

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA 24-394

Filed 5 November 2024

Orange County, No. 23 JA 66

IN THE MATTER OF: L.W.G.

Appeal by Respondent-mother from an order entered 20 December 2023 by Judge Hathaway Pendergrass in Orange County District Court. Heard in the Court of Appeals 8 October 2024.

Robinson & Lawing, L.L.P., by Christopher M. Watford for the Respondent-Appellant Mother.

Stephenson & Fleming, LLP, by Deana K. Fleming, for Petitioner-Appellee Orange County Department of Social Services.

McGuireWoods, LLP, by Anita M. Foss, for the Guardian ad Litem.

WOOD, Judge.

Respondent-mother (“Mother”) appeals from the trial court’s order adjudicating her son as neglected. Mother alleges the trial court’s findings are not supported by the evidence, the court failed to make a finding of a “probability of future

neglect,” and the adjudication should be reversed and the subsequent disposition vacated. Father is not a party to this appeal. For the reasons set forth below, we affirm the trial court’s order.

I. Factual and Procedural Background

Mother and Father welcomed their son Liam¹ in 2018 and subsequently married in 2022. Mother and Father had a significant history with Orange County Department of Social Services (“DSS”) prior to the initiation of this action on 10 June 2023.

DSS first received a report on 29 September 2022 stating that on 25 September 2022, a friend of the parents overdosed while visiting their home. Police and Emergency Services were called to the home and noted that Liam was awake and upset as the responders attempted to resuscitate the woman. During the requisite investigation DSS determined both parents had a significant drug history with methamphetamine, Adderall and marijuana, as well as domestic violence issues. On 25 October 2022, a case decision was made for in-home services. Within days after the in-home determination, Father was yelling about people wanting to kill him and needing weapons and appeared to be under the influence. Mother called the police and her mother, Liam’s maternal grandmother. Liam was upset and crying when the grandmother arrived, so she took him from the home with Mother’s permission. The

¹ A pseudonym is used to protect the identity of the juvenile pursuant to N.C. R. App. P. 42(b).

maternal grandmother brought Liam to her other daughter's home, Liam's aunt, where she left him for a few days. Liam's aunt then filed for emergency custody of Liam. The maternal grandmother intervened in the custody case as well. The custody hearing was held on 5 December 2022 and the court awarded temporary custody to the maternal grandmother. The custody order was dismissed 9 January 2023, but the in-home services case remained open while the parents worked to address concerns of substance abuse and mental health. The in-home services case was closed on 6 June 2023 following completion of mental health assessments and drug treatment.

On 10 June 2023 DSS received a report of another domestic altercation between Mother and Father. Police reported that Mother and Father were arguing, and each alleged that the other had assaulted them. Mother provided a video in which the parents were cursing, describing sexual activity, and discussing drug use. Mother acknowledged that Liam was present during the fight but that he had fled to the neighbor's apartment before law enforcement arrived. The responding officer testified that Mother appeared to be under the influence of an impairing substance. Her pupils were very large, and she was in a manic state moving around "rapidly, kind of at random." The officer also reported that Father appeared to be under the influence based on his manic state and rapid demeanor and topic shifts. The officer noted other people were present at the apartment including the friend who had overdosed on 25 September 2022. The maternal grandmother was contacted and

came to care for Liam while the parents went to the magistrate to take out charges on one another. The magistrate issued a warrant for Father for assault on a female after seeing marks on Mother. The court issued Mother a Domestic Violence Protection Order (“DVPO”) against Father on 10 June 2023.

On 18 June 2023, DSS received another domestic incident report. The reporter noted hearing loud noises coming from the apartment. When the reporter knocked on the door Father answered. Mother and Liam were seen crying. However, when law enforcement responded, Mother denied that anything was wrong. The reporter stated a neighbor had seen Father strangling Mother, but Mother denied it despite reporting neck pain. In response to this incident, the maternal grandmother came again and took Liam.

During DSS’s investigation of the two domestic violence reports, both Mother and Father denied drug use, refused random drug screens and denied domestic abuse, despite clearly being in violation of the 10 June 2023 DVPO at the time of the second 911 call on 18 June 2023. The parents denied DSS access to the home and to Liam. The case was deemed high risk, and a decision was made 25 July 2023 for in-home services. Social workers called, texted, and e-mailed the parents but received no response. On 28 July 2023 and 3 August 2023 DSS attempted home visits, but no one answered the door.

On 7 August 2023, in an effort to locate the family, social worker Allen conducted an unannounced home visit to the maternal grandmother’s home. Mother and Liam

were in the home with grandmother. Social worker Allen introduced herself and attempted to discuss the need for in-home services. Mother stated they were not going to work with DSS unless there was a court order. Social worker Allen attempted to schedule another visit or meeting, but Mother refused. Social worker Allen also asked for updated contact information which Mother refused to provide. Mother stated that she would follow up with DSS and social worker Allen provided her with contact information. However, Mother did not contact her.

On 11 August 2023 social worker Allen received a police report from 7 August 2023 indicating police had responded to maternal grandmother's residence for a domestic incident and possible larceny. When law enforcement arrived Mother, grandmother and Liam were present. Grandmother reported she had allowed the family to move in with her to get a "fresh start" and that Father had promised to get a job and pay rent. Grandmother stated Father had not provided any money, had been disruptive, and had taken money belonging to Mother. Mother expressed concern that he may be buying drugs. Mother stated the incident had not been physical, only verbal, and she did not want to press charges.

On 13 August 2023 the on-call social worker received a call from the police. The officer reported grandmother had contacted the police that morning after the parents failed to meet her and Liam as planned. Grandmother reported she had been caring for Liam for the past four to five weeks. Grandmother then stated she had received a phone call from Mother saying they had been "kidnapped, robbed, and beaten up."

Social worker Allen followed up with grandmother the next day. Grandmother reported that when they called her, Mother and Father had been in a parking lot with a person who had offered water and to call the police. She stated that the police were called and reported to her that the parents “looked extremely high.” Parents had requested grandmother to come and pick them up, but she had refused because she would not put Liam in a dangerous situation. She was concerned because it was dark, and she struggled with cataracts and had not felt safe driving. Grandmother reported to social worker Allen that she was concerned Liam would be in a dangerous environment if he returned to his parents. While she was not certain they were on drugs, she reported that she thought they needed mental health help and forced drug screens.

On 16 August 2023 DSS filed a juvenile petition alleging that Liam was a neglected juvenile in that, “[the] juvenile’s parent, guardian, custodian or caretaker does not provide proper care, supervision or discipline” and “creates or allows to be created a living environment that is injurious to the juvenile’s welfare.” The court found a substantial risk of physical injury, ordered nonsecure custody of Liam to DSS with placement with his maternal grandmother.

A Child Planning Conference was held on 22 August 2023. The court issued a Consent Order continuing non-secure custody with DSS pending adjudication which was set for 23 October 2023. Mother agreed to submit to random drug screens, obtain a clinical assessment, complete eligibility with Family Treatment Court, participate

in and complete a parenting curriculum, connect with domestic violence services and support, and sign consents for DSS to communicate with providers. Father agreed to submit to random drug screens, obtain a clinical assessment, complete eligibility with Family Treatment Court, participate in and complete a parenting curriculum, complete a Batterer's Intervention Program, and sign consents for DSS to communicate with providers.

On 23 October 2023 the trial court signed an order continuing the matter to 17 November 2023 based on a motion from DSS stating additional time was required to receive additional evidence.

On 17 November 2023 a joint adjudication and disposition hearing was held. During the adjudication stage, a responding police officer, the maternal grandmother and social worker Allen testified. The officer testified about the multiple calls to the residence for which he had been dispatched to including the overdose on 25 September 2022 and the incident on 10 June 2023. Grandmother testified about her ongoing care for Liam, the domestic incident on 7 August 2023, and the possible kidnapping on 13 August 2023. Social worker Allen offered testimony about the domestic violence incidents, her multiple attempts to engage with Mother and Father for in-home services, and their refusal to respond or engage in drug testing. After hearing testimony and reviewing the police reports and other evidence, the trial court adjudicated Liam as neglected based on "the totality of all of the incidents that have been described in the reports" and testimony.

The trial court then moved to disposition. Social worker Allen and the Guardian *ad Litem* were called to testify concerning Liam's status and the parents' progress on goals. In addition, the trial court received a Disposition Report into evidence which noted that separate Child and Family Team meetings took place for each parent due to the domestic violence concerns. Each parent participated and created agreements to address DSS's concerns about substance abuse, family violence, employment and parenting skills. Both parents participated in the Permanency Planning Review meeting on 11 October 2023. Social worker Allen testified Mother had participated in weekly AA meetings and had completed 12 of 20 hours of her DWI course but had not completed a comprehensive clinical assessment. Mother had been referred to Family Treatment Court but had not contacted or responded to their contacts. Mother submitted to a drug screen on 25 August 2023 which tested positive for marijuana. She was asked to submit to a hair follicle test on 21 September 2023 but had not complied, stating she had lost her wallet and could not take the test without an ID. On 17 October 2023, Mother again was asked to submit to a hair follicle test scheduled for 19 October 2023. Social worker Allen agreed to meet Mother at the testing center to verify her identification or to transport Mother if needed. When social worker Allen arrived at their apartment, Mother was with Father and refused to comply with the drug screen. After that refusal, social worker Allen had significant difficulty communicating with the parents. Although

they regularly attended visitation with Liam, they left visitation quickly and would not engage with social worker Allen.

The report also noted law enforcement had been called to the residence on 13 August 2023, 14 August 2023, 7 September 2023 and 18 September 2023. Father also reported to social worker Allen that he had left the home on 5 October 2023 due to a disagreement with Mother. Additionally, they had received notice from their landlord that they must vacate their apartment by 6 November 2023 due to noise complaints and the frequent presence of law enforcement.

According to social worker Allen, Father reported completing a comprehensive clinical assessment, but social worker Allen was unable to verify. She received records of his detox at Freedom House and anticipated Freedom House would recommend outpatient substance abuse treatment. Additionally, social worker Allen testified that on 6 October 2023 Father told her he and Mother were allowing another person to occupy Liam's room while he was staying with his grandmother and the roommate supplied parents with methamphetamines. Father reported being eighteen days sober at that point.

Social worker Allen and the Guardian *ad Litem* testified Liam is doing well with his grandmother and has told her he feels safer with her than with his parents. While in his grandmother's care, Liam had been seen by an eye doctor who prescribed him glasses, a medical doctor who diagnosed a peanut allergy and prescribed an EpiPen, and an Ear, Nose & Throat doctor who recommended a tonsillectomy.

Parents had not consented to surgery to address the tonsil and adenoid concerns at the time of hearing. Liam also received counseling services and speech therapy. Additionally, his low weight and BMI concerns were addressed by increasing his caloric intake with PediaSure and protein shakes.

The court determined based on the significant instances of domestic violence and substance abuse that it was in Liam's best interest to remain in DSS custody with placement with his maternal grandmother until his parents were able to complete the steps outlined in their case plan.

The Adjudication and Disposition Order was filed on 20 December 2023 and served on 3 January 2024. Mother filed a timely notice of appeal on 2 February 2024.

II. Analysis

On appeal Mother challenges five findings in the adjudication and argues the trial court erred because its findings of fact were unsupported by clear, cogent and convincing evidence and that it failed to make a finding of the "future probability of neglect" necessary to support a conclusion of neglect. Mother does not challenge the dispositional order.

A. Standard of Review

"We review an adjudication under N.C. Gen. Stat. § 7B-807 to determine whether the trial court's findings of fact are support by clear and convincing competent evidence and whether the court's findings support its conclusions of law." *In re M.H.*, 272 N.C. App. 283, 286, 845 S.E.2d 908, 911 (2020). "If such evidence

exists, the findings of the trial court are binding on appeal, even if the evidence would support a finding to the contrary.” *In re T.H.T.*, 185 N.C. App. 337, 343, 648 S.E.2d 519, 523 (2007). “The determination that a child is “neglected” is a conclusion of law we review de novo.” *In re J.C.M.J.C.*, 268 N.C. App. 47, 51, 834 S.E.2d 670, 674 (2019).

B. Challenged Findings of Fact

Mother challenges only five of the trial court’s seventy findings of fact: specifically, 32, 39, 61, 66 and 70. Each will be addressed in turn. Uncontested 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) (internal citation and quotations omitted).

1. Finding of Fact 32

Mother contends finding of fact 32 is essentially a recitation of the evidence and fails to resolve a material conflict in the evidence. “[T]he trial court must, through processes of logical reasoning, based on the evidentiary facts before it, find the ultimate facts essential to support the conclusions of law.” *In re J.W.*, 241 N.C. App. 44, 48, 772 S.E.2d 249, 253 (2015).

Finding of fact 32 states, “Father stated he took him [Liam] to the neighbors due to a verbal argument he was having with Mother about their marital problems; however, it was also reported that the juvenile fled to the apartment due to his parents’ fighting.” The trial court did not make a determination of how Liam came to be at the apartment; however, the means by which Liam arrived at the neighbor’s

apartment was not an ultimate fact “essential” to support the court’s conclusions of law. The relevant factor was that “the dispute between his parents” forced Liam to leave his home. The need for Liam to seek safety outside his home is undisputed and the most significant portion of finding of fact 32. Mother’s argument is overruled.

2. Findings of Fact 39 and 61

Mother contends the evidence does not support finding of fact 39 which states Liam was at parents’ home during “another domestic incident.” Additionally, Mother contends finding of fact 61 which states the police talked to Grandmother and “noted concerns about Respondent parents using substances and being under the influence” was not supported by the evidence presented at trial. While both findings were supported by the DSS reports there was no direct testimony supporting either finding and the statements in the DSS report were inadmissible hearsay that could not support the findings of fact. “[W]hen an appellate court determines a finding of fact is not supported by sufficient evidence, the court must disregard that finding and examine whether the remaining findings support the trial court's conclusions of law.” *In re A.J.*, 904 S.E.2d 707, 710 (2024). Therefore, we disregard findings of fact 39 and 61. Mother’s arguments regarding those findings although correct does not affect the validity of the order.

3. Finding of Fact 66

Mother contends finding of fact 66 implies Grandmother did something wrong by allowing Liam to be in the car with his parents and argues the inference is not

supported by evidence. Mother does not challenge the text of the finding of fact 66. The finding reads, “[d]espite the safety concerns noted, [grandmother] and the juvenile later in the day drove to Siler City with Respondent parents’ roommate, Spencer, and the juvenile to pick up the parents. No arrests were made regarding the alleged kidnapping.” Grandmother testified that she had safety concerns relating to the “kidnapping” and with her ability to drive at night. She also stated that she, Liam and Spencer drove out to help parents the next morning. Mother contests the implication she believes the finding makes but does not contest any of the content in the finding. The content of the finding is supported by the evidence; therefore, finding of fact 66 is affirmed.

4. Finding of Fact 70

Finding of fact 70 states Liam is subject to substantial risk of physical, mental and/or emotional impairment and lists subsections to support the finding. Mother contends subsections (d), (e), (h) and (j) are ambiguous and lack support.

Subsections (d) and (e) indicate Liam has been exposed to substance abuse and domestic violence on multiple occasions requiring his maternal grandmother to care for him. Mother contends the court heard testimony regarding the 10 June 2023 and one previous incident in 2022 only. Ample competent evidence speaks to the contrary. In addition to the 10 June 2023 and 25 September 2022 incidents, the trial court heard testimony concerning the police responding to Grandmother’s home on 7 August 2023 due to domestic issues between Mother and Father as well as the alleged

“kidnapping” on 13 August 2023. Additionally, the responding officer testified officers had responded to the home eight to nine times in the past year and a half. The term “multiple occasions” was supported by the evidence. The findings in subsections (d) and (e) are affirmed.

Subsection (h) states, since the end of the first DSS case there have been five documented incidents with concerns of physical domestic, suspicious condition, larceny and verbal dispute, and crime information. Mother contends the 7 September 2023 incident and possibly others occurred after the petition was filed on 16 August 2023 and evidence of events occurring post-petition are not allowed at an adjudication hearing. We agree. “This is because the purpose of an adjudicatory hearing is to determine only the existence or nonexistence of any of the conditions alleged in a petition.” *In re V.B.*, 239 N.C. App. 340, 344, 768 S.E.2d 867, 869-70 (2015)(internal quotations omitted). The record clearly supports four incidents on 10 June 2023, 19 June 2023, 7 August 2023 and 13 August 2023 that included concerns with domestic abuse, assault, suspicious conditions, larceny, and kidnapping. Evidence pertaining to the 7 September 2023 incident is disregarded.

Subsection (j) notes that Liam “exhibits and expresses fear about being at the apartment with his parents.” Mother argues this was not supported by the evidence produced at adjudication. We disagree. There was significant testimony from which the court could conclude that Liam was afraid at this parents’ apartment. He cried profusely during the overdose event, fled to the neighbor’s house multiple times, and

was noted to get visually upset when his parents argued. The evidence is clear and convincing that Liam expressed fear. Mother's argument is overruled.

Overall, two of the five contested findings of fact are supported by clear and convincing evidence. A third, finding of fact 70, is supported in all subsections except for (h). Section (h) contained one incident from 7 September 2023 that was post-petition and should not have been included; however, the other four incidents in section (h) are supported by clear and convincing evidence. Nevertheless, the other sixty-five findings of fact are uncontested and therefore binding on appeal. The remaining findings of fact detail issues with substance abuse, domestic violence, and possible criminal activity and are supported by clear and convincing evidence that in turn support the conclusion Liam is a neglected juvenile.

C. Necessity to make a finding of repetition of neglect.

Mother asserts the trial court did not make a proper finding that there was a future probability of neglect because Liam was safe with his caretaker, his grandmother, at the time of adjudication. We disagree.

When a child is being adjudicated as neglected while placed with another caretaker our Supreme Court recently held, “[a] juvenile may be adjudicated neglected even if not currently residing in the parent’s home. When the juvenile does not currently reside with the parent, the trial court must assess whether there is substantial risk of future neglect based on the historical facts of the case.” *In re A.J.*, 904 S.E.2d 707, 714 (2024).

Here, the trial court made a multitude of findings of fact detailing historical facts sufficient to establish substantial risk of future neglect:

14. On 29 September 2022, []DSS received a CPS report that on 25 September 2022, [], a friend of the parents, overdosed while visiting their home. The juvenile was in the bedroom next door, and while he did not witness the incident, he was awake when police and EMS arrived at the home.

15. The allegations of the report were confirmed. Officer Deshaies was a responding officer to the overdose. He observed the juvenile present at the scene with emergency services.

...

28. On 10 June 2023, []DSS received a CPS report due to domestic altercation between Respondent parents in which law enforcement was called by Respondent father to the home and the juvenile was present. Concerns were noted due to parental substance use.

...

31. Officer Deshaies located the juvenile at a neighbor's apartment due to the dispute between his parents. The juvenile is familiar with the family as he has previously sought refuge.

...

38. On 10 June 2023, Respondent mother obtained a DVPO against Respondent father; however, the parties did not abide by the DVPO, and Respondent father returned home.

...

41. Respondent parents denied domestic violence, however, the incidents were verified by the agency through requested police records, 911 call logs, and the juvenile's disclosures.

...

45. On 28 July 2023 and 3 August 2023, the social workers unsuccessfully attempted home visits with the family. Respondent parents would not communicate with []DSS.

...

50. When Ms. Allen explained the services were not voluntary, Respondent mother indicated she would not engage in services without a court order. Respondent mother declined to provide contact information to the agency or set up a follow up meeting.

51. On 7 August 2023, around 10:30 p.m., [grandmother] contacted emergency services to her home due to a domestic dispute between Respondent mother and Respondent father. Respondent mother alleged that Respondent father stole fifty dollars from her to purchase drugs. [Grandmother] was concerned for her daughter, and the juvenile was also present in another room.

52. [Grandmother] did not want Respondent mother to know she had called law enforcement, but she was concerned about the situation as the fighting was escalating and Respondent father had been disruptive in the home and exhibited paranoia or saw things not there.

53. [Grandmother] was concerned about the safety of her daughter and grandson due to the escalating argument. [Grandmother] ensured that the juvenile was in a back bedroom so that he was not exposed to the situation.

...

60. On 13 August 2023, in the evening, [Grandmother] received a call from a person she did not know who was with Respondent parents and allowed them to use the cell phone. Respondent parents told [Grandmother] that they were in Siler City and had been “kidnapped, robbed and beaten up.” They had not called because Respondent mother’s phone battery was dead, and Respondent father’s battery only had about 3% left.

...

62. Respondent father called back an hour later and

asked for [Grandmother] to pick them up in Siler City that evening. [Grandmother] declined to pick them up that evening because she had safety concerns regarding the situation, it was getting late, and she did not have childcare for [Liam]. [Grandmother] did not want to take the juvenile to an unsafe situation.

...

65. [Grandmother] told the social worker that “it was a mess” and expressed concerns about the juvenile’s safety in their care and the need for mental health treatment and drug screens.

...

67. While maternal grandmother had taken over the juvenile’s primary caretaking over the prior month, she had no legal ability to ensure the juvenile’s safety while in their care or prevent them from requesting he return to their home.

This Court has held “even where the trial court makes no finding that a juvenile has been impaired or is at substantial risk of impairment there is no error if the evidence would support such a finding.” *In re C.C.*, 260 N.C. App. 182, 185, 817 S.E.2d 894, 897 (2018). Additionally, a trial court’s finding that a child was neglected is supported when the parents had failed to remedy the conditions that required the child to be placed with another, and they continued to be unable to provide the child with proper care. *Id.* at 192, 817 S.E. 2d at 900-01; *In re H.L.*, 256 N.C. App. 450, 457, 807 S.E.2d 685, 690 (2017).

In the instant case, the trial court made extensive findings that the parents were still having regular interactions with law enforcement, had failed or refused

drug screenings, had not completed all assessments and treatments, had recently and repeatedly placed Liam in dangerous situations that caused him to fear, and did not have stable housing. The trial court properly concluded Liam was neglected because his parents failed to remedy the conditions which led to Liam being in his grandmother's care and a careful review of historical facts support the conclusion that there was a substantial risk of future neglect were he returned to his parents' care.

III. Conclusion

The trial court made sufficient findings of fact based on clear and competent evidence to support the conclusion that Liam was neglected. We affirm the trial court's adjudication. Mother did not contest the disposition order. The trial court's adjudication and disposition order is affirmed.

AFFIRMED.

Judge ARROWOOD and STADING concur.

Report per Rule 30(e).