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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-705

Filed 16 April 2024

Jones County, Nos. 18 JA 01, 22 JA 05–06

IN THE MATTER OF: L.D.R., C.L.M., W.G.M.,

Appeal by respondent-mother from orders entered 6 January 2023 by Judge Cristopher Welch and 21 April 2023 by Judge Robert Gilmore in Jones County District Court. Heard in the Court of Appeals 18 March 2024.

*Reece & Reece, by Mary McCullers Reece, for Jones County Department of Social Services.*

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

*Parent Defender Wendy C. Sotolongo and Assistant Parent Defender Jacky Brammer for respondent-appellant mother.*

PER CURIAM.

Respondent-mother appeals from the trial court's orders adjudicating her children Lauren,<sup>1</sup> Cary, and Wayne as neglected juveniles and ordering her to comply with a case plan. Upon review, we reverse the orders and remand to the trial court.

**I. Background**

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

Respondent-mother is the mother of three children: Lauren, born in July 2011; Cary, born in May 2019; and Wayne, born in July 2020. Respondent-mother's boyfriend is the father of Cary and Wayne ("the boys' father") and a caretaker of Lauren.

The Jones County Department of Social Services (DSS) obtained nonsecure custody of Lauren in March 2018 upon filing a petition alleging that she was neglected and dependent due to respondent-mother's substance abuse; mental health concerns; inability to post bond following her arrest on drug charges; and inability to arrange alternative care for Lauren, in that the temporary safety provider (TSP) arranged by respondent-mother was unable to continue caring for Lauren.

Following a hearing on the petition in May 2018, the trial court entered orders that adjudicated Lauren neglected, continued DSS's custody of Lauren, and placed Lauren with respondent-mother, who had bonded out of jail. At a review hearing in August 2018, the trial court found that Lauren's placement with respondent-mother was going well and that respondent-mother had sufficiently complied with the requirements for reunification. Accordingly, the court returned custody of Lauren to respondent-mother and terminated jurisdiction in the juvenile proceeding.

On 8 March 2022, DSS filed petitions alleging that Lauren, Cary, and Wayne were neglected juveniles.<sup>2</sup> Each petition included identical allegations that "[t]he

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<sup>2</sup> It does not appear that the children were removed from respondent-mother's custody.

children are at substantial risk of harm because of prolonged and consistent exposure to domestic violence between [respondent-mother and the boys' father]." In addition to noting Lauren's prior neglect adjudication, DSS alleged that it had received three Child Protective Services (CPS) reports with concerns of domestic violence in 2020.

More specifically, the petition provided that DSS had received two CPS reports of domestic violence in October and December 2020. DSS alleged that during its investigation, respondent-mother and the boys' father admitted to verbally and physically fighting in the presence of the children. DSS determined that in-home services were necessary following its investigation, and respondent-mother and the boys' father agreed to participate in services to address mental health and family relationship issues. However, DSS alleged that although respondent-mother and the boys' father were attending therapy and had expressed an understanding of the effects of domestic violence on the children at the time in-home services ceased, they failed to comply with recommendations to continue services and therapy.

DSS received a third CPS report on 4 January 2022, reporting further detailed verbal and physical domestic violence between respondent-mother and the boys' father in the presence of the children. The petition alleged that DSS assisted respondent-mother in getting into a domestic violence shelter with the children, but that she returned to the home with the boys' father within 72 hours. DSS alleged that the children continued to be exposed to domestic violence despite referrals and access

to services, as evidenced by thirteen calls to law enforcement and DSS concerning domestic disturbances over a period of two years.

After multiple continuances, the petitions came on for hearing on 4 and 5 January 2023. The trial court heard testimony from the boys' father and received exhibits during the first day of the hearing. On the second day of the hearing, DSS provided the court with "stipulations to finding of neglect" signed by respondent-mother, the boys' father, and their respective counsel. The court accepted the stipulations, which were filed the same day. The trial court indicated that the stipulations provided an adequate basis for an adjudication of neglect and adjudicated the children neglected without hearing further evidence.

On 6 January 2023, the trial court entered an adjudication order adjudicating all three children neglected juveniles. The trial court found that the "juveniles are at [a] substantial risk of harm based on the stipulated facts" and that the juveniles "lived in an environment injurious to [their] welfare."

The trial court held a disposition hearing on 1 February 2023. On 21 April 2023, the trial court entered a disposition order that placed Lauren in respondent-mother's custody and placed Cary and Wayne in the joint custody of respondent-mother and the boys' father. The court ordered, however, that respondent-mother (1) obtain a mental health assessment and a substance abuse assessment and follow treatment recommendations; (2) participate in parenting and anger management classes; (3) participate in anger management and domestic violence counseling; (4)

obtain and maintain stable housing and employment; (5) cooperate and maintain contact with DSS and the guardian ad litem; (6) consume only prescribed substances and medications; and (7) not remove the children from the state absent approval.

Respondent-mother filed timely written notice of appeal.<sup>3</sup>

## **II. Analysis**

Respondent-mother challenges the trial court's adjudication of the children as neglected juveniles as well as certain case plan requirements imposed on her in the disposition order.

### **A. Standard of Review**

"When reviewing an adjudication of abuse, neglect, or dependency, this Court determines whether the trial court's findings of fact are supported by clear and convincing evidence and whether the trial court's legal conclusions are supported by its findings of fact." *In re S.G.*, 268 N.C. App. 360, 363, 835 S.E.2d 479, 483 (2019); "The trial court's conclusions of law are reviewed *de novo*." *Id.* "A disposition order is reviewed to determine whether the trial court abused its discretion in deciding what action is in the juvenile's best interest." *In re H.P.*, 278 N.C. App. 195, 201, 862 S.E.2d 858, 865 (2021).

### **B. Adjudication**

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<sup>3</sup> Neither Lauren's father nor the boys' father appealed.

At the outset, we address respondent-mother’s assertion that the trial court did not enter a consent adjudication order pursuant to N.C. Gen. Stat. § 7B-801(b1). Respondent-mother emphasizes that she only stipulated to facts and contends that “[t]o the extent this Court considers the trial court’s adjudication as a consent, the order must be reversed[.]” We agree that the trial court did not enter a consent adjudication order under N.C. Gen. Stat. § 7B-801(b1), and DSS and the GAL do not contend to the contrary. It is evident from the record that the trial court accepted the stipulated facts and made its own adjudication decision based on the stipulations, as contemplated by N.C. Gen. Stat. § 7B-807(a). *See In re R.L.G.*, 260 N.C. App. 70, 73, 816 S.E.2d 914, 917 (2018) (“Separate and apart from the statutory authorization for consent adjudication orders contained in N.C. Gen. Stat. § 7B-801(b1), . . . N.C. Gen. Stat. § 7B-807 . . . allows factual stipulations made by a party to be used in support of an adjudication.”).

Respondent-mother next argues that the trial court’s findings of fact, based entirely on the stipulations, were insufficient as a matter of law to support the adjudication of neglect because the stipulations and findings are “too vague and do not explain how the children were at risk of harm[.]”

The Juvenile Code requires that an adjudicatory order “contain appropriate findings of fact and conclusions of law.” N.C. Gen. Stat. § 7B-807(b) (2023); *see also* N.C. Gen. Stat. § 1A-1, Rule 52(a)(1) (“In all actions tried upon the facts without a jury . . . , the court shall find the facts specially and state separately its conclusions

of law thereon and direct the entry of the appropriate judgment.”). “Whether a child is neglected is a conclusion of law which must be supported by adequate findings of fact.” *R.L.G.*, 260 N.C. App. at 75, 816 S.E.2d at 918 (citation omitted).

The Juvenile Code defines a “[n]eglected juvenile,” in relevant part, as a child “whose parent, guardian, custodian, or caretaker . . . [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). To adjudicate a juvenile neglected, this Court has required that “there must be some physical, mental, or emotional impairment of the juvenile or a substantial risk of such impairment.” *In re J.W.*, 241 N.C. App. 44, 50, 772 S.E.2d 249, 254 (cleaned up), *disc. review denied*, 368 N.C. 290, 776 S.E.2d 202 (2015); *see also In re K.J.B.*, 248 N.C. App. 352, 354, 797 S.E.2d 516, 518 (2016) (“[E]vidence must show that the environment in which the child resided has resulted in harm to the child or a substantial risk of harm.”). While a trial court may consider a prior adjudication of neglect of a child living in the home as evidence in support of a subsequent adjudication, an adjudication of neglect may not be based solely on a prior adjudication; the court must find the presence of other factors suggesting a present risk to the juvenile. *In re J.A.M.*, 372 N.C. 1, 9–10, 822 S.E.2d 693, 699 (2019).

“Generally, North Carolina courts have found neglect where the conduct at issue constituted either severe or dangerous conduct or a pattern of conduct either causing injury or potentially causing injury to the juvenile.” *In re V.M.*, 273 N.C. App. 294, 297, 848 S.E.2d 530, 533 (2020) (cleaned up). “It is well[ ]established that the

trial court need not wait for actual harm to occur to the child if there is a substantial risk of harm to the child in the home.” *In re D.B.J.*, 197 N.C. App. 752, 755, 678 S.E.2d 778, 780 (2009) (citation omitted). “[T]he trial court [has] some discretion in determining whether children are at risk for a particular kind of harm given their age and the environment in which they reside.” *In re C.M.*, 183 N.C. App. 207, 210, 644 S.E.2d 588, 592 (2007) (citation omitted). Nevertheless, the trial court must make adequate findings of fact to support the conclusion that the juvenile is neglected. *See R.L.G.*, 260 N.C. App. at 75, 816 S.E.2d at 918.

In the instant case, the trial court concluded that Lauren, Cary, and Wayne were neglected juveniles based on its determinations that they were “at substantial risk of harm based on the stipulated facts[,]” and “lived in an environment injurious to [their] welfare.” These ultimate determinations were based on the following stipulated facts incorporated by the trial court into finding of fact 9:

- ii. [Respondent-mother and the boys’ father] have a history of verbal and physical altercations, some of which occurred in the presence of the three minor children, [Lauren, Cary, and Wayne].
- iii. Jones County emergency services responded to the family’s home . . . no less than fifteen times between 2018 and the filing of the juvenile petition.
- iv. On December 16, 2020, [DSS] received [a] report of child neglect in reference to domestic violence in the home. Respondent[-m]other was incarcerated . . . on charges of assault and battery as a result of the conduct alleged in the CPS report. The District Attorney dismissed the criminal case against [respondent-mother] at [the boys’ father’s]

request.

v. In December 2020, [the boys' father] obtained a domestic violence protective order against [r]espondent[-m]other.

vi. [The boys' father] subsequently took a voluntary dismissal of the domestic violence protective order.

vii. Domestic violence continued to occur in the home from January 2021 until March 2022. Several instances occurred in the presence of the children.

viii. The juvenile [Lauren] was previously adjudicated a neglected juvenile . . . because of improper care, supervision, or discipline and injurious environment while in the care of [r]espondent[-m]other.

ix. [DSS's] trial exhibits 1-6 were received and admitted into evidence during a hearing conducted on January 4, 2023. The same are hereby incorporated by reference and attached hereto.

x. Neither [respondent-mother] nor [the boys' father] stipulate as to which party is primarily responsible for the incidents of domestic violence in the home, notwithstanding the admission of . . . trial exhibits 1-6.

Respondent-mother does not challenge her stipulations, or the findings based thereon. The findings of stipulated fact are thus binding on appeal. *See In re G.T.*, 250 N.C. App. 50, 52, 791 S.E.2d 274, 276 (2016) (explaining that findings of fact based on stipulations “are presumed to be supported by competent evidence and are binding on appeal”), *aff'd*, 370 N.C. 387, 808 S.E.2d 142 (2017); *see also In re A.K.D.*, 227 N.C. App. 58, 60, 745 S.E.2d 7, 9 (2013) (“[S]tipulations are judicial admissions and are therefore binding in every sense . . .” (citation omitted)). Respondent-mother instead argues that the findings of stipulated facts are insufficient to support the

adjudication of neglect because they are too vague and do not explain how the children were at a substantial risk of harm, noting that “[t]he stipulations have no specificity as to the number of incidents, the severity, the specific circumstances, and most importantly no findings on how the children were affected by this.” We agree that the findings are lacking.

As respondent-mother argues, the findings based on the stipulated facts provide no details regarding the domestic violence that evinced its impact on the children. The findings concerning domestic violence only establish that there was domestic violence, including verbal and physical altercations, in the home between 2018 and 2022, with “[s]everal instances” in the presence of the children. Although the court found that a domestic violence incident in 2020 resulted in the filing of criminal charges and the entry of a DVPO against respondent-mother, it also found that the boys’ father and the District Attorney dismissed the cases. Aside from the “history of verbal and physical altercations, some of which occurred in the presence of the three minor children,” the court did not issue any additional findings about respondent-mother’s conduct or its impact on the children.

While this Court has recognized that “[i]n determining whether a child is neglected, domestic violence in the home contributes to an injurious environment[.]” *J.W.*, 241 N.C. App. at 50, 772 S.E.2d at 254; *see also D.B.J.*, 197 N.C. App. at 755, 678 S.E.2d at 781 (including domestic violence among conduct that supports a conclusion that a child is neglected), those cases upholding adjudications of neglect

based at least in part on domestic violence have included findings demonstrating harm, or a substantial risk of harm, to the juveniles as a result of the domestic violence. There are no such findings in the instant case.

Although the trial court additionally found that Lauren was previously adjudicated neglected while in the care of respondent-mother, the finding that there was a prior adjudication of neglect provides little support for the adjudications now at issue because the trial court did not establish the relevance of the prior adjudication. Moreover, a review of the record reveals that Lauren's prior adjudication did not involve domestic violence, and Lauren's prior case was closed after respondent-mother promptly complied with case plan requirements and regained custody of Lauren.

The trial court's only other findings addressed "exhibits 1-6" that were received and admitted into evidence on the first day of the adjudication hearing. The trial court incorporated the exhibits, including cellphone video recordings and a photograph, records related to the 2020 DVPO, and a 911 call log, into the adjudication order. While exhibits admitted at the adjudication hearing are properly considered as evidence by the trial court, the trial court may not delegate its fact-finding duty and should not broadly incorporate exhibits into an order as support for an adjudication. *See In re K.P.*, 249 N.C. App. 620, 624, 790 S.E.2d 744, 747 (2016). Here, the trial court incorporated the exhibits but made no findings based on the

exhibits to support the adjudication. Without findings regarding the exhibits, the mere incorporation of exhibits does not support the adjudication.

In support of their contention that this Court should uphold the adjudications, DSS and the GAL rely on testimony and exhibits introduced at the adjudication hearing prior to the admission of the stipulated facts. While DSS and the GAL may be correct that evidence supported the adjudications, the trial court failed to make findings based on the testimony, exhibits, and prior adjudication to support the adjudications. This Court's role is not to weigh the evidence and to determine the facts, but to determine whether the trial court's findings are supported by the evidence and whether the findings support the conclusion of neglect. *See In re K.S.*, 380 N.C. 60, 65, 868 S.E.2d 1, 4 (2022) (explaining that, where the trial court's findings were based largely on stipulated facts, the appellate court's role in reviewing an adjudication was to determine whether the stipulated facts supported the trial court's conclusion of neglect).

We conclude that the trial court's findings of fact in the present case, based entirely on the stipulated facts, are inadequate to support the court's determination that Lauren, Cary, and Wayne were "at [a] substantial risk of harm" and therefore its conclusion that the children were neglected juveniles. Yet we note that there was significantly more detail in DSS's allegations in the petition than in the trial court's findings of fact. DSS began to present evidence in support of the petition and likely could have presented additional evidence had the trial court not accepted the

stipulated facts as a sufficient basis for a determination of neglect. Because there was evidence from which the trial court could make additional findings supporting an adjudication, and because DSS could have presented additional evidence, it is appropriate to remand the matter to the trial court for additional findings. The trial court, in its discretion, may hold additional hearings and accept additional evidence.

### **III. Conclusion**

For the above reasons, the adjudication order is reversed and remanded to the trial court. Having reversed the adjudication order, the disposition order based thereon must also be reversed. *K.J.B.*, 248 N.C. App. at 357, 797 S.E.2d at 519. Therefore, we do not address respondent-mother's challenges to the disposition order.

REVERSED AND REMANDED.

Panel consisting of:

Judges ZACHARY, CARPENTER, and THOMPSON.

Report per Rule 30(e).