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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-807

Filed 19 September 2023

Guilford County, No. 19 JA 280

IN THE MATTER OF: H.G.

Appeal by respondent-father from orders entered 21 October 2021 and 15 June 2022 by Judge Angela C. Foster in Guilford County District Court. Heard in the Court of Appeals 28 August 2023.

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

Administrative Office of the Courts, Guardian Ad Litem Division, by Michelle FormyDuval Lynch, for guardian ad litem.

Robert W. Ewing for respondent-appellant father.

GORE, Judge.

Respondent appeals from the trial court’s order adjudicating H.G. (“Heather”) an abused, neglected, and dependent juvenile.¹ Because the trial court failed to make sufficient findings of fact to allow for meaningful appellate review, we vacate the trial

¹ We use a pseudonym to protect the identity of the juvenile and for ease of reading.

court's orders and remand.

I. Background

Respondent adopted Heather, along with her two older sisters, Sally and Ellen, in June 2012, when Heather was almost three years old. In a prior proceeding, the trial court adjudicated Heather neglected and dependent, and Sally and Ellen abused, neglected, and dependent, based upon allegations of respondent's improper discipline of Sally and Ellen. This Court reversed the adjudications on 7 July 2020, after concluding that the adjudications were predicated solely on inadmissible hearsay. *In re H.A.G.*, 272 N.C. App. 446 (2020) (unpublished).

On 8 July 2020, Guilford County Department of Health and Human Services ("DHHS") received a report alleging respondent sexually abused Heather and subjected her to an injurious environment.² That same day, Heather was interviewed by a social worker from the Mecklenburg County Department of Social Services, where she reported that prior to her removal from the home, she had slept in the same bed as respondent, while wearing only a nightgown with no underwear. When asked why she slept in the same bed as respondent, she stated "it was because there was no more room for [her] to sleep in." Heather also reported that respondent "touched all her private parts[,] which she identified as her vaginal, butt, and chest

² DHHS also filed juvenile petitions for Sally and Ellen, and they were adjudicated abused, neglected, and dependent at the same adjudication hearing. However, the matters were bifurcated for disposition and any subsequent hearings, and the appeal only concerns Heather's adjudication.

areas.

On 20 July 2020, Heather participated in a Child Medical Evaluation (“CME”) and forensic interview, where she reported that respondent showered with her up until age nine, when she was removed from the home. She specified that she was “upset” when respondent continued to assist her with showering even when she no longer needed help, and that sometimes respondent would take off his clothes and ask her to wash his back. Heather further reported that respondent repeatedly put ointment on her vaginal area due to a rash. She again reported that she shared a bed with respondent until she was removed from the home, that she only wore a nightgown, that respondent only wore boxers, and that respondent “touched her in all the places he should not[,]” which she identified as her “top” and “down there.”

Sally and Ellen were each interviewed by the Davidson County Department of Social Services and also participated in a CME and/or forensic interview. They each reported that respondent slept and showered with Heather “from a young age” until the children were removed from the home in 2019. They also reported incidents of Heather describing the appearance of respondent’s genitals, and they both witnessed multiple occurrences of respondent putting ointment on Heather’s vaginal area.

Based on the report and subsequent investigation, DHHS filed a petition on 28 July 2020, alleging that Heather was an abused, neglected, and dependent juvenile. As no viable placement options were available, DHHS also sought and obtained nonsecure custody of Heather.

In October 2020, DHHS filed notice of intent to present hearsay statements concerning the allegations in the juvenile petition made by Heather to the Mecklenburg County Department of Social Services social worker, the forensic examiner, and her sisters, pursuant to the residual hearsay exception of N.C. Gen. Stat. § 8C-1, Rule 803(24). The trial court considered the motion at the 30 April 2021 pre-adjudication hearing. DHHS presented a letter from Heather's therapist, in which the therapist opined that Heather was not ready to take the stand and testify. Over respondent's objection, the trial court granted the motion but also ordered the parties who heard Heather's statements be subpoenaed to testify at the hearing.

Following the 15 September 2021 adjudication hearing, the trial court entered an order on 21 October 2021 adjudicating Heather an abused, neglected, and dependent juvenile. The court held the dispositional hearing on 30 March 2022, and entered an order on 15 June 2022 ordering Heather to remain in DHHS custody and relieving DHHS from further reunification efforts with respondent. Respondent appeals.

II. Analysis

Respondent presents two arguments on appeal, challenging the trial court's adjudicatory findings of fact and conclusions. We address each in turn.

A. Hearsay Statements

Respondent first contends that the trial court abused its discretion by allowing Heather's out-of-court statements into evidence. We disagree.

In order to admit hearsay under the residual exception, the trial court must make findings determining:

whether (1) proper notice has been given; (2) the hearsay statement is not specifically covered elsewhere; (3) the statement possesses circumstantial guarantees of trustworthiness; (4) the statement is material; (5) the statement is more probative than any other evidence which the proponent can procure through reasonable efforts; and (6) the interest of justice will be best served by admission.

In re W.H., 261 N.C. App. 24, 27, 819 S.E.2d 617, 620 (2018) (citation omitted). We review the trial court's determination "for an abuse of discretion, [which] may be disturbed on appeal only where an abuse of such discretion is clearly shown." *Id.* (internal quotation marks and citation omitted). Moreover, respondent must show that he "was prejudiced and a different result would have likely ensued had the error not occurred." *Id.*

Respondent only challenges the court's finding regarding the third prong of the analysis: that Heather's statements possessed "circumstantial guarantees of trustworthiness." Our appellate courts have

often used the following factors in determining a statement's trustworthiness: (1) the declarant's personal knowledge of the underlying event; (2) the declarant's motivation to speak the truth or otherwise; (3) whether the declarant ever recanted the testimony; and (4) the practical availability of the declarant at trial for meaningful cross-examination.

In re W.H., 261 N.C. App. at 28, 819 S.E.2d at 620 (citing *State v. Valentine*, 357 N.C. 512, 518, 591 S.E.2d 846, 852–53 (2003) and *State v. Smith*, 315 N.C. 76, 93–94, 337 S.E.2d 833, 845 (1985)). However, “[n]one of these [four] factors, alone or in combination, may conclusively establish or discount the statement’s ‘circumstantial guarantees of trustworthiness.’” *Id.* Moreover, “[i]f the trial court either fails to make findings or makes erroneous findings,” we will review the record and “‘make our own determination.’” *In re M.A.E.*, 242 N.C. App. 312, 321, 849 S.E.2d 50, 57 (2015) (quoting *State v. Sargeant*, 365 N.C. 58, 65, 707 S.E.2d 192, 196 (2011) and *Valentine*, 357 N.C. at 518, 591 S.E.2d at 853).

In its pre-adjudication order, the court found:

13. As it relates to the trust worthiness of the juvenile’s statements, the Court notes specifically, that these statements were made close in time to which the Department became involved in this action and that those statements were made to a Social Worker in the process of an investigation. Based upon the juvenile’s age, she understands the difference between right and wrong, and the Court determines that the juvenile has the capacity to understand the nature of the questions being asked of her by the Social Worker, and [Heather] had no reason not to tell the truth. The juvenile had personal knowledge of these events alleged to Social Worker on July 8, 2020, July 20, 2020 and July 21, 2020 and she was motivated to speak the truth because she was the juvenile that allegedly was inflicted by the occurrences and incidences that caused the Department to have to act in this case. The juvenile has not recanted her statements.

Respondent contends that DHHS failed to present sufficient evidence to support this finding. He relies upon this Court’s unpublished opinion *In re G.M.A.*, 2022 N.C. App.

LEXIS 418, 284 N.C. App. 205, 873 S.E.2d 441 (2022), where this Court determined the juvenile's statements were truthful based, in part, on testimony from the nurse who performed the CME. She

testified that there was no sign the children had been told what to say or encouraged to report sexual abuse and that they were not hesitant to answer her questions. The forensic interviewer followed a standard protocol, under which the children promised to tell the truth and were instructed to correct the interviewer if she got anything wrong and not to guess at answers.

Id., 2022 N.C. App. LEXIS 418, at *9. Respondent argues that because there was no testimonial evidence establishing the procedure under which Heather was interviewed, the trial court erred in determining her statements possessed "circumstantial guarantees of trustworthiness."

Respondent's reliance on *In re G.M.A.* is misplaced. Beyond the fact that as an unpublished opinion *In re G.M.A.* has no precedential value, it also does not stand for the assertion that such detailed findings regarding the processes underlying a juvenile's interview or CME are required. In accordance with our case law, this Court in *In re G.M.A.* reviewed the record to determine whether the four *Valentine* factors supported the trial court's determination. In addition to the nurse's testimony, this Court also determined the children had personal knowledge of the underlying events, had never recanted their statements, there was no indication in the record that they had any reason to lie when describing their abuse, and the trial court had determined they were unavailable to testify. *Id.*

Assuming, *arguendo*, the finding is insufficient, we conclude the record supports the trial court's determination. *In re M.A.E.*, 242 N.C. App. at 321, 849 S.E.2d at 57. There is no question that Heather had personal knowledge of the events she described to the Mecklenburg County social worker, the nurse during her CME, and her sisters. Heather never recanted her statements, and her disclosure remained consistent in each of her interviews. The trial court determined that Heather was unavailable to testify based on a letter from her therapist. Respondent argues the "record indicated that Heather had problems telling the truth[.]" referencing reports from a prior foster placement that Heather was not truthful about practicing appropriate hygiene. However, in determining trustworthiness, we examine the circumstances surrounding the making of the statement. *State v. Waddell*, 351 N.C. 413, 422, 527 S.E.2d 644, 650–51 (2000). Those reports were produced in 2019, during the prior proceeding, and concern Heather's adjustment to her foster care provider. There is no indication in the record that Heather had any reason to lie during her interviews or the CME in 2020, and there is no indication that she had any reason to lie to her sisters. *See Valentine*, 357 N.C. at 519, 591 S.E.2d at 853 (finding relevant that the declarant had "no reason to lie" to friends when making the out-of-court statement at issue). Thus, the trial court did not abuse its discretion in determining that Heather's out-of-court statements were trustworthy or allowing them into evidence. *In re W.H.*, 261 N.C. App. at 28, 819 S.E.2d at 620.

Moreover, respondent cannot show that he was prejudiced by Heather's

statements. Even if they had been excluded from evidence, both Sally and Ellen provided substantially similar evidence, testifying at the adjudication hearing that they had witnessed Heather sleeping in respondent's bed wearing only a nightgown without underwear, Heather showering with respondent between the age of five or six until age nine, and respondent repeatedly applying ointment to Heather's vaginal area. Respondent's argument is overruled.

B. Adjudication

Respondent also contends that the trial court's findings of fact are insufficient to support its conclusion that Heather is an abused, neglected, and dependent juvenile. Specifically, he argues that the majority of the court's findings are "mere recitations" from witness testimony and the underlying petition, and the court failed to resolve material disputes in the conflicting evidence presented at the hearing and reflected in the findings of fact. We agree.

At an adjudicatory hearing, the trial court must "adjudicate the existence or nonexistence of any of the conditions alleged in a petition." N.C. Gen. Stat. § 7B-802 (2021). The resulting order "shall be in writing and shall contain appropriate findings of fact and conclusions of law." N.C. Gen. Stat. § 7B-807(b) (2021). "The findings need to be stated with sufficient specificity in order to allow meaningful appellate review." *In re S.C.R.*, 217 N.C. App. 166, 168, 718 S.E.2d 709, 712 (2011) (citation omitted).

“[T]he trial court must, through processes of logical reasoning, based on the evidentiary facts before it, find the ultimate facts essential to support the conclusions of law.” *In re O.W.*, 164 N.C. App. 699, 702, 596 S.E.2d 851, 853 (2004) (cleaned up).

If different inferences may be drawn from the evidence, the trial judge must determine which inferences shall be drawn and which shall be rejected. Where there is directly conflicting evidence on key issues, it is especially crucial that the trial court make its own determination as to what pertinent facts are actually established by the evidence, rather than merely reciting what the evidence may tend to show.

In re Gleisner, 141 N.C. App. 475, 480, 539 S.E.2d 362, 365–66 (2000).

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

In re M.H., 272 N.C. App. 283, 286, 845 S.E.2d 908, 911 (2020) (quoting *In re Helms*, 127 N.C. App. 505, 511, 491 S.E.2d 672, 676 (1997)).

Respondent challenges the majority of the trial court’s findings: Findings of Fact 7 through 21 and 23 through 28. These findings recount what the witnesses “stated,” “reported,” “testified,” “disclosed,” or “admitted” at the adjudication hearing. Such findings “fail to satisfy the trial court’s obligation to evaluate the credibility of the witnesses who testified at the adjudication hearing and to resolve any contradictions that existed in the evidence.” *In re A.C.*, 378 N.C. 377, 384, 861 S.E.2d 858, 867 (2021).

Of course, “[t]here is nothing impermissible about describing testimony, so long as the court ultimately makes its own findings, resolving any material disputes.” *In re T.N.H.*, 372 N.C. 403, 408, 831 S.E.2d 54, 59 (2019) (citation omitted). Both the GAL and DHHS concede that the challenged findings are recitations of testimony, but they contend the trial court’s ultimate findings sufficiently demonstrate the court properly considered and weighed the evidence presented at the hearing.

Instead of resolving material disputes in the evidence, the challenged findings merely display the conflicts in the evidence. The testimony of the social workers, Sally, and Ellen tends to show that respondent inappropriately touched Heather and forced her to sleep in his bed and shower with him until she was removed from the home. Respondent’s testimony contradicts the worst of the allegations and presents the allegations as misunderstandings of parental care: allowing a child to sleep in the parent’s bed, and assisting a child with bathing, medical care, and hygiene.

Moreover, the trial court found that the testimony from *all* the witnesses—the social workers, Sally, Ellen, and even respondent—was “credible and reliable.” Respondent denied he had sexually abused Heather while the other witnesses testified Respondent had inappropriately touched her and slept with her. As most of the findings of fact are recitations of evidence, and the trial court found all the witnesses to be “credible and reliable,” we are unable to determine how the trial court came to its ultimate findings of fact regarding abuse. Thus, we must conclude that the trial court failed to properly determine which “pertinent facts [were] actually

established by the evidence.” *In re Gleisner*, 141 N.C. App. at 480, 539 S.E.2d at 366. Absent a clear determination on witness credibility, the trial court has failed to, “through processes of logical reasoning, based on the evidentiary facts before it, find the ultimate facts essential to support the conclusions of law.” *In re O.W.*, 164 N.C. App. at 702, 596 S.E.2d at 853.

However, we do not agree with respondent that the errors in the order require reversal. Because the findings prevent this Court from conducting a meaningful appellate review, “we remand the case to the trial court with instructions to make ultimate findings of fact based on the evidence and to enter clear and specific conclusions of law based on the findings of fact.” *In re Gleisner*, 141 N.C. App. at 481, 539 S.E.2d at 366.

IV. Conclusion

Based on the foregoing, we vacate the adjudication and disposition orders and remand the matter for further proceedings not inconsistent with this opinion. On remand, the trial court shall make the necessary, ultimate findings resolving the material conflicts in the evidence. As the trial court did not abuse its discretion in allowing Heather’s out-of-court statements to be admitted into evidence, they may properly be considered on remand. In its discretion, the trial court may hold an additional hearing on evidentiary matters. *In re S.M.L.*, 272 N.C. App. 499, 517, 846 S.E.2d 790, 802 (2020).

IN RE: H.G.

Opinion of the Court

VACATED AND REMANDED.

Chief Judge STROUD and Judge STADING concur.

Report per Rule 30(e).