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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-255

Filed 3 December 2024

Surry County, No. 23 JA 64

IN THE MATTER OF: T.M.

Appeal by Respondents from orders entered 18 December 2023 and 20 December 2023 by Judge Gretchen Kirkman in Surry County District Court. Heard in the Court of Appeals 5 November 2024.

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WOOD, Judge.

Respondent-Mother (“Mother”) and Respondent-Father (“Father”) appeal from

the trial court's order adjudicating their son T.M. ("Tyson")<sup>1</sup> neglected. On appeal, Mother and Father challenge several of the trial court's findings of fact and argue that the trial court's findings do not support the conclusion that Tyson was neglected. For the reasons stated herein, we affirm the trial court's adjudication of neglect.

### **I. Factual and Procedural Background**

At the initiation of this matter, Tyson was fourteen years old and diagnosed with autism. In July 2023, Surry County Department of Social Services ("DSS") received allegations that Mother and Father were not meeting Tyson's needs for services or medical treatment. DSS received a letter from Tyson's doctor, Dr. Youell, explaining that his health has declined rapidly over the last several years. Dr. Youell raised numerous concerns, namely: Tyson has failure to thrive, and severe feeding difficulties related to his autism; his gait has changed to the point that he has limited mobility; Dr. Youell has made referrals to a gastroenterologist, physical therapist, neurologist, and dentist, but the parents are non-complaint with following up to schedule these appointments.

On 30 July 2023, DSS visited the maternal grandmother's ("Grandmother") home and discovered that Tyson had been living with Grandmother since approximately 1 July 2023 when Mother and Father left Tyson at her home. Grandmother informed DSS that since Tyson had been in her care, Mother and

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<sup>1</sup> Pseudonyms are used to protect the identity of the juvenile pursuant to N.C. R. App. P. 42(b).

Father had refused to deliver his prescribed nutritional supplement to her unless she reimbursed them for fuel. Additionally, Grandmother had attempted unsuccessfully to enroll Tyson in school because Mother and Father would not provide to her his birth certificate or social security card.

On 15 August 2023, Mother and Father submitted to a urine drug screen and both tested positive for methamphetamines. Father also tested positive for marijuana. Thereafter, on 23 August 2023, DSS filed a petition alleging that Tyson was living in an injurious environment due to parental substance abuse, was not receiving proper care or supervision, and his medical needs were not being met. The petition was supported by the information in Dr. Youell's letter, DSS' findings following the visit to Grandmother's home, and the parent's positive drug screen results. That same day, the trial court granted DSS nonsecure custody of Tyson and continued his placement with Grandmother.

An adjudication hearing was held on 16 October 2023 and 16 November 2023. At the first hearing, Dr. Youell, who had treated Tyson since he was a young child, testified about his treatment history. Dr. Youell summarized Tyson's medical challenges as follows: he has global developmental delays, causing issues with his speech and motor skills; he has difficulty with mobility; he has significant difficulties with feeding; dysphagia, which makes it challenging for him to eat normally, such as chewing and swallowing; and his verbal communication is limited to the point where he is wholly dependent on his caregiver. Over the last several years, Dr. Youell had

become increasingly concerned as she observed Tyson's condition worsening. Specifically, Tyson's mobility and growth had declined. Tyson had difficulty walking, walked in a "stooped posture," and would "shuffle" rather than walk normally. Regarding his growth, Dr. Youell diagnosed him with failure to thrive related to his feeding challenges. She explained that Tyson was not growing along his curve, which was unusual for a child of his age and that Tyson's school had contacted her in the fall of 2022 with concerns about his mobility and weight after observing a decline in his condition from the end of the prior school year to the beginning of the fall 2022 school year.

Dr. Youell discussed her concerns at various times with the parents during his appointments. However, most discussions were with Mother because she brought Tyson to most of his appointments. Dr. Youell made referrals to specialists to address Tyson's decline. She referred Tyson to a gastroenterologist, who works alongside a nutritionist, to address his growth concerns and to a neurologist, as she had concerns regarding his neurologic condition due to the extent his gait had changed. Additionally, she referred Tyson to a physical therapist to prevent him from "deconditioning," which results when muscles and joints tighten due to inactivity and makes it difficult to walk. Despite Dr. Youell's referrals and heightened concerns about Tyson's declining health, the parents failed to timely comply, or failed altogether, to take him to these specialists for evaluation and treatment.

Tyson was taken to the neurologist for an initial consultation in October 2022. He attended an initial consultation with the physical therapist but was not taken to his follow-up appointments. He had been taken to a gastroenterologist in 2019 but there was no follow-up. His most recent referrals to a gastroenterologist were made on 27 September 2022 and 21 April 2023; however, both appointments following the referrals were missed. Mother attributed one of the missed appointments to a death in the family, but failed to reschedule the appointment despite Dr. Youell communicating to her how important the appointment was.

Dr. Youell also advised Mother and Father to take Tyson to the dentist for treatment because the condition of his teeth may have contributed to his inability to eat. She discussed Tyson's need to see a dentist with Mother at every appointment since he had come into her care, and provided instructions on how the parents could assist Tyson in brushing his teeth. Tyson had broken teeth, severe decay, and an infection in his mouth. The parents took Tyson to the dentist for the first time in February 2023, but he was unable to receive treatment because of his autism and was referred to a different location that does dental procedures under anesthesia.

Dr. Youell testified that she had seen Tyson twice since transitioning to the care of his Grandmother, most recently, one week prior to the hearing. She explained that he was doing "exceptionally well." Since residing with Grandmother, Tyson had attended a gastroenterologist and nutritionist appointment; had gained four pounds from August 2023 to October 2023; his mobility had significantly improved and he no

longer shuffled; had attended a neurologist appointment; had reestablished care with a physical therapist; and Grandmother, DSS, and Dr. Youell were working closely together to find a dentist that would best suit Tyson's needs.

At the next hearing conducted on 16 November 2023, DSS social worker Emily Simmons ("Simmons") testified about the events leading up to the filing of the petition and DSS' response to the initial report regarding Tyson's well-being and parental substance abuse. In addition to Dr. Youell's concerns, DSS' report alleged that Tyson appeared malnourished; was not properly clothed while in the care of his parents; had poor hygiene; was not enrolled in school; and there was no documentation that he was homeschooled. During DSS' investigation, Simmons learned that previous reports had been filed over the last several years alleging medical neglect. As part of her investigation, Simmons spoke with Dr. Youell's referral coordinator who then emailed a list of all missed appointments with specialists.

Simmons conducted visits to Mother and Father's home and Grandmother's home. Mother stated that she left Tyson with Grandmother when the air conditioning unit in their home went out and that he would return once it was fixed. However, during the home visit Simmons found another individual and her one-year-old child living in the home. Mother and Father informed DSS that the mother had been in prison at the time she gave birth to the child, and they had cared for the child until her release. Both mother and child continued to reside in the home at the time of Simmons' home visit.

Simmons further testified that after speaking with Mother, Father, and Grandmother, she discovered that Tyson had been prescribed Pediasure and a dietary supplement, both of which were delivered to his parents' home. After Grandmother informed Simmons that she was running out of both, Simmons went to the parents to obtain more and delivered it to Grandmother. Once that supply ran out, however, the parents purportedly told Grandmother that in order to get Tyson's Pediasure and supplement, she would need to provide them with gas money for them to deliver it to her; notwithstanding that the parents were receiving a monthly disability check for Tyson and food stamps at that time. Simmons intervened and told Mother that she must mail these things directly to Grandmother going forward.

Simmons testified that DSS had been involved previously during the prior school year due to allegations of medical neglect and malnourishment. Shortly before DSS' current action, Father stated that he had removed Tyson from school because "he was hoping that there would be no more calls to DSS since he thought that he alleviated the problem." Grandmother attempted to enroll Tyson in school for the upcoming year but stated that the parents would not send the necessary documentation. After Simmons spoke with Mother and Father, they provided Tyson's social security card, but said Grandmother would have to obtain a copy of his birth certificate herself.

Father was the final witness to testify at the hearing. He testified that the plan was for Tyson to stay at Grandmother's until the beginning of the 2023 school

year. He testified that approximately four months prior to the end of the previous school year, Tyson was pulled out of school for Mother to homeschool him. He was unaware of the program or curriculum Mother used. Father admitted that Tyson was removed from school because of DSS initiating an investigation. However, he stated that they planned to re-enroll Tyson in school starting in the fall. Father also conceded that he used methamphetamine during the period of Tyson's removal from school and DSS taking custody.

Father testified to Tyson's medical history and the day-to-day challenges. He stated that since Tyson was born, his difficulties with eating had presented many challenges. He must puree his food or give him Pediasure, as he will not chew any food. Father testified that he has taken Tyson to various medical appointments. Specifically, Father took Tyson to the dental appointment in February 2023 but because of Tyson's autism and need for anesthesia, he has found it difficult to find a dentist that would treat Tyson. Similarly, because of his heightened mouth sensitivity, Father testified that he is unable to brush Tyson's teeth.

Following the close of evidence, the trial court found that Mother and Father did not provide proper care, supervision, or discipline; Mother and Father did not provide or arrange for the provision of necessary medical care; and they created an environment that is injurious to Tyson's welfare. For these reasons, the trial court found Tyson to be a neglected juvenile. The trial court then proceeded to disposition and concluded that Tyson would remain in DSS custody with continued placement



with Grandmother. Additionally, the trial court ordered Mother and Father to comply with their case plan but acknowledged that they had made reasonable efforts. The trial court ordered that the permanent plan remain reunification.

On 18 December 2023 the trial court entered written adjudication and disposition orders consistent with its oral findings. On 20 December 2023 the trial court filed an amended adjudication order. On 28 December 2023, Father filed notice of appeal from the 20 December 2023 adjudication order and 18 December 2023 disposition order. On 12 January 2024, Mother filed notice of appeal from the respective orders.

## **II. Analysis**

On appeal, Mother and Father argue the trial court erred in adjudicating Tyson neglected. Both challenge numerous findings of fact, arguing that the findings do not support the conclusion of neglect. Additionally, Mother and Father argue that Tyson was not neglected at the time of the filing of the petition, as he lived in an appropriate environment with his Grandmother, in which his parents had voluntarily placed him prior to DSS involvement. We note neither Mother nor Father challenges the trial court's dispositional order which concluded it was in Tyson's best interest to remain in DSS custody and be placed with Grandmother. Therefore, any argument as to the dispositional order is deemed abandoned on appeal. *See* N.C. R. App. P. 28 ("Issues not presented and discussed in a party's brief are deemed abandoned.").

### **A. Standard of Review**

The role of the trial court during an adjudication hearing is to determine “the existence or nonexistence of any of the conditions alleged in a petition.” *In re A.B.*, 179 N.C. App. 605, 609, 635 S.E.2d 11, 14 (2006) (citation omitted). The trial court’s review is thus limited to “the items alleged in the petition.” *Id.* (citation omitted). In this regard, the conditions alleged in the petition “are fixed at the time of the filing of the petition.” *In re L.N.H.*, 382 N.C. 536, 543, 879 S.E.2d 138, 144 (2022). The trial court’s determination “focuses on the status of the child at the time the petition is filed, not the post-petition actions of a party.” *Id.* Moreover, “[t]he trial [court] determines the weight to be given the testimony and the reasonable inferences to be drawn therefrom. If a different inference may be drawn from the evidence, [the trial court] alone determines which inferences to draw and which to reject.” *In re T.H.T.*, 185 N.C. App. 337, 343, 648 S.E.2d 519, 523 (2007) (citation omitted)

On appeal, “[t]he role of this Court in reviewing a trial court's adjudication of neglect and abuse is to determine (1) whether the findings of fact are supported by clear and convincing evidence, and (2) whether the legal conclusions are supported by the findings of fact.” *In re T.H.T.*, 185 N.C. App. at 343, 648 S.E.2d at 523 (cleaned up). Clear and convincing evidence is “evidence which should fully convince.” *In re K.J.M.*, 288 N.C. App. 332, 338, 886 S.E.2d 589, 594 (2023) (citation omitted). If the trial court’s findings of fact are supported by clear and convincing evidence, the findings are “deemed conclusive, even where some evidence supports contrary findings.” *Id.* (citation omitted). Likewise, findings of fact that are unchallenged on

appeal are binding on this Court, and thus are supported by the evidence. *In re K.W.*, 282 N.C. App. 283, 286, 871 S.E.2d 146, 149 (2022). “[W]hether a trial court's findings of fact support its conclusions of law is reviewed *de novo*.” *In re A.D.*, 278 N.C. App. 637, 641, 863 S.E.2d 317, 321 (2021) (citation omitted).

## **B. Challenged Findings of Fact**

Mother and Father each challenge numerous findings of fact for varying reasons. We address each challenged finding to determine whether it is supported by clear and convincing evidence.

### ***1. Finding of Fact 14***

Mother and Father challenge finding of fact 14, which states:

14. The Respondents did fail to follow through with referrals to GI and neurology, were inconsistent with ensuring the child's physical therapy appointments, and had failed to follow through with the child's referral to a pediatric specialty group for the child's dental care.

Mother and Father argue that this finding is unsupported by the evidence because no specific dates of missed appointments were provided; no confirmation of referrals was provided; the parents followed up with the neurologist; the parents took Tyson to the dentist in February 2023, but because Tyson requires a more specialized dentist, they were awaiting a referral; and Dr. Youell testified that, at the time of the hearing, finding a dentist for Tyson was still a “work in progress.”

Tyson came into Dr. Youell’s care when he was a young child and was fourteen years old at the commencement of this action. Accordingly, Dr. Youell testified about

the history of Tyson's medical treatment and her referrals while he was in her care. Specifically, she made referrals for Tyson to a gastroenterologist, a neurologist, a physical therapist, and a dentist. Tyson was taken to one gastroenterologist appointment in 2019. Dr. Youell recalled two of the most recent referrals to a gastroenterologist, one in September 2022 and one in April 2023, and testified that both appointments were missed. While the parents did attend a neurology appointment in October 2022, it was only for the initial consultation. Similarly, Tyson was taken to a physical therapist, but attended only an initial consultation, with no follow-up appointments. Tyson was taken to a dentist in February 2023 by the parents, however, finding a sedation dentist, even while in DSS care, has proven to be challenging.

Although the parents contend neither the specific dates of the missed appointments nor confirmation of the missed appointments were provided, Dr. Youell's testimony supported the trial court's finding. Mother and Father failed to follow through with the gastroenterologist following one appointment in 2019. In the same regard, the parents failed to follow through with Tyson's neurologist and physical therapist. Moreover, Dr. Youell testified that she stressed to Mother repeatedly at Tyson's appointments the importance of following through with the referrals considering Tyson's deteriorating condition. Tyson's school noticed a decline in his condition and reported its concerns to Dr. Youell. Simmons testified to the content of the email she received from Dr. Youell's office which listed the dates of

each missed referral appointment with specialists. Notwithstanding that confirmation of the missed appointments was not presented at the hearing, evidence was presented that Dr. Youell had continually made referrals over many years due to Tyson's deteriorating condition. We simply cannot conclude that only attending initial consultations with Dr. Youell's recommended specialists is sufficient to address Tyson's health issues and serious decline.

As to the finding concerning Tyson's dental treatment, Dr. Youell advised Mother at every check-up that Tyson needed to see a dentist. Additionally, unchallenged finding 31 states, "Dr. Youell routinely covers dental hygiene with parents at every well-child visit . . . [they] were always instructed to help [Tyson] with brushing, flossing, etc." Thus, the need for a dental appointment was discussed at every visit; however, Tyson was not taken to a dentist until February 2023. The delay in dental treatment caused Tyson's teeth to become decayed and broken, an infection to develop in his mouth, and an odor of decay to emanate from his mouth.

The trial court did not find that Mother and Father had attended *no* appointments, as there was evidence that Tyson had attended a few appointments with specialists. Rather, the trial court found that Mother and Father *failed to follow through* with referrals to these specialists. This finding is supported by Dr. Youell's testimony that Tyson's condition was not improving and that she had repeatedly stressed to Mother how important the referrals were. We conclude finding of fact 14 is supported by clear and convincing evidence.

**2. *Finding of Fact 16***

Next, Mother and Father challenge finding of fact 16:

The Respondents were not ensuring that the juvenile had proper nutrition each day as the Respondent Father indicated the child could consume three to four Pediasure per day, however, the child is supposed to have a minimum of six pediasure per day, and has done so, since coming into care.

Mother and Father argue this finding was erroneous, because Father testified that he was not always home to see how many Pediasures Tyson drank each day. Additionally, Father testified that the prescription was not for six Pediasures per day at that time; instead, the prescribed amount was not increased to six cans until the day prior to the filing of the petition. Further, they argue that no evidence was presented that the parents did not provide him with liquids, pureed food, or Pediasure sufficient to ensure his nutritional needs were met. We disagree.

To the contrary, finding of fact 16 is supported by the evidence. At the hearing, Dr. Youell testified that she had diagnosed Tyson with failure to thrive because he was not growing along his curve, which is unusual for a child of his age. He was hospitalized in April 2019 and the treating physicians had concerns for neglect due to failure to thrive. Tyson's school shared similar concerns about his weight. Thus, the trial court heard evidence that Tyson's weight and growth were consistently a concern. Irrespective of the exact number of Pediasures Tyson consumed in any given day, or the number prescribed at that time, the trial court's finding that the parents

failed to ensure he received proper nutrition is supported. It is further supported by the parents' failure to follow up with Tyson's gastroenterologist and nutritionist appointment referrals, which were intended to address Tyson's growth, weight, and eating difficulties. Mother and Father's argument regarding finding of fact 16 is without merit.

**3. *Finding of Fact 24***

Mother and Father argue finding of fact 24 is also unsupported. The trial court found: "The Respondents refused to provide to the grandmother with necessary documents to enroll the juvenile in school." Mother and Father point to Simmons' testimony, where she states that she believed Mother and Father provided the documents needed for Grandmother to enroll Tyson in school after she spoke with them. Specifically, Simmons testified that the parents provided Tyson's social security card, and that Grandmother would have to get the birth certificate herself. Contrary to Mother and Father's position, Grandmother told Simmons that the parents would not send the necessary documentation. The parents did not provide his social security card until after Simmons intervened. Thus, this finding is supported by competent evidence, as the parents did not provide the documents to Grandmother of their own accord and only partially complied once DSS intervened.

**4. *Findings of Fact 19; 20; 26; 32; 37; 38***

Lastly, Father challenges findings of fact 19, 20, 26, 32, and 38, arguing that the trial court relied on impermissible evidence when making these findings.

Similarly, both Mother and Father challenge finding of fact 37. Mother and Father argue these findings are based on evidence outside the scope of the adjudication hearing. The trial court found:

19. The Respondent Father has exhibited aggressive and threatening behaviors toward DSS staff as well as the Respondent Mother when the parents have been at the Department.

20. On one occasion, the Respondent Father slapped the Respondent Mother's leg during a meeting with the Social Worker, and told the mother to "shut up".

26. The juvenile had gained in excess of four pounds since coming into care, and Dr Youell expressed shock at how much the juvenile's mobility, gait, posture, and level of activity have improved since he has resided with the grandmother.

32. The Respondent Father told the DSS Social Worker that he thought DSS was "done with the family after they took the juvenile out of school".

37. Concerns have been noted at the child's medical appointments due the parents' inability to focus on the information provided due to caring for the baby at said appointments.

38. The Respondent Father told the Department that he has smoked pot since he was 13 years old and he had no intention of stopping.

Father first argues that finding of fact 26 derives from Dr. Youell's testimony concerning her appointment with Tyson one week prior to the hearing. Father argues this finding is erroneous, as the testimony related to events *after* the filing of the petition. Likewise, Father argues findings of fact 19 and 20 were unsupported by



the evidence presented during the adjudication hearing. Mother and Father argue finding of fact 37 was based upon testimony presented during the disposition hearing.

We agree that findings of fact 19, 20, and 37 are based upon evidence outside the scope of the adjudication hearing. These findings regarding Mother and Father's behavior during visits to the Department and their inability to focus during Tyson's appointments appear to be based upon information that was not presented as evidence during the adjudication hearing. Rather, this evidence was presented at the dispositional stage of the proceedings. For these reasons, findings of fact 19, 20, and 37 are disregarded.

Likewise, finding of fact 26 speaks to Tyson's well-being after he came into DSS' custody, *i.e.*, after the petition was filed. As discussed *supra*, adjudicatory findings are generally limited to "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. at 543, 879 S.E.2d at 144. As DSS and the GAL correctly point out, however, "the general rule that post-petition evidence is not admissible during the adjudication hearing is '*not absolute.*' " *In re G.W.*, 286 N.C. App. 587, 594, 882 S.E.2d 81, 88 (2022) (citation omitted) (emphasis added). In *In re G.W.*, this Court stated:

This court has previously determined that some post-petition evidence, like that which pertains to mental illness and paternity, does not constitute a "discrete event or one-time occurrence." Instead, conditions such as these have been determined by this Court to be "fixed and ongoing circumstance[s]" so that post-petition evidence about them is allowed to be considered in a neglect adjudication.

Likewise, the findings Mother challenges here relate in whole or in part to “ongoing circumstances” relevant to “the existence or nonexistence of conditions alleged in the adjudication petition.”

*Id.* (cleaned up). Likewise, here, the petition alleged that Tyson’s physical condition had worsened over several years and there were concerns that he was not receiving proper nutrition and treatment. Importantly, Father contested this, arguing that they took Tyson to appointments and tried to ensure that his nutritional needs were met. Evidence produced at the hearing contradicted Father’s assertions and addressed the significant improvements in Tyson’s condition since entering Grandmother’s care and receiving the recommended treatment. Thus, we conclude this finding wholly relates to “ongoing circumstances” relevant to “the existence or nonexistence of conditions alleged in the adjudication petition.” *Id.* (citation omitted).

Lastly, Father argues that findings of fact 32 and 38 are not apparent in the adjudication evidence presented. However, Simmons testified that Father previously stated he pulled Tyson out of school because he thought it “alleviated the problem” of DSS. Father testified that Tyson was pulled out because DSS initiated an investigation. Thus, finding of fact 32 is supported by Simmons’ testimony and Father’s own admission. However, we agree that finding of fact 38 was erroneous. This finding concerns Father’s marijuana usage and that he has no intention of stopping. This finding, too, appears to be based upon information presented during the dispositional stage of the proceedings, not during the adjudication hearing. Thus,

finding of fact 38 is disregarded.

Despite the erroneous findings of fact we have disregarded, the trial court's adjudication order contains thirty-five competent findings of fact. The trial court's order contains forty findings of fact. Of those findings, thirty-one are unchallenged, and therefore binding on appeal. *In re T.N.H.*, 372 N.C. 403, 407, 831 S.E.2d 54, 58 (2019). We hold that the trial court erred in findings of fact 19, 20, 37, and 38, as each relate to evidence presented during the dispositional stage. We further hold that the remaining challenged findings—14, 16, 24, 26, and 32—are supported by clear and convincing evidence. Thus, those findings are “deemed conclusive” and binding on appeal. *In re K.J.M.*, 288 N.C. App. at 338, 886 S.E.2d at 594.

### **C. Conclusion of Neglect**

We next address whether the conclusion that Tyson was a neglected juvenile was supported by the binding findings of fact. The trial court found that Mother and Father did not provide proper care, supervision, or discipline; Mother and Father did not provide or arrange for the provision of necessary medical care; and they created an environment injurious to Tyson's welfare. *See* N.C. Gen. Stat. § 7B-101(15) (Defining a neglected juvenile as one whose parent, guardian, custodian, or caretaker “Does not provide proper care, supervision, or discipline;” “Has not provided or arranged for the provision of necessary medical or remedial care;” and “Creates or allows to be created a living environment that is injurious to the juvenile's welfare.”).

Father argues Tyson was not neglected, as the evidence failed to support the

conclusion that he received improper care, lack of necessary medical care, or lived in an injurious environment. Father contends Tyson consistently saw Dr. Youell for check-ups; attended some of the specialist appointments; had ongoing battles with his weight and growth his entire life; and that he planned to enroll Tyson in school the upcoming year. For these reasons, Father asks this Court to vacate the adjudication order.

Father cites to *In re R.L.G.*, when this Court stated:

[T]he trial court's bare finding that [the juvenile] was not taken to 'well care visits'—without more—is insufficient to support a finding of neglect. There are no findings as to the actual number of missed visits, the reasons they were missed, the medical conditions that necessitated the visits, or the nature or existence of any accompanying adverse effects on [the juvenile's] health.

*In re R.L.G.*, 260 N.C. App. 70, 77, 816 S.E.2d 914, 919 (2018). Father argues that *In re R.L.G.* is similar to the present case, as the trial court failed to provide dates of what appointments were missed; failed to confirm what referrals were made; and that Tyson was taken to well checks with Dr. Youell and a few appointments with specialists. We disagree.

In our view, the present case is easily distinguishable from *In re R.L.G.* The unchallenged findings and the findings that are now binding, as deemed to be supported by clear and convincing evidence discussed *supra*, support the conclusion of neglect on these grounds. The trial court found Mother and Father failed to follow through with referrals to a gastroenterologist, neurologist, physical therapist, and

dentist over many years. It found Tyson has global developmental delays, which affect his motor skills, speech, and feeding. It found that his diagnosis of dysphagia and autism make him susceptible to failure to thrive and impede his daily life. It also found that the extent of Tyson's dental issues would necessarily make it difficult and painful for Tyson to eat and that dental care will require "extensive intervention" due to decayed and broken teeth, and an infection in his mouth. Unlike the "bare finding" discussed in *In re R.L.G.*, the trial court here made numerous findings of fact concerning Tyson's medical conditions, how those conditions adversely affected his health, and the specialist appointments that were missed.

Contrary to Father's assertions, this case is more akin to *In re Huber*, in which this Court affirmed an adjudication of neglect based upon the mother's refusal to allow her daughter to receive necessary medical and remedial care. There, this Court stated, "[t]o deprive a child of the opportunity for normal growth and development is perhaps the greatest neglect a parent can impose upon a child." *In re Huber*, 57 N.C. App. 453, 458, 291 S.E.2d 916, 919 (1982). Further, "[i]t is not the presence of the defects in the child that cause[s] her to be neglected. It is the failure of the mother to allow [the juvenile] to receive necessary medical and remedial care and treatment." *Id.* In the case of *In re Thompson*, this Court similarly held, "the respondent mother's failure to seek the recommended treatment for her child support[s] the conclusion of neglect by reason of the respondent's failure to provide necessary medical care which would consequently deprive the child of the opportunity for normal growth and

development.” *In re Thompson*, 64 N.C. App. 95, 101, 306 S.E.2d 792, 795 (1983).

As in the cases of *In re Huber* and *In re Thompson*, it is Mother’s and Father’s failure to consistently and properly seek treatment to address Tyson’s condition that supports the trial court’s adjudication of neglect. Their failures also deprived Tyson of his ability to maintain a normal weight, to eat without pain, and to walk normally. Each day Tyson endured pain commensurate with severe tooth delay, broken teeth, and the resulting infection. The trial court found, “with appropriate care and supervision, as well as attendance at necessary and required medical appointments and follow-up care, the juvenile can and has thrived.” Accordingly, Tyson was properly adjudicated neglected on these grounds.

Lastly, Mother and Father argue that because Tyson was voluntarily placed in Grandmother’s care at the time the petition was filed, it cannot be concluded that Tyson was living in an injurious environment and was not receiving proper care and supervision. Mother and Father cite to *In re B.P.*, in which this Court stated:

[I]t is apparent from the evidence and the trial court's findings of fact Respondent was homeless. However, the evidence and findings also demonstrate, prior to the filing of the petition, Respondent placed Beth in a home which was found by both DSS and the trial court to be appropriate. Thus, the findings and evidence do not support a conclusion, at the time the petition was filed, Beth was living in an environment injurious to her welfare and not receiving proper care and supervision.

*In re B.P.*, 257 N.C. App. 424, 433, 809 S.E.2d 914, 919 (2018) (citation omitted).

Mother and Father argue that *In re B.P.* is controlling, since they voluntarily placed

Tyson with Grandmother in July, prior to DSS initiating an investigation; the petition was filed in August 2023 while Tyson was residing in Grandmother's home; Grandmother was an appropriate placement, as determined by both DSS and the trial court; and the trial court found Grandmother provided proper care because Tyson attended medical appointments, enrolled in school, gained weight, and his mobility and level of activity greatly improved.

To the contrary, this Court has consistently held that “[a] child may be adjudicated as neglected by a parent even if the child has never resided in the parent’s home.” *In re K.J.D.*, 203 N.C. App. 653, 661, 692 S.E.2d 437, 443 (2010). If a child is not residing in the parent’s home at the time the petition is filed, “the decision of the trial court must of necessity be predictive in nature, as the trial court must assess whether there is a substantial risk of future abuse or neglect of a child based on the historical facts of the case.” *In re McLean*, 135 N.C. App. 387, 396, 521 S.E.2d 121, 127 (1999). Our Supreme Court recently upheld these principles, stating “[a] juvenile may be adjudicated neglected even if not currently residing in the parent’s home.” *In re A.J.*, 386 N.C. 409, 416, 904 S.E.2d 707, 714 (2024). In the case of *In re A.J.*, the Court reaffirmed that the trial court must look to the “historical facts of the case” and determine if those facts lead to the conclusion that there is a “substantial risk of future neglect.” *Id.*

The trial court found that Tyson was left with Grandmother purportedly because the air conditioning was not working in the parents’ home. Significantly,

Father testified that he wanted Tyson to come home and that he would return at the start of the upcoming school year, however, neither parent acted to assure Tyson had access to his prescriptions, food stamps or to his disability check while in Grandmother's care. It would appear, in fact, that Mother and Father provided no financial support to Tyson at all while he was in Grandmother's care. Here, the unchallenged findings demonstrate a substantial risk of future neglect based on Mother and Father's continued inability to properly care for Tyson and failure to provide support. Mother and Father did not follow Dr. Youell's recommendations for specialist care, resulting in Tyson's failure to thrive and hospitalization. The delay, and failure, to seek the recommended medical treatment negatively impacted his daily life. His declining condition was noticeable, as observed by Dr. Youell, Tyson's school, and Simmons. Furthermore, Mother and Father tested positive for amphetamines and methamphetamine on 15 August 2023. Father admitted to methamphetamine use from March 2023 through July 2023.

Thus, the trial court made findings of fact detailing the history of Tyson's condition while in the care of Mother and Father. It further found that, with appropriate care and supervision, Tyson can and has thrived. Such findings are sufficient to support a substantial risk of future neglect if Tyson were to return to the care and supervision of his parents. Accordingly, we affirm the trial court's conclusion that Tyson was a neglected juvenile within the meaning of N.C. Gen. Stat. § 7B-101(15).



### **III. Conclusion**

For the foregoing reasons, we affirm the trial court's 20 December 2023 adjudication order, adjudicating Tyson as neglected. The trial court's findings are supported by clear and convincing evidence sufficient to support a conclusion of neglect. Further, the trial court made sufficient findings to support a substantial risk of future neglect, notwithstanding Tyson's placement with Grandmother at the time the petition was filed. Accordingly, the adjudication and disposition orders are affirmed.

AFFIRMED.

Judges GRIFFIN and STADING concur.

Report per Rule 30(e).