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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-690

Filed 16 July 2024

Wake County, No. 22 JA 174–177-910

IN THE MATTER OF: J.N.B., T.T.B., B.L.S., and I.F.B.S.

Appeal by Respondent-Mother (“Mother”) and Respondent-Father (“Father”) (collectively “Respondents”) from order entered 12 April 2023 by Judge Ashleigh P. Dunston in Wake County District Court. Heard in the Court of Appeals 17 June 2024.

Mary Boyce Wells for Wake County Health and Human Services.

Alston & Bird LLP, by Ryan P. Ethridge and Nicholas A. Young, for Guardian ad Litem.

W. Michael Spivey for respondent-appellant mother.

Office of the Parent Defender, by Parent Defender Wendy C. Sotolongo and Assistant Parent Defender J. Lee Gilliam, for respondent-appellant father.

STADING, Judge.

Respondents are the parents of T.T.B. (“Tom”) and J.N.B. (“Jane”).¹ Father is also the parent of B.L.S. (“Bob”) and I.F.B.S. (“Alan”). Respondents appeal the trial

¹ Pseudonyms are used to protect the identities of the juveniles and for ease of reading.

court's order adjudicating Alan, Tom, Bob, and Jane neglected juveniles.² We affirm in part; vacate in part; and remand in part the trial court's order.

I. Background

Respondents are married and reside together with Jane, born in 2014, and Tom, born in 2012. Bob was also born in 2012, and Alan was born in 2010. Father shares joint legal and physical custody of Bob and Alan with their mothers.

On 9 September 2022, Wake County Health and Human Services ("WCHHS") filed juvenile petitions in the trial court alleging Alan, Bob, Tom, and Jane were neglected juveniles alleging that the juveniles' parents did not provide proper care, supervision, or discipline and created or allowed a living environment that was injurious to the juveniles' welfare. The petition allegations described the families' history with WCHHS.

In 2013, WCHHS responded to a report that Father struck Alan, leaving a significant bruise on his bottom. WCHHS substantiated physical abuse and neglect by Father, who was later convicted of misdemeanor child abuse. Child Protective Services ("CPS") provided in-home services, and Father completed parenting education at Safechild Advocacy Center ("Safechild").

In November 2014, WCHHS received a report that Father physically abused Bob and Alan and that Alan suffered from post-traumatic stress disorder ("PTSD").

² Bob's mother and Alan's mother are not parties to this appeal.

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Alan's family participated in a Child and Family Evaluation ("CFE"), which concluded that Alan was emotionally abused by his mother, neglected by his mother and Father, who were engaged in high-conflict custody issues, and did not receive necessary mental health services. The family was deemed in need of in-home services. In 2013 and 2014, the family entered into safety agreements with CPS not to use physical discipline with the child.

In 2016, Johnston County CPS received a report of inappropriate physical discipline by Father and Bob's mother, resulting in injury to Bob.

On 1 March 2022, WCHHS received a report that Bob was the victim of neglect and improper discipline after he sustained a large bruise on his buttocks due to allegedly being struck by Father. On 9 March 2022, the trial court entered an ex parte order for emergency custody, granting Bob's mother temporary sole legal and physical custody of Bob and denying Father visitation with the minor child pending a full hearing on the merits. Father was charged with felony child abuse. Father and Mother entered into an oral agreement with WCHHS that they would refrain from physically disciplining the children, that Bob and Alan would reside with their respective mothers full-time, that Respondents' future contact with Bob and Alan would be based on therapeutic recommendation, and that Respondents would ensure the children received mental health services.

On 18 May 2022, WCHHS received a report alleging neglect and improper care of Tom due to his demonstration of increased mental health symptoms at school, placing himself and others at risk of harm.

In July 2022, a licensed clinical psychologist working with Safechild completed a CFE assessing Father, each of the mothers, and all the children. The psychologist noted that Father's history included anger management issues and prior convictions, including a criminal conviction for inflicting serious harm on Alan. Father and Mother both acknowledged using physical discipline with the children. The psychologist also noted that multiple injuries had previously been inflicted upon Bob without report, findings of abuse, or identification of the perpetrator. Moreover, the psychologist raised concerns of emotional abuse, neglect, and improper care of the children due to the threatening environment of Respondents' household, Mother's negative comments about Bob and Alan's mothers, and a lack of mental health services. The psychologist recommended that all parents use "hands-off discipline with the children."

At the time the juvenile petitions were filed, WCHHS noted that the families had eleven prior reports of abuse and/or neglect in Wake and Johnston counties and had a "significant history of involvement" with CPS, including being provided in-home services three times. WCHHS also alleged that Bob was hospitalized due to increased mental health symptoms.

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The juvenile petitions were heard before the trial court on 2 and 3 March 2023. The trial court found that Bob’s mother had made the 1 March 2022 report alleging Bob was the victim of neglect and improper discipline when she saw a large bruise on his bottom after a weekend visit with Father. Bob had disclosed that Father had “‘popp[ed]’ him for not eating his dinner and ‘popp[ed]’ him again for crying too much after being hit the first time.” The trial court found that after the 1 March 2022 report, Respondents orally agreed not to use physical discipline with the children but refused to sign a written agreement with WCHHS. However, as the trial court noted, the parents had also previously agreed not to use physical discipline with the children as part of service agreements with WCHHS, and in a civil action, a court had ordered Father not to use corporal punishment with Alan in December 2013, October 2015, November 2017, and March 2019. At the time of the hearing, the criminal matter charging Father with felony child abuse was still pending.

The trial court acknowledged evidence submitted by Dr. Heather Williams, who had examined Bob during a Child Medical Evaluation (“CME”) conducted at Safechild on 17 March 2022. Dr. Williams also reviewed photos taken at the hospital on 1 March 2022 and undated photos provided by Father’s attorney depicting bruises on Bob. Dr. Williams reported concerns of physical abuse because the bruising occurred on areas of the body normally protected from injury (i.e., “like the bottom”), the pattern of bruises suggested the use of an object, and Bob’s bloodwork did not reveal a predisposition to bruising. Dr. Williams also raised concerns about

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inadequate nutrition, as Bob's body mass index was in the seventh percentile. Dr. Williams had recommended that all the children receive a CME.

Alan received a CME at Safechild on 22 March 2022, during which he described Respondents' use of a belt when spanking the boys. Respondents did not submit Jane and Tom for CMEs.

The trial court found that Bob had been referred to Hope Services for treatment of attention-deficit/hyperactivity disorder ("ADHD"), impulse control, and aggression. Hope Services provided a parenting course, family therapy, and outpatient therapy for Bob. Bob's mother completed a parenting course, but Father did not participate. The family therapy was ceased due to high conflict between Bob's parents. Also, Bob's mental health symptoms worsened after March 2022, prompting his therapist to recommend intensive outpatient therapy.

The trial court acknowledged Mother's testimony that she was aware Tom had significant behavioral problems at school, including screaming, crying, and damaging school property when presented with tasks he perceived as difficult. Tom had been seeing a therapist since December 2021. After one incident, school staff recommended that she take Tom to "Crisis and Assessment," as he appeared to be a potential danger to himself and others. Mother took Tom to "Crisis and Assessment" but left before he could be evaluated.

The trial court found that on "numerous" occasions, the parents received parenting education and agreed not to use physical discipline with the children as

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part of service agreements with WCHHS to address concerns of neglect without filing a juvenile petition. The trial court found that Respondents caused Bob physical and emotional impairment as well as caused the other children emotional impairment or placed them at substantial risk of physical and emotional impairment. The trial court concluded that Alan, Bob, Tom, and Jane were neglected juveniles as defined by N.C. Gen. Stat. § 7B-101(15) “in that the children d[id] not receive proper care and supervision from [Respondents] and live[d] in an environment injurious to their welfare.”

The trial court ordered that Father and Bob’s mother maintain joint legal custody of Bob and that Bob’s mother exercise sole physical custody. Father and Alan’s mother would maintain joint legal custody of Alan, and Alan’s mother would exercise sole physical custody. Respondents retained joint legal and physical custody of Jane and Tom. All parents were ordered to abstain from using physical discipline with the children and speaking negatively about the other parents in front of the children. The trial court ordered Respondents to comply with, among other things, an “In-Home Family Services Agreement” requiring them to begin mental health treatment, ensure that Jane and Tom participate in therapy, participate in therapy to the extent deemed appropriate by the provider, and obtain and maintain financial resources sufficient to meet the needs of themselves and the children. Bob and Alan’s visitation with Respondents was suspended until further court order and only after

the recommendation of a therapist. Sibling visits with all four children were ordered to occur monthly. Respondents appeal the trial court's order.

II. Appeal

Respondents file separate briefs with this Court challenging the trial court's adjudication and disposition. Challenging (A) the adjudication, Respondents challenge (i) whether the findings of fact are supported by the evidence and (ii) whether the adjudication of the children as neglected juveniles is supported by the findings of fact. Challenging (B) the disposition, Respondents challenge the trial court's decree.

A. Adjudication

1. Standard of Review

There are “two phases in juvenile hearings—adjudication and disposition.” *In re Eades*, 143 N.C. App. 712, 713, 547 S.E.2d 146, 147 (2001) (citation omitted); *see also* N.C. Gen. Stat. § 7B-901(a) (2023). We review “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.’” *In re K.S.*, 380 N.C. 60, 64, 868 S.E.2d 1, 4 (2022) (quoting *In re Montgomery*, 311 N.C. 101, 111, 316 S.E.2d 246, 253 (1984)). When a challenged finding of fact is supported by clear, cogent, and convincing evidence, the finding is “binding on appeal, even if the evidence would support a finding to the contrary.” *In re V.M.*, 273 N.C. App. 294, 296, 848 S.E.2d 530, 533 (2020) (quoting *In re T.H.T.*, 185 N.C. App. 337, 343, 648 S.E.2d 519, 523

(2007), *aff'd as modified*, 362 N.C. 446, 665 S.E.2d 54 (2008)). “Unchallenged findings are [also] binding on appeal.” *In re R.B.*, 280 N.C. App. 424, 431, 868 S.E.2d 119, 124 (2021) (quoting *In re C.B.*, 245 N.C. App. 197, 199, 783 S.E.2d 206, 208 (2016)). “We review a trial court’s conclusions of law *de novo*.” *In re V.M.*, 273 N.C. App. at 296, 848 S.E.2d at 533 (quoting *In re J.R.*, 243 N.C. App. 309, 312, 778 S.E.2d 441, 443 (2015)).

Mother contends that the trial court’s ultimate finding of fact must be supported by its evidentiary findings of fact. She cites *In re G.C.*, 384 N.C. 62, 884 S.E.2d 658 (2023) in support of her argument. In *In re G.C.*, our Supreme Court upheld a trial court’s adjudication of a neglected juvenile. *Id.* In doing so, the Court stated:

In prior cases, this Court has misused the term “ultimate fact,” saying that an “ultimate finding is a conclusion of law or at least a determination of a mixed question of law and fact. . . .”

. . . .

To avoid confusion in the future, we overturn our prior caselaw to the extent it misuses the term “ultimate fact” and clarify that . . . an ultimate finding is a finding supported by other evidentiary facts reached by natural reasoning.

Id. at 65 n.3, 884 S.E.2d at 661 n.3; *see also Woodard v. Mordecai*, 234 N.C. 463, 472, 67 S.E.2d 639, 645 (1951) (“Whether a statement is an ultimate fact or a conclusion of law depends upon whether it is reached by natural reasoning or by an application

of fixed rules of law.” (citation omitted)). We read *In re G.C.*, in pertinent part, as distinguishing an ultimate finding of fact from a conclusion of law.

Pursuant to N.C. Gen. Stat. § 1A-1, Rule 52(a), “[i]n all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon and direct the entry of the appropriate judgment.” N.C. Gen. Stat. § 1A-1, Rule 52(a)(1) (2023). Our Supreme Court has observed:

Rule 52(a) does not require a recitation of the evidentiary and subsidiary facts required to prove the ultimate facts, it does require *specific findings* of the ultimate facts established by the evidence, admissions and stipulations which are determinative of the questions involved in the action and essential to support the conclusions of law reached.

Quick v. Quick, 305 N.C. 446, 452, 290 S.E.2d 653, 658 (1982), *superseded in part by statute on other grounds as stated in State v. Brice*, 370 N.C. 244, 251, 806 S.E.2d 32, 37 (2017); *see also In re J.N.J.*, 286 N.C. App. 599, 605–06, 881 S.E.2d 890, 896 (2022) (“[T]his Court will examine whether the record of the proceedings demonstrates that the trial court, through processes of logical reasoning, based on the evidentiary facts before it, found the ultimate facts necessary to dispose of the case.” (quoting *In re J.W.*, 241 N.C. App. 44, 48-49, 772 S.E.2d 249, 253 (2015))). Thus, we disagree with Mother’s contention that an ultimate finding of fact can be upheld only if supported by the trial court’s evidentiary findings of fact.

2. Arguments

i. Challenged Findings of Fact Nos. 16, 18, 21, 22, and 27.

In finding of fact no. 16, the trial court observed that when Bob was referred to Hope Services for treatment of ADHD, impulse control, and aggression, he engaged in therapy and that Hope Services also offered family therapy. Mother challenges the finding that “[f]amily therapy was not effective due to the high conflict between the parents” as not supported by the evidence.

The record evidence includes testimony by Bob’s therapist at Hope Services that Bob’s mother and Father met with her for family therapy, though “[t]here was some high conflict.” Following a disagreement between Bob’s parents, “[b]oth parents, individually, decided not to continue doing coparenting [therapy] because it wasn’t helpful and effective.” This evidence supports finding of fact no. 16. *See In re V.M.*, 273 N.C. App. at 296, 848 S.E.2d at 533.

Mother also argues that finding of fact no. 18 is unsupported by the evidence, in part. The trial court observed that “Staff at [Tom]’s school asked [Mother] to sign a release allowing them to communicate with [Tom]’s therapist to address his behaviors but she never did.” Mother contends there is no evidence that “she never did” sign a release.

Tom’s school counselor testified that “[w]e had asked for a release of information, but we did not receive that release of information.” The counselor also testified that a release could have been sent to the school’s front office. We agree that the evidence does not support the trial court’s finding that Mother “never did” sign a

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release to allow Tom's therapist to communicate with school staff. We strike the portion of finding of fact no. 18 that Mother "never did" sign the release.

Father challenges finding of fact no. 21 as unsupported by the evidence. In finding of fact no. 21, the trial court found that "[Jane] experienced stress because of witnessing the physical discipline and feeling pressured to keep it a secret, as evidenced by her relief in sharing her observations of physical discipline with the psychologist after learning about 'funny tummy feelings' in school."

The licensed clinical psychologist testified:

[Jane] expressed to me the stress of the household and, kind of, having to keep secrets about what was going on in the household. She told me basically it felt like -- what she had learned at school was a funny tummy feeling. That she knew what happened to [Bob] and how he got hurt and who had hit him, but she had, up to that point, felt like she didn't want to talk about it or was afraid to.

So I think, you know, considerable stress for all of these children, right, in terms of emotional needs.

A trial court "passes upon the credibility of the witnesses and the weight to be given their testimony and the reasonable inferences to be drawn therefrom. If different inferences may be drawn from the evidence, [the trial court] determines which inferences shall be drawn and which shall be rejected." *Knutton v. Cofield*, 273 N.C. 355, 359, 160 S.E.2d 29, 33 (1968) (citing *Hodges v. Hodges*, 257 N.C. 774, 127 S.E.2d 567 (1962)). We uphold finding of fact no. 21 as a reasonable inference within the purview of the trial court to draw from the evidence.

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Respondents each argue finding of fact no. 22 should be disregarded from review of the trial court's adjudication, as the finding considers events after the juvenile petitions were filed. In finding of fact no. 22, the trial court observed:

The children have expressed a desire to see each other and are sad that their sibling bond has been disrupted by the parent's behaviors. [Mother] acknowledges that [Jane] and [Tom] miss their siblings and [Tom], in particular, has been negatively affected by the lack of contact he has had with [Bob] and [Alan]. In spite of this knowledge, [Mother] and [Father] have willfully chosen not to take [Jane] and [Tom] to regularly scheduled sibling visits that were court ordered in two pre[-]adjudication orders signed and filed on November 3, 2022 and January 19, 2023. [Mother] acknowledged that she understood the court's order, but failed to take her children to the sibling visits because "[Alan] was mean to [Tom]" by not acknowledging him at school and while playing games online and she didn't want to further expose [Tom] to that behavior.

An adjudication hearing on abuse, neglect, or dependency is "designed to adjudicate the existence or nonexistence of any of the conditions alleged in a petition." N.C. Gen. Stat. § 7B-802 (2023). The court's "inquiry focuses on the status of the child at the time the petition is filed, not the post-petition actions of a party." *In re L.N.H.*, 382 N.C. 536, 543, 879 S.E.2d 138, 144 (2022). Here, the juvenile petitions were filed on 9 September 2022. While an order for ex parte emergency custody granted Bob's mother temporary sole legal and physical custody of Bob and denied Father visitation with the minor child and the juvenile petitions alleged that the parties agreed that Alan and Bob would live with their mothers full-time, there was

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no indication that the children had expressed a desire to see each other and were denied the opportunity to do so. To the extent that finding of fact no. 22 reflects circumstances not alleged in the juvenile petitions about events after the juvenile petitions were filed, we disregard the finding in our review of the trial court's adjudication.

Respondents challenge finding of fact no. 27, in which the trial court observed that “[t]he actions of [Father] and [Mother] caused [Bob] physical and emotional impairment and caused the other children emotional impairment and placed all the children at substantial risk of physical and emotional impairment.” Mother contends that the trial court's other findings of fact fail to make a logical connection between any action by Respondents and an impairment or substantial risk of impairment as to each child. Father contends the statement is “not supported by any evidence in the record.”

It is unchallenged that Bob and Tom suffered from mental or emotional impairment. According to the unchallenged component of finding of fact no. 16, Bob was referred to Hope Services for treatment of ADHD, impulse control, and aggression following the 1 March 2022 incident, and his mental health symptoms worsened “to the point that his therapist recommended a higher level of care, intensive outpatient therapy, in September 2022.” Under findings of fact nos. 18 and 19, Tom had “significant behavior problems in the school environment including screaming, crying, and damaging school property in response to tasks that he

perceived as difficult.” On one occasion, school staff recommended that Mother “take [Tom] to Crisis and Assessment as he appeared to staff to be a potential danger to himself and others.” We also note the trial court’s finding that Father was convicted of misdemeanor child abuse for inflicting injuries on Alan in November 2023 when Alan was no older than three years old, along with the finding that per Mother’s testimony, Alan “was diagnosed with PTSD when he was three years old.”

The psychologist testified before the trial court as an expert in the evaluation of children for abuse and neglect, and her CFE report was admitted into evidence. Per the CFE report, the psychologist “fe[lt] that [Bob] has suffered improper discipline at the hands of both his father and [mother]” and that the children “are all being put under emotional duress regarding the atmosphere in the father’s household.” Alan and Bob informed the psychologist that Tom gets hit “very badly.” The psychologist noted that Father had “a history of anger management issues and inflicting serious injury on another child. He has been told repeatedly to engage in hands-off discipline but continue[d] to do so.” The psychologist also stated a concern that Father was “refusing the children access to participate in therapy”: Tom did not begin therapy until he reached the point of needing crisis intervention and immediate assessment, and Father had refused consent for Alan to receive recommended therapy for some time. The psychologist reported that “that given the nature of the high level of emotional difficulties these children are experiencing; this certainly is pointing to concerns for being emotionally abusive and improper care.” The

uncontested evidence showed, as the psychologist testified, there was “considerable stress for all of these children . . . in terms of emotional needs.”

The record does not show the children suffered physical impairment. The trial court found that in the 1 March 2022 report to WCHHS, Bob’s mother reportedly “observed one side of [Bob’s] bottom to be bruised” and that during Bob’s CME examination conducted on 17 March 2022, Dr. Williams found evidence of bruising on parts of his body “at unknown times in the past.” During his CME, “[Alan] did not present with any current physical injuries,” and no record of physical injury was reported for Tom or Jane. *Cf. In re Stumbo*, 357 N.C. 279, 283, 582 S.E.2d 255, 258 (2003) (noting conduct supporting an adjudication of neglected juveniles, such as children residing with a parent suffering from severe alcohol abuse; a five-year-old girl’s parent leaving bruising on her face and “digging into” her vagina causing bleeding; children under six years of the age left alone overnight with inadequate food in the home and had never been seen by a doctor); *In re T.S.*, 178 N.C. App. 110, 114, 631 S.E.2d 19, 22–23 (2006) (upholding an adjudication of neglected juveniles where the parents engaged in acts of domestic violence, cohabitated in an abusive environment, committing acts of violence toward police officials in the presence of the minor children, abused illegal substances and refused to submit to drug screens, allowed the children ages four and one to ride unrestrained in a motor vehicle, used threatening behavior toward social workers and police officers in front of the children, and had a firearm in the home in the presence of minor children while both

respondents were convicted felons), *aff'd*, 361 N.C. 231, 641 S.E.2d 302 (2007). Therefore, we strike those portions of finding of fact no. 27 relating to observations the children suffered physical impairment.

The evidentiary facts of record do support the trial court's finding of fact 27 as it relates to the trial court's observation that "[t]he actions of [Father] and [Mother] caused [Bob] . . . emotional impairment and caused [Tom] emotional impairment and placed all children at substantial risk of . . . emotional impairment." *See In re McLean*, 135 N.C. App. 387, 395, 521 S.E.2d 121, 126 (1999) (A trial court is allowed "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." (citing *In re Nicholson and Ford*, 114 N.C. App. 91, 94, 440 S.E.2d 852, 854 (1994))). *See also Quick*, 305 N.C. at 452, 290 S.E.2d at 658; *In re J.N.J.*, 286 N.C. App. at 605–06, 881 S.E.2d at 896; *In re V.M.*, 273 N.C. App. at 296, 848 S.E.2d at 533. The remaining findings of fact are unchallenged and are also binding on appeal. *See In re R.B.*, 280 N.C. App. at 431, 868 S.E.2d at 124.

ii. Conclusion of Law

Respondents argue that the trial court's findings of fact do not support the adjudication that Alan, Bob, Tom, and Jane are neglected juveniles. Mother contends that the trial court's findings about the history of WCHHS's involvement with the families is too remote to support an adjudication of a neglected juvenile, and the court did not find that any physical discipline was inappropriate, excessive, abusive, or

inflicted any injury. Father contends that spanking a child for the purpose of discipline—even if done with a belt and resulting in a bruise—is not neglect. He contends that the trial court’s findings of fact provide that Bob and Alan were spanked, but there was no evidence of lasting harm or even medical treatment. Nor was there any evidence about the frequency of the spankings or a lack of disciplinary purpose. Father contends that the only disciplinary method found here was an occasional “popping” on the buttocks with a hand or belt, with one documented bruise and no medical treatment. And so, the spankings do not support an adjudication of neglect.

Our Juvenile Code defines a “neglected juvenile,” in part, as one “whose parent, guardian, custodian, or caretaker does any of the following: . . . [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)(e) (2023). In cases upholding adjudications of neglect, “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 Stumbo*, 357 N.C. at 283, 582 S.E.2d at 258. “[O]ur 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 J.A.M.*, 372 N.C. 1, 9, 822 S.E.2d 693, 698 (2019) (internal quotation marks omitted) (quoting *In re Stumbo*, 357 N.C. at 283, 582 S.E.2d at 258).

We review a parent’s conduct in a neglect determination “on a case-by-case basis considering the totality of the evidence.” *In re L.T.R.*, 181 N.C. App. 376, 384, 639 S.E.2d 122, 128 (2007) (citing *Speagle v. Seitz*, 354 N.C. 525, 557 S.E.2d 83 (2001)); *see, e.g., In re Thompson*, 64 N.C. App. 95, 99–100, 306 S.E.2d 792, 795 (1983) (Though the injuries sustained by the minor child were not serious, “the bruises and abrasions resulting from [the mother’s] disciplining of her five year old child . . . show methods of care and discipline which are below normal standards, and therefore establish neglect. . .”).

As set forth in unchallenged findings of fact 23 through 26, WCHHS became involved with these families in 2013 in response to Father’s inappropriate physical discipline of Alan—then two-to-three years old—resulting in “significant bruising.” The incident resulted in a misdemeanor conviction against Father for child abuse. WCHHS was involved with the families again in 2015 in response to a report that Alan was emotionally abused. WCHHS substantiated allegations of neglect. Father and Mother entered into agreements not to engage in physical discipline, and an in-home services agreement required parent training on appropriate ways to address child behavior. Respondents orally agreed not to use physical discipline as part of a safety agreement in March 2022 but refused to sign the written agreement. A court ordered Father not to use corporal punishment with Alan in December 2013, October 2015, November 2017, and March 2019.

Per the trial court’s findings of fact, in the spring of 2022, Alan and Bob visited with Father and Mother every Wednesday through Friday and every other weekend. Mother “admitted to using physical discipline on the children.” In the 1 March 2022 report to WCHHS, Bob described Father “popping” him for not eating his dinner and then “popping” him again for crying about being spanked. Photos of Bob were taken on 1 March 2022 and at other unknown times depicted bruises on his buttock and parts of his body. Father was charged with felony child abuse. Bob was referred for treatment for ADHD, impulse control, and aggression. The service provider recommended a parenting course, family therapy, and outpatient therapy. After March 2022, Bob’s symptoms worsened such that his therapist recommended he receive intensive outpatient therapy in September 2022.

Tom exhibited “significant behavior problems in the school environment including screaming, crying, and damaging school property.” School staff recommended Mother take Tom “to Crisis and Assessment as he appeared to be a potential danger to himself and others.” According to the CFE conducted by the psychologist, the children made consistent disclosures of physical discipline in Respondents’ home and that Bob and Alan were “negatively affected by the domestic discord and high conflict between their parents.” As upheld in finding of fact 27, “[t]he actions of [Father] and [Mother] caused [Bob] . . . emotional impairment and caused [Tom] emotional impairment and placed all children at substantial risk of . . . emotional impairment.”

The findings of fact indicate a pattern of physical discipline by Respondents and conflict with the mothers of Alan and Bob such that Respondents created, or allowed to be created, a living environment that was injurious to the children's welfare. See N.C. Gen. Stat. § 7B-101(15)(e). As a result, Alan, Bob, Tom, and Jane suffered emotional impairment or were at substantial risk of such impairment. See *In re J.A.M.*, 372 N.C. at 9, 822 S.E.2d at 698; *In re Stumbo*, 357 N.C. at 283, 582 S.E.2d at 258. We uphold the trial court's conclusion that Alan, Bob, Tom, and Jane "are neglected as defined by N.C.G.S. § 7B-101(15) in that the children do not receive proper care and supervision from the [Father] and [Mother] and live in an environment injurious to their welfare." See N.C. Gen. Stat. § 7B-101(15)(e).

B. Disposition

1. Standard of Review

Following adjudication, the trial court conducts a disposition phase during which the "primary consideration is the best interest of the child[.]" *In re L.N.H.*, 382 N.C. at 543, 879 S.E.2d at 144 (quoting *In re A.B.*, 179 N.C. App. 605, 609, 635 S.E.2d 11, 14 (2006) (cleaned up)); see also N.C. Gen. Stat. § 7B-901(a) (2023). A court "has broad discretion to fashion a disposition" based upon the best interests of the child. *In re J.W.*, 241 N.C. App. 44, 52, 772 S.E.2d 249, 255 (2015) (quoting *In re B.W.*, 190 N.C. App. 328, 336, 665 S.E.2d 462, 467 (2008)). "We review a dispositional order only for abuse of discretion." *In re B.W.*, 190 N.C. App. at 336, 665 S.E.2d at 467 (citing *In re Pittman*, 149 N.C. App. 756, 766, 561 S.E.2d 560, 567 (2002)).

2. Arguments

i. Leaving Jane and Tom with Respondents

Father argues that the trial court's decision to leave Jane and Tom with Respondents, as in their best interests, undermines the conclusion that the children were neglected juveniles.

Our Juvenile Code authorizes a court to place a neglected juvenile in the custody of a parent if the court finds the disposition to be in the best interests of the juvenile. N.C. Gen. Stat. § 7B-903(a)(4) (2023). *See generally In re Ballard*, 311 N.C. 708, 714, 319 S.E.2d 227, 231 (1984) (“[T]he parents’ fitness to care for their children should be determined as of the time of the [dispositional] hearing.”).

According to a report prepared by CPS social worker Julie Masterson and WCHHS social worker Lillie Davis in November 2022, after the juvenile petitions were filed, Jane denied any safety concerns in the home with Respondents at that time, and it was noted that she was participating in therapy. Tom also denied any safety concerns in the home with Respondents. It was reported that he had demonstrated improvements in his performance and behavior at school and participated in therapy. The Guardian ad Litem (“GAL”) testified during the dispositional phase of the hearing that “[t]he parents clearly love their children” and acknowledged that “overall, [Jane] and [Tom] seem to be very stable.” The GAL noted that the mental health of both Jane and Tom had “gotten much better” and that

“there is obvious good parenting happening in all homes, but there are obvious problems happening across all homes as well.”

Here, the record supports the trial court’s award of Tom and Jane’s custody to Respondents in disposition and does not undermine the conclusion that the children were neglected juveniles at the time the juvenile petitions were filed. Father’s argument is, therefore, overruled.

ii. Mental Health Treatment, Housing, Financial Resources

Father argues the trial court exceeded the limits of its authority as the trial court’s disposition order has no nexus with the conditions underlying the children’s removal. He contends that the trial court’s disposition decrees that he “begin in-person mental health treatment,” “[o]btain and maintain the financial resources sufficient to meet the needs of himself and his children,” and “maintain housing sufficient to meet the needs of himself and his children” were in error as no evidence reflects that he suffered from a mental illness or that the children lacked any material necessities, including adequate housing.

In the disposition phase, a court may determine that the juvenile’s best interests “require that the parent . . . undergo . . . psychological, or other treatment or counseling directed toward remediating or remedying behaviors or conditions that led to or contributed to the juvenile’s adjudication[.]” N.C. Gen. Stat. § 7B-904(c) (2023); *see also id.* § 7B-904(d1) (“[T]he court may order the parent . . . [to] (3) [t]ake appropriate steps to remedy conditions in the home that led to or contributed to the

juvenile’s adjudication”). “For a court to properly exercise the authority permitted by this provision, there must be a nexus between the step ordered by the court and a condition that is found or alleged to have led to or contributed to the adjudication.” *In re T.N.G.*, 244 N.C. App. 398, 408, 781 S.E.2d 93, 101 (2015) (citing *In re H.H.*, 237 N.C. App. 431, 439, 767 S.E.2d 347, 353 (2014)). However, the trial court “may also order services which could aid ‘in both understanding and resolving the possible underlying causes’” of the actions underlying the trial court’s adjudication. *In re S.G.*, 268 N.C. App. 360, 368, 835 S.E.2d 479, 486 (2019) (quoting *In re A.R.*, 227 N.C. App. 518, 522, 742 S.E.2d 629, 632–33 (2013)).

The trial court decreed Father to submit to “in-person mental health treatment.” We note that per the psychologist’s CFE report, Father had a “history of anger management issues” and that “[h]e ha[d] been repeatedly told to engage in hands-off discipline but continue[d] to do so.” These observations support the trial court’s decree compelling Father to undergo mental health therapy to aid in understanding and resolving Father’s conduct. *See id.* Father’s challenge thus lacks merit.

The trial court decreed that Father “[o]btain and maintain financial resources sufficient to meet the needs of himself and his children” as well as “[m]aintain housing.” We agree that the record provides no indication the children lack adequate housing. However, in a pre-adjudication order filed on 1 January 2023, the trial court determined that Father was indigent. Accordingly, the trial court’s decree that he

maintain financial resources to meet the needs of himself and those of his children was within the court's discretion.

iii. Visitation

Conclusion of law no. 11 of the trial court's order directed that "[v]isitation of [Bob] and [Alan] with the father . . . is suspended until further order of the court and only after a recommendation by a therapist." Father contends the trial court erred by delegating its judicial function of setting visitation to a yet-to-be-named therapist.

"An order that removes custody of a juvenile from a parent, . . . shall provide for visitation that is in the best interests of the juvenile consistent with the juvenile's health and safety, including no visitation. The court may specify in the order conditions under which visitation may be suspended." N.C. Gen. Stat. § 7B-905.1(a) (2023). However, the trial court may not eliminate all visitation without proper findings, and here, the trial court did not purport to eliminate visitation but intended any visitation to be limited in some manner. Where the trial court orders visitation for a child in the custody of DSS, "the court may order the director to arrange, facilitate, and supervise a visitation plan expressly approved or ordered by the court. The plan *shall* indicate the minimum frequency and length of visits and whether the visits shall be supervised." N.C. Gen. Stat. Ann. § 7B-905.1.

The award of visitation rights "is the exercise of a judicial function." *In re Custody of Stancil*, 10 N.C. App. 545, 552, 179 S.E.2d 844, 849 (1971). Our Supreme Court has directed that the trial court may not delegate its judicial function of

awarding visitation but must at least “indicate the minimum frequency and length of visits and whether the visits shall be supervised.” N.C. Gen. Stat. Ann. § 7B-905.1(b) *See, e.g., In re J.D.R.*, 239 N.C. App. 63, 768 S.E.2d 172 (2015) (reversing order conferring to the father authority over whether the mother was entitled to visitation).

We, therefore, hold that the trial court erred on this basis, as alleged by Father. Accordingly, we vacate and remand this portion of the order. On remand, the trial court shall determine whether Father’s visitation rights with Alan and Bob should be suspended, or if the trial court determines visitation with Father is in the best interest of Alan and Bob, the trial court shall set at least a minimum visitation schedule as required by NCGS 7B-905.1(b).

iv. Ability to Pay

Respondents contend that the trial court erred by ordering them to pay the cost of sibling visits. Father additionally challenges the order for him to “[e]nsure that all children participate in therapy” to the extent the order imposes on him the costs for the children’s therapy without finding Respondents had the ability to pay for the services ordered.

In *In re J.C.*, 368 N.C. 89, 772 S.E.2d 465 (2015), our Supreme Court reviewed a trial court order imposing the cost of supervised visitation on the respondent-mother without findings of fact as to her ability to pay. The Court reasoned that “[w]ithout such findings, our appellate courts are unable to determine if the trial court abused its discretion by requiring as a condition of visitation that visits with

the children be at respondent mother's expense." *Id.* (citing *Quick v. Quick*, 305 N.C. 446, 452, 290 S.E.2d 653, 658 (1982)). The matter was remanded to the trial court for entry of a new disposition order with the necessary findings of fact. *Id.*; *see also In re Y.I.*, 262 N.C. App. 575, 582, 822 S.E.2d 501, 506 (2018) (vacating the trial court's order compelling supervised visitation and remanding for additional findings of fact where "the trial court did not determine what costs, if any, would be associated with conducting supervised visitation," whether the respondent-mother was to bear any associated costs, "and if so, whether respondent-mother has the ability to pay those costs"). *See generally* N.C. Gen. Stat. § 7B-905.1(c) (2023) ("[A]ny order providing for visitation shall specify the minimum frequency and length of the visits and whether the visits shall be supervised."); *see, e.g., In re T.H.*, 232 N.C. App. 16, 753 S.E.2d 207 (2014) (requiring that a court establish the time, place, and conditions for sibling visitation).

Here, the trial court decreed that "[s]ibling visits between all the children shall occur monthly at Wake House. If sibling visits . . . must be moved from Wake House to a third-party provider, [Father] and [Mother] are ordered to pay the entire cost of the visits." During the dispositional phase, it was acknowledged that Wake House would provide supervised visitation at no cost to the parties. However, the trial court's order does not specify where visitations would be conducted alternatively, the costs of those visitations, or if Respondents have the ability to satisfy those costs. Nor does the order indicate whether visitations are supervised or the length of a visit.

We vacate the portion of the trial court’s order directing that “[i]f sibling visits between all the children must be moved from Wake House to a third-party provider, [Father] and [Mother] are ordered to pay the entire cost of the visits.” The matter is remanded for additional findings of fact addressing whether the sibling visits are to be supervised and the minimum length of the visits, the location of the visits if not conducted at Wake House, the costs associated with conducting sibling visits, and whether respondents have the ability to pay those costs. *See* N.C. Gen. Stat. § 7B-905.1(c); *In re J.C.*, 368 N.C. 89, 772 S.E.2d 465.

While the trial court ordered that Father “[e]nsure that all children participate in therapy,” we note that each parent was ordered to ensure that their child or children participated in therapy. To the extent the order requires Father to pay the cost of therapy, we remand the matter to the trial court for additional findings of fact as to the costs of therapy, the portion of the costs for which Father is responsible, and whether Father has the ability to satisfy those costs.

III. Conclusion

We affirm the trial court’s adjudication of Alan, Tom, Bob, and Jane as neglected juveniles. We vacate and remand the decretal order that “[i]f sibling visits between all the children must be moved from Wake House to a third-party provider, [Father] and [Mother] are ordered to pay the entire cost of the visits” for additional findings of fact addressing whether the sibling visits are to be supervised, the minimum length of the visits, the location of the visits if not conducted at Wake

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House, the costs associated with conducting sibling visits, and whether Respondents have the ability to pay those costs. Additionally, we vacate and remand the decretal order requiring Father to “[e]nsure that all children participate in therapy” for clarification, given that Father does not have visitation with Alan or Bob, and for additional findings of fact as to the costs of therapy, what portion of therapy costs Father is responsible for, and whether Father has the ability to satisfy those costs. Furthermore, we vacate the provision regarding Father’s visitation with Alan and Bob based upon a therapist’s recommendation and remand for the trial court to clarify whether Father’s visitation with Alan and Bob is in their best interest and, if so, to set a minimum frequency and duration of visits and whether the visits will be supervised.

AFFIRMED IN PART; VACATED IN PART; AND REMANDED IN PART.

Judges STROUD and FLOOD concur.

Report per Rule 30(e).