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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-426

Filed 2 January 2024

Union County, No. 20 JA 178

IN THE MATTER OF: R.B., a minor child.

Appeal by Respondent-Father from order entered 28 December 2022 by Judge Erin S. Hucks in Union County District Court. Heard in the Court of Appeals 29 November 2023.

*Perry, Bundy, Plyler & Long, LLP, by Ashley J. McBride, for Petitioner-Appellee Union County Department of Social Services.*

*Rebekah W. Davis for Respondent-Appellant Father.*

*Ward and Smith, P.A., by Mary V. Cavanaugh and Dakota M. Lipscombe, for guardian ad litem.*

GRIFFIN, Judge.

Respondent-Appellant Father appeals from the trial court's order adjudicating

his minor child, Robert,<sup>1</sup> to be a neglected and dependent juvenile. Father contends the trial court's adjudications of neglect and dependency are each based on insufficient evidence and findings of fact. We affirm.

### **I. Factual and Procedural Background**

Robert was born to Father and Mother in June 2019. As of the date of the adjudicatory hearing, Robert is non-verbal, has been diagnosed as autistic, and displays behavioral issues injurious to himself and others which warrant extensive, weekly therapeutic services.

DSS first became involved with Robert's family in January 2021. On 25 January 2021, DSS filed a petition alleging that Robert was neglected and dependent after Father notified police that, when he met Mother in a parking lot to pick-up Robert one day, he discovered Mother passed out in the driver's seat with Robert in the vehicle. DSS obtained nonsecure custody of Robert that day, and Robert was placed in Father's physical care.

On 2 March 2021, the trial court first adjudicated Robert neglected and dependent. The trial court ordered that Robert remain in the legal custody of DSS,

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<sup>1</sup> We use a pseudonym for ease of reading and to protect the identity of the juvenile. See N.C. R. App. P. 42(b).

but would continue physical placement with Father. On 18 May 2021, the trial court conducted a review hearing regarding Robert's placement. Despite evidence that Father's actions were frustrating Robert's ability to participate in daycare, healthcare, and speech, occupational, and physical therapy services, the court gave Father legal and physical custody of Robert.

Beginning with his placement with Father in March 2021, DSS recommended that Robert receive a variety of developmental services, including speech, occupational, and physical therapy. Father disagreed with DSS's recommendations and argued against Robert's participation in services. Father eventually allowed Robert to begin speech therapy, but would not allow Robert to participate in occupational and physical therapy. Robert initially attended daycare at Steps Academy, but was discharged due to Father's "rude, threatening, and aggressive" behavior toward daycare staff. DSS expressed that Father was "consistently [] difficult to work with and combative," displayed aggressive and intimidating behaviors, threatened to file lawsuits against them, and insinuated that DSS workers would face religious judgment for their actions in Robert's case.

Mother and Father co-parented Robert but did not maintain a romantic relationship. Record evidence shows Robert has been repeatedly exposed to incidents of domestic violence in Mother and Father's relationship. In March 2020, law

enforcement became involved when Mother and Father had a physical altercation, in which Mother alleged Father would not let her leave. In May 2022, Father pointed a gun at Mother, and then “pistol-whipped” Mother a few times while Robert was present. In July 2022, though Mother was allowed only supervised visitation with Robert, Father allowed Mother to watch Robert unsupervised while he went to work. When Father returned home, Father “tried to tie [Mother’s] hands and feet,” struck her in the face, and would not let her leave his home, again while Robert was present. Mother filed a domestic violence complaint against Father. Father was arrested and charged with assault inflicting serious injury and false imprisonment as a result of this incident, but the criminal charges and domestic violence complaint against Father were ultimately dismissed. On 20 July 2022, Mother obtained an ex parte order against Father, granting Mother emergency physical custody of Robert and ordering Father not to have contact with Robert.

On 2 September 2022, DSS filed a second petition once again alleging Robert was a neglected and dependent juvenile due to reports of domestic violence between Mother and Father and improper medical care for Robert. That day, DSS received nonsecure custody of Robert due, in part, to reports that Robert had high levels of lead in his body and DSS was unsure Father would provide Robert with proper medical care. Throughout custody hearings in September, the court heard evidence

that Father repeatedly violated the court's orders by providing Mother unsupervised visitation with Robert and that Father refused to cooperate with DSS throughout their involvement in this matter. The trial court ordered Father to complete a service agreement on 14 September and 4 October 2022, but Father failed to do so prior to the disposition hearing in this matter.

On 8 November 2022, the trial court conducted an adjudication hearing regarding DSS's second petition. The trial court heard testimony from Mother, Father, the GAL, and a social worker assigned to Robert's case, and incorporated by judicial notice all prior court files and orders pertaining to Robert. On 28 November 2022, the court entered a written order adjudicating Robert to be neglected and dependent a second time. On 5 January 2023, following a disposition hearing, the court entered a written order determining it was in Robert's best interest to remain in the legal custody of DSS with physical placement in a foster home.

Father timely appeals.

## **II. Analysis**

Father challenges the trial court's adjudication of his minor child, Robert, to be a neglected and dependent juvenile. For each of these, "[a]n appellate court reviews 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.” *Matter of G.C.*, 384 N.C. 62, 65, 884 S.E.2d 658, 661 (2023). “‘Ultimate facts are the final facts required to establish the [petitioner]’s cause of action or the defendant’s defense; and evidentiary facts are those subsidiary facts required to prove the ultimate facts.’” *Matter of K.R.C.*, 374 N.C. 849, 857, 845 S.E.2d 56, 61 (2020) (quoting *Woodard v. Mordecai*, 234 N.C. 463, 470, 67 S.E.2d 639, 644 (1951)). “Where no exception is taken to a finding of fact by the trial court, the finding is presumed to be supported by competent evidence and is binding on appeal.” *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991). “Appellate courts review a trial court’s conclusion of law concerning adjudication de novo.” *G.C.*, 384 N.C. at 66, 884 S.E.2d at 661 (citation omitted).

Our Courts have established that “[r]ecitations of the testimony of each witness do not constitute findings of fact by the trial judge’ absent an indication concerning ‘whether [the trial court] deemed the relevant portion of [the] testimony credible.’” *Matter of A.E.*, 379 N.C. 177, 185, 864 S.E.2d 487, 495 (2021) (citation omitted). Likewise, “[t]he trial court may not simply recite allegations, but must through processes of logical reasoning from the evidentiary facts find the ultimate facts essential to support the conclusions of law.” *Matter of J.C.M.J.C.*, 268 N.C. App. 47, 58, 834 S.E.2d 670, 677 (2019) (citation and quotation marks omitted). The trial court is not required to track the language of the statute, but it must make findings

which show how the circumstances place the juvenile in substantial risk of harm. *See Matter of E.P.-L.M.*, 272 N.C. App. 585, 596, 847 S.E.2d 427, 436 (2020).

### **A. Neglect Adjudication**

Father first argues “the factual findings are insufficient to support the court’s ultimate findings and conclusion that Robert was neglected” because the evidence “did not show that Robert was at risk of some type of impairment or was neglected.”

A neglected juvenile is defined as, *inter alia*, a minor:

whose parent, guardian, custodian, or caretaker does any of the following:

a. Does not provide proper care, supervision, or discipline.

...

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) (2021). “In order to adjudicate a juvenile neglected, our courts have additionally 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 Stumbo*, 357 N.C. 279, 283, 582 S.E.2d 255, 258 (2003) (citation and quotation marks omitted).

Father incorporates and references Findings of Fact 10 through 24 as the basis for the trial court’s conclusion of neglect. These Findings together with the remaining Findings relevant to this appeal, state:

9. The court considered the following evidence: Union county files 22 CVD 1968, Union County criminal file 22 CRS 411 and prior orders in 20 JA 178.

10. A Review Hearing was held in this case on May 18, 2021 and an order was filed on June 18, 2021, wherein the court ordered, amongst other things:

- (A) Legal custody of the juvenile [Robert] will be placed with [Father] [.]
- (B) Visitation was at a minimum every other Saturday from 10 a.m. to 12 p.m. supervised by [Father].
- (C) Union County DSS and the GAL were relieved of further responsibility in the matter.

11. On July 20, 2022, [Mother] filed a Complaint and Motion for Domestic Violence Protective Order against [Father] in Union County file number 22 CVD 1968, alleging two separate incidences of domestic violence:

- (A) The first alleged offense was May 7, 2022 in which [Mother] stated “[Father] pistol whipped me in the face and head in front of our son.”
- (B) The second alleged incident was July 12, 2022, in



which [Mother] stated “[Father] tied my up and beat me in the face. Threatened to kill me. Would not let me leave his house.”

12. The most recent allegation in the Complaint and Motion for Domestic Violence Protective Order was a week prior to the July 20, 2022 filing of the Complaint.

13. On July 20, 2022 during the hearing for [Mother’s] Complaint and Motion, this Court noticed bruising visible on [Mother’s] face.

14. Criminal charges involving the same allegations were filed against [Father] in Union County file number 22 CR 411.

15. On or about July 19, 2022, Union County DSS received a report regarding the same allegations as the Complaint and the Motion and the criminal charges.

16. [Father] was arrested approximately on July 19, 2022, and the juvenile was present for the arrest. [Robert] was placed in a patrol car while [Father] was in custody for approximately 20 minutes.

17. On July 28, 2022, a Motion for Review was filed by [Father].

18. On August 23, 2022, [Father] filed an Order to show cause against [Mother].

19. On September 2, 2022, Union County DSS filed a Juvenile Petition alleging neglect and dependency.

20. On September 27, 2022, during a preadjudication and nonsecure custody hearing, this Court observed [Mother] with additional and significant bruising to her eye.

21. During the adjudication hearing, [Mother] chose to invoke her 5th Amendment right against self incrimination. This Court can infer that [Mother's] responses would have been unfavorable to herself.

22. [Father] testified that he was wrongly accused of domestic violence against [Mother] on 3 separate occasions: in 2020 when [Mother] was arrested, the May 7, 2022 and July 12, 2022 incidents.

23. This Court does not find [Mother's] testimony credible.

24. This Court does not find [Father's] testimony credible.

Father does not challenge whether any of these findings are sufficiently based on the evidence before the court. They are, therefore, binding in our review. *See Koufman*, 330 N.C. at 97, 408 S.E.2d at 731. Rather, Father challenges Finding of Fact 25 and Conclusion of Law 3, contending that this ultimate finding of fact and conclusion of law are unsupported by the court's findings. Finding 25 states that the evidence showed Robert was a neglected juvenile:

25. [DSS] has proven by clear and convincing evidence that [Robert] is Neglected as defined in [N.C. Gen. Stat.] § 7B-101(15) based on the following:

- (A) [Robert] does not receive proper care, supervision or discipline from the juvenile's parent, guardian, custodian, or caretaker; and
- (B) [Robert] lives in an environment injurious to [his] welfare.

Conclusion of Law 3 concludes, succinctly, that Robert is a neglected juvenile:

3. [Robert] is neglected and dependent, pursuant to [N.C. Gen. Stat. §] 7B-101.

Father argues the trial court's evidentiary findings do not support its ultimate findings and conclusions of law because they merely recite the holdings of prior orders and summarize testimony. *See A.E.*, 379 N.C. at 185, 864 S.E.2d at 495. We hold the trial court made sufficient evidentiary findings of fact supporting its ultimate findings and conclusions of law.

A juvenile's exposure to numerous instances of domestic violence has often been sufficient to support an adjudication of neglect. "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 T.S., III & S.M.*, 178 N.C. App. 110, 113, 631 S.E.2d 19, 22 (2006) (citation omitted). "[C]onduct that supports a conclusion that a child is neglected includes exposing the child to acts of domestic violence, abuse of illegal substances, and threatening or abusive behavior toward social workers and police officers in the presence of the children." *In re D.B.J.*, 197 N.C. App. 752, 755, 678 S.E.2d 778, 781 (2009) (holding findings that the father physically assaulted the mother in the juvenile's presence supported adjudication of neglect). "[E]vidence of a child's continued exposure to domestic violence may constitute an environment

injurious to the juvenile’s welfare.” *In re M.K. (I)*, 241 N.C. App. 467, 475, 773 S.E.2d 535, 541 (2015).

The language of the trial court’s findings focuses on Mother and Father’s conduct toward one another, with minimal explicit connections between that conduct and the well-being of Robert. However, the trial court’s findings show that Robert was at substantial risk of impairment due to his injurious environment—a physical placement where he was subjected to recurring domestic violence.

Finding 9 shows the trial court reviewed Robert’s prior adjudication of neglect and the domestic violence incidents giving rise to the second petition. *See Matter of B.P.*, 257 N.C. App. 424, 432, 809 S.E.2d 914, 919 (2018) (“In predicting whether neglect is likely to recur, the court must consider the historical facts and background of a case.”). Finding 10 establishes that Robert was placed in Father’s care in June 2021, with Mother receiving only supervised visitation. Findings 11 through 18 show events which bring into question Father’s ability to provide Robert a safe environment with proper care, including that Robert was placed in the care of police for some time due to Father’s alleged behavior. Due to Father’s arrest, he was unable to care for Robert. The findings then recite testimony received by the trial court from Mother and Father, but these recitations are supplemented with the trial court’s factual findings that Mother and Father’s testimony lacked credibility. *See A.E.*, 379

N.C. at 185, 864 S.E.2d at 495 (requiring the trial court to indicate whether it found recited testimony credible). Mother refused to corroborate evidence of domestic violence by exercising her Fifth Amendment rights. Father attempted to deny the incidents of domestic violence. The trial court's finding that Mother and Father's testimonies were not credible is tantamount to a finding that it believed the underlying events occurred. After finding that Mother and Father could not credibly negate the prior, recurring domestic violence between them, the trial court reached its ultimate finding of neglect.

Though Father asserts the trial court was required to explicitly state more than what the trial court found in this case, he does not cite to any cases which lay out this rule of law. The trial court's evidentiary findings are sufficient to support its adjudication of Robert to be a neglected juvenile.

## **B. Dependency Adjudication**

Father next argues "the trial court erred in concluding that Robert was a dependent child" because "the findings and evidence did not show that [Father] was unable to care for Robert" and "did not address an alternative child care arrangement."

A dependent juvenile is a minor who is "in need of assistance or placement because (i) the juvenile has no parent, guardian, or custodian responsible for the

juvenile's care or supervision or (ii) 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) (2021).

Father challenges Findings of Facts 6 and 26, as well as Conclusion of Law 3, arguing that they are ultimate findings of fact and a conclusion of law all unsupported by the evidentiary findings of fact. Findings 6 and 26 find that the evidence supported an adjudication of dependency:

6. The following efforts have been made to identify and notify relatives and nonrelative kin as potential resources for placement or support: DSS has identified relatives and nonrelative kin but there are no potential placements at this time . . . .

. . .

26. [DSS] has proven by clear and convincing evidence that [Robert] is Dependent as defined in [N.C. Gen. Stat.] § 7B-101(9) based on the following:

(A) [Robert's] parents, guardian or custodians are unable to provide for the care or supervision of [Robert] and lacks an appropriate alternative childcare arrangement without the intervention of DSS.

We first disagree with Father's characterization of Finding 6 as an ultimate finding of fact. This finding does not purport to declare, conclusively, that Robert wholly lacks an alternative care arrangement. Rather, Finding 6 details efforts taken

to secure an alternative placement for Robert. Finding 6 describes that DSS has reviewed both relatives and nonrelatives and has found no satisfactory placements. Finding 6 is supported by record evidence that DSS looked for a potential placement, assessing both its own nonrelative placements and relative placements recommended by Father, and that Father was unable to provide DSS with a suitable, potential alternative care arrangement. *See In re J.D.L.*, 199 N.C. App. 182, 189, 681 S.E.2d 485, 490 (2009) (“A conclusion that a juvenile is dependent may be supported by evidence that the parent is unable to care for the child or to suggest an appropriate alternative placement for the child.” (citation omitted)). The trial court appropriately found that DSS was unable to locate a potential placement for Robert.

Finding 26 and Conclusion 3 are supported by Finding 6, as well as the trial court’s remaining unchallenged findings. The trial court found that, though Mother and Father refused to corroborate the multiple incidents of domestic violence between them in Robert’s presence during their testimony, that testimony was not credible. The findings show that Father’s domestic violence placed Robert in circumstances where Father was unable to care for and supervise Robert.

### **III. Conclusion**

For the aforementioned reasons, we affirm the trial court’s adjudication of Robert to be a neglected and dependent juvenile.

IN RE: R.B.

*Opinion of the Court*

AFFIRMED.

Judge ARROWOOD concurs.

Judge HAMPSON concurs by separate opinion.

Report per Rule 30(e).



No. COA23-426 – *In re R.B.*

HAMPSON, Judge, concurring.

I fully concur in the Opinion of the Court affirming the dependency adjudication. I also agree that as the law appears to stand following our Supreme Court’s decision in *In re G.C.*, 384 N.C. 62, 884 S.E.2d 658 (2023), the trial court’s neglect adjudication should be affirmed. I write separately on the neglect adjudication to highlight this important decision by our Supreme Court appearing to conclusively establish there is no specific requirement for findings of fact a juvenile was physically, mentally, or emotionally impaired or at a substantial risk of such impairment as the result of the neglect alleged in the petition.<sup>2</sup>

The North Carolina Juvenile Code requires an “adjudicatory order shall be in writing and shall contain appropriate findings of fact and conclusions of law.” N.C. Gen. Stat. § 7B-807(b) (2021). “[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) (quoting *In re Harton*, 156 N.C. App. 655, 660, 577 S.E.2d 334, 337 (2003)). The findings need to be stated with sufficient specificity to allow meaningful

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<sup>2</sup> The Supreme Court in *G.C.* only addressed risk of impairment—not impairment. However, under the stark logic employed by the majority opinion, it seems evident that ruling would have to apply to eliminate the need for finding both impairment and risk of impairment.

appellate review. *In re S.C.R.*, 217 N.C. App. 166, 168, 718 S.E.2d 709, 711-12 (2011) (citing *Quick v. Quick*, 305 N.C. 446, 451, 290 S.E.2d 653, 657 (1982)).

A “neglected juvenile” is defined in part as a juvenile whose parent, guardian, custodian, or caretaker “does not provide proper care, supervision, or discipline” or “creates or allows to be created a living environment that is injurious to the juvenile’s welfare.” N.C. Gen. Stat. § 7B-101(15) (2021). “In order to adjudicate a juvenile neglected, our courts have additionally ‘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 Stumbo*, 357 N.C. 279, 283, 582 S.E.2d 255, 258 (2003) (quoting *In re Safriet*, 112 N.C. App. 747, 752, 436 S.E.2d 898, 901-02 (1993) (citation and quotation marks omitted)).

Our Court has previously recognized: “A trial court adjudicating a juvenile neglected must make sufficient findings ‘show[ing] . . . harm[ ] . . . or creat[ion of] a substantial risk of such harm’ ”. *In re M.N.*, 260 N.C. App. 203, 207, 816 S.E.2d 925, 929 (2018) (alterations in original) (quoting *In re J.R.*, 243 N.C. App. 309, 314, 778 S.E.2d 441, 445 (2015)). It is true, “[w]here there is no finding that the juvenile has been impaired or is at substantial risk of impairment, there is no error if all the evidence supports such a finding.” *In re Padgett*, 156 N.C. App. 644, 648, 577 S.E.2d 337, 340 (2003) (citation omitted). In determining, however, whether, in the absence of a specific finding of impairment or substantial risk thereof, all the evidence

supports such a finding, we generally look to the trial court's evidentiary findings on adjudication demonstrating impairment or risk of impairment to the juvenile as the evidentiary record established by the trial court in its role as the finder of fact. *See id.* at 648-49, 577 S.E.2d at 340; *see also Safriet*, 112 N.C. App. at 753, 436 S.E.2d at 902.

In *G.C.*, our Supreme Court affirmed a neglect adjudication of a juvenile based on the asphyxiation death of her infant brother. Our Supreme Court determined:

Although there is no mention of [the juvenile] . . . or her whereabouts on 12 March 2020 in the trial court's findings of fact, the foregoing evidentiary findings support the ultimate finding that [the juvenile] does not receive proper care, supervision, or discipline from her parents and the conclusion of law that [the juvenile] is a neglected juvenile.

*G.C.*, 384 N.C. at 68, 884 S.E.2d at 662. The Supreme Court went on "to be clear, there is no requirement of a specific written finding of a substantial risk of impairment." *Id.* at 69, 884 S.E.2d at 663. In that case, the Supreme Court affirmed a neglect adjudication in the absence of any evidentiary finding mentioning the juvenile or their whereabouts at the time of the incident giving rise to the allegations in the petition or the impact of that incident on the juvenile and without a specific finding of substantial risk of impairment. *Id.* Moreover, although relegated to a footnote, our Supreme Court expressly stated: "To the extent any Court of Appeals' decision requires a written finding of fact by the trial court of substantial risk of impairment, such decisions are overruled." *Id.* at 69 n.5, 884 S.E.2d at 663 n.5. In

*G.C.*, the trial court's neglect adjudication was primarily premised on the conditions leading to the infant's death, creating an injurious environment and a lack of proper care, supervision, or discipline.

Here, the trial court's neglect adjudication appears to be premised primarily on domestic violence between the parents in the juvenile's residence. There is no evidentiary finding of the juvenile being exposed to domestic violence or illustrating any harm or risk of harm to the juvenile. The only relevant finding is that the juvenile was present when Respondent-Father was arrested, and the juvenile was placed in a patrol car for approximately 20 minutes. Likewise, there is no specific finding of impairment or risk of impairment. Under our prior case law, it seems evident the trial court's findings in this case would be woefully inadequate to support a neglect adjudication. Under prior practice, the trial court's adjudication would have been vacated and this case remanded.

However, following the Supreme Court's decision in *G.C.*, findings expressly related to the juvenile or the juvenile's condition appear to be no longer required if there are some findings describing bad acts of the parents. From there, it appears it is now the role of the appellate courts to scour the record to engage in a fact-finding process of determining whether it might be inferred from the evidence that because of these acts, there was impairment or risk of impairment to the juvenile.

As such, on review of the Record in this case—despite the lack of any evidentiary finding on this critical issue—I would conclude there was, in fact,

evidence the juvenile was exposed to multiple incidents of domestic violence between his parents in their home. Given the lack of cooperation and credibility of the parents, it is reasonable to infer from the facts the juvenile would be at substantial risk of impairment if returned to their care and custody. Thus, the evidence in the Record supports the trial court's ultimate findings of fact. Therefore, the trial court did not err in adjudicating R.B. as neglected. Consequently, the trial court's order must be affirmed.