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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-833

Filed 05 July 2023

Guilford County, Nos. 21 JA 84-87

IN THE MATTER OF: A.H., D.H., B.H., P.H.

Appeal by respondent-mother from orders entered 30 June 2022 and 15 July 2022 by Judge Marcus A. Shields in Guilford County District Court. Heard in the Court of Appeals 6 June 2023.

*Mercedes O. Chut, for Guilford County Department of Health and Human Services, for petitioner-appellee.*

*Law Office of Jason R. Page, PLLC, by Jason R. Page, for respondent-mother.*

*North Carolina Administrative Office of the Courts, by Michelle FormyDuval Lynch, for guardian ad litem.*

ARROWOOD, Judge.

Respondent-mother appeals from the trial court's orders adjudicating the minor children, A.H. ("Anna"), D.H. ("Dylan"), B.H. ("Barbara"), P.H. ("Patricia"),<sup>1</sup> (collectively, "the children") neglected and dependent and continuing nonsecure custody with the Guilford County Department of Health and Human Services

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<sup>1</sup> Pseudonyms stipulated to by the parties are used to protect the identity of the juveniles.

(“DSS”). After careful review, we affirm.

I. Background

On 2 July 2021, DSS received a report alleging concerns of homelessness, improper discipline by the children’s father, and substance abuse by the parents. The report also alleged that the children had never been enrolled in school. On 9 August 2021, after attempting to locate the family for several weeks, social worker Chelsea Clyburn (“Ms. Clyburn”) found the family residing at Motel 6. Ms. Clyburn had been informed by the Greensboro Police Department that the family were at the hotel, after receiving “a call requesting a child welfare check, due to the parents possibly fleeing from [DSS].”

During this initial meeting, the parents denied having substance abuse issues, but stated they had been taking Suboxone, as prescribed, “for at least seven years” and were “number one on the waitlist for Asheboro Housing.” Respondent-mother also asserted that the children were being homeschooled but was unable to provide any homeschooling verification information. Although the parents were requested to submit to drug tests within 48-hours of the initial contact with DSS, Ms. Clyburn had to transport the parents to the drug screening facility on 26 August 2021, “due to the parents’ failure to submit to the drug screens within the requested timeframe.” Respondent-mother’s urine tested positive for ethanol, and her hair follicle test results were positive for “cocaine, . . . amphetamines, benzoylecgonine, methamphetamines, and norcocaine.” The children’s father (“Mr. H”) was only able

to complete a urine analysis, which indicated positive results for cocaine and ethanol.

When Ms. Clyburn attempted to contact the parents to address their results, she was informed by the hotel that the family “moved out a week prior.” The family was eventually located at the Microtel and a child and family team meeting (“CFT”) was scheduled for 13 September 2021. The parents “were a no-call/no-show[,]” but Ms. Clyburn was able to contact them on the hotel phone afterwards, and the meeting was held over the phone. The concerns addressed included the children’s enrollment in school, establishing medical care for the children, and additional drug screens and substance abuse assessments for the parents.

On 15 September 2021, the parents signed a safety plan agreement and Ms. Clyburn provided them with additional drug screen referrals. However, “[s]ince [that day],” DSS “never received another drug screen from the parents.” Furthermore, respondent-mother asserted she “wanted [the children] to be homeschooled[,]” and someone agreed to provide tablets for the children to start “an online education program.” Respondent-mother did not provide any information pertaining to a program this individual was associated with.

Ms. Clyburn visited the family again on 25 and 29 September 2021. The parents failed to complete the requested drug screens and were given additional referrals. The children were still not enrolled in school, but respondent-mother contended “she . . . had resources to get them homeschooled.”

Additional CFTs were scheduled for 4 and 6 October 2021. On 4 October 2021, Ms. Clyburn called the hotel at 8:43 a.m. and respondent-mother asserted, “she was about to leave and be on her way.” When the parents missed the CFT, Ms. Clyburn called the hotel again at 10:00 a.m., but Mr. H informed her respondent-mother “had already left.” Ms. Clyburn did not hear from respondent-mother until 3:40 p.m. when respondent-mother texted that her “car had broken down on the way to the CFT.” The CFT was rescheduled for 6 October 2021, but the parents “were a no-call/no-show.” Ms. Clyburn also offered respondent-mother transportation to CFTs, medical appointments for the children, and to school, which respondent-mother declined.

On 8 October 2021, DSS filed juvenile petitions alleging the children were dependent, neglected, and living in an environment injurious to their welfare and obtained nonsecure custody of the children. DSS’s reasons for filing the petitions included the parents “lack of cooperation[,]” failure to follow “any of the safety plans[,]” “concerns of neglect[,]” the children’s lack of education, and the parents failure to schedule the children for agreed upon medical appointments.

The matters came on for adjudication and disposition hearings in Guilford County District Court on 10 March 2022 and 7 April 2022, Judge Shields presiding. Ms. Clyburn and social worker Daphene Johnson (“Ms. Johnson”) testified.

Ms. Clyburn testified to the allegations underlying the juvenile petitions and they were submitted as verified affidavits, without objection. Additionally, Ms. Clyburn testified that after contacting Asheboro Housing Authority, she discovered

the family was not on the waitlist for housing. Ms. Clyburn testified further that Mr. H was “difficult” to speak with, and on one occasion while visiting the family at the Microtel, Mr. H would “usually” go “straight into the bathroom . . . screaming about why [DSS is] involved and . . . just wish[ing] [they] would leave him alone.” Lastly, Ms. Johnson testified that the children “love . . . school, but they never attended” nor been enrolled in school before, which respondent-mother admitted.

In an order entered 30 June 2022, the trial court adjudicated the children neglected and dependent. In its order rendered 15 July 2022, the trial court continued nonsecure custody with DSS. Respondent-mother timely appealed on 4 August 2022.

## II. Discussion

On appeal, respondent-mother asserts the trial court erred by adjudicating the minor children neglected and dependent and concluding that DSS made reasonable efforts to prevent the need for placement. Specifically, respondent-mother argues the trial court’s findings do not “indicate a negative impact” on the children, contending the “facts . . . show four children who live in an intact family, are homeschooled, and have parents who tested positive for drugs once.” We disagree.

“We review an adjudication of abuse, neglect or dependency under N.C. [Gen. Stat.] § 7B-807 to determine whether the trial court’s findings are supported by clear and convincing competent evidence and whether the findings, in turn, support the trial court’s conclusions of law.” *In re R.S.*, 254 N.C. App. 678, 680, 802 S.E.2d 169,

171 (2017) (citation and internal quotation marks omitted). Unchallenged findings of facts are deemed to be supported by the evidence and are binding on appeal. *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991) (citation omitted). “Erroneous findings unnecessary to the adjudication may be disregarded as harmless.” *In re J.C.M.J.C.*, 268 N.C. App. 47, 51, 834 S.E.2d 670, 674 (2019). We review a trial court’s conclusions of law *de novo*. *In re R.S.*, 254 N.C. App. at 680, 802 S.E.2d at 171 (citation omitted).

A. Neglect

In relevant part, a “neglected juvenile” is defined as a minor whose parent:

- a. Does not provide proper care, supervision, or discipline.
- b. Has abandoned the juvenile.
- c. Has not provided or arranged for the provision of necessary medical or remedial care.
- . . . .
- 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)-(c), (e) (2022). In order to sustain an adjudication of neglect, “this Court has consistently required that there 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 re Safriet*, 112 N.C. App. 747, 752, 436 S.E.2d 898, 901-902 (1993) (citation and internal quotation marks omitted). “[T]he 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). “The trial court is granted some discretion in determining whether children are at risk for a particular kind of harm given their age and the environment in which they reside.” *In re A.D.*, 278 N.C. App. 637, 642, 863 S.E.2d 317, 321-22 (2021) (citation and internal quotation marks omitted). “It is well-established that 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) (citation and internal quotation marks omitted).

Respondent-mother challenges several portions of the trial court’s findings as being unsupported by competent evidence. We agree that some of the challenged findings are not supported by evidence in the record, “[w]hen, however, 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 (2006) (citation omitted).

Here, the unchallenged findings indicate that the children were at a substantial risk of impairment and the findings are supported by competent evidence. The facts tended to show that the children were not enrolled in an educational program, did not have stable housing, and respondent-mother refused to cooperate with DSS. *In re A.D.*, 278 N.C. App. at 643, 863 S.E.2d at 322 (citation omitted) (finding “a mother’s failure to cooperate with DSS put the child[ren] at risk of

substantial harm where the mother refused to participate in services”). Contrary to respondent-mother’s assertion that her children were homeschooled, she provided no evidence of a homeschooling program and reported to DSS that the children “had *never* been enrolled in school[.]”

This finding is especially paramount when, at the time the petitions were filed, Patricia was eleven, Barbara was nine, and Dylan was six. “It is fundamental that a child who receives proper care and supervision in modern times is provided a basic education. A child does not receive ‘proper care’ and lives in an ‘environment injurious to his welfare’ when he is deliberately refused this education, and he is ‘neglected’ within the meaning of [N.C. Gen. Stat. § 7B-101(15)].” *In re McMillan*, 30 N.C. App. 235, 238, 226 S.E.2d 693, 695 (1976).

Furthermore, respondent-mother’s drug use, when taken in combination with her refusal to follow DSS’s recommendations, establish preventative medical care for the children, and take requested drug screens, “have the potential to significantly impact her ability to provide ‘proper care, supervision, or discipline’ for [the children].” *See In re K.D.*, 178 N.C. App. 322, 329, 631 S.E.2d 150, 155 (2006) (citation omitted); *In re A.D.*, 278 N.C. App. at 643, 863 S.E.2d at 322 (citation omitted). The inability to follow simple tasks that have a direct impact on the children’s wellbeing is sufficient to indicate a likelihood of substantial harm. *In re A.D.*, 278 N.C. App. at 643, 863 S.E.2d at 322 (citation omitted) (“‘A parent’s failure to make progress in



completing a case plan is indicative of a likelihood of future neglect.’ ”). Accordingly, the trial court properly adjudicated the children neglected.

B. Dependent

A dependent child is defined as “[a] juvenile in need of assistance or placement because . . . [the juvenile’s] parent, guardian, or custodian is unable to provide for the care or supervision and lacks an appropriate alternative child care arrangement.” N.C. Gen. Stat. § 7B-101(9) (2022). “Under this definition, the trial court must address both (1) the parent’s ability to provide care or supervision, and (2) the availability to the parent of alternative child care arrangements.” *In re P.M.*, 169 N.C. App. 423, 427, 610 S.E.2d 403, 406 (2005). “A juvenile may not be adjudicated dependent so long as at least one parent is capable of providing or arranging for adequate care and supervision[.]” *In re W.C.T.*, 280 N.C. App. 17, 38, 867 S.E.2d 14, 28 (2021) (citation omitted).

As set forth above, the trial court’s findings demonstrate that the parents are unable to provide proper care or supervision to the children. The parents failed to address the children’s educational needs, their medical needs, and when given the opportunity to address DSS’s concerns, they refused to cooperate with their safety plans. The trial court’s order also indicates that Mr. H “provided inconsistent answers about his cocaine use” and failed to complete a substance abuse assessment, even though respondent-mother completed one on the day the petitions were filed. *See In re W.C.T.*, 280 N.C. App. at 42, 867 S.E.2d at 30 (upholding adjudication of

dependency in part due to the parents' failure to address the juvenile's medical and educational needs).

Furthermore, respondent-mother failed to offer or provide an appropriate alternative child care arrangement. *In re D.J.D.*, 171 N.C. App. 230, 239, 615 S.E.2d 26, 32 (2005) (finding dependency determination proper since the respondent-parents "were neither able to care for [the children] nor did they suggest appropriate alternat[ive] placements"). Accordingly, her argument is overruled.

C. Reasonable Efforts

When a juvenile is taken into the nonsecure custody of DSS, the order must "contain specific findings as to whether [DSS] has made reasonable efforts to prevent the need for placement of the juvenile." N.C. Gen. Stat. § 7B-507(a)(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." *Id.* "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 trial court finds that placement is necessary for the protection of the juvenile." *Id.*

N.C. Gen. Stat. § 7B-101(18) defines "reasonable efforts" as "[t]he diligent use of preventive or reunification services by [DSS] when a juvenile's remaining at home or returning home is consistent with achieving a safe, permanent home for the juvenile within a reasonable period of time." N.C. Gen. Stat. § 7B-101(18). However, "[o]ur General Assembly requires [DSS] to undertake reasonable, not exhaustive,

efforts toward reunification.” *In re A.A.S.*, 258 N.C. App. 422, 430, 812 S.E.2d 875, 882 (2018).

Here, the trial court’s order expressly states “[DSS] made reasonable efforts to prevent the filing of the petition and assumption of the custody of the juveniles by providing” visits to the home, interviews with the parents, safety assessments, CFT meetings, and providing the parents with drug screen referrals and referrals for substance abuse assessments. Furthermore, Ms. Clyburn offered to help respondent-mother obtain the requested services by providing her with transportation. Accordingly, respondent-mother’s argument is overruled. *See In re A.A.S.*, 258 N.C. App. at 430, 812 S.E.2d at 882 (finding DSS made reasonable efforts by creating safety assessments and case plans, offering transportation to the parents for services, and arranging for drug screens).

### III. Conclusion

For the foregoing reasons, the trial court’s orders are affirmed. As respondent-mother does not challenge the trial court’s ultimate disposition that the children should remain in DSS custody, we do not address it here.

AFFIRMED.

Judges ZACHARY and GRIFFIN concur.

Report per Rule 30(e).