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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-888

Filed 4 June 2024

Transylvania County, Nos. 21 JA 26–28

IN THE MATTER OF: I.F., B.F., M.F.

Appeal by petitioner from orders entered 5 June 2023 by Judge Abe Hudson in Transylvania County District Court. Heard in the Court of Appeals 6 May 2024.

James H. Taylor, III, for petitioner-appellant Transylvania County Department of Social Services.

Administrative Office of the Courts, by GAL Appellate Counsel Matthew D. Wunsche, for guardian ad litem.

Parent Defender Wendy C. Sotolongo, by Assistant Parent Defender Jacky L. Brammer, for respondent-appellee father.

BJK Legal, by Benjamin J. Kull, for respondent-appellee mother.

PER CURIAM.

Transylvania County Department of Social Services (“DSS”) appeals from the trial court’s orders dismissing with prejudice its petitions alleging that each of the three minor siblings was a dependent and neglected juvenile. After careful review, we affirm.

BACKGROUND

On 23 July 2021, DSS filed juvenile petitions alleging that three minor children—“Ingrid,” born in February 2016, “Bilfur,” born in December 2017, and “Matteus,”¹ born in August 2019—were dependent and neglected juveniles. On 15 September 2021, DSS filed an amended petition for each child, again alleging neglect—in that the juveniles did “not receive proper care, supervision, or discipline” from Respondent-Mother and Respondent-Father and “live[d] in an environment injurious to [their] welfare[.]” The petitions also alleged dependency in that Mother and Father were “unable to provide for the [minor children]’s care or supervision and lack[ed] an appropriate alternative child care arrangement.”²

The amended petitions alleged the following: On 21 July 2021, a social worker with DSS responded to a report of improper supervision and dependency at an address in Brevard where the three children (then aged five years, three years, and one year) had been discovered outside alone by a neighbor in the neighborhood community where they resided. When the social worker arrived, she found Ingrid, Bilfur, and Matteus, along with their older half-brother “Stieg,”³ then aged 13, in the care of the neighbor. Stieg reported that he was babysitting the minor children, who

¹ We employ the pseudonyms adopted by the parties to protect the identities of the minor children.

² The amended petitions also alleged dependency in that the minor children had “*no parent . . . responsible for [their] care or supervision.*” (Emphasis added). However, DSS did not allege any facts in the petitions, present any evidence at the adjudication hearing, or make any argument on appeal regarding this form of dependency.

³ Stieg is the child of Mother but has a different father than the minor children.

had kept him up during the previous evening, such that he had fallen asleep in the morning hours and thus not realized that the minor children had gotten outside. The social worker attempted to contact Mother and Father, but was unable to reach them by telephone, and could not locate another caretaker for the minor children. After about one hour, the social worker took the minor children into DSS custody.

On 22 March 2023, the petitions came on for hearing. DSS's sole witness at the hearing was the social worker, who testified to the following: She received the report about the minor children around 2 p.m., and when she arrived at the family's home, all four children—including Stieg—were in the company of a neighbor and two law enforcement officers who had responded to the neighbor's 911 call. The social worker described the two youngest children as dirty, having cuts and scrapes, and wearing "saggy diapers." Ingrid was barefoot, had some scratches on her face, as well as "some cuts and scrapes on her legs and some bruises."

The social worker obtained telephone numbers for Mother and Father, but the social worker was unable to reach either of them. When Mother returned the social worker's call two days later, she initially told the social worker that both she and Father had been at home "the night before and then [on] Wednesday[,] " that Father was in Atlanta, and that Mother was in Hendersonville and on her way home. However, Mother then admitted that she was currently with Father. Mother agreed to meet the social worker at the DSS office. However, "just after 5:00" p.m., Mother called the social worker to ask her to wait. The social worker explained that she was

leaving for the day and arranged to meet with Mother and Father on the following Monday.

On the following Monday, Mother and Father appeared at the DSS office. They explained to the social worker “that they had asked a neighbor to watch the children[,]” however, they did not provide the social worker with the neighbor’s name. According to the social worker, Mother and Father first said that they were in Hendersonville, but then “admit[ted] that they had been out of town[.]”

The social worker also testified that DSS ordered child medical examinations for all four children, which included the taking of hair follicles for drug testing. Bilfur and Matteus were examined on 4 August 2021, after they had been in DSS’s custody for two weeks, and Ingrid and Stieg on 10 August 2021, after Ingrid had been in custody for roughly an additional week. Bilfur and Matteus tested positive for marijuana and methamphetamine. Ingrid tested positive for methamphetamine, and Stieg did not test positive for any illicit substances.

The trial court ruled in open court: “The [c]ourt finds [that DSS has] not met [its] burden in this adjudication against the parents in this matter.” In its written orders entered on 5 June 2023, the trial court concluded that DSS did not prove its allegations of dependency and neglect by clear and convincing evidence, and therefore, the trial court dismissed the petitions with prejudice.

APPELLATE MOTIONS

On 22 June 2023, DSS timely filed notices of appeal from the trial court's orders dismissing the juvenile petitions with prejudice.

On 12 February 2024, Mother filed in this Court a motion to amend her brief, or in the alternative, to strike the guardian ad litem's brief. Mother contends that, "though labeled as an 'appellee's' brief," the brief that the guardian ad litem filed "is directly adverse to" Mother and Father's briefs "and directly aligned with" the position taken by DSS such that, if it is not stricken—or alternatively, Mother is not permitted to file her proposed supplement—Mother "would be denied any opportunity to respond to" the guardian ad litem's arguments, "contrary to the intent of the Rules of Appellate Procedure and the legislative intent underlying the Juvenile Code."⁴

The guardian ad litem asks that we deny Mother's motions, contending that the argument that an appellee's position on appeal cannot be aligned with the appellant's rests on an erroneous premise "that all appellees must be aligned in interest and in opposition to the appellant[.]" The guardian ad litem cites N.C.R. App. P. 30(b)(1), which provides that although all appellees generally share 30 minutes for oral argument, the existence of adverse interests may constitute good cause to extend the time for argument. *See* N.C.R. App. P. 30(b)(1). The guardian ad litem contends that, because it did not raise any new issues, the guardian ad litem is an appellee

⁴ For example, Mother notes that "an appellant may not use its reply brief for purposes of raising new arguments" because it would deprive the appellee of the ability to respond. (Citing N.C.R. App. P. 28(h)).

who may “respond[]” to the arguments in DSS’s brief, and therefore, this Court should not strike its brief.

As to Mother’s ability to file a supplemental brief in response, the guardian ad litem first notes that “[t]he Rules of Appellate Procedure establish a briefing schedule that does not permit appellees to respond to each other’s briefs,” and that Mother “cites no authority permitting her to file a brief responding to another appellee . . . based on their respective responses to the issues raised by the appellant.” The guardian ad litem further asks this Court to reject Mother’s request that we invoke Rule 2 of our Rules of Appellate Procedure and suspend the rules to allow her the opportunity to amend her brief. *See* N.C.R. App. P. 2 (stating that Rule 2 is appropriately invoked to “prevent manifest injustice to a party”); *see also Dogwood Dev. & Mgmt. Co. v. White Oak Transp. Co.*, 362 N.C. 191, 196, 201, 657 S.E.2d 361, 364, 367 (2008) (holding that Rule 2 “must be invoked cautiously” and only on “rare occasions” under “exceptional circumstances” (cleaned up)).

We agree with Mother that the guardian ad litem here is not an appellee. Our Rules of Appellate Procedure contemplate that for briefing purposes, an appellee is a party whose goal is to support the order or ruling that the appellant is attacking. *See, e.g.*, N.C.R. App. P. 28(c) (allowing an appellee in its response brief to “present issues on appeal based on any action or omission of the trial court that deprived the appellee of an alternative basis in law for supporting the judgment, order, or other determination from which appeal has been taken”). The guardian ad litem’s brief here

presents arguments aligned with DSS, i.e., seeking a reversal of the trial court's order.

The role of a guardian ad litem is “to protect and promote the best interests of the juvenile[s,]” N.C. Gen. Stat. § 7B-601(a) (2023), and if the guardian ad litem here believed that the trial court's dismissal with prejudice of the petitions filed by DSS was not in the best interests of the minor children, it should have filed notices of appeal from the trial court's orders. This both ensures appellate review of an order and preserves the guardian ad litem's ability to file an appellant brief explaining why an order is erroneous and should be reversed. *See id.* § 7B-1001; N.C.R. App. P. 3.1(b). But the guardian ad litem did not elect to do so. Having made that decision, the guardian ad litem is without the ability to seek reversal or vacatur of the trial court's orders. Mother's motion to strike the guardian ad litem's brief is allowed.

The guardian ad litem has also filed, in the alternative, a petition for writ of certiorari, asking this Court “to allow [it] a belated cross-appeal from the . . . 5 June 2023 orders dismissing the juvenile petitions if this Court determines that [it] was required to cross-appeal[.]” (Citing *Jonna v. Yaramada*, 273 N.C. App. 93, 121–22, 848 S.E.2d 33, 54 (2020)). The guardian ad litem contends that any error that it made should not be attributable to the minor children, who “should still be allowed to participate in the appeal and this Court should consider the arguments made on their behalf in [the] GAL's brief.”

In Mother and Father’s joint response to the guardian ad litem’s petition for writ of certiorari, they argue that the guardian ad litem cannot satisfy the second prong of the “two-factor test to assess whether certiorari review by an appellate court is appropriate”:

[A] writ of certiorari should issue only if there are extraordinary circumstances to justify it. We require extraordinary circumstances because a writ of certiorari is not intended as a substitute for a notice of appeal. If courts issued writs of certiorari solely on the showing of some error below, it would render meaningless the rules governing the time and manner of noticing appeals.

There is no fixed list of extraordinary circumstances that warrant certiorari review, but this factor generally requires a showing of substantial harm, considerable waste of judicial resources, or wide-reaching issues of justice and liberty at stake.

Cryan v. Nat’l Council of Young Men’s Christian Ass’ns, 384 N.C. 569, 572–73, 887 S.E.2d 848, 851 (2023) (cleaned up).

Moreover, Mother and Father observe that if this Court permitted the guardian ad litem a belated cross-appeal, they would become cross-appellees, triggering the applicable briefing schedule under our Appellate Rules, *see* N.C.R. App. P. 28, thereby delaying resolution of the matter.

As the guardian ad litem states in its response to Mother’s motion to strike, it did not raise any new arguments in its “appellee brief[,]” but merely “responded” to DSS’s arguments by supporting DSS’s position. In light of this concession by the guardian ad litem that all pertinent issues are before this Court by means of DSS’s

appeal, the guardian ad litem cannot show that there are “wide-reaching issues of justice and liberty at stake” that may be jeopardized but for the allowance of its petition for writ of certiorari. *Cryan*, 384 N.C. at 573, 887 S.E.2d at 851 (citation omitted). In addition, our resolution prevents any unnecessary delay in resolving this appeal. *See In re T.H.T.*, 362 N.C. 446, 450, 665 S.E.2d 54, 57 (2008) (“[I]n almost all cases, delay is directly contrary to the best interests of children, which is the polar star of the North Carolina Juvenile Code.” (cleaned up)). Therefore, in our discretion, we deny the guardian ad litem’s petition for writ of certiorari.

The guardian ad litem’s brief is stricken, its petition for writ of certiorari is denied, and we proceed to address DSS’s appeal.

DISCUSSION

On appeal, DSS contends that the trial court erroneously concluded that it failed to prove that the minor children were dependent and neglected juveniles.⁵ We disagree.

A. Standard of Review

On appeal, an adjudication order is reviewed to determine “(1) whether the findings of fact are supported by clear and convincing evidence, and (2) whether the

⁵ While denominated as a finding of fact, the trial court’s determination that DSS “did not prove the allegations by clear and convincing evidence” is better characterized as a conclusion of law. *See In re Everette*, 133 N.C. App. 84, 86, 514 S.E.2d 523, 525 (1999) (“Determination that a child is not receiving proper care, supervision, or discipline, requires the exercise of judgment by the trial court, and is more properly a conclusion of law.”); *see also In re McLean*, 135 N.C. App. 387, 390, 521 S.E.2d 121, 123 (1999) (“Whether a child is neglected is a conclusion of law” (cleaned up)).

legal conclusions are supported by the findings of fact.” *In re M.M.*, 272 N.C. App. 55, 69, 845 S.E.2d 888, 898 (2020) (citation omitted). We review the trial court’s conclusions of law de novo. *In re K.S.*, 380 N.C. 60, 64, 868 S.E.2d 1, 4 (2022).

B. Allegation of Dependency

As to dependency, DSS presents this Court with three alternative arguments: 1) that the trial court “made no ruling on dependency”; 2) that the trial court’s findings of fact were sufficient to support a conclusion that the children were dependent juveniles and thus the trial court erred in failing to adjudicate the children dependent; and 3) that if this Court “finds there is no finding of fact regarding the lack of alternative childcare arrangements or that specific findings regarding dependency needed to have been made[,]” that “this Court should remand for additional findings in an additional hearing[.]”

We first consider whether the trial court “ruled on dependency at the Adjudication hearing.” We conclude that it did.

The root of this argument by DSS rests on its observation that finding of fact 27 in each petition states that DSS “requested the [c]ourt find that the juvenile is a neglected juvenile as defined by [N.C. Gen. Stat. §] 7B-101(15)[.]” however, no similar finding regarding dependency appears.⁶ Our review of the transcript, however, reveals that while counsel for DSS explicitly asserted to the trial court that the

⁶ Like the amended juvenile petitions, the orders for each minor child are largely identical.

evidence presented was “enough for neglect” during closing arguments, DSS did not make such a contention regarding dependency. We read finding of fact 27 as an accurate evidentiary finding of what DSS requested during its closing argument at the hearing and not as indicating that the trial court was unaware that the pending petitions alleged dependency, or that the court did not intend to rule on the dependency allegation.

In each of its three orders, the trial court noted that the adjudication hearing was on a petition “filed by [DSS] alleging that the juvenile . . . is a dependent juvenile as defined by [N.C. Gen. Stat. §] 7B-101(9) and a neglected juvenile as defined by [N.C. Gen. Stat. §] 7B-101(15)[.]” and that DSS “filed a petition on July 21, 2021 *alleging dependency* and neglect[.]” (Emphasis added). The trial court employed the plural when it determined that DSS “did not prove the *allegations* by clear and convincing evidence.” (Emphasis added). The court then ordered that “[t]he matter is dismissed with prejudice.” See N.C. Gen. Stat. § 7B-807(a) (“If the court finds that the allegations have not been proven, the court shall dismiss the *petition* with prejudice” (emphasis added)). Taken together, these portions of the order indicate that the trial court determined that DSS failed to prove both allegations—dependency and neglect—and thus dismissed the entire matter as raised in the petitions.

We next consider whether the trial court’s findings of fact support its conclusion that DSS “did not prove the allegations by clear and convincing evidence.”

DSS does not challenge any of the trial court’s findings of fact, and accordingly, they are “binding on appeal.” *In re Z.L.W.*, 372 N.C. 432, 437, 831 S.E.2d 62, 65 (2019). DSS suggests that the trial court should have drawn certain inferences based on its findings of fact and adjudicated the minor children dependent and neglected as a result of its findings. We disagree.

In juvenile adjudications, “the proper inquiry is often fact-dependent and the trial court, as the fact-finding court, is in the best position to determine the credibility of the witnesses before it and make findings of fact.” *In re S.R.*, 384 N.C. 516, 517, 886 S.E.2d 166, 169 (2023). Accordingly, the trial court “determines the weight to be given the testimony and the reasonable inferences to be drawn therefrom. *If a different inference may be drawn from the evidence, the trial court alone determines which inferences to draw and which to reject.*” *M.M.*, 272 N.C. App. at 69, 845 S.E.2d at 898 (emphasis added) (citation omitted). Further, a “reviewing court should not speculate about how ‘heavily’ the trial court might have relied on one finding as opposed to another.” *In re A.J.L.H.*, 384 N.C. 45, 48, 884 S.E.2d 687, 693, *reh’g denied*, 384 N.C. 670, ___ S.E.2d ___ (2023).

In each of its orders, after reciting various procedural aspects of the case and identifying the parties involved in the hearing, the trial court made the following findings of fact:

14. [DSS] received a report on July 21, 2021 of Improper Supervision. The juvenile and the juvenile’s siblings were unsupervised and approaching the road when a neighbor

saw them, took them back to her residence, and called law enforcement.

15. The parents were not present when law enforcement and the social worker arrived at the scene. Neither law enforcement nor the social worker observed the parents while on-site with the juvenile and the juvenile's siblings.

16. The juvenile, her siblings and parents reside in a mobile home park. Of the neighbors who answered their door for the Social Worker they either did not know the juvenile or did not know where the juvenile's parents were located.

17. No neighbors present indicated they were supervising the juvenile or the juvenile's siblings, nor did they know who was.

18. A phone number was obtained from the juvenile's older sibling for the mother and the father, but upon being called, nobody answered.

19. After at least an hour without anyone coming forward to claim responsibility for or supervision of the juvenile and the juvenile's siblings, [DSS] filed a petition on July 21, 2021 alleging dependency and neglect as [DSS] was unable to leave the juvenile and the juvenile's siblings unattended and unsupervised.

20. The mother called the social worker Friday July 23, 2021 stating that the children had been left in the care of a neighbor, that she was on the way to Brevard, but could not arrive before 5:30 p.m.

21. Mother stated father . . . was in Atlanta.

22. [DSS] amended, with permission of the Court, the Petition on September 15, 2021 to add the results of the Child's Medical Exam (hereinafter referred to as "CME"), statements of the juvenile made during the CME, and drug screens from the CMEs of the juvenile and the juvenile's siblings.

23. During questioning of [DSS's] sole witness the CME was admitted into evidence over the objection of the father's attorney.⁷

24. Over the objection of mother's and father's attorneys, the drug screen information f[ro]m the CME for the juvenile and the juvenile's siblings was admitted into evidence.

25. The . . . drug screen information indicated positive for exposure to THC and methamphetamines.

26. The Court sustained the objection of the father's attorney and excluded from evidence statements made by the juvenile during the CME.

27. [DSS] requested the Court find that the juvenile is a neglected juvenile as defined by [N.C. Gen. Stat. §] 7B-101(15).

Regarding dependency, each petition alleged that Mother and Father were “unable to provide for the juvenile’s care or supervision *and* lack[] an appropriate alternative child care arrangement.” N.C. Gen. Stat. § 7B-101(9) (emphasis added). As noted by DSS, “[f]indings of fact addressing both prongs [of the statutory definition] must be made before a juvenile may be adjudicated as dependent[.]” *In re L.C.*, 253 N.C. App. 67, 80, 800 S.E.2d 82, 91–92 (2017) (citation omitted).

Although the trial court did find that the minor children were at least briefly unsupervised when the neighbor observed them alone outside, and that Mother did

⁷ We observe that this finding, while not challenged by DSS, is nonetheless erroneous. The CME report was not admitted at the hearing; the social worker merely testified about what the juveniles’ hair follicle drug screens indicated. In any event, this finding is not pertinent to our analysis.

not return the social worker's call for two days after DSS obtained custody of the minor children, no evidence was offered, and thus the trial court did not make findings, about when Mother learned that DSS had taken custody of the children.

Yet we need not resolve whether Mother and Father's actions and inaction would be sufficient to support, much less *require*, a finding that they were "unable to provide for the juvenile[s'] care or supervision[.]" N.C. Gen. Stat. § 7B-101(9). The court made no findings regarding the second prong of dependency: whether Mother and Father "lack[ed] an appropriate alternative child care arrangement." *Id.* This lack of findings, in turn, reflects the absence of any evidence offered by DSS at the hearing concerning Mother and Father's alternative childcare arrangements. The social worker did not testify as to whether she inquired about such arrangements in any of her interactions with Mother or Father or whether they offered any potential arrangements. Simply put, "the burden was on [DSS] to show that [Mother and Father] lacked a suitable alternative childcare arrangement, and [DSS] presented no evidence to meet [its] burden." *In re K.C.T.*, 375 N.C. 592, 596, 850 S.E.2d 330, 334 (2020); *see also In re V.B.*, 239 N.C. App. 340, 341–42, 768 S.E.2d 867, 868 (2015) ("The petitioner has the burden of proving by clear and convincing evidence that a child is dependent.").

The evidence did not require the trial court to adjudicate the children dependent juveniles. DSS's arguments are overruled.

C. Allegation of Neglect

DSS also alleged the ground of neglect under N.C. Gen. Stat. § 7B-101(15), in that Mother and Father did “not provide proper care, supervision, or discipline” for the minor children and/or “[c]reate[d] or allow[ed] to be created a living environment that is injurious to [their] welfare.” N.C. Gen. Stat. § 7B-101(15)(a), (e).

This Court has observed:

In general, treatment of a child which falls below the normative standards imposed upon parents by our society is considered neglectful. However, not every act of negligence on [the] part of the parent results in a neglected juvenile. 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. 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).

“[I]n 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.” *In re K.J.B.*, 248 N.C. App. 352, 354, 797 S.E.2d 516, 518 (2016). Moreover, “[s]ection 7B-101(15) affords the trial court 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) (cleaned up).

Here, the trial court's findings of fact, taken together, are that 1) on one occasion, when Mother said that the minor children had been left in the care of a neighbor, the children were found unsupervised outside their home near a road; 2) DSS was not able to locate anyone claiming to be responsible for their supervision and took custody of the minor children after being unable to reach Mother or Father by telephone for an hour; 3) Mother contacted DSS by telephone two days later; and 4) the minor children's medical examinations indicated exposure to illegal drugs—without any details as to when or how such exposure may have occurred.

Young children being left unsupervised or “escaping” the supervision of a parent or caretaker for a short period of time does not necessarily require an adjudication of neglect. *See, e.g., In re Stumbo*, 357 N.C. 279, 285, 582 S.E.2d 255, 259 (2003) (stating that a single report of a two-year-old child walking unsupervised outside without the awareness of the parent or caregiver does not itself constitute neglect); *In re D.S.*, 286 N.C. App. 1, 16, 879 S.E.2d 335, 346 (2022) (holding that neglect was not supported where a two-week-old infant was left home alone sleeping in a crib for approximately five minutes); *In re H.P.*, 278 N.C. App. 195, 208, 862 S.E.2d 858, 869 (2021) (holding that a finding of neglect was not supported despite the four-year-old being observed walking outside alone on two occasions).

Whether there was any negligence in Mother and Father's choice of a caretaker for the minor children is unknown on this minimal record. Despite the lengthy passage of time between the filing of the petitions and the adjudication hearing, DSS

elected to present only the brief testimony of the social worker. The social worker testified that Mother and Father “consistently said that they had thought a neighbor was supposed to be watching” the minor children, but that DSS had not immediately been able to locate that person upon arriving at the home, and that Mother and Father “weren’t able to give [the social worker] a name[.]”⁸ It was for “the trial court alone [to] determine[] which inferences to draw and which to reject” from the evidence that DSS presented. *M.M.*, 272 N.C. App. at 69, 845 S.E.2d at 898 (citation omitted).

The evidence that DSS offered regarding the minor children’s exposure to controlled substances was also inconsequential. While the exams for Ingrid, Bilfur, and Matteus showed exposure to illegal drugs, DSS did not present evidence that drugs or drug paraphernalia were found in the home. The evidence also showed that the exam of Stieg—a teenager residing in the same home with the minor children—did not show exposure to drugs, and that the exams were conducted at a point when the minor children had been residing outside of the family home in foster care for several weeks. DSS did not introduce the examination reports at the hearing and did not call an expert to provide any insight into the drug screen results. The trial court’s

⁸ Although the social worker testified that Stieg claimed to have been watching the minor children, the trial court did not make any findings regarding Stieg or his statements. *See Scott v. Scott*, 106 N.C. App. 606, 613, 417 S.E.2d 818, 823 (1992) (“[I]n a bench trial, the trial judge will be presumed to know the law and will disregard irrelevant or inadmissible evidence.”), *aff’d*, 336 N.C. 284, 442 S.E.2d 493 (1994).

single finding of the bare fact that testing indicated that each minor child had been exposed to illicit substances suggests that it was not persuaded by DSS's contention that the drug exposure must have occurred "within the home." Again, DSS—not Mother and Father—had the burden of proof at the adjudication hearing; while the trial court perhaps could have made the inference that DSS requests, in its role as fact-finder, it did not. *See id.*

In sum, the findings of fact made by the trial court here did not mandate that it adjudicate Ingrid, Bilfur, and Matteus to be dependent and/or neglected juveniles. DSS's arguments are overruled.

CONCLUSION

Mother's motion to strike the guardian ad litem's brief is allowed. The guardian ad litem's petition for writ of certiorari is denied. The orders dismissing with prejudice DSS's dependency and neglect petitions are affirmed.

AFFIRMED.

Panel consisting of:

Judges ZACHARY, CARPENTER and THOMPSON.

Report per Rule 30(e).