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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-375

Filed 5 November 2024

Yancey County, No. 23 JA 23

In the Matter of:

E.H.

Appeal by Respondent-Mother from orders entered 18 December 2023 and 30 January 2024 by Judge Rebecca Eggers-Gryder in Yancey County District Court. Heard in the Court of Appeals 9 October 2024.

Daniel M. Hockaday for Petitioner-Appellee Yancey County Department of Social Services.

Brooks, Pierce, McLendon, Humphrey & Leonard, L.L.P., by Daniel F.E. Smith, for Guardian ad Litem.

Kimberly Connor Benton for Respondent-Appellant Mother.

COLLINS, Judge.

Respondent-Mother appeals from the trial court's orders adjudicating her minor child, Eli,¹ abused and placing his legal custody with the Yancey County Department of Social Services. Mother argues that certain findings of fact in the

¹ We use a pseudonym to protect the identity of the minor child. See N.C. R. App. P. 42.

adjudication order are not supported by clear and convincing evidence and that the evidence does not support the conclusion that Eli was abused. Mother has abandoned any argument that the disposition order was erroneous. *See* N.C. R. App. P. 28(a). We affirm.

I. Background

Mother is the biological parent of Eli, a minor child who was approximately twenty-two months old when he was brought into the custody of the Yancey County Department of Social Services (“DSS”). On 19 April 2023, DSS received a report alleging that Eli was abused. The report stated that Mother took Eli to urgent care because he was not using his right arm normally, and Mother claimed that Eli came home from daycare not using his right arm. An x-ray revealed a “displaced, impacted, angulated fracture” (“spiral fracture”) in Eli’s right arm, and a subsequent skeletal exam identified a buckle fracture in Eli’s right wrist. Medical professionals at urgent care splinted Eli’s right arm, referred Eli to the emergency department for “more extensive testing,” and reported Eli’s injury to DSS. DSS began an investigative assessment of both the daycare and Mother on 20 April 2023, and it placed Eli in a temporary safety placement with Mother’s grandparents on that same day.² Mother was permitted to live with Eli as long as there was full-time supervision of their

² Sometime prior to 19 April 2023, a Domestic Violence Protective Order was entered between Mother and Eli’s biological father, and Mother was awarded primary custody of Eli. While Eli’s biological father was named as a respondent to the juvenile petition filed in this case, he was not named in the report that alleged Eli’s abuse and is not a party to this appeal.

interactions.

Eli was taken to Mission Children’s Hospital on 21 April 2023 where Doctor Sarah Monahan-Estes conducted a child medical exam. Dr. Monahan-Estes confirmed that Eli had both a spiral fracture and a buckle fracture in his right arm. She reported that, while the buckle fracture could have occurred due to Eli running and falling onto his hands, “a significant amount of bending and twisting force” was “required” to cause the spiral fracture, and Eli would have “cried immediately and been in pain” upon suffering the spiral fracture. Additionally, Dr. Monahan-Estes reported that Mother provided her with “no accidental history” to “account for this [spiral] fracture.” Therefore, because Mother provided no accidental account for Eli’s injury, Dr. Monahan-Estes concluded that there was “significant concern for physical abuse.” DSS maintained its investigation into Mother but allowed Eli to continue living with Mother and her relatives until 17 July 2023.

On 17 July 2023, DSS filed and served a petition in district court alleging that Eli was abused as defined by N.C. Gen. Stat. § 7B-101(1). That same day, the trial court entered an order placing Eli in nonsecure custody with DSS and maintaining placement with Mother’s grandparents. At some point in September 2023, DSS placed Eli into the care of his biological father. The trial court held an adjudication hearing on 20-21 November 2023. The trial court reviewed video footage evidence of the playground outside of the daycare; the daycare’s internal cameras were not working on the day Eli was injured. The trial court also heard testimony from a DSS

caseworker, a detective with Yancey County Sheriff's Department, an urgent care physician, Dr. Monahan-Estes, Mother's therapist, Mother's boyfriend, and Mother. The video footage and witness testimony from the DSS caseworker, detective, and Dr. Monahan-Estes supported that Eli was not injured while at his daycare and that his injury had occurred by non-accidental means. Mother testified specifically that Eli was injured during his morning recess while at daycare, but the trial court reviewed the video footage from the daycare and found that Eli was not injured at the daycare. Mother presented conflicting testimony as to whether she or her boyfriend had been driving when they picked Eli up from daycare and, despite having external video cameras at her home, did not provide video of her and Eli entering and leaving the home after returning from daycare but instead provided still photos. The trial court found that it had "some concern as to the credibility of [Mother's] testimony."

The trial court entered an order on 18 December 2023 adjudicating Eli abused because he had suffered a non-accidental spiral fracture to his right arm while in the care of Mother and held an interim disposition hearing. The final disposition hearing was held on 5 January 2024 and the court entered the disposition order on 30 January 2024. The trial court maintained Eli's legal custody with DSS and physical custody with his biological father, granted Mother fifteen hours of supervised visitation per week, and scheduled a permanency planning hearing for 1 March 2024. The trial court found that Eli was likely to return to respondent-parents' home within the next six months and that reunification was the permanent plan for Eli and in his best

interests. Mother timely appealed from the adjudication and disposition orders on 9 February 2024.

II. Discussion

Mother argues (1) that certain findings of fact are unsupported by clear and convincing evidence as required by N.C. Gen. Stat. § 7B-805 and (2) that the evidence does not support the trial court’s conclusion that Mother abused Eli.

A. Standard of Review

We review a trial court’s adjudication of abuse to determine whether its findings of fact are based on “clear and convincing competent evidence” and whether the trial court’s findings of fact support its conclusions of law. *In re Helms*, 127 N.C. App. 505, 511 (1997). The clear and convincing evidence standard is defined as “evidence which should fully convince.” *In re Smith*, 146 N.C. App. 303, 304 (2001) (quotation marks and citation omitted). Unchallenged findings of fact are “presumed to be supported by competent evidence and [are] binding on appeal.” *Koufman v. Koufman*, 330 N.C. 93, 97 (1991) (citations omitted). The determination that a child is abused is a conclusion of law that we review de novo. *In re K.L.*, 272 N.C. App. 30, 36 (2020).

B. Analysis

The trial court made the following relevant findings of fact:

3. That the juvenile is currently placed in the physical custody of the respondent father; the Court finds this placement appropriate to meet the needs of the juvenile at

this time and is in the best interests of the juvenile.

4. That the respondent mother is offered weekly supervised visitations with the juvenile; that the Court finds the level of visitation offered has been appropriate and in the best interests of the juvenile.

....

6. That the Court has received and reviewed various exhibits, including the Child Medical Exam. The Court has also reviewed two (2) video tapes from Head Start Childcare and photographs provided by the respondent mother.

7. That the Court finds by clear, cogent and convincing evidence that the juvenile is an abused juvenile as defined by [N.C. Gen. Stat. §] 7B-101 (1) et seq., to wit: that on 04/19/23, the juvenile was less than 18 years of age and his parent inflicted or allowed to be inflicted on him a serious physical injury by other than accidental means, specifically, the Court is referring to the spiral fracture injury to the juvenile's right humerus.

8. The juvenile was born on 06/07/21. On 04/19/23, the child was 22 months old. The parents did not reside together. A Domestic Violence Protective Order had previously been entered between the parents. Pursuant to the terms of that Order, the respondent mother was awarded the primary custody of the juvenile and the respondent father supervised visitations. On 04/19/23, the child was residing in the physical care of the respondent mother. The child regularly attended Head Start Daycare from 8:00 am — 2:00 pm. The child was present at daycare on 04/19/23. Video camera footage showed the outside of the building where the juvenile (and other children played outside) and the area where the parents picked up the children at 2:00 pm. The video camera inside the building was not working. The respondent mother testified that the child had no issues or injuries when the child was dropped off at daycare the morning of 04/19/23. Video footage showed the child playing outside during the morning break

and appeared to be active, happy and without injury or distress. At the end of the day, the child was also playing outside before pickup and appeared to be active, happy and without injury or distress. The respondent mother picked up the child from the daycare worker at 1:58 pm. The child was moving his right arm without limitation.

9. That the respondent mother testified that she left daycare and took the child to her residence, arriving at 2:07 pm. The resident mother took the child inside the home. Her boyfriend (Preston Arnold) was present with her. The respondent mother stated that she noticed the child was not using his right arm. She left the home with the child at 2:25 pm and drove the child to Urgent Care. She stated that the child was not injured in her care. The minor child was in the exclusive care of the respondent mother from 1:58 pm on, either at her home or at the medical care facilities.

10. That the minor child was first examined at Urgent Care in Spruce Pine. It was determined the child did not have nursemaid's elbow. X-rays were ordered. The child was holding his arm in a compromised position. The x-rays showed a spiral fracture of the child's right humerus bone in his upper arm, broken in two pieces. The respondent mother offered no information to suggest the injury had occurred by accident. The child also had a compression fracture of his right wrist.

11. That the child was then transported to Mission Hospital in Asheville, NC. The child was examined by Dr. Sarah Monahan-Estes. She confirmed the child had a spiral fracture. Dr. Monahan-Estes testified that this injury could have been caused by accidental means but no such information was provided and therefore she concluded in the CME Report that the child had been abused. Information as to the cause of injury provided by the respondent mother was inconsistent with an accidental injury. The respondent mother offered no explanation except that the injury must have occurred at daycare prior to her picking up the child at 1:58 pm.

12. That the Court has reviewed the video footage from the daycare. There is no evidence to suggest the minor child was injured while at daycare. Dr. Monahan-Estes also reviewed the video footage and agreed the child did not appear to be injured at daycare. Randall Shuford (Burnsville Police Department) also reviewed the video footage and interviewed the workers at the daycare. He found no evidence indicating the injury occurred at that facility. The respondent mother points to a portion of the video (during the morning recess) indicating the child was picked up by the daycare worker by one arm and that the injury must have occurred at that time. The Court has reviewed that section of the video footage. The Court finds the child was lifted out of a wagon by the worker, with the worker using two arms to lift the child. The child continued to play thereafter without any sign of injury or distress. **The Court finds the juvenile was not injured at Head Start Daycare.**

13. That the Court has some concern as to the credibility of the respondent mother's testimony. The respondent mother received outpatient surgery in Asheville the morning of 04/19/23 after dropping the child off at daycare. She and her boyfriend offered conflicting testimony as to who was driving the vehicle. The respondent mother stated that due to her medication she was instructed not to drive. Mr. Arnold stated the respondent mother drove the vehicle. The respondent mother drove the child to Urgent Care after bringing the child to her home. The respondent mother had video cameras set up in her home but did not provide video footage, only providing a series of still photographs indicating the time she arrived and left her home. The Court finds the testimony of respondent mother not credible as to the cause of the injury to the child's right arm (spiral fracture injury).

14. **That the injury to the minor child was nonaccidental.** The injury was a serious injury and the minor child was in pain and discomfort when arriving at Urgent Care. Surgery was not required. **The injury had not occurred prior to the time the respondent**

mother picked up the child from daycare at 1:58 pm.

The injury had occurred by the time the respondent mother delivered the child to Urgent Care to be examined. The minor child was in the exclusive care of the respondent mother from the time the juvenile was picked up at daycare at 1:58 pm. Since the injury is nonaccidental, the injury is consistent with an injury of abuse. The above findings relate to the spiral fracture injury. The Court does not find abuse related to the buckle fracture of the child's wrist.

15. That the interim dispositional provisions as set forth hereinbelow are reasonable, appropriate and consistent with those terms and provisions of [N.C. Gen. Stat. §] 7B-903 et seq. and are in the best interests of the juvenile.

16. That the following services have been provided by the Petitioner to prevent or eliminate the need for placement of the juvenile: CPS assessment; safety plans; temporary parental safety resources; CFTs; collaboration with law enforcement; law enforcement letter; DCDEE; Rams Team; CME; home visits; requests for home visits; investigation at Head Start; watching video footage; contact with the Yancey County Sheriffs Department; District Attorney referral; kinship placement; supervised visitations; and all other standard and routine foster care services.

17. That reasonable and active efforts have been made by the Petitioner to prevent or eliminate the need for placement of the juvenile but the return of the juvenile to the home of the respondent parents is contrary to his welfare and best interests at this time.

1. Challenged findings of fact

Mother challenges only the bolded portions of finding of fact 12 (that Eli was not injured at Head Start Daycare) and finding 14 (that Eli's injury was nonaccidental and that the injury had not occurred prior to Mother picking Eli up from daycare at 1:58 p.m.) as being unsupported by clear and convincing evidence.

There is ample record evidence to support the challenged portions of findings 12 and 14. It is undisputed that Eli was in Mother's sole care prior to arriving at daycare and that Eli arrived at daycare without any injuries. Video evidence from the daycare confirms that Eli was uninjured throughout the day, as he can be seen at various times playing happily and moving his arms normally. Video evidence shows Eli playing outside immediately before his Mother picks him up at 1:58 p.m.; the video shows Eli walking around, swinging his arms, crouching on the ground, and using his hands to push a small chair towards another child. The video then shows a daycare worker pick Eli up under both his arms, and Eli uses his right arm to pat the back of the daycare worker. This video evidence supports that Eli was not injured at daycare and that the injury had not occurred prior to the time Mother picked Eli up from daycare at 1:58 p.m.

Moreover, reports from Dr. Monahan-Estes support the challenged portions of findings of fact 12 and 14. Dr. Monahan-Estes stated that she had

reviewed the videos provided to me by DSS of [Eli] reportedly at his daycare on the day in question. [Eli] is using both arms normally throughout the videos. There is no evidence of an accidental or non-accidental injury seen on the video to explain [Eli's] arm fracture. At the end of the second video you can see the daycare provider picking [Eli] up and handing him over a fence. Just prior to that [Eli] was using both arms normally and did not appear in pain or distressed.

Dr. Monahan-Estes testified that Eli's spiral fracture was caused by "some form of twisting and some form of bending" which caused Eli's right humerus bone to be

“broken completely in half and then in two separate portions.” Eli “would have been in a significant amount of pain . . . any time he had to move his arm.” Dr. Monahan-Estes testified that Mother reported that she picked Eli up from daycare around 2:00 p.m. and checked into the urgent care at 2:45 p.m., and Mother provided no history of accidental injury that could have explained the spiral fracture in Eli’s right arm. Because Eli was using his arm normally at the daycare, but he arrived at the urgent care with a spiral fracture, Dr. Monahan-Estes determined that there was significant concern for physical abuse. This evidence supports the challenged portions of findings 12 and 14.

We determine that there is clear and convincing record evidence to support the challenged portions of finding 12 and 14. Moreover, the trial court’s unchallenged findings of fact support the challenged findings and are binding on appeal. *Koufman*, 330 N.C. at 97.

2. Adjudication of Abuse

N.C. Gen. Stat. § 7B-101(1) defines an abused juvenile, in relevant part, as “[a]ny juvenile less than 18 years of age . . . whose parent, guardian, custodian, or caretaker . . . [i]nflicts or allows to be inflicted upon the juvenile a serious physical injury by other than accidental means[.]” N.C. Gen. Stat. § 7B-101(1)(a) (2023). This Court has upheld adjudications of abuse when (1) a juvenile has sustained an unexplained, non-accidental injury; (2) medical experts determine that the juvenile’s injury is consistent with abuse; and (3) there is clear and convincing evidence to

support that a parent inflicted the juvenile's injuries. *In re C.M.*, 198 N.C. App. 53, 62 (2009); *In re R.S.*, 254 N.C. App. 678, 683 (2017).

This Court has upheld adjudications of abuse when a parent has exclusive care of a juvenile for the period of time during which the juvenile suffers an unexplained, non-accidental injury. *See In re L.Z.A.*, 249 N.C. App. 628, 637-38 (2016) (affirming adjudication of abuse where child suffered a skull fracture, the parents provided no explanations for the injury, and the child was in the parents' exclusive care at the time the injuries occurred); *In re Y.Y.E.T.*, 205 N.C. App. 120, 128-29 (2010) (affirming adjudication of abuse where child suffered a non-accidental buckle fracture, the parents' explanation of the injury was inconsistent, and the child was in the parents' exclusive care at the time the injury occurred).

Here, the trial court's findings of fact show that Eli suffered a non-accidental spiral fracture of his right arm while in the exclusive care of Mother. The findings show that Eli was uninjured when dropped off at daycare; he was happily playing and using his arm normally when picked up from daycare by Mother at 1:58 p.m.; he remained in the exclusive care of Mother from the time he was picked up until Mother took him to the urgent care at approximately 2:45 p.m.; and he was diagnosed with a buckle fracture and spiral fracture at the urgent care. Additionally, Mother did not provide any information to suggest that Eli's spiral fracture was accidental, and Dr. Monahan-Estes reported that Eli's spiral fracture required "a significant amount of bending or twisting force" to occur. The findings thus support that Eli suffered a

serious, non-accidental injury, consistent with abuse, while in Mother's exclusive care. *In re L.Z.A.*, 249 N.C. App. at 638. The trial court properly concluded that Eli was abused. *Id.*

Mother cites to *In re K.L.* to argue for the reversal of Eli's adjudication of abuse. However, *K.L.* is distinguishable from the present case. The infant in that case was not in the exclusive care of his parents when his injuries occurred because his injuries "manifested themselves so subtly that they were not noticed by his babysitter and initially escaped notice by his pediatrician" *Id.* at 46. Due to the elapsed timeline of discovery of his injuries, the infant in *K.L.* had been in the care of his parents, his babysitter, and multiple other family members, and this Court determined that the evidence did not support that the infant was in his parents' exclusive care when his injuries occurred. *Id.* at 46-47. Unlike in *K.L.*, the evidence and findings of fact here show that Eli was in Mother's exclusive care when he sustained a spiral fracture in his right arm.

III. Conclusion

There is clear and convincing evidence to support the challenged findings of fact, and the findings of fact support the trial court's conclusion of law that Eli was abused. Mother does not challenge the disposition order. We affirm the trial court's orders.

AFFIRMED.

Chief Judge DILLON and Judge CARPENTER concur.

IN RE: E.H.

Opinion of the Court

Report per Rule 30(e).