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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-850

Filed 7 May 2024

Forsyth County, Nos. 22 JA 84, 22 JA 86

IN THE MATTER OF: Z.S. & J.C.M.

Appeal by Respondent-Mother and Respondent-Father from orders entered 18 May 2023 by Judge Thomas W. Davis, V, in Forsyth County District Court. Heard in the Court of Appeals 3 April 2024.

Assistant County Attorney Melissa Starr Livesay for Petitioner-Appellee Forsyth County Department of Social Services.

Parker Poe Adams & Bernstein LLP, by E. Merrick Parrott, for Guardian ad Litem.

Robert W. Ewing for Respondent-Appellant Mother.

Mary McCullers Reece for Respondent-Appellant Father.

COLLINS, Judge.

Respondent-Mother and Respondent-Father appeal from the trial court's order adjudicating their minor child, Zoey, neglected. Mother and Father both argue that the trial court erred by concluding that Zoey was neglected. We affirm the trial court's order.

I. Background

Mother and Father are the biological parents of Zoey, born in 2019.¹ Mother is also the biological mother of John,² born in 2010.

On 27 April 2022, the Forsyth County Department of Social Services (“DSS”) received a report that John had disclosed that Father, who is Mother’s boyfriend and Zoey’s biological father, sexually abused him. John specifically disclosed that Father touched his private parts and asked John to touch his private parts. The report further alleged that Zoey and John were often left unsupervised, and that Mother and Father had substance abuse issues. DSS filed petitions on 9 May 2022 alleging that Zoey was neglected, and that John was neglected and abused.³ An order for nonsecure custody for both children was entered on 11 May 2022.

After several hearings, the trial court entered an order on 18 May 2023 adjudicating Zoey neglected and John abused and neglected. The trial court also entered a disposition order continuing custody of Zoey and John with DSS. Mother and Father appealed.

II. Discussion

Mother and Father both argue that the trial court erred by concluding that Zoey was neglected. We address each of their arguments in turn.

¹ We use pseudonyms to protect the identities of the minor children. *See* N.C. R. App. P. 42.

² John is not a subject of this appeal.

³ DSS also filed a petition alleging that John’s paternal half-brother was neglected; however, John’s biological father is not a party to this appeal.

We review an adjudication of neglect to determine whether the findings of fact are supported by clear and convincing evidence, and whether the findings of fact support the conclusions of law. *In re K.H.*, 281 N.C. App. 259, 266, 867 S.E.2d 757, 762 (2022). “The clear and convincing standard is greater than the preponderance of the evidence standard required in most civil cases. Clear and convincing evidence is evidence which should fully convince.” *In re N.K.*, 274 N.C. App. 5, 8, 851 S.E.2d 389, 392 (2020). “Unchallenged findings of fact are deemed supported by competent evidence and are binding on appeal.” *In re J.S.*, 374 N.C. 811, 814, 845 S.E.2d 66, 71 (2020) (quotation marks and citation omitted). “Moreover, we review only those findings needed to sustain the trial court’s adjudication.” *Id.* (citation omitted). Whether a child is neglected is a conclusion of law, which we review de novo on appeal. *In re K.W.*, 282 N.C. App. 283, 286, 871 S.E.2d 146, 150 (2022).

A neglected juvenile is defined, in pertinent part, as a juvenile “whose parent, guardian, custodian, 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) (2023). “In determining whether a juvenile is a neglected juvenile, it is relevant whether that juvenile lives in a home . . . where another juvenile has been subjected to abuse or neglect by an adult who regularly lives in the home.” *Id.* § 7B-101(15) (2023). To support an adjudication of neglect, “the failure to provide proper care, supervision, or discipline must result in some type of physical, mental, or emotional impairment or a

substantial risk of such impairment.” *In re K.J.B.*, 248 N.C. App. 352, 354, 797 S.E.2d 516, 518 (2016) (quotation marks and citation omitted). “Similarly, in order for a court to find that the child resided in an injurious environment, evidence must show that the environment in which the child resided has resulted in harm to the child or a substantial risk of harm.” *Id.* (citation omitted). “A trial court’s failure to make specific findings regarding a child’s impairment or risk of harm will not require reversal where the evidence supports such findings.” *Id.* (citation omitted).

A. Mother’s Appeal

Mother argues that the trial court erred by concluding that Zoey was a neglected juvenile because “the evidence presented at the adjudication hearing and the competent findings of fact failed to establish that Zoey was impaired or exposed to a substantial risk of an impairment.”

Here, Mother specifically challenges the following findings of fact:

49. Therefore, based upon a showing of clear, cogent, and convincing evidence, the [c]ourt finds for purposes of this civil action that [Mother] did permit or allow the abuse of [John] as defined by NCGS §7B-101(1)(d).

50. Additionally, based upon the [c]ourt’s experience in both Juvenile and Criminal cases, and taken in context with the other evidence, including the admitted drug screens, it is likely that [John] saw and was exposed to both cocaine and marijuana in [Mother and Father’s] home.

. . . .

52. Based upon the presence of substances, including the green leafy substance and the white powdery substance observed by [John], which were most likely marijuana and cocaine, [John’s] description of his Mother’s behavior after

she'd had the box with the white powder, [Father's] initial admission to [the social worker] that he smoked marijuana, and [Father's] positive hair follicle tests, the [c]ourt concludes that there was some degree of drug use and impairment going on by [Mother] and [Father] during the time in question.

. . . .

55. At the age of two, [Zoey] was dependent upon [Mother] and [Father], her parents, for her care. These caregivers directly inflicted or tolerated and permitted the abuse of her sibling, [John]. These caregivers were unavailable to provide adequate and appropriate care to her due to impairment and absence, which at times left her to look to her 11- and 12-year old brother [John] to meet her needs.

Finding of Fact 49 is supported by John's testimony that he told Mother that Father had touched him inappropriately and that Mother said he "was just lying" and "trying to get [Father] in trouble." John further testified that Father "would whoop [him] like with a wooden paddle every time . . . [he] said what had happened. So . . . they pretty much forced [him] to lie and say that it didn't happen."

Findings of Fact 50 and 52 are supported by John's testimony that Mother "had a container with a card full of little white dust powder" and that he would find it when she was "laying around when she would leave it or . . . when she was in her room." John also testified that when Mother used the white powdery substance, she was "more energetic" and was "pacing and stuff." John testified that Father had a container of "green plants . . . crunched up" and an object that "looks like a pipe that Frosty the Snowman would have in his mouth." John also testified that Father "would always try to hide it, but he wasn't the best [at] hiding it because he would

leave it around and leave it on the table and stuff[.]” and that Father would “put it away real fast but all [he] saw was like smoke in the room[.]” John further testified that Father used marijuana while Zoey was in the home. Furthermore, a social worker testified that Father told her that he smoked marijuana, and Father tested positive for cocaine in June 2022 and September 2022.

Finding of Fact 55 is supported by the same testimony that supports Finding of Fact 49 and is further supported by John’s testimony that he would “watch [Zoey] and change her diapers” because Mother “was sleeping . . . [or] out with her friends or her boyfriend.” Moreover, during the child and family evaluation, John “described his mother as always sleeping” and stated that “he was required to be with and watch [Zoey] from eight in the morning until five p.m. when his mother would get up.” A social worker also testified that John told her that “he was the one responsible for caring for [Zoey]” because “[Father] was gone working and [Mother] was passed out either drunk or under some type of influence at home.”

Additionally, the trial court made the following unchallenged findings of fact, which are deemed supported by competent evidence and are binding on appeal, *In re J.S.*, 374 N.C. at 814, 845 S.E.2d at 71:

12. . . . [John] reported having finally told [Mother] a few weeks after the third incident in which [Father] touched his penis and/or directed [John] to touch [Father’s] penis. [John] reported that, not only did [Mother] not believe him, she directed [Father] to whoop, beat, or spank him with a wooden paddle until [John] proclaimed aloud that the abuse he reported did not happen.

13. [John] disclosed that, because [Mother] did not believe him regarding the abuse, he told her he would tell his counselor at school. [Mother] removed [John] from public school within a few weeks of [John] reporting the abuse to her and his report that he would tell his counselor. [John] never professed that he knew [Mother] removed him from public school because of his reports of abuse or because he said he would tell his counselor. [John] did say that he suspected that was his Mother's motivation. . . .

. . . .

15. [John] said that he saw a green leafy substance that [Father] kept in a container, with a smoking pipe nearby.

16. [John] said that he also saw a clear container with a white powdery substance in the home shared by [Father] and [Mother], with a card (understood by the [c]ourt to be a playing card) nearby, and after his mother would get out this container, she acted hyper.

. . . .

48. [Mother] and [Father] did in fact punish [John] for having disclosed the abuse to his Mother [Mother] and/or [Father] did in fact "whoop" or beat [John] on his bottom with a wooden paddle as a consequence for reporting the abuse.

. . . .

51. [John] also testified that he was required to provide care for [Zoey] when the adults in the home were impaired or simply unavailable. . . .

. . . .

53. [Zoey] at that time was a child of two years of age or under, and would have been entirely dependent upon others for her care. The [c]ourt therefore finds it plausible and accepts that [John] had this responsibility when [Zoey's] parents were unavailable due to impairment or absence.

The findings of fact establish that Zoey lived in the home where John was sexually

abused by Father, that Zoey and John were often left unsupervised, and that Mother and Father had ongoing substance abuse issues. The evidence therefore supports a finding that Zoey was at a substantial risk of impairment due to Mother's failure to provide proper care, supervision, or discipline. *In re K.J.B.*, 248 N.C. App. at 354, 797 S.E.2d at 518.

Furthermore, the trial court's findings of fact support its conclusions of law that "[Zoey] did not receive proper care, supervision, or discipline from her parents and lived in an environment injurious to her welfare"; that "[Zoey] lived in a home where another juvenile was subjected to abuse by adults who regularly resided in the home"; and that "[Zoey] is a neglected juvenile as defined by NCGS §7B-101 (15)."

B. Father's Appeal

Father argues that the trial court erred by concluding that Zoey was a neglected juvenile because "the findings of fact were insufficient to show that she was at substantial risk of physical, mental, or emotional impairment."

Father does not challenge any findings of fact, and they are thus binding on appeal. *In re J.S.*, 374 N.C. at 814, 845 S.E.2d at 71. The unchallenged findings of fact establish that Zoey lived in the home where John was sexually abused by Father, that Zoey and John were often left unsupervised, and that Mother and Father had ongoing substance abuse issues. The evidence thus supports a finding that Zoey was at a substantial risk of impairment due to Father's failure to provide proper care, supervision, or discipline. *In re K.J.B.*, 248 N.C. App. at 354, 797 S.E.2d at 518.

Moreover, the trial court's findings of fact support its conclusions of law that "[Zoey] did not receive proper care, supervision, or discipline from her parents and lived in an environment injurious to her welfare"; that "[Zoey] lived in a home where another juvenile was subjected to abuse by adults who regularly resided in the home"; and that "[Zoey] is a neglected juvenile as defined by NCGS §7B-101 (15)."

III. Conclusion

For the foregoing reasons, the trial court did not err by adjudicating Zoey neglected, and we affirm the trial court's order.

AFFIRMED.

Chief Judge DILLON and Judge STADING concur.

Report per Rule 30(e).