounding the children’s other fathers as it is immaterial to a review of Mother’s appeal.

That same day, the trial court entered a nonsecure custody order granting DSS custody of the children on the grounds that “the juvenile[s] [are] exposed to a substantial risk of physical injury or sexual abuse because the parent, guardian, custodian, or caretaker has created conditions likely to cause injury or abuse or has failed to provide, or is unable to provide, adequate supervision or protection.” A hearing on the need for continued nonsecure custody was scheduled for 9 November 2020. The trial court concluded that DSS presented “a reasonable factual basis to believe that no reasonable means, other than non-secure custody, are available to protect the juveniles” and ordered that the children be placed in the custody of DSS. Visitation with the parents was not ordered.

In another nonsecure custody order, entered 14 January 2021, the trial court again found that the children should remain in the continued custody of DSS but granted Mother supervised visitation with Leo and Aria. Mother was not to have visitation with Jacob or Quran until they had completed a forensic interview.

The trial court entered another nonsecure custody order on 29 January 2021. In this order, the trial court noted that Mother had refused to sign the case plan prepared by DSS. DSS recommended that Mother engage in a mental health assessment, parenting classes, anger management, a domestic violence assessment, and a substance abuse assessment. The trial court granted Mother visitation with all of her children in this order. Although Mother was living in Charlotte at the time, she could exercise visitation with her children provided she traveled to Cumberland

County. The trial court ordered that the children be removed from their current placements and be placed in foster care.

A nonsecure custody order entered 19 February 2021 noted that Mother had “completed a mental health evaluation, is actively seeking employment, and has relocated back to Fayetteville.” The trial court found that “Mother has a previous Child Protective Services history in Roanoke, Virginia and . . . indicated that she [had been] granted full custody of the juveniles through that Court.” Mother was allowed continued, supervised visitation with her children for one hour per week.

On 15 March 2021, the trial court entered another nonsecure custody order. This order stated much the same as the previous one.

The trial court, in an 8 April 2021 nonsecure custody order, again found that Mother had a case plan but “is in need of continued services.” Specifically, a psychological assessment and re-engagement in a sixteen-week intensive parenting class were needed. The trial court noted that Mother had presented several documents evidencing her desire to accept further responsibilities. These included an employment timesheet, a lease, an application for a North Carolina driver license, the title for a vehicle, and an email from a social worker praising the structural integrity of Mother’s home. The trial court concluded by ordering Mother to complete a psychological assessment.

In its 7 June 2021 nonsecure custody order, the trial court transferred placement of the children from foster care to Mother. Mother had completed

parenting classes and had been discharged from individual therapy. The trial court noted little concern with Mother's housing situation. "Mother indicated that she has the means [to] transport the juveniles to and from school and daycare." Though the children were to be placed with Mother, the trial court continued custody with DSS and stated that "Mother's home is subject to announced and unannounced visits by [DSS] and the Guardian ad Litem."

By the trial court's 2 August 2021 nonsecure custody order, nothing had changed, and placement remained the same. Nonsecure custody continued unchanged through orders filed on 18 August, 15 September, 15 October, and 5 November 2021.

However, at some point after the 5 November 2021 nonsecure custody order, Mother was charged with misdemeanor child abuse stemming from "improper discipline" in which Mother allegedly hit Quran with a belt and inflicted bruises. A nonsecure custody order heard on 8 November 2021, signed on 5 January 2022, and filed on 12 January 2022 removed the children from Mother's placement and returned them to foster care. DSS did not file a new petition or an amended petition following the alleged "improper discipline." An adjudication hearing on the issue of neglect was scheduled for 7 December 2021, more than a year after the filing of the petition.

Prior to the hearing, held on 7 December 2021, Mother entered into a stipulation with DSS wherein she stipulated to certain findings. The stipulated facts were verified, read into the record, and are as follows:

1. The Cumberland County Department of Social Services (CCDSS) received a Child Protective Services (CPS) referral on 10/23/20 concerning the safety of the juveniles.

2. Respondent Father, [Meadows], is listed on the birth certificates of [Leo] and [Aria]. Respondent, Louis Aldrich, claims to be the biological father of [Aria] but he has not filed any action to claim paternity. Respondent Mother claims that Louis Aldrich is [Aria's] biological father. Paternity for [Leo] is not at issue. Paternity for [Aria] may be at issue.

3. Respondent Father, [Thompson], pays child support for his child [Jacob], pursuant to a court order. Paternity is not at issue.

4. Respondent Father, [Jones], pays child support for his child [Quran], pursuant to a court order. Paternity is not at issue.

5. On 10/11/20, Respondent Mother and Respondent Father, [Meadows], engaged in a physical altercation with each other. During the altercation, Respondent Father [Meadows] hit Respondent Mother in the mouth and face several times and he was throwing furniture. Respondent Father [Meadows] threatened to pour gasoline in or around the home. Fayetteville Police were called. Respondent Mother failed to press charges against Respondent Father [Meadows]. Respondent Mother filed a Domestic Violence Order for Protection; it was denied on 11/19/2020.

6. On 10/13/20, Respondent Father [Meadows] called Respondent Mother and asked her to go to the paternal aunt's home where he was residing. While the Respondent Mother was there, the paternal aunt physically assaulted Respondent Mother in the presence of at least two of the children. A knife was involved in the altercation. Respondent Mother called Fayetteville Police who responded; no one was charged at the scene. Respondent Mother filed a Domestic Violence Order for

Protection against the paternal aunt; it was denied on 11/19/2020.

7. On 10/23/20, CCDSS received a video of Respondent Mother engaging in sexual acts with Respondent Father [Meadows] and the child [Leo] was in the video on the opposite side of the bed from Respondents. The child was four (4) month[s] old at the time of the incident. Respondent Mother and Respondent Father [Meadows] separated on 10/11/2021. Said video was created in January of 2020.

8. The child [Quran] was in foster care several years ago. During that time, Respondent Father [Jones] was unable to provide care for his child.

9. Respondent Mother temporarily placed the children [Quran] and [Leo] with the maternal grandmother in Mecklenburg County.

10. The maternal grandmother lives in a three-bedroom residence along with her sister and her 17-year-old son.

11. There is no legal remedy that would prevent Respondent Mother from retrieving the children [Quran] and [Leo].

12. It was reported that Respondent Mother has been uncooperative with CCDSS and has not maintained contact with the agency; she has not divulged where the child [Aria] can be located. Respondent mother refuses to agree to [a] new CCDSS safety plan for the children. Respondent Mother otherwise followed the initial safety plan set up by CCDSS by placing the children with Mrs. Kimberly Porter.

13. The child [Jacob] is currently residing with his father, [Thompson], in Raleigh. Respondent Father [Thompson] indicated that he would keep his child long term and he will only allow Respondent Mother to have supervised contact with [Jacob] but he would not prevent

Respondent Mother [sic] from seeing his mother.

The trial court inquired of Mother during the adjudication hearing and verified that she understood and signed the above stipulated facts. Mr. Jones, Quran's father, was present during the adjudication. All other fathers were not present.

The trial court entered an Adjudication and Temporary Disposition Order on 11 January 2022 adjudicating the children to be neglected based upon the stipulated facts. The trial court concluded that "[t]he evidence presented rises to the level of neglect pursuant to N.C. Gen. Stat. § 7B-101(15) in that the juveniles did not receive proper care, supervision, or discipline from their parent, guardian, custodian, or caretaker, and the juveniles lived in an environment injurious to their welfare." The trial court ordered that legal and physical custody of the children remain with DSS.

A disposition hearing was held on 9 February and 9 March 2022. The subsequent Disposition Order, filed on 25 May 2022, noted the issues which led to the children's original removal from Mother's home as being "domestic violence between Respondent Mother and [Meadows], long-standing CPS history, [and] Respondent Mother and [Meadows] engaging in sexual activity in front of [Leo]." As with its previous orders, the trial court held that legal and physical custody of all four children should remain with DSS "for placement in foster care, therapeutic care, with suitable relatives, or with other Court approved caretakers."

Of the thirteen stipulated facts, I focus principally on the following five:

5. On 10/11/20, Respondent Mother and Respondent Father, [Meadows], engaged in a physical altercation with each other. During the altercation, Respondent Father [Meadows] hit Respondent Mother in the mouth and face several times and he was throwing furniture. Respondent Father [Meadows] threatened to pour gasoline in or around the home. Fayetteville Police were called. Respondent Mother failed to press charges against Respondent Father [Meadows]. Respondent Mother filed a Domestic Violence Order for Protection; it was denied on 11/19/2020.

6. On 10/13/20, Respondent Father [Meadows] called Respondent Mother and asked her to go to the paternal aunt's home where he was residing. While the Respondent Mother was there, the paternal aunt physically assaulted Respondent Mother in the presence of at least two of the children. A knife was involved in the altercation. Respondent Mother called Fayetteville Police who responded; no one was charged at the scene. Respondent Mother filed a Domestic Violence Order for Protection against the paternal aunt; it was denied on 11/19/2020.

7. On 10/23/20, CCDSS received a video of Respondent Mother engaging in sexual acts with Respondent Father [Meadows] and the child [Leo] was in the video on the opposite side of the bed from Respondents. The child was four (4) month[s] old at the time of the incident. Respondent Mother and Respondent Father [Meadows] separated on 10/11/2021. Said video was created in January of 2020.

8. The child [Quran] was in foster care several years ago. During that time, Respondent Father [Jones] was unable to provide care for his child.

....

12. It was reported that Respondent Mother has been uncooperative with CCDSS and has not maintained contact with the agency; she has not divulged where the

child [Aria] can be located. Respondent mother refuses to agree to [a] new CCDSS safety plan for the children. Respondent Mother otherwise followed the initial safety plan set up by CCDSS by placing the children with Mrs. Kimberly Porter.

In sum, these stipulated facts tended to show Mother was involved in a domestic violence incident with Respondent Father (Meadows) for which she sought a domestic violence protective order which was denied by the court, and it does not appear from the trial court's findings that the minor children were present during the incident. The denial of the protective order is important to note because it can be presumed that the trial court hearing Mother's complaint for a domestic violence protective order did not find a sufficient basis of domestic violence for the entry of a domestic violence protective order. The stipulated facts show Mother was assaulted by the paternal aunt in front of at least two of the children, and that Mother called police and also sought a domestic violence protective order which was denied by the court. The stipulated facts also show that a four-month-old infant was present in the room with his parents during sexual acts. Finding of fact 8 alludes to the prior placement of one of Mother's children in foster care but makes no specific finding of any abuse, neglect, or dependency of the child causing the placement in foster care. There is no indication whether the placement was court ordered or a voluntary placement. Mother also, reportedly, did not cooperate with DSS prior to adjudication and did not reveal the location of one of her children; although, she then voluntarily placed them in a kinship placement pursuant to a safety plan.

Concerning the instances of domestic violence, Meadows assaulted and threatened Mother, and she sought a domestic violence protective order. Meadows' aunt assaulted and threatened Mother after she arrived at the aunt's home at Meadows' invitation. It does not follow from these facts that Mother failed to "provide proper care, supervision, or discipline" or allowed "a living environment that is injurious to the juvenile's welfare." N.C. Gen. Stat. § 7B-101(15) (2022). The trial court's order does not assert any finding of fact tending to show, for example, that Mother "continu[ed] to cohabitate in an abusive environment," *In re T.S.*, 178 N.C. App. 110, 114, 631 S.E.2d 19, 22, or otherwise failed to act to protect her children during these instances. To the contrary, Mother "filed a Domestic Violence Order for Protection" against her assailants in both instances.

As for the finding concerning Mother's recorded sexual acts with Meadows, I highlight the fact that the child present during the occurrence was an infant who was no more than four months old. A child of this age is without understanding, and no evidence was presented to even infer that he would be affected by this activity. Mother's actions here, then, could not rise to a presumption of neglect. To hold otherwise would prohibit parents from cradling infants in their bedroom following birth—a ludicrous outcome.

As for Quran's previous stint in foster care, the majority is correct in stating that a trial court may consider prior and closed cases of neglect as evidence of continued neglect, when considered in "the presence of other factors." *In re J.A.M.*,

372 N.C. 1, 9, 822 S.E.2d 693, 699 (2019). However, “[a] prior and closed case with other children . . . *standing alone*, cannot support an adjudication of current or future neglect.” *Id.* Merely stating then, as here, that Quran “was in foster care several years ago,” without more, does nothing to reveal a history of neglect or in any way support the conclusion that Quran or any of the children were neglected at the time DSS filed its petition in 2020.

Lastly, a determination of neglect at the time of DSS’s petition does not rest with Mother’s cooperation with DSS afterward. A trial court may only adjudicate a child neglected based upon “the circumstances as they existed at the time the petition was filed.” *In re E.P.-L.M.*, 272 N.C. App. 585, 597, 847 S.E.2d 427, 437 (2020). In fact, “post-petition evidence generally is not admissible during an adjudicatory hearing for abuse, neglect, or dependency.” *In re V.B.*, 239 N.C. App. 340, 344, 768 S.E.2d 867, 869 (2015). Even if this were not true, the trial court’s findings here do not allege that any of the children were in some form of danger because of Mother’s alleged refusal to cooperate with DSS. Therefore, the stipulated fact that it was reported that Respondent Mother has been uncooperative with CCDSS and did “not divulged where the child [Aria] can be located” is not decisive. Further, although Mother refused to agree to a new safety plan, Mother followed the initial safety plan set up by DSS and placed the children in a kinship placement. There is no finding by the trial court how this affected the safety of the children.

“Traditionally, there must be some physical, mental, or emotional impairment

of the juvenile or a substantial risk of such impairment as a consequence of the failure to provide proper care, supervision, or discipline in order to adjudicate a juvenile neglected.” *In re K.S.*, 380 N.C. 60, 64-65, 868 S.E.2d 1, 4 (2022) (internal quotations and alteration omitted). There was not a substantial risk of physical, mental, or emotional impairment here. The trial court’s findings of fact do not support its conclusion of law that the children were neglected.

Although Mother stipulated to the ultimate findings of fact, she did not, and could not, stipulate to a conclusion of neglect. It was, therefore, incumbent upon the trial court to determine whether to receive the stipulations of the parties. Upon receiving the stipulation of the parties, the trial court is vested with the duty of determining if the stipulations supported a conclusion of law that the children were neglected. Here, the trial court’s uncontested findings of fact do not support its conclusion of law that the children were neglected. The trial court erred in holding the children did not receive “proper care, supervision, or discipline” or that the children lived in an “environment that is injurious to [their] welfare.” N.C. Gen. Stat. § 7B-101(15) (2022). Accordingly, I would reverse the adjudication order of the trial court and, consequently, also the disposition order.