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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-45

Filed 16 January 2024

Alleghany County, Nos. 22 JA 11–13

IN THE MATTER OF: Z.M., L.M., and H.M.

Appeal by respondent-mother from order entered 12 July 2022 by Judge Robert J. Crumpton in Alleghany County District Court. Heard in the Court of Appeals 19 December 2023.

*Anné C. Wright and John Benjamin “Jak” Reeves for petitioner-appellee Alleghany County Department of Social Services.*

*Michelle FormyDuval Lynch for the Guardian ad Litem.*

*Office of the Parent Defender, by Assistant Parent Defender J. Lee Gilliam, for respondent-appellant mother.*

PER CURIAM.

Respondent-mother appeals from a trial court’s adjudication and disposition order entered 12 July 2022 adjudicating Z.M. (“Zora”), L.M. (“Lydia”), and H.M. (“Hudson”) neglected and dependent juveniles.<sup>1,2</sup> We affirm the trial court’s order.

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<sup>1</sup> Pseudonyms are used to protect the identity of the children and for ease of reading.

<sup>2</sup> Respondent-father is not a party to this appeal.

I. Background

Zora was born in June 2014, Lydia in October 2015, and Hudson in June 2018. The juveniles lived with respondent-mother and respondent-father in Allegheny County. On 29 October 2021, the Allegheny County Department of Social Services (“DSS”) received a report alleging domestic violence, substance abuse, improper remedial/medical care, and improper supervision in the home. After respondents failed to respond to attempted communications, social worker Juanita Del Valle (“Del Valle”) and a law enforcement officer visited the home unannounced on 1 November 2021.

Respondents admitted to Del Valle that there had been instances of domestic violence, though none in front of the children, and they denied any substance abuse in the home. However, respondent-father admitted that he “did use and sold a little” to make extra income. Respondent-mother stated that she home schooled Zora, but the school was not licensed. The children had not seen a doctor, and none had been vaccinated. In her report, Del Valle described the home as cluttered: there were toys everywhere, the couch was “cut up,” and dog feces and urine were on the floor. The children told Del Valle that respondents fight and that it scares them.

At the conclusion of the 1 November home visit, respondent-parents entered into a safety plan with DSS which required that they enroll Zora in school, keep pathways and exits in the home clear, clean up animal waste, and refrain from domestic violence.

Del Valle conducted follow-up visits with the family on 9, 17, and 30 November 2021. On 9 November, Zora was not enrolled in a school; the home smelled of urine; and Zora said that respondent-father had pushed respondent-mother down the stairs and choked her. But by 17 November, Zora had not observed any fighting in a week. On 30 November, Zora said that respondent-father was being nicer to respondent-mother, and respondent-mother also reported no domestic violence.

DSS conducted three more home visits in December 2021. During one visit, Zora informed Del Valle that respondents were fighting again, though respondent-mother denied any domestic violence. Respondent-mother reported that Zora had been enrolled in school, but she was unable to provide any documentation to support the claim. At a subsequent visit, respondent-mother provided a home-school license number, and Del Valle reported no other concerns.

Respondents met with Del Valle and a supervisor to develop a home family service agreement on 1 January 2022. The supervisor explained that if the plan was not followed within the time frame provided, “the next step would be court.” Del Valle conducted two home visits in January 2022. On 21 January Zora said she had not witnessed any more fighting since the last visit. On 26 January 2022, respondent-parents expressed their frustration with DSS remaining involved with the family, and Zora mentioned that she had not participated in school that day because respondent-mother was working on something else.

DSS attempted home visits on 2, 8, 17, and 18 February 2022, but no one answered the door or responded to messages. Del Valle observed that the same five full trash bags had been sitting outside the home for three weeks.

Later in the day on 18 February 2022, Del Valle returned to the home with a law enforcement officer and met with respondent-mother. While in the home, Del Valle observed dog feces were on the floor, that the home was very messy and cluttered, that open food containers lay around, and that there was an odor of trash and dogs inside.

During the home visit, Del Valle spoke with Zora, who stated that respondents had been arguing that day. Zora described how respondent-father had choked respondent-mother, and Zora hit him to “get him off of” respondent-mother. Zora also stated that respondent-father had been in her closet looking for a bag and that he was upset because he could not find it. Zora was afraid that he would be upset with respondent-mother. Respondent-mother denied arguing with respondent-father and stated that he had left the residence to prevent an argument. Both Zora and Lydia stated that they were not afraid to speak with the social worker because respondent-father was not at home. Del Valle completed a safety plan with respondent-mother directing the parents to not argue in the presence of the kids.

DSS filed juvenile petitions on 21 February 2022 alleging Zora, Lydia, and Hudson were neglected and dependent juveniles. The trial court entered orders granting DSS nonsecure custody of the children the same day. On 15 March 2022,

the court awarded respondents a minimum of two two-hour supervised visits per month.

The trial court conducted a hearing on the juvenile petitions on 17 May 2022. The trial court heard testimony from Del Valle setting forth the facts giving rise to the petitions. GAL case supervisor Michelle Dix testified that Zora had disclosed that she witnessed respondent-father choke respondent-mother and “tripped [her] on purpose” and that Zora was afraid of respondent-father. The trial court also reviewed two videos recorded inside respondents’ home in which respondent-mother was heard yelling after respondent-father pushed her down the stairs, and respondent-father was heard going through a closet looking for drugs to sell. Respondent-mother testified that respondent-father’s statements were sarcasm. The trial court also received evidence that respondent-parents had a treatment plan with Daymark Recovery Services but had not completed the plan or attended a substance abuse assessment.

The children’s maternal grandmother had not been in the home since October 2020 due to domestic violence between respondents. A kinship assessment for the maternal grandmother was approved on 19 April 2022. DSS recommended that the children be placed with their maternal grandmother until respondent-parents made progress with their case plan and eliminated concerns of substance abuse, domestic violence, and unsafe or improper care for the children.

The court found that the allegations set forth in the petitions were proven by clear, cogent, and convincing evidence. Regarding DSS efforts, the trial court found the following efforts had been pursued: (1) a CPS investigative assessment; (2) safety plans; (3) contact with collaterals; (4) risk assessments; (5) strength and needs assessments; (6) attempts to maintain regular contact with the parents and children; (7) kinship assessment as requested; (8) referrals for counseling; (8) transportation as needed; (9) Medicaid for the children; (10) monitoring mental health services respondent-parents were receiving through Daymark; and (11) referrals for parenting and/or substance abuse.

The court further found that DSS had learned of the family's previous involvement with Child Protective Services ("CPS") in Wake County addressing concerns of domestic violence, substance abuse in the home, improper supervision, and improper remedial and medical care. The court found that the case plan required respondent-parents to maintain proper communication with DSS in a civil and respectful manner, but respondent-parents had failed to do so. Furthermore, Hudson needed "serious dental care" and "exhibit[ed] aggressive behaviors toward others due to modeling the violent behavior in the home."

The court adjudicated Zora, Lydia, and Hudson neglected and dependent juveniles by order entered 12 July 2022. *See* N.C.G.S. § 7B-101 (2021). In its disposition order, the trial court decreed that legal and physical custody of the children would remain with DSS, that respondents' visitation with the children would

remain unchanged, and that the children could be placed with the maternal grandmother in the discretion of DSS. Respondents were ordered to comply with their case plan as directed by DSS. The primary plan for the children was set as reunification with a concurrent plan of custody with an approved caregiver. Respondent-mother appealed the adjudication and disposition order on 8 August 2022.

## II. Discussion

Respondent-mother challenges the trial court’s adjudication of the children as (A) neglected juveniles and (B) dependent juveniles. Respondent-mother challenges findings of fact 13, 19, 24–28, 42–45, and 48, requesting this Court set aside those findings because they either recite “allegations in the petition or other documents authored by [DSS] or testimony given below.” Alternatively, she contends the evidence does not show neglect. She further contends the children were not dependent because they had an appropriate alternative caregiver in their maternal grandmother. We address each argument in turn.

### A. Standard of Review

“We review an adjudication under N.C.G.S. § 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 (2020) (citing *In re Helms*, 127 N.C. App. 505, 511 (1997)). “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 T.H.T.*, 185 N.C. App. 337, 343 (2007) (citing *In re McCabe*, 157 N.C. App. 673, 679 (2003)), *aff’d as modified*, 362 N.C. 446 (2008). “Unchallenged findings of fact are binding on appeal.” *In re K.W.*, 272 N.C. App. 487, 492 (2020) (citing *In re K.B.*, 253 N.C. App. 423, 428 (2017)). “[W]e review a trial court’s conclusions of law de novo.” *In re M.H.*, 272 N.C. App. at 286.

B. Adjudication of Neglect

“In all actions tried upon the facts without a jury . . . , the court shall find the facts specially . . . .” N.C. Gen. Stat. § 1A-1, Rule 52(a)(1) (2021). “[T]he trial court’s factual findings must be more than a recitation of allegations.” *In re Anderson*, 151 N.C. App. 94, 97 (2002). However, “it is not per se reversible error for a trial court’s fact findings to mirror the wording of a petition or other pleading prepared by a party.” *In re J.N.J.*, 286 N.C. App. 599, 605 (2022) (quoting *In re J.W.*, 241 N.C. App. 44, 48–49 (2015)). Moreover, “[t]here is nothing impermissible about describing testimony, so long as the court ultimately makes its own findings, resolving any material disputes[.]” *In re A.E.*, 379 N.C. 177, 185–86 (2021) (quoting *In re T.N.H.*, 372 N.C. 403, 408 (2019)).

1. *Findings of Fact*

Respondent-mother contends that the trial court’s conclusion that Zora, Lydia, and Hudson are neglected juveniles “centers on finding of fact 13,” which she describes as “simply recite[d] allegations . . . [as] findings of fact.” In that finding, the trial court found “[t]he facts that gave rise to the Petition,” restating the



allegations set forth in DSS's juvenile petitions. We note that in unchallenged finding of fact 14, the court found the "allegations set forth in the petition have been proven by clear, cogent, and convincing evidence." *See In re K.W.*, 272 N.C. App. at 492. Although the wording on finding of fact 13 may mirror that of the petitions, it is unchallenged that the observations made under finding of fact 13 were proven by clear, cogent, and convincing evidence, and accordingly, we overrule respondent-mother's challenge to finding of fact 13. *See In re J.N.J.*, 286 N.C. App. at 605.

In finding of fact 19, the trial court found that DSS had made "all reasonable efforts to avoid the child[ren]'s placement in foster care; foster placement is the only current option for the child[ren] unless the Respondents follow their case plan." The court further acknowledged DSS's efforts throughout the case as previously discussed. Respondent-mother's brief does not identify what finding of fact 19 recites. *See generally* N.C.R. App. P. 28(b)(6) ("Issues not presented in a party's brief, or in support of which no reason or argument is stated, will be taken as abandoned.").

We also note that the trial court's finding of DSS's reasonable efforts is a prerequisite for making out-of-home placements in disposition. *See* N.C.G.S. § 7B-903(a3) (2021) ("An order under this section placing the juvenile in out-of-home care shall contain specific findings as to whether the department has made reasonable efforts to prevent the need for placement of the juvenile."); *see also Barnette v. Lowe's Home Ctrs., Inc.*, 247 N.C. App. 1, 6 (2016) ("Any determination reached through logical reasoning from the evidentiary facts is more properly classified a finding of

fact.”). Where respondent-mother does not show how finding of fact 19 is an impermissible recital and the finding reflects the court’s consideration of a statutorily mandated criteria for out-of-home placements, we overrule the challenge to finding of fact 19.

In findings of fact 24, 25, and 26, the court described the guardian ad litem’s (“GAL”) testimony. Per finding of fact 24, the GAL “testified that the minor child [Zora] has disclosed that she has witnessed her father choke her mother, and included in a statement to the GAL that ‘Daddy tripped mommy on purpose.’” In finding of fact 25, Zora “stated to the GAL that she is afraid of the [respondent-]father due to acts of domestic violence she has witnessed in the home.” In finding of fact 26, the court found that Lydia “also disclosed abusive behavior to the GAL, including a statement to the GAL that ‘Daddy hit mommy’s leg so hard that that she fell down the stairs.’” In contrast, respondent-mother testified before the trial court and denied ever feeling the need to take out a domestic violence protective order against respondent-father or feeling unsafe around him.

The trial court must make “its own findings, resolving any material disputes[.]” *In re A.E.*, 379 N.C. at 185–86. “[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.’” *Id.* at 185 (quoting *In re N.D.A.*, 373 N.C. 71, 75 (2019)). Where the issue of domestic violence in respondents’ home was in material dispute and where the trial court did

not address the credibility of the recited testimony, we are compelled to disregard findings of fact 24, 25, and 26 from our consideration of the court's adjudication.

In finding of fact 27, the trial court acknowledged that Del Valle "testified on behalf of [DSS]" and went on to find that DSS "has learned of previous history of CPS involvement with the family in Wake County with many of the same concerns involving domestic violence, substance abuse in the home, improper supervision, improper remedial and medical care as in the current petition." In finding of fact 28, the court found that "DSS has concerns about the family's history of substance abuse, domestic violence, and improper medical and remedial care" and sought to address respondents' history of substance abuse through assessments and drug screens, domestic violence through counseling services, and improper medical and remedial care by providing the children with age-appropriate education and regular medical and dental care.

We note respondent-mother fails to point to any conflicting evidence. *See In re A.E.*, 379 N.C. at 185–86. We also note that the observations under findings of fact 27 and 28 are consistent with the following unchallenged findings of fact: (1) respondents had entered into an Out of Home Services Case Plan with DSS and have a treatment plan with Daymark Recovery Services; (2) the minor child Hudson "is in need of serious dental care due to the improper remedial and medical care provided by the respondents"; (3) "[b]ehavioral and mental health treatment is recommended for all children due to the exposure of domestic violence in the home"; (4) respondent-

mother admitted “to having substance abuse issues for the last ten years”; and (5) respondent-father has “consistently exhibited aggressive anger and has projected a dominate behavior,” as stated under findings of fact 29, 30, 31, 37 and 38. We overrule respondent-mother’s challenge to findings of fact 27 and 28.

In finding of fact 42, the court found that DSS “recommends that the minor children be placed with the maternal grandmother until respondents work the case plan . . . and there are no further concerns of substance abuse, domestic violence, unsafe and improper care for the minor children.” In finding of fact 43, the court found that a social worker Rachel Call reported “that the minor children were doing well overall” and described a “strange” telephone communication between the minor children and respondents occurring on 16 May 2022. In finding of fact 44, the court found that respondent-mother testified “that she only takes the children to the doctor when they are sick, and that her children are never sick.” In finding of fact 45, the court found that “respondents do not vaccinate the minor child[ren] and the decision to not vaccinate was based on ‘research[,]’” which respondents did not present. Respondent-mother does not contend that the evidence supporting these findings of fact was in material dispute. *See In re A.E.*, 379 N.C. at 185–86. Accordingly, we overrule respondent-mother’s challenge.

## 2. *Evidence of Neglect*

Respondent-mother argues that the evidence does not show neglect. She contends that the only potential harm shown was that Hudson needed serious dental

care and that he has been exhibiting aggressive behaviors modeling the violent behavior in his home, but that neither harm shows neglect. Respondent-mother further contends that she worked with DSS for 112 days, during which they were aware of the conditions in her home, before they took nonsecure custody. She avers that she left respondent-father on 18 February 2022 and at the time of the adjudication hearing there was no evidence of domestic violence or substance abuse.

Section 7B-101 of our General Statutes defines a neglected juvenile as follows, in relevant part:

Any juvenile less than 18 years of age . . . 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.
- d. Or whose parent, guardian, or custodian has refused to follow the recommendations of the Juvenile and Family Team made pursuant to Article 27A of this Chapter.
- e. Creates or allows to be created a living environment that is injurious to the juvenile's welfare.

N.C.G.S. § 7B-101(15) (2021).

“In determining whether a child is neglected, domestic violence in the home contributes to an injurious environment.” *In re J.W.*, 241 N.C. App. 44, 50 (2015) (citing *In re K.D.*, 178 N.C. App. 322, 328 (2006)); *see also In re D.B.J.*, 197 N.C. App. 752, 755 (2009) (“[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.”).

The trial court received substantial evidence to satisfy § 7B-101(15). Respondents have a history of involvement with Wake County CPS addressing issues of domestic violence as well as improper remedial and medical care, and DSS observed similar conditions in this case. Due to improper remedial and medical care, Hudson “is now in need of serious dental care.” Respondents last took the children to a dentist a year before the adjudication hearing, when “tooth decay was ‘just starting[,]’” and respondent-mother testified that the dentist directed her to just “watch it.” Furthermore, Hudson was “modeling the violent behavior in the home,” and “[b]ehavioral and mental health treatment was recommended for all children due to the exposure of domestic violence in the home.”

The findings of fact provide that the children were scared when respondents fought each other, that respondent-father “scream[ed]” at respondent-mother, and that respondent-father choked respondent-mother. In video recordings, “respondent mother is heard yelling out to the respondent father after he pushed her down a staircase.” “[S]ocial work staff ha[d] become uncomfortable and fearful in the presence of respondent father.” The maternal grandmother had not been in respondents’ home since October 2020 “due to the domestic violence and fighting in the home between the respondents when she was there.” Additionally, respondent-parents failed to comply with the Daymark treatment plan. These findings of fact

support the trial court's adjudication of Zora, Lydia, and Hudson as neglected juveniles as defined by N.C. Gen. Stat. § 7B-101(15).

As to respondent-mother's contention that she left respondent-father on 18 February 2022, the record does not reflect this contention being presented before the trial court. We do not consider it in our review. *See Bethesda Rd. Partners, LLC v. Strachan*, 267 N.C. App. 1, 7 (2019) ("A party cannot raise on appeal issues which were not pleaded or raised below." (citing *Whichard v. Oliver*, 56 N.C. App. 219, 224 (1982))).

We uphold the trial court's adjudication of Zora, Lydia, and Hudson as neglected juveniles.

C. Adjudication of Dependency

Respondent-mother argues that her children are not dependent juveniles, where they had an appropriate alternative caregiver in their maternal grandmother.

A dependent juvenile is defined by statute as "[a] juvenile in need of assistance or placement because . . . (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.G.S. § 7B-101(9) (2021). "[T]he conditions underlying determination of whether a juvenile is an abused, neglected, or dependent juvenile are fixed at the time of the filing of the petition." *In re L.N.H.*, 382 N.C. 536, 543 (2022) (upholding the adjudication of a juvenile as dependent where the respondent-mother was unable to care for the juvenile, the respondent-father's whereabouts were

unknown, and no alternative placements were available because home studies of the potential placements had not been completed at the time the juvenile petition was filed); *see also* N.C.G.S. § 7B-802 (2021) (“The adjudicatory hearing shall be a judicial process designed to adjudicate the existence or nonexistence of any of the conditions alleged in a petition.”).

At the time the juvenile petitions were filed, there had been no kinship assessment completed for the maternal grandmother, and the record does not reflect that an alternative placement for the children was otherwise available. Respondent-mother does not challenge the trial court’s disposition. As the record does not reflect the availability of an alternative placement for the children and respondent-mother does not challenge the conclusion that respondent-parents were unable to provide for the children’s care or supervision, *see* N.C.G.S. § 7B-101(9), we uphold the trial court’s adjudication of Zora, Lydia, and Hudson as dependent juveniles.

### III. Conclusion

For these reasons, we affirm the trial court’s 12 July 2022 order.

AFFIRMED.

Panel Consisting of: Judges DILLON, ARROWOOD, and GRIFFIN.

Report per Rule 30(e).