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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-270

Filed 19 November 2024

Stokes County, Nos. 23 JA 7-11

IN RE: K.F., F.S., A.B., M.H., A.S.

Appeal by respondent-mother from order entered 20 December 2023 by Judge Marion Boone in District Court, Stokes County. Heard in the Court of Appeals 8 October 2024.

Richard Croutharmel, for respondent-appellant mother.

Anne C. Wright, for Stokes County Department of Social Services.

James N. Freeman, Jr., for the Guardian ad Litem.

ARROWOOD, Judge.

Respondent-mother appeals from the trial court's order entered 20 December 2023 adjudicating juveniles K.F. ("Kofi"), F.S. ("Francesco"), A.B. ("Abby"), M.H. ("Mekhi"), and A.S. ("Ashton")¹ (collectively, "the children") to be neglected and dependent. For the following reasons, we affirm the trial court.

¹ Pseudonyms agreed upon by the parties pursuant to N.C. R. App. P. 42(b).

I. Background

Respondent-mother lived at 112 Belmont Place Drive in Stokes County with her husband (“Husband”) and her five children: Kofi, 15; Abby, 13; Francesco, 10; Ashton, 7; and Mekhi, 1. Husband is the biological father of Mekhi and acted as a father figure to the other four children.

On 19 January 2023, Husband and respondent-mother picked up Abby from school around 4:00 p.m. and dropped her off at the family home. Respondent-mother and Husband then got into a truck and left the family home at 4:30 p.m., claiming they were going out to celebrate their wedding anniversary, but instead went to a Sheetz gas station in Peter’s Creek, North Carolina. Detective Corporal Monty Wolfe (“Detective Wolfe”) was on patrol for Davidson County Traffic Enforcement and Crime Prevention Unit and was participating in a stolen property investigation that day. Detective Wolfe testified that per the investigation, there was a subject coming to the Sheetz that day to deliver stolen items that were taken a night or two before 19 January 2023. There were other undercover officers in the Sheetz and several marked and unmarked vehicles conducting surveillance outside the Sheetz.

Detective Wolfe observed Husband and respondent-mother’s vehicle pull into the gas station and observed Husband exit the vehicle and walk into the Sheetz while respondent-mother remained in the passenger seat. Detective Wolfe and the other officers proceeded to conduct a vehicle takedown. Detective Wolfe then approached

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the vehicle while respondent-mother was exiting the vehicle. When he approached, he could smell marijuana coming from the inside of the vehicle. Officers then brought a canine to sniff the vehicle to determine whether there was evidence of more drugs other than marijuana. The canine alerted on the car and the officers proceeded to search the vehicle, discovering a large quantity of narcotics located in a backpack in the vehicle. Specifically, Detective Wolfe found methamphetamines, fentanyl, cocaine, marijuana, amphetamine tablets, and suboxone strips.

Husband also spoke with other officers and showed them where the stolen property was in the vehicle. He told officers that he was not aware that the property was stolen and that he received the property from someone else. Respondent-mother and Husband were then arrested around 6:00 p.m. and transported to the Davidson County Sheriff's Department.

Respondent-mother and Husband were charged with trafficking methamphetamines by possession, transportation, and manufacture; trafficking opium/heroin by possession, transportation, and manufacture; possession with intent to sell/deliver cocaine; felony maintaining a motor vehicle to store controlled substance; possession of a schedule III controlled substance (suboxone); and possession of drug paraphernalia. Those criminal charges were pending at the time of the initial neglect and dependency hearing.

Respondent-mother spent one night in jail and was released the following

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morning. During the course of her time at the Davidson County Sheriff's Office, respondent-mother informed officers that she needed to make a phone call because her children were left at home, but an adult would be coming later to be with her children. Responding to this information, Detective Wolfe called Sergeant Laws from the King Police Department to inform him that a welfare check needed to be done on the children at respondent-mother's home.

At around 8:05 p.m. on 19 January 2023, Sergeant Laws, along with Officer McGee and Officer G.T. Atkins ("Officer Atkins"), conducted a welfare check on the house. All five children were in the home at the time of the welfare check and appeared to be healthy and not in need of any medical intervention. When Officer Atkins arrived at respondent-mother's home around 8:05 p.m., he spoke with Kofi, the oldest child in the house, to inform him that his parents had been arrested. Officer Atkins asked Kofi if there was an adult he could call and Kofi stated that there were no adults in the home at the moment but that he could contact a family member to come over. Kofi called his aunt, Andrea "Tosha" Hargrave ("Ms. Hargrave") and Officer Atkins spoke with her on the phone as well. Officer Atkins determined that Ms. Hargrave lived in Mount Airy, North Carolina, and could arrive at respondent-mother's home within 30 to 45 minutes.

Officer Atkins proceeded to call the Stokes County Department of Social Services ("DSS"). DSS representatives Jessica Pinson ("Ms. Pinson") and Brittany

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Norris (“Ms. Norris”) were sent to respondent-mother’s home to assist with the welfare check. While traveling to the home for the welfare check, Ms. Pinson learned that respondent-mother and Husband had been arrested. Ms. Pinson attempted to contact them to make a plan of care for the children while they were in custody, however, she was unable to reach them.

After the arrival of Ms. Hargrave, Ms. Pinson, and Ms. Norris, Officer Atkins and Officer McGee conducted a walk-through. Ms. Hargrave remained with the children in the living room of the home. When the group proceeded to the second story of the house, Officer Atkins smelled a “medium odor of marijuana.” He also observed a biometric lock on one of the doors.

Officer Atkins testified that after ensuring the safety of the DSS representatives within the home, he obtained a search warrant² and the group proceeded to search all the bedrooms in the house. In the master bedroom of the home, Officer Atkins found approximately six and a half grams of marijuana, mostly in burnt marijuana roaches, a plastic bag with marijuana in a drawer in the bedroom, and a white powdery substance on the TV stand on a digital scale. There was not enough of the white powdery material for the officers to conduct a field test to identify the substance. The master bedroom was accessible to the children at the time. Ms.

² The search warrant was granted based on “the odor of marijuana emitting from the residences and the charges [respondent-mother and Husband] were arrested for that night.”

Pinson testified that the home appeared free of clutter and that she did not observe any safety hazards during her check of the home.

Following the welfare check, Ms. Pinson testified that because she could not get in contact with respondent-mother and Husband, it was the policy of DSS to assume 12-hour custody of the children. After DSS assumed custody of the children, Ms. Pinson testified that she, along with law enforcement, conducted a kinship assessment to test the suitability of Ms. Hargrave to stay in the home with the children. After running a background check on Ms. Hargrave, DSS approved Ms. Hargrave to supervise the children. Ms. Hargrave agreed to serve as a temporary safety provider for the children after DSS's 12-hour custody period ended and DSS adopted this alternative childcare arrangement.

On 20 January 2023, DSS filed juvenile petitions alleging neglect and dependency for all five children. Specifically, the petition alleged that respondent-mother and Husband were unable to provide for the juveniles' care or supervision and lacked an appropriate alternative child care arrangement. The petition further alleged that the juveniles lived in an environment injurious to their welfare because of the presence of drugs in the home. That same day, respondent-mother was released from police custody and was able to get in contact with DSS. Respondent-mother agreed that the children could remain with Ms. Hargrave. The trial court issued an order for nonsecure custody with kinship placement with Ms. Hargrave.

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The trial court conducted a prehearing conference on 23 January 2023 to determine the need for continuing custody. Respondent-mother was allowed supervised visitation for two hours per week. Jaime Kehoe was appointed as Guardian Ad Litem for the children. Ms. Hargrave retained custody of the children in a pre-adjudication order filed on 30 January 2023. Husband never made a permanency plan agreement or visitation agreement prior to the hearing.

On 17 July 2023, DSS became aware that Ms. Hargrave had not lived with the children in respondent-mother's home since 30 June 2023 but that respondent-mother and Husband had been present at the house since then. DSS then called respondent-mother, who was at work at the time, to come back to the home or identify an appropriate family member to assume care of the children, or else the children would be placed in foster care. The children were then placed with their maternal great-aunt Jennifer Simmons ("Ms. Simmons"), who also works at Stokes County DSS.

A hearing was held on 28 July 2023 where respondent-mother's attorney requested a motion to dismiss the neglect and dependency allegations. In her motion, respondent-mother's counsel stated that DSS had entered into an alternative child care arrangement for the children because the children remained in the care of Ms. Hargrave. Furthermore, respondent-mother's counsel stated that the children were not exposed to marijuana in the residence and none of the children tested positive for

any illicit substances. The trial court ultimately denied respondent-mother's motion to dismiss.

During the hearing, respondent-mother testified regarding her safety plan for the children. First, she stated the children use a "buddy system" where Abby watches Ashton, Kofi watches Francesco, and the two daughters Abby and Ashton together supervise baby Mekhi. Respondent-mother stated that Kofi and Abby have cell-phones with all the emergency contact numbers they would need to call if they needed any help. There were also Ring cameras throughout the house with a doorbell camera on the outside, as well as Alexa devices to assist the children if they needed to make calls and their phones were not working.

Kofi, the oldest child, testified that he is not left alone with his siblings often and he usually does not have to babysit his siblings. Abby, the next oldest child, also testified that the children were left home alone "not even every month." Kofi testified that the family had an emergency plan in place and that if they needed help, they could call Husband's parents, Ms. Hargrave, or their neighbors, although the first person they usually called was Ms. Hargrave. Kofi stated that if the children had not heard from respondent-mother or Husband every hour, he was supposed to call someone from the emergency list, but that respondent-mother usually checked in on them every thirty minutes to one hour. If respondent-mother and Husband were not at home, the children were not allowed to go into the master bedroom or outside the

home.

Kofi also testified that he had never seen respondent-mother or Husband use drugs and he had no concerns about drug use in the home. Both Kofi and Abby testified that when police arrived at their home for the welfare check, they did not appear to be concerned with the children's well-being and instead were searching through cabinets and walking around the house rather than talking to the children. Abby specifically testified to feeling scared when she heard police officers using force to open locked doors upstairs.

The trial court, in making its decision, stated that the safety plan did not account for instances where a fire could break out in one of the locked rooms in the house. Second, the court found that the drugs in the master bedroom were accessible by the children because the bedroom door was closed but unlocked. Based on these findings of fact, the trial court found that there was clear and convincing evidence of dependency and neglect and continued the hearing on disposition to 24 August 2023. Counsel for DSS then requested that the court maintain non-secure custody because two of the respondent-fathers in this case had already signed visitation agreements and requested that a supervised visitation plan be made for respondent-mother, which the court granted. Following placement with Ms. Hargrave, the children were placed in the care of respondent-mother's aunt Ms. Simmons.

Respondent-mother agreed to attend and complete a substance use and mental

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health assessment with an approved agency, engage in random drug screenings, notify DSS of any medication changes, comply with random pill counts, and sign a release of information for DSS and substance use treatment provider to mutually communicate. Furthermore, respondent-mother was required to obtain and maintain a stable source of housing and a legal source of employment for at least three to six months.

Following the hearing, Francesco received a referral at school for behavioral issues. The referral stated that Francesco was engaging in a pattern of lying, being aggressive towards authority, stealing, bullying, running away, and general insubordination. Husband has since been incarcerated without bond.

As of 20 December 2023, Ms. Simmons retains custody of the children. Currently, the permanent plan for all the children is reunification with respondent-mother. Respondent-mother filed written notice for appeal on 18 January 2024.

II. Discussion

On appeal, respondent-mother asserts the trial court erred by (1) adjudicating the minor children neglected when the evidence failed to support the findings and the findings failed to support a conclusion of neglect, and (2) adjudicating the juveniles dependent when the evidence failed to support the findings, the findings failed to support a conclusion of dependency, and the trial court operated under a misapprehension of law in reaching its conclusion. We address each argument in

turn.

A. Standard of Review

“We review an adjudication of abuse, neglect or dependency under N.C.G.S. § 7B-807 (2015) to determine whether the trial court’s findings are supported by clear and convincing evidence and whether the findings, in turn, support the trial court’s conclusions of law.” *In re R.S.*, 254 N.C. App. 678, 680 (2017). (cleaned up). Unchallenged findings of fact are deemed to be supported by the evidence and are binding on appeal. *Koufman v. Koufman*, 330 N.C. 93, 97 (1991) (citation omitted). “Erroneous findings unnecessary to the adjudication may be disregarded as harmless.” *In re J.C.M.J.C.*, 268 N.C. App. 47, 51 (2019). This Court reviews a trial court’s conclusions of law *de novo*. *In re R.S.*, 254 N.C. App. at 680.

Generally, post-petition evidence is not admissible during an adjudicatory hearing for abuse, neglect, or dependency. *See In re V.B.*, 239 N.C. App. 340, 344 (2015) (cleaned up). However, this rule is not absolute and post-petition evidence on “fixed and ongoing circumstance[s]” may be admitted in such adjudications. *In re G.W.*, 286 N.C. App. 587, 594 (2022) (quoting *In re Q.M.*, 275 N.C. App. 34, 41 (2020)).

B. Neglect

First, respondent-mother argues that the trial court erred in adjudicating the children neglected because the evidence fails to support the findings, and the findings failed to support a conclusion of neglect. Specifically, respondent-mother contests the

following findings of fact: (1) the police finding a bag of marijuana in a dresser drawer in the master bedroom, (2) there was no evidence of a prior plan to have the children's aunt come supervise the children in the absence of the parents, (3) the locked office was a fire hazard to the children due to its lack of accessibility, (4) there was substantial risk to the children because they had access to the master bedroom, which contained "illegal and dangerous substances", and (5) the children suffered emotional and psychological trauma because they were present when the police executed a search warrant in the family home.

In North Carolina, a "neglected juvenile" is defined as a juvenile less than 18 years of age whose parent, guardian, custodian, or caretaker:

- a. Does not provide proper care, supervision, or discipline.
- b. Has abandoned the juvenile, except where that juvenile is a safely surrendered infant as defined in this Subchapter.
- c. Has not provided or arranged for the provision of necessary medical or remedial care.
- d. Or whose parent, guardian, or custodian has refused to follow the recommendations of the Juvenile and Family Team made pursuant to Article 27A of this Chapter.
- e. Creates or allows to be created a living environment that is injurious to the juvenile's welfare.
- f. Has participated or attempted to participate in the unlawful transfer of custody of the juvenile under G.S. 14-321.2.
- g. Has placed the juvenile for care or adoption in violation of law.

N.C.G.S. § 7B-101(15) (2023). To sustain an adjudication of neglect, "this Court has consistently 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 Safriet*, 112 N.C. App. 747, 752 (1993) (cleaned up). “[T]he clear and convincing evidence in the record must show current circumstances that present a risk to the juvenile.” *In re J.A.M.*, 372 N.C. 1, 9 (2019). “The trial court is granted some discretion in determining whether children are at risk for a particular kind of harm given their age and the environment in which they reside.” *In re A.D.*, 278 N.C. App. 637, 642 (2021) (cleaned up). “It is well-established that the trial court need not wait for actual harm to occur to the child if there is a substantial risk of harm to the child in the home.” *In re D.B.J.*, 197 N.C. App. 752, 755 (2009) (cleaned up).

Here, respondent-mother challenges several of the trial court’s findings of fact as being unsupported by evidence. However, when “ample other findings of fact support an adjudication of neglect, erroneous findings unnecessary to the determination do not constitute reversible error.” *In re T.M.*, 180 N.C. App. 539, 547 (2006). In this case, there are several unchallenged findings of fact, supported by credible evidence in the form of testimony from Officer Wolfe, Officer Atkins, and Ms. Pinson, that support a finding that respondent-mother created an environment injurious to the children’s welfare.

“[C]onduct that supports a conclusion that a child is neglected includes exposing the child to acts of . . . abuse of illegal substances.” *In re D.B.J.*, 197 N.C.

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App. at 781. Here, there is abundant evidence that the children had access to illegal drugs. First, Officer Wolfe testified to finding a bag of marijuana in a dresser located in the master bedroom. He further testified that the door to the master bedroom was closed but unlocked, showing that the children could access the illegal drugs in the bedroom. This Court has previously inferred that drugs are accessible to children if they could determine that drugs were present in a room immediately when they walk in. *See In re P.H.*, 899 S.E. 2d 923, 2024 WL 1631286, at *4 (N.C. Ct. App. Apr. 16, 2024) (unpublished) (finding that the children were neglected because they had access to cocaine that was readily observable in the master bedroom of the home). Here, detectives were immediately able to smell marijuana odors upon going to the second floor of the house and were immediately able to identify marijuana roaches when entering the master bedroom.

Second, drugs were found in a truck belonging to respondent-mother and Husband, including marijuana, cocaine, methamphetamines, and some sort of heroin or fentanyl. The children had access to these drugs, which was shown through testimony from Husband, who stated he frequently brings Mekhi with him and stays with him in the truck while he is working. Because multiple drugs were found in the family home and the children could access it even when respondent-mother and Husband were in the home, the trial court did not err in finding that respondent-mother had created an environment that was injurious to the children in the home.

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Respondent-mother also challenges the findings of fact stating that the room locked with a biometric lock created a fire hazard and that the children suffered emotional and psychological trauma when the police executed their search warrant on the house, stating that there is no evidentiary basis for these findings. We disagree.

During the hearing on adjudication, both of the oldest children testified to the nature of the events on 19 January 2023. Both children, particularly Abby, were extremely emotional when describing the police searching the home. Abby even testified to feeling scared when the police were searching the home. These findings were a direct result of respondent-mother's and Husband's arrests that day and support a conclusion that the children had suffered emotional harm due to respondent-mother's actions. Furthermore, respondent-mother argues that the locked door leading to the office did not create a fire hazard because the children would not be locked inside that room. However, the trial court specifically found that the locked room presented a risk because there was no plan for how the children are supposed to react if a fire were to break out in one of those rooms. Even assuming *arguendo* that this finding of fact was erroneous, the evidence previously discussed adequately supports a finding that the trial court properly adjudicated the children neglected.

Additionally, the unchallenged findings of fact reflect that the children were at

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a substantial risk of impairment and the findings are supported by competent evidence. First, respondent-mother did not contest the finding that she was unable to provide care that night because of her own actions which caused her to get arrested. Second, she did not address the finding of fact that there was an odor of marijuana that was detected by both law enforcement and Ms. Pinson upon entering the second floor of the house. This finding of fact also supports an inference that the children were exposed to abuse of illegal drugs. Furthermore, respondent-mother's involvement with illegal substances, coupled with the fact that she had not provided any proof that she has obtained a legal source of employment as of 19 December 2023, when she was ordered to do so in March 2023, could potentially have an impact on her ability to provide proper care to her children in the future. Accordingly, the trial court properly adjudicated the children neglected.

C. Dependency

Next, respondent-mother contends the trial court erred in adjudicating the children dependent because the evidence failed to support the findings and the findings failed to support a conclusion of dependency. Respondent-mother also contends the trial court operated under a misapprehension of the law in reaching its conclusion. Specifically, respondent-mother contests the following findings of fact: (1) that there was no evidence of a prior plan to have the children's aunt come supervise the children in the absence of the parents; (2) that the parents failed to

provide an appropriate alternative childcare arrangement for the children; and (3) that the parents had no plan for overnight care of the children.

In North Carolina, a dependent juvenile is one “in need of assistance or placement because (i) the juvenile has no parent, guardian, or custodian responsible for the juvenile’s care or supervision or (ii) the juvenile’s parent, guardian, or custodian is unable to provide for the juvenile’s care or supervision and lacks an appropriate alternative child care arrangement.” N.C.G.S. § 7B-101(9). “Under this definition, the trial court must address both (1) the parent’s ability to provide care or supervision, and (2) the availability to the parent of alternative child care arrangements.” *In re P.M.*, 169, N.C. App. 423, 427 (2005). “Findings of fact addressing both prongs must be made before a juvenile may be adjudicated as dependent, and the court’s failure to make these findings will result in reversal of the court.” *In re B.M.*, 183 N.C. App. 84, 90 (2007).

“A juvenile may not be adjudicated dependent so long as at least one parent is capable of providing or arranging for adequate care and supervision[.]” *In re W.C.T.*, 280 N.C. App. 17, 38 (2021) (cleaned up). Furthermore, “[h]aving an appropriate alternative childcare arrangement means that the parent himself must take some steps to suggest a childcare arrangement—it is not enough that the parent merely goes along with a plan created by DSS.” *In re L.H.*, 210 N.C. App. 355, 366 (2011).

Here, respondent-mother contests the findings that the parents did not have

an appropriate alternative child care arrangement plan.

The trial court found “[t]here was no credible evidence there was any prior plan for [Ms.] Hargrave to supervise the juveniles during the events of” 19–20 January 2023 and that DSS made a safety plan with Ms. Hargrave that night after multiple failed attempts to contact the parents. The trial court further found that respondent-mother and Husband “knew there were no adults in the home and the juveniles were alone,” and that the parents “failed to provide an appropriate alternative childcare arrangement or plan for the juveniles during the timeframe in question[.]”

Respondent-mother and Husband note their testimony that the children knew that if they did not hear back from the parents within a certain time period, they were to call Ms. Hargrave to come and watch them. They also testified that they discussed this safety plan with the children “all the time.” Kofi testified that if they did not hear back from their parents within a certain period of time, they could call Ms. Hargrave, a few of their neighbors, or Husband’s parents to come take care of them. This testimony does provide some evidence that respondent-mother and Husband discussed a safety plan to provide for supervision in the event that the parents were not at home when they said they would be.

However, we review “to determine whether the trial court’s findings are supported by clear and convincing evidence and whether the findings, in turn,

support the trial court’s conclusions of law.” Here, the trial court found there was “clear and convincing evidence” of dependency. The trial court noted its consideration of respondent-mother and Husband’s testimony but found their testimony was not credible. The trial court found that law enforcement had to ask the oldest child to call Ms. Hargrave and he had not called her or arranged for her supervision on his own initiative. Furthermore, the trial court found that there was no long-term child care arrangement for the children during the parents’ incarceration in a different county from where the family resided. Additionally, as previously noted, DSS became aware that Ms. Hargrave had not lived with the children in respondent-mother’s home since 30 June 2023, despite the order for nonsecure custody placing the children to “remain at the parental home – with [Ms. Hargrave].”

The trial court’s findings address both required prongs in an adjudication of dependency: (1) respondent-mother and Husband were unable to provide care or supervision due to their incarceration, and (2) the parents had not established adequate alternative child care arrangements. Although respondent-mother and Husband may have directed the children to call Ms. Hargrave if they were gone for an extended period of time, Ms. Hargrave was not present at the house when law enforcement officers and DSS officials responded on the night of 19 January 2023, and did not arrive until Kofi was prompted to call her. Furthermore, she was found to not be living in the house with the children between at least 30 June 2023 and

17 July 2023; although it appears from the testimony that respondent-mother may have been at the home with the children at that time, the order for nonsecure custody placing the children *with Ms. Hargrave in the parental home* was still in effect at that time. Respondent-mother's testimony that Ms. Hargrave would come to the house "all the time" to watch the children does not establish the existence of an adequate alternative child care arrangement. To the contrary, the evidence established that Ms. Hargrave was not actively supervising the children or otherwise attending to their care.

Additionally, Ms. Hargrave was not available to testify at the hearing for neglect and dependency to attest to whether she would watch the children long-term. Although Ms. Hargrave did assume custody of the children on the night of 19 January 2023, this was an action taken entirely by Stokes County DSS and respondent-mother played no part in arranging this plan, as evidenced by the fact that Ms. Pinson was unable to contact respondent-mother that night. Additionally, the record shows that Ms. Hargrave, one month prior to the hearing, refused to supervise the children anymore and that she no longer had a relationship with respondent-mother and Husband. Although respondent-mother advised that her aunt, Jennifer Simmons, could care for the children and Ms. Simmons agreed to care for the children long-term, this was also a DSS action and was not created prior to DSS filing their petition. Accordingly, the trial court did not err in adjudicating the

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children dependent.

III. Conclusion

For the following reasons, we affirm the trial court's adjudication.

AFFIRMED.

Judge WOOD concurs in the result.

Judge STADING concurs.

Report per Rule 30(e).