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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-809

Filed 18 July 2023

Rutherford County, No. 21 JA 119

In the Matter of:

D.P.

Appeal by Respondent-Father from order entered 14 June 2022 by Judge Michelle McEntire in Rutherford County District Court. Heard in the Court of Appeals 24 May 2023.

Laura G. Hooks for the Respondent-Appellant Father.

Hanna Frost Honeycutt for the Petitioner-Appellee Rutherford County Department of Social Services.

Jeanine Soufan, Guardian ad Litem.

STADING, Judge.

Respondent-Father (“Father”) appeals from the trial court’s order adjudicating his minor child neglected and dependent, and determining that there shall not be a plan of reunification with Father. For the reasons set forth below, we affirm.

I. Background

“Denny”¹ was born in September of 2021 to his mother, Candace Coffey (“Mother”)², and Father, Dominic Parker. After Denny’s birth, hospital staff contacted Rutherford County Department of Social Services (“DSS”) “with concerns of substance abuse” after locating a syringe and “white baggies of substances” in the hospital room. The assigned DSS social worker determined that both Father and Mother had prescriptions for suboxone and methadone. After Denny’s discharge from the hospital, DSS conducted home visits on 29 September 2021 and 6 October 2021. Following these home visits, the assigned social worker reported that the parents had adequate formula and diapers, Denny had been eating well and sleeping normally, and there were no further concerns at this time.

On 12 October 2021, DSS received a new report from Mission Children’s Hospital concerning Denny’s health. Hospital staff reported that Father and Mother brought Denny to the emergency room twice but left before admission on each occasion because “there was a wait.” They returned to the hospital again with Denny and waited until Denny was admitted and seen by a doctor. Father reported that Denny “has not eaten for over 12 hours and would not take his bottle.” Father stated that he had been with Denny for the past 24 hours and Denny would not eat. Mother

¹ Denny is a pseudonym to protect the identity of the minor child. See N.C. R. App. P. 42.

² While the trial court made findings and conclusions pertaining to both parents, Candace Coffey is not a party to this appeal.

believed that Denny had “worms crawling out of his eyes, nose and mouth,” and any time he took his bottle, worms would “come out and run down his face and neck.” Hospital staff saw no worms on Denny but observed that he was “lethargic and obviously dehydrated,” with a sunken skull. Hospital staff gave Denny a bottle, which he took eagerly and without vomiting. Denny was provided six bottles of Pedialyte and formula, as well as intravenous rehydration. Mother took the bottle away from Denny when he started drooling, proclaiming that “the worms were coming out again.”

Hospital staff observed that Mother appeared to be “significantly” under the influence. They also noted that Father repeatedly insisted on leaving with Denny, as he appeared very anxious and under the influence. Additionally, Father admitted that he and Mother had used methamphetamines just before Denny’s hospitalization. Father changed his story—later claiming that he lied about using drugs and did not relapse—but only Mother had used drugs while he was away. Initially, Father refused to submit to a drug test but provided a sample later in the month that was positive for tetrahydrocannabinol (“THC”) and admitted to a chronic history of substance abuse.

The hospital staff conducted a Child Medical Examination (“CME”) on Denny. The CME was consistent with findings in the medical records from the hospital concluding that Denny experienced severe dehydration. Moreover, the CME

concluded that the circumstances surrounding Denny's hospitalization were consistent with neglect and abuse.

Due to ongoing concerns for Denny's health and safety, on 19 October 2021, DSS filed a petition alleging neglect and dependency, and placed Denny with his maternal grandmother. However, the grandmother contacted DSS the next day to report that she could not care for Denny because "she can't do this, it's too much." DSS held a "Child Family Team" meeting with the parents to determine a safe location for Denny. At the conclusion of the three-hour meeting, DSS assumed nonsecure custody of Denny since no relative could be located.

Following the meeting, DSS created a case plan with Mother and Father that included opportunities for both parents to visit Denny in his foster home. At the beginning, both parents visited Denny consistently, but by the end of 2021, the visits became inconsistent and infrequent. Father eventually received a mental health assessment, but there were no recommendations for further services at that point. However, during the investigation, Father tested positive for THC and refused further hair and saliva testing. Furthermore, the investigation revealed that Father and Mother's parental rights to Denny's order sibling were terminated in 2019 due to untreated substance abuse issues.

On 14 June 2022, the trial court entered its adjudication and disposition order. The trial court adjudicated Denny as a neglected and dependent juvenile under N.C. Gen. Stat. § 7B-101(15) and (9). Subsequently, the trial court concluded that it was

in Denny’s best interest that he remain in the custody of DSS and ceased any reunification efforts with both parents. Father entered his notice of appeal on 14 July 2022.

II. Jurisdiction

This Court has jurisdiction to hear Father’s appeal of the trial court’s order of disposition and the adjudication order under N.C. Gen. Stat. §§ 7B-1001(a)(3) and 7A-27(b)(2) (2023).

III. Analysis

Father presents three issues on appeal: (1) whether the trial court properly adjudicated Denny as dependent, (2) whether the trial court properly adjudicated Denny as neglected, and (3) whether the trial court properly ceased reunification efforts with Father at disposition. For a juvenile to be adjudicated as abused, neglected, or dependent, the petitioner has the burden of showing that the “allegations in a petition alleging that a juvenile is abused, neglected, or dependent” are supported by “clear and convincing evidence.” N.C. Gen. Stat. § 7B-805 (2022). Accordingly, when reviewing a trial court’s adjudication of neglect and dependency, this Court must “determine (1) whether the findings of fact are supported by clear and convincing evidence, and (2) whether the legal conclusions are supported by the findings of fact.” *In re T.H.T.*, 185 N.C. App. 337, 343, 648 S.E.2d 519, 523 (2007) (internal quotation marks and citations omitted). “The clear and convincing standard is greater than the preponderance of the evidence standard required in most civil

cases. If such evidence exists, the findings of the trial court are binding on appeal, even if the evidence would support a finding to the contrary.” *In re M.C.*, 286 N.C. App. 632, 636, 881 S.E.2d 871, 875 (2022) (internal citations and quotation marks omitted). “Unchallenged findings are binding on appeal. The conclusion that a juvenile is abused, neglected, or dependent is reviewed *de novo*.” *In re V.B.*, 239 N.C. App. 340, 341, 768 S.E.2d 867, 868 (2015) (internal citations omitted).

A. Dependency

A dependent juvenile 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 juvenile’s care or supervision and lacks an appropriate alternative child care arrangement.” N.C. Gen. Stat. § 7B-101(9) (2022). An adjudication of dependency requires the trial court to consider “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). “Findings of fact addressing both prongs must be made before a juvenile may be adjudicated as dependent, and the court’s failure to make these findings will result in reversal[.]” *In re R.B.*, 280 N.C. App. 424, 437, 868 S.E.2d 119, 128 (2021) (citations omitted).

On appeal, Father argues that the trial court did not make specific findings that he was unable to provide for Denny’s care or provide appropriate care and supervision. Father does not challenge any specific findings of fact. Consequently,

the trial court's findings are deemed to be binding on appeal and supported by competent evidence. *See In re V.B.*, 239 N.C. App. at 341, 768 S.E.2d at 868. As to Father's ability to provide for the care and supervision to Denny, the trial court found:

10. That the minor child was born at Mission Hospital. That hospital staff found a needle under the respondent mother's pillow. The parents stated it was for the respondent father's diabetes. He has never shown a prescription to the Department.

...

12. That the respondent parents had taken the minor child to the hospital on the 10th of October, 2021 with a complaint that he was not eating. That they left before the minor child could be treated.

13. That they took the minor child back to the hospital on the 12th of October, 2021 with the same complaint. That upon arrival, the respondent mother appeared to be under the influence.

14. That the respondent mother told hospital staff and the social worker that there were worms coming out of the minor child when she tried to feed him. That she believed the worms were coming out and run[ning] down his face and neck. That she showed the social worker a video claiming that it showed worms in the minor child.

15. That hospital staff and the social worker observed there to be no worms coming of the minor child. The video [did] not show what the respondent mother believed to be seeing either.

16. The respondent mother was involuntarily committed to the hospital on that same date and was drug screened. That she tested positive for methamphetamines.

17. That the minor child was observed to be severely dehydrated. That upon exam he was deemed to be

significant[ly] dehydrated and underfed.

18. The respondent father was also reporting that the minor child had not eaten in over 12 hours and would not take his bottle.

19. That hospital staff provided a bottle for the minor child in the ER and the minor child eagerly took the bottle without any signs of nausea or vomiting. The minor child also received IV re-hydration.

20. That prior to discharge, the minor child was given no less than 6 bottles of pedia-lyte [sic] and formula. The bottles were 60 mls [sic] each. That his condition was improved after being fed.

21. That a CME was completed on the 19th of October, 2021. That the CME was consistent with the findings in the medical records from the hospital.

...

26. That the respondent parents recently had their parental rights terminated on an older sibling of the minor child based on substance abuse and mental health concerns. That file was admitted into evidence by the Department.

27. The parents are still dealing with similar issues as they were when their parental rights were terminated.

The trial court then concluded that “[o]n or about the date or dates set forth in the petition, the juvenile did not have a caregiver or anyone willing to arrange for the care of the minor child. That the minor child is dependent in accord[ance] with N.C. Gen. Stat. § 7B-101(9).”

With respect to the first dependency prong, the trial court adequately addressed Father’s inability to provide for the care and supervision of Denny. In the

trial court's order, finding of fact no. 10 recounted that when Denny was born, a needle was found under Mother's pillow in the hospital and Father provided an unsubstantiated statement that the needle was for his diabetes. This finding containing Father's explanation for the syringe must be viewed in the context of findings of fact nos. 13–16 that paint a vivid picture of Mother's drug use and the impact it had on the Denny's malnutrition. The trial court's order contained findings of fact that both parents took Denny to the hospital on two separate occasions with the same complaint that he was not eating. On the first occasion, the court found that the parents left the hospital before Denny's medical needs—significant dehydration—was addressed. Finding of fact no. 18 contains Father's statement to the hospital staff that Denny had not eaten for twelve hours—despite earlier visits to the hospital over a two-day period for the same complaint. Moreover, Father's statement that Denny would not take a bottle was contradicted by the trial court's findings that he “eagerly” took a bottle from hospital staff and consumed six bottles before leaving the hospital. The findings note that both parents were still dealing with the substance abuse and mental health issues that led to termination of their parental rights to Denny's sibling. Contrary to Father's contentions, the trial court's findings show Father's failure to provide adequate hydration and timely medical attention for his child, which support the conclusion of law that he is unable to care for and properly supervise Denny.

As for the second dependency prong, Father argues the trial court's findings are insufficient to conclude that the parents lack an appropriate alternative childcare arrangement. In urging us to accept his position, Father cites *In re Q.M.*, 275 N.C. App. 34, 852 S.E.2d 687 (2020), in which the respondent-mother was unable to care for her child, but respondent-father was known to DSS and the trial court's findings of fact did not address his availability or capability to care for and supervise the minor. The matter before us is substantially different in that findings of fact directly addressed Father's inability to care for and supervise Denny. Father also cites *In re M.H.*, 272 N.C. App. 283, 845 S.E.2d 908 (2020), and states that this Court "reversed the trial court's dependency adjudication because the baby was living with a parent willing and able to provide for his care." However, in that matter, this Court stated "[t]he absence of findings related to the availability and suitability of alternative care arrangements . . . by itself requires that the trial court's adjudicatory and dispositional orders be reversed. *Id.* at 290, 845 S.E.2d at 913. Here, the trial court's findings included such a finding and included the attempt to place Denny with his maternal grandmother:

22. That the minor child was placed in a [temporary safety placement] on the 12th of October, 2021 and a [child and family team meeting] was conducted on the 13th of October, 2021.

...

25. That the [temporary safety placement] could not continue due to health reasons and the respondent parents were unable to provide information for another placement

for the minor child.

Unlike the cases cited by Father, this matter is more akin to *In re D.J.D.*, 171 N.C. App. 230, 239, 615 S.E.2d 26, 32 (2005), since neither of Denny's parents were able to care for him nor did they suggest appropriate alternate placements. Therefore, the trial court's order contains adequate factual findings regarding an alternative childcare plan, and the findings are supported by competent evidence supporting that the parents failed to provide or arrange for another placement.

B. Neglect

A juvenile is considered neglected when their "parent, guardian, or caretaker . . . [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). "In 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 Q.A.*, 245 N.C. App. 71, 74, 781 S.E.2d 862, 864 (2016) (citation omitted). To adjudicate a juvenile neglected, the trial court must find "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 Stumbo*, 357 N.C. 279, 283, 582 S.E.2d 255, 258 (2003) (internal quotation marks and citations omitted). In neglect cases involving a newborn or a medically fragile infant, the trial court must consider "whether there is a substantial risk of future abuse or neglect based on the historical

facts of the case.” *In re J.N.J.*, 286 N.C. App. 599, 612, 881 S.E.2d 890, 900 (2022) (citation omitted).

In support of his argument that he did not neglect Denny, Father cites to *In re B.P.*, 257 N.C. App. 424, 433, 809 S.E.2d 914, 919 (2018), in which this Court determined that the trial court failed to make findings that the alleged neglectful conditions caused the minor child’s impairments or put her at a substantial risk of impairment. However, here, the trial court made findings that detailed the conditions that lead to Denny’s physical injuries and could put him at substantial risk of further impairment. These include the court’s findings that both parents took Denny to the hospital twice and left before Denny could be seen, that Mother appeared to be under the influence and “believed worms were coming out” of Denny’s face and neck, that Denny was significantly dehydrated and underfed, and that while Father reported that Denny would not take his bottle during the last twelve hours, Denny eagerly took a bottle from hospital staff. These findings sufficiently detail the neglectful conditions, created by the parents, that directly led to Denny’s physical impairments and adequately support the trial court’s conclusion that Denny’s injuries resulted from the parent’s failure to provide proper care and supervision.

Father also argues that the trial court made no findings regarding the probability of substantial risk for future neglect of Denny. Nevertheless, the trial court made findings about the termination of the parental rights of both parents to another minor child based on substance abuse and mental health concerns. While a

“prior adjudication of a sibling as neglected may not, standing alone, support an adjudication of neglect[,]” the parents’ “failure to correct the conditions that lead to the prior adjudication of neglect . . . may support the likelihood of the repetition of neglect.” *In re J.N.J.*, 286 N.C. App. at 613, 881 S.E.2d at 900 (internal citations omitted).

While Father argues that “[i]f substance abuse by [Mother] resulted in Denny’s condition, no clear and convincing evidence was presented to the trial court of same regarding Mr. Parker.” However, the trial court’s conclusion of neglect by Father was not simply based on the Mother’s substance abuse; Father was aware of Mother’s substance abuse and the impact it had on Denny’s health due, its causation of him to develop stories to accommodate Mother’s drug use, the failure to feed his malnourished child, and the delayed response in seeking necessary medical attention. The foregoing findings by the trial court sufficiently show that there is a likelihood that such neglect will be repeated if Denny is returned to Father. Father had not demonstrated his willingness or ability to ensure that Denny was given proper nutrition, healthcare, and protected from Mother’s drug abuse. *See In re S.M.L.*, 272 N.C. App. 499, 846 S.E.2d 790 (2020). Thus, the trial court properly adjudicated Denny as neglected. The trial court’s finding of fact that “[t]he parents are still dealing with similar issues as they were when their parental rights were terminated [on a previous occasion]” and its conclusion of neglect properly considered Father’s circumstances and ability to care for Denny at the time of adjudication and were

based upon the “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.” *See id.* at 509, 849 S.E.2d at 797.

C. Ceasing Reunification Efforts

Lastly, Father argues that the trial court erred in ceasing reunification efforts under N.C. Gen. Stat. § 7B-901(c) at disposition. “This Court reviews an order that ceases reunification efforts to determine whether the trial court made appropriate findings, whether the findings are based upon credible evidence, whether the findings of fact support the trial court’s conclusions, and whether the trial court abused its discretion with respect to disposition.” *In re I.R.C.*, 214 N.C. App. 358, 361, 714 S.E.2d 495, 497 (2011) (citation omitted). “The trial court’s findings are conclusive on appeal if supported by any competent evidence[,] . . . even where some evidence supports contrary findings.” *In re P.T.W.*, 250 N.C. App. 589, 594, 794 S.E.2d 843, 848 (2016) (internal citations omitted). “Unchallenged findings are deemed to be supported by sufficient evidence and are also binding on appeal.” *Id.* (internal quotation marks and citations omitted).

In pertinent part, N.C. Gen. Stat. § 7B-901(c)(2) reads:

If the disposition order places a juvenile in the custody of a county department of social services, the court shall direct that reasonable efforts for reunification . . . shall not be required if the court makes written findings of fact pertaining to any of the following, unless the court concludes that there is compelling evidence warranting continued reunification efforts: . . . A court of competent

jurisdiction has terminated involuntarily the parental rights of the parent to another child of the parent.

N.C. Gen. Stat. § 7B-901(c)(2) (2022). Here, in the disposition order, *inter alia*, the trial court findings of fact were:

17. That the respondent father has not made any progress on his case plan. He does sometimes attend court in this matter.

18. That the respondent parents have not been consistent in their visitations with the minor child.

19. That the respondent parents had recent experience with another Department of Social Services with similar issues on their case plans. That they had not visited for a majority of the [other] minor child's life.

20. That their parental rights were involuntarily terminated in that matter.

21. That a Court Report for the Dispositional Hearing was received into evidence. . . .

22. That the Department has made reasonable efforts towards the permanent plan of reunification in this matter.

. . .

24. That the conditions which led to the placement of the Child in DSS custody still exist and the return of the Child to the home of the respondent parents would be contrary to the welfare of the Child at this time. . . .

25. That it is in the best interest of the Child to remain in the custody of Rutherford County Department of Social Services.

. . .

27. That both respondent parents have had their parental rights involuntarily terminated in North Carolina. That

neither of them testified in that matter.

Based on the foregoing findings of fact—including that Father has not made any progress on his case plan, inconsistently visited the Denny, and the conditions which led to the placement in DSS custody still exist—the trial court concluded as a matter of law “[t]hat a ground exists under N.C.G.S. [§] 7B-901(c) and therefore a reunification plan is not appropriate in this matter.” Further, the court concluded “[t]hat no compelling interest exists to order a plan of reunification.” Therefore, the trial court followed the procedure outlined in N.C. Gen. Stat. § 901(c) and did not abuse its discretion by determining that the termination of Father’s parental rights was in Denny’s best interest.

IV. Conclusion

We affirm the trial court’s order adjudicating Denny as a dependent and neglected juvenile as well as the trial court’s disposition order ceasing reunification efforts with Father.

AFFIRMED.

Judges TYSON and ZACHARY concur.

Report per Rule 30(e).