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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-656

Filed 20 June 2023

Cumberland County, Nos. 21 JA 157-58

IN THE MATTER OF: A.G., N.D.

Appeal by respondent-mother from order entered 19 April 2022 by Judge Cull Jordan, III, in Cumberland County District Court. Heard in the Court of Appeals 24 May 2023.

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

Office of the Parent Defender, by Assistant Parent Defender Jacky L. Brammer, for respondent-appellant mother.

Raleigh Divorce Law Firm, by Jennifer A. Sinclair and Heather Williams Forshey, for the guardian ad litem.

ARROWOOD, Judge.

Respondent-mother appeals from the trial court's order adjudicating her minor children A.G. ("Amelia") a neglected juvenile and N.D. ("Nathan")¹ an abused juvenile. Respondent-mother further contends the trial court erred in determining it

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

was in the best interest of the children to remain in Cumberland County Department of Social Services' ("DSS") custody, but in separate placements, and that DSS did not make reasonable efforts to prevent the children's adjudication. For the following reasons, we affirm the trial court's order.

I. Background

On 27 May 2021, DSS obtained nonsecure custody of Amelia and Nathan upon the filing of a juvenile petition alleging the children were abused and neglected. The petition alleged that DSS initially became involved with the family in April 2021, after reports that Nathan was "physically disciplined" and hit by respondent-mother because Amelia, then four-years-old, disclosed that Nathan, then ten-years-old, "inappropriately touched her." The petition further asserted that on 13 May 2021, in response to Amelia's disclosure, respondent-mother took Amelia to the pediatrician and "demanded" that they perform a sexual assault exam on her. "When the pediatrician told [her] that she would have to take [Amelia] to the hospital for that, [r]espondent[-][m]other became irate and volatile towards the doctor and the doctor's staff." Amelia was never taken to the hospital for the examination.

The petition also alleged that on 26 May 2021, Amelia disclosed to respondent-mother "that she was recently touched and pointed to her vaginal area." "As [Nathan] was in the home with [Amelia] when she disclosed," respondent-mother asked Nathan "about touching his sister inappropriately[.]" Nathan denied doing anything to Amelia and stated Amelia had lied. Respondent-mother "became angry and hit

[Nathan] with a belt and a pan, . . . and [respondent-mother] sprayed hot water in [Nathan's] face.” The petition further alleged that respondent-mother made Nathan “dress in girls['] clothing” and “threatened to make him take sleeping medicine and sleep in the bathtub.”

Nathan “was upset and frightened, so he ran from home to a neighbor’s home and the neighbor called law enforcement.” Respondent-mother was charged with child abuse and arrested, and Nathan was transported to the hospital by an ambulance and later released to his maternal grandfather. Medical records stated that Nathan told the medics that respondent-mother beat him with “ ‘a belt a bunch of times[,]’ ” and hit him in the head with a bottle. Medical records also indicated that when he was in the emergency room, Nathan was “wearing female undergarments[.]”

DSS saw Nathan in the hospital before he was discharged, and although they attempted to locate Amelia that evening, they were not able to do so until the following day. While meeting with respondent-mother to discuss a safety plan and “alternative placements” for the juveniles, DSS learned that respondent-mother had brought Nathan back to her residence from his maternal grandfather’s house.

During follow-up forensic interviews with law enforcement, Nathan disclosed that he witnessed the children’s babysitter, “coming out of the room with his sister, [Amelia], and he believed that there was inappropriate touching” that had happened. Amelia disclosed during her interview that the babysitter had inappropriately

touched her one time. When detectives spoke with respondent-mother she stated that she had seen Nathan inappropriately touching Amelia. However, respondent-mother explained Nathan had previously “been touched” and that was possibly why he “was doing it to [Amelia][.]”

Respondent-mother also told detectives about a separate incident involving Amelia being inappropriately touched by the babysitter. Respondent-mother told detectives that “[the babysitter] had inappropriately touched [Amelia] and in order to get [Nathan] not to say anything he told [Nathan] to touch [Amelia] as well.” Respondent-mother stated that Nathan “didn’t touch [Amelia]” on this occasion, but rather “[the babysitter] was basically using that as a ploy” to ensure Nathan did not disclose the incident.

Between June 2021 and January 2022, eight hearings were held to determine the need for continued nonsecure custody of the children. In orders following each hearing, the trial court found there was “a reasonable factual basis to believe that no reasonable means, other than non-secure custody, [were] available to protect the juveniles[.]” the children would be “exposed to a substantial risk of physical injury because [respondent-mother] has created conditions likely to cause injury, or has failed to provide, or is unable to provide adequate supervision or protection[.]” and return of the children to respondent-mother’s custody would be “contrary to the juveniles’ health and safety.” Furthermore, each order continuing nonsecure custody found DSS was making “reasonable efforts to prevent the need for the juveniles’

placement outside of the home” by attempting “to identify suitable relatives[,]” and the juveniles should be “placed in separate foster care homes due to the nature of the allegations,” and such placements were “in the best interest of the children[.]”

The matter came on for adjudication and dispositional hearings on 25-26 January 2022 and 24-25 February 2022 in Cumberland County District Court, Judge Jordan presiding. At the time of the hearings, there were no longer criminal charges pending against respondent-mother related to the May incident as they were voluntarily dismissed.

During the adjudicatory hearings, DSS social workers and a detective testified on behalf of DSS. Detective Daniel Edmonds (“Detective Edmonds”) with the Fayetteville Police Department, who responded to the initial call to respondent-mother’s house in April 2021, testified on behalf of DSS. Detective Edmonds testified that, upon arrival, Nathan told him “that he had run away because he was afraid of” respondent-mother. Detective Edmonds further testified that respondent-mother told him she “saw [Nathan] touching [Amelia] inappropriately.” Respondent-mother told Detective Edmonds that when she “questioned” Nathan, “he said something may have happened” so “she began whipping him” and Nathan “ran out of the house.” She also told Detective Edmonds that Nathan “was running around and that’s why he was hit in the face.”

Detective Edmonds did observe “some red marks” on Nathan’s arms which appeared consistent with belt marks. Detective Edmonds also testified about the

forensic interviews conducted on the children and their disclosures. Lastly, Detective Edmonds testified during his initial encounter with respondent-mother in April 2021, she did not mention the babysitter, but after she was told about the children's disclosures during the forensic interviews, she mentioned him.

Social worker Vanna Cummings ("Ms. Cummings") also testified. Ms. Cummings testified that when she met Nathan in the hospital on 26 May, "[h]e did present with a bump on his forehead[.]" and "[h]e stated that his mother threw a glass bottle at his head and back." Lastly, DSS called respondent-mother to testify as an adverse witness.

Respondent-mother testified that when Nathan ran away in April 2021, he ran away because he feared the babysitter was going to come "shoot [their] house up." Furthermore, respondent-mother denied "whipping" or hitting Nathan at all and stated that it was likely tall grass that injured Nathan's arms, and she denied telling Detective Edmonds she witnessed Nathan touching Amelia inappropriately. Additionally, respondent-mother denied signing the safety assessment plan from April 2021, and stated that the document appeared to have been forged by DSS.

Respondent-mother also testified that Amelia's medical records, which stated, "[Amelia] kept complaining that she was hurting down there, and [respondent-mother] asked her why she was hurt and [Amelia] finally told [respondent-mother] that someone touched her down there[.]" and any allegations she accused Nathan of touching Amelia were lies. Respondent-mother further denied the information

contained in Nathan's medical records and testified that Nathan "fabricated" the story he told the medic, social worker, and doctor on 26 May when he was hospitalized. However, respondent-mother testified that she did believe Nathan was honest about the babysitter inappropriately touching Amelia, despite her statement that "[k]ids lie all the time."

Respondent-mother testified the reason Nathan went to the hospital in May 2021 was because he was dehydrated from running away and denied it had anything to do with physical injuries. When presented with photographs of the injuries, respondent-mother stated the knot on his head was a "scar [he had] since he was four years old[,] and she denied seeing any marks on his arms. Respondent-mother testified that Nathan disclosed that on her and her significant other's anniversary, while they were out of the house, Nathan woke up and found the babysitter naked in a separate room alone with Amelia. At the close of DSS's evidence, respondent-mother made a motion to dismiss. The motion was denied.

Nathan testified on behalf of respondent-mother. Nathan testified that while he was with the babysitter on his parent's anniversary, he woke up and realized the babysitter had taken Amelia to another room. Nathan further testified that the babysitter hit him on the head when he refused to "do something with [Amelia]" as the babysitter requested. Nathan also testified that respondent-mother never hit him on the day in question, and the contusion to his head came from running away, hopping a fence, and falling on his head. He testified that he ran away in May

because he did not do the dishes that day, but he did want to go home.

Nathan also denied respondent-mother ever threatened to give him sleep medication, make him sleep in the bathtub, wear female undergarments, and denied she had ever hit him with a belt or otherwise. Nathan did remember telling the hospital staff and law enforcement after the May 2021 incident that respondent-mother hit him, but testified he was not telling them the truth because he “was mad at her.” Lastly, Nathan testified respondent-mother “thought it was [him] and [the babysitter]” that touched Amelia, until he told her what happened and then respondent-mother “believed that it wasn’t [him].”

At the last hearing on 25 February 2022, the trial court found clear, cogent, and convincing evidence that Nathan was an abused juvenile and Amelia was a neglected juvenile. Specifically, the trial court found that respondent-mother hit Nathan with a belt, bottle, and pan after Nathan denied inappropriately touching Amelia, despite her disclosure that both Nathan and the babysitter inappropriately touched her. The trial court found Amelia to be neglected, as she disclosed in April 2021 that she was inappropriately touched, and despite law enforcement’s suggestion to get her examined, respondent-mother never sought medical treatment for her.

Following the adjudication, the trial court moved to the disposition phase of the trial. Isabel Belen-Coppin (“Ms. Belen-Coppin”) testified on behalf of DSS. Ms. Belen-Coppin testified that both children were placed with separate maternal

relatives, attending school regularly, and Nathan was in therapy and DSS was seeking new therapy services for Amelia, so she could continue treatment. However, Ms. Belen-Coppin expressed concerns with both placements allowing respondent-mother “face-to-face visitation with the child[ren] without” informing DSS. Ms. Belen-Coppin testified respondent-mother has been ”challenging” to work with, as she attempted to get both children discharged from therapy and “constantly” texted Ms. Belen-Coppin, sometimes “[u]sing foul language and making false accusations.”

Respondent-mother also testified during the dispositional phase of the hearing. Respondent-mother testified she had completed parenting classes, anger management, and was seeking mental health services, but when asked about her role in her children being in DSS’s custody, she stated that she “didn’t do anything.” At the close of all evidence, the trial court found that it was in the best interest of the children to continue nonsecure custody with DSS and continued the case to May 2023 for a permanency planning hearing. The court’s holdings were memorialized in an order entered 19 April 2022. Respondent-mother filed notice of appeal 17 May 2022.

II. Discussion

On appeal, respondent-mother raises four issues: (1) DSS did not make reasonable efforts to prevent the juvenile’s adjudication; (2) the trial court erred in adjudicating Nathan abused since he “did not suffer serious physical injury[.]” (3) the trial court erred in adjudicating Amelia neglected; and (4) the trial court erred in finding it was in the children’s best interest to separate them from her and each other.

We address each argument in turn.

A. Reasonable Efforts by DSS

In her first argument on appeal, respondent-mother contends that DSS did not make a reasonable effort because they failed to offer her “reasonable services before adjudicating Nathan abused and Amelia neglected[,]” and their efforts “were not aimed at reunifying Nathan and Amelia with” her. This argument is without merit.

The record reflects that there were eight hearings to determine the need for continued nonsecure custody of the children between June 2021 and January 2022. These hearings were held pursuant to N.C. Gen. Stat. § 7B-506, which requires the court to “[i]nquire about efforts made to identify and notify relatives as potential resources for placement or support and as to whether a relative of the juvenile is willing and able to provide proper care and supervision of the juvenile in a safe home.” N.C. Gen. Stat. § 7B-506(h)(2) (2022). Furthermore, the statutes state that nonsecure custody should continue “when there is a reasonable factual basis to believe the matters alleged in the petition are true” and the children are “exposed to a substantial risk of physical injury or sexual abuse because the parent . . . has created the conditions likely to cause injury or abuse or has failed to provide, or is unable to provide, adequate supervision or protection.” N.C. Gen. Stat. § 7B-503(a), (a)(3) (2022).

Additionally, the statutes require “[a]n order placing or continuing the placement of a juvenile in the nonsecure custody of” DSS to contain: (1) “a finding

that the juvenile's continuation in or return to the juvenile's own home would be contrary to the juvenile's health and safety" and (2) "specific findings as to whether a county department of social services has made reasonable efforts to prevent the need for placement of the juvenile." N.C. Gen. Stat. § 7B-507(a)(1)-(2) (2022). "In determining whether efforts to prevent the placement of the juvenile were reasonable, the juvenile's health and safety shall be the paramount concern. *The court may find that efforts to prevent the need for the juvenile's placement were precluded by an immediate threat of harm to the juvenile.*" *Id.* § 7B-507(a)(2) (emphasis added). "A finding that reasonable efforts were not made by [DSS] shall not preclude the entry of an order authorizing the juvenile's placement when the court finds that placement is necessary for the protection of the juvenile." *Id.* Lastly, a court "[m]ay order services or other efforts aimed at returning the juvenile to a safe home." *Id.* § 7B-507(a)(5) (emphasis added). Here, each order continuing nonsecure custody specifically addresses the statutory requirements.

Although our statutes require the court to consider whether DSS's efforts toward reunification are reasonable during *permanency planning hearings*, there is no such requirement at hearings to continue nonsecure custody. *Id.* § 7B-906.2(c). Respondent-mother's argument overlooks this distinction. Furthermore, respondent-mother's reliance on *In re J.C.-B.*, 276 N.C. App. 180, 856 S.E.2d 883 (2021), is misplaced. There, this Court specifically addressed DSS's reasonable efforts in the context of permanency planning hearings. *Id.* at 190, 856 S.E.2d at 891. Accordingly,

this argument is without merit.

B. Adjudication of Nathan as Abused and Amelia as Neglected

Respondent-mother next argues the trial court erred in adjudicating Nathan abused, since he “did not suffer serious physical injury,” and in adjudicating Amelia neglected. We disagree.

Our appellate courts “review an adjudication . . . 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, 188 (2020) (citation omitted). “[W]e review a trial court’s conclusions of law de novo[.]” *Id.* (citation omitted). “Under a de novo review, this Court ‘considers the matter anew and freely substitutes its own judgment for that of the lower tribunal.’” *Id.* at 36, 845 S.E.2d at 189 (citation omitted). “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))

1. Adjudication of Nathan as Abused

On appeal, respondent-mother contends Nathan was not abused because he did not suffer “serious physical injury” due to respondent-mother’s “discipline.” Rather, respondent-mother contends that Nathan’s injuries were “nothing worse than bruises” and the “result of corporal punishment” and we should reverse because precedent holds that bruises from spanking that result in temporary bruises does not amount to serious physical injury. We disagree with respondent-mother’s

characterization of the injuries Nathan sustained and find this argument without merit.

An abused juvenile is defined, in pertinent part, as one whose parent or guardian:

- a. Inflicts or allows to be inflicted upon the juvenile a serious physical injury by other than accidental means;
- b. Creates or allows to be created a substantial risk of serious physical injury to the juvenile by other than accidental means;
- c. Uses or allows to be used upon the juvenile cruel or grossly inappropriate procedures or cruel or grossly inappropriate devices to modify behavior;

. . . .

- e. Creates or allows to be created serious emotional damage to the juvenile; serious emotional damage is evidenced by a juvenile's severe anxiety, depression, withdrawal, or aggressive behavior toward himself or others[.]

N.C. Gen. Stat. § 7B-101(1)(a)-(c), (1)(e) (2022). “At its core, ‘the nature of abuse, based upon its statutory definition, is the existence or serious risk of some nonaccidental harm inflicted or allowed by one’s caretaker.’” *In re A.J.L.H.*, __ N.C. __, __, 884 S.E.2d 687, 693 (2023) (citation omitted).

Here, the trial court found that after Amelia’s disclosure, respondent-mother “hit [Nathan] with a belt, bottle, and pan which resulted in [him] requiring medical treatment for injuries[.]” Nathan was transported by EMS to the hospital to receive

treatment. Nathan disclosed to paramedics that respondent-mother hit him in the head with a bottle, “beat him with a belt ‘a bunch of times[,]’ ” “and hit him on his back three or four times” with a pan. Nathan had “red raised linear marks the size of a dollar bill on both of his forearms and a large hematoma on the left side of his head from being hit by [r]espondent[-][m]other.” Nathan also had “marked tenderness in his right flank.”

Contrary to respondent-mother’s contention, these injuries were not from spanking and did not result in mere bruising. The uncontested findings of fact show that Nathan was hit with a belt, bottle, and pan, requiring transport to the hospital by EMS and he had documented injuries to multiple areas, including his head and flank. Accordingly, the trial court properly adjudicated Nathan abused.

2. Adjudication of Amelia as Neglected

Respondent-mother further contends the trial court erred in adjudicating Amelia as neglected, as it “did not find Amelia suffered any impairment because of [respondent-mother’s] alleged neglect.” This argument is likewise without merit.

A neglected juvenile is one whose parent or guardian: “[d]oes not provide proper care, supervision, or discipline[;] [h]as not provided or arranged for the provision of necessary medical or remedial care[;]” 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), (c), (e) (2022). Furthermore, “it is relevant whether th[e] juvenile . . . lives in a home where another juvenile has been subjected to abuse or neglect by an adult

who regularly lives in the home.” *Id.* § 7B-101(15).

“A court may not adjudicate a juvenile neglected solely based upon previous [DSS] involvement relating to other children[,]” but “in concluding that a juvenile ‘lives in an environment injurious to the juvenile’s welfare,’ . . . the clear and convincing evidence in the record must show current circumstances that present a risk to the juvenile.” *In re J.A.M.*, 372 N.C. 1, 9, 822 S.E.2d 693, 698 (2019). Importantly, “a 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 A.J.L.H.*, __ N.C. at __, 884 S.E.2d at 694 (citation omitted).

“When determining the weight to be given to a finding of abuse of another child in the home, a critical factor is whether the respondent indicates a willingness to ‘remedy the injurious environment that existed’ with respect to the older child.” *Id.* at __, 884 S.E.2d at 694-95 (citation omitted). “Facts that can demonstrate a parent’s unwillingness to remedy the injurious environment include failing to acknowledge the older child’s abuse or insisting that the parent did nothing wrong when the facts show the parent is responsible for the abuse.” *Id.* (citations omitted).

At the trial, respondent-mother specifically denied “hit[ting] [Nathan] at all[,]” and testified that “[her] kids don’t get whippings.” Furthermore, when asked about her responsibility for the children being in DSS’s custody, respondent-mother testified that she “didn’t do anything.” Even on appeal, respondent-mother contends that Nathan’s injuries were “nothing worse than bruises,” and the “result of corporal

punishment[.]”

Here, the trial court properly adjudicated Nathan as abused, as discussed above, and respondent-mother never took responsibility for her actions. Additionally, although respondent-mother was instructed by law enforcement in April 2021 to get Amelia “a medical examination for possible sexual assault[.]” Amelia never received an evaluation. Accordingly, the trial court properly determined by clear, cogent, and convincing evidence that there was a current risk to Amelia if she remained in the home and, as a result, properly adjudicated Amelia a neglected juvenile.

C. Best Interest to Separate the Children

Lastly, respondent-mother contends the trial court erred in finding it was in the children’s best interest to separate them from her and each other. Again, we find this argument to be without merit. “At the disposition stage, the trial court solely considers the best interests of the child. Nonetheless, facts found by the trial court are binding absent a showing of an abuse of discretion.” *In re Pittman*, 149 N.C. App. 756, 766, 561 S.E.2d 560, 567 (citations and internal quotation marks omitted), *disc. review denied*, 356 N.C. 163, 568 S.E.2d 608 (Mem), *appeal dismissed*, 356 N.C. 163, 568 S.E.2d 609 (Mem) (2002), *cert. denied*, 538 U.S. 982, 155 L. Ed. 2d 673 (2003). “Abuse of discretion results where the court’s ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision.” *Id.* (citation and internal quotation marks omitted).

Here, the trial court found that it was in Nathan and Amelia’s best interest to

remain in separate placements due to the allegations regarding Nathan inappropriately touching Amelia, and that any contact between them “should occur in a therapeutic environment when deemed appropriate by the juveniles’ mental health providers.” Furthermore, the trial court found it was in the juvenile’s best interest to remain in DSS’s custody, considering the juveniles were adjudicated abused and neglected. Based on the totality of the trial court’s findings, we cannot say the trial court abused its discretion in finding the juveniles should remain in DSS’s custody in separate placements.

III. Conclusion

For the foregoing reasons, we affirm the trial court’s order.

AFFIRMED.

Judges WOOD and GORE concur.

Report per Rule 30(e).