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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-318

Filed 3 December 2024

Cabarrus County, Nos. 23JA203, 23JA204, 23JA205, 23JA206

IN THE MATTER OF:

M.M.A.

I.C.

A.S.A.

G.J.A.

Appeal by respondent-father and respondent-mother from order entered 10 January 2024 by Judge Christy E. Wilhelm in Cabarrus County District Court.
Heard in the Court of Appeals 9 October 2024.

Mercedes O. Chut, for respondent-appellant-mother.

Rebekah W. Davis, for respondent-appellant-father.

Hartsell & Williams, PA, by E. Garrison White, for petitioner-appellee Cabarrus County Department of Human Services.

Nelson Mullins Riley & Scarborough, LLP, by Andrew T. Heath, for appellee-Guardian ad Litem.

GORE, Judge.

This case arises from a juvenile adjudication concerning the neglect and

dependency of four children, stemming from a long history of domestic violence and unsafe living conditions in their home. The Cabarrus County Department of Health Services (“CCDHS”) filed juvenile petitions following an incident in September 2023 when the children were left unsupervised after their mother was hospitalized and their father’s whereabouts were unknown. The trial court conducted a hearing, during which evidence of prior Child Protective Services (“CPS”) involvement substantiated reports of domestic violence and the parents’ inability to provide proper care or supervision. Based on this evidence, the trial court adjudicated the children as neglected and dependent, a decision respondent-parents now appeal. Upon review, we affirm.

I.

Respondent-mother and respondent-father (collectively, “respondent-parents”) are the biological parents of five children, four of whom are the subjects of this case: M.M.A. (“Mark”), who was born on 18 January 2019; I.C. (“Irene”), who was born on 30 November 2017; G.J.A. (“Guy”), who was born on 14 June 2014; and A.S.A. (“Amy”), who was born on 16 March 2013 (collectively, the “juveniles”).

The family has a long history with CPS, with twelve reports dating back to 2013, primarily involving domestic violence between respondent-father and respondent-mother, as well as against the juveniles. As of 14 November 2013, respondent-father had been “beating on” respondent-mother for four to five years, and in the year prior to the current case, law enforcement had visited their home at

least fifteen times. The current case arose from Juvenile Petitions filed on 24 September 2023 alleging neglect and dependency of the juveniles, which was initiated after law enforcement became involved due to domestic violence allegations. During the investigation, CCDHS attempted to meet with respondent-parents, but respondent-father refused, and respondent-mother was hospitalized for three days making her initially unavailable. During her hospital stay, respondent-father was absent, leaving the juveniles unsupervised in the home, with no appropriate alternative care plan in place. Neither parent provided necessary information to establish a suitable care plan for the children.

On 25 September 2023, the district court held a nonsecure custody hearing under N.C.G.S. § 7B-506, during which the CCDHS Court Report (the “25 September 2023 CCDHS Report”) was admitted into evidence without objection and incorporated into the findings of fact. The report documented multiple instances of substantiated domestic violence, including respondent-mother slapping respondent-father while holding Amy, knocking him to the ground, and being arrested for misdemeanor child abuse and assault charges.

It also recorded respondent-father punching respondent-mother in front of Guy, and respondent-mother breaking Guy’s leg. Additionally, the district court found that respondent-father had been convicted of assault on a female at least three times and that he faced over fifteen charges, including assault on a female, false imprisonment, and battery of an unborn child.

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The Petition alleges that the juveniles were neglected because respondent-parents failed to provide proper care, supervision, or discipline, and created or allowed a living environment that is injurious to the juveniles' welfare. Specifically, the Petition alleges during a domestic dispute on 23 September 2023, respondent-mother had a mental breakdown and was hospitalized. While in the hospital, she asked a nurse to request a welfare check on the juveniles, and when law enforcement arrived on 24 September 2023, the children, aged ten, nine, five, and four, were found home alone with respondent-father's whereabouts unknown. The Petition further alleges respondent-father refused to discuss a proper alternative care plan, and that respondent-mother had failed to provide basic parental care, lacked a care plan, and did not take protective actions despite respondent-father's history of domestic violence.

The district court found a "reasonable factual basis" supporting the allegations in the petition. Specifically, respondent-father had refused to enter into a safety plan or identify relatives for alternative care, and instead had fled with the juveniles.

Respondent-mother admitted ongoing domestic violence and expressed concerns about the juveniles' safety with respondent-father but was unable to enter into a safety plan due to being in psychiatric care. The court determined the juveniles were at substantial risk of injury or abuse, lacked proper supervision, and their parents created a harmful living environment without appropriate alternative care arrangements. It concluded that continued nonsecure custody with CCDHS was

warranted.

On 2 October 2023, the district court held a second nonsecure custody hearing and found CCDHS was unable to locate the juveniles because respondent-father had fled with them on 24 September 2023. The court again accepted the CCDHS Court Report into evidence without objection and incorporated it into its findings of fact. The district court also found a reasonable factual basis to believe the allegations in the Petition were true and concluded continued nonsecure custody with CCDHS was warranted.

On 9 November 2023, the District Court, Cabarrus County, held an adjudication and disposition hearing pursuant to N.C.G.S. § 7B-801 et seq. and N.C.G.S. § 7B-901 et seq. At the hearing, respondent-mother's testimony was limited to establishing paternity, while respondent-father did not testify. Social worker Nancy Suarez testified, and the court accepted the Guardian ad litem ("GAL") and CCDHS Court Reports into evidence over objection, incorporating them into the findings of fact.

The court found the juveniles to be neglected and dependent, citing the parents' failure to provide proper care, supervision, or discipline, and the creation of a harmful living environment. The court concluded that the juveniles were neglected and dependent and ordered they remain in CCDHS custody, with reunification as the primary goal. The case was set for a permanency planning hearing on 25 January 2024.

Both respondent-mother and respondent-father have appealed. This Court has jurisdiction over an appeal from the initial adjudication and disposition order pursuant to N.C.G.S. § 7B-1001(a)(3)(2023).

II.

The sole issue raised on appeal is whether the trial court erred in adjudicating the children as neglected and dependent based on allegations and speculation regarding the events that led to their removal.

An appellate court reviews a trial court's adjudication to determine whether the findings are supported by clear, cogent and convincing evidence and the findings support the conclusions of law. A trial court's finding of an ultimate fact is conclusive on appeal if the evidentiary facts reasonably support the trial court's ultimate finding of fact. Where no objection is made to a finding of fact by the trial court, the finding is presumed to be supported by competent evidence and is binding on appeal.

Appellate courts review a trial court's conclusion of law concerning adjudication *de novo*.

In re G.C., 384 N.C. 62, 65–66 (2023) (cleaned up).

Respondents argue the trial court's Adjudicatory Findings were insufficient to support its conclusions of law, asserting that some findings lacked evidentiary support. They further contend that the findings do not establish neglect or dependency and that the record lacks sufficient evidence to support those conclusions. We disagree and affirm the trial court's decision.

Respondent-parents primarily argue that several of the trial court's findings of

fact and conclusions of law lack sufficient evidentiary support. They focus on the trial court's reliance on the hearsay CCDHS report, which was accepted over objection and incorporated into the findings of fact, as well as the court's recitation of allegations from petitions and reports. Respondent-parents assert that the report was improperly introduced during the adjudication phase, violating N.C.G.S. § 7B-808 (2023). They also contend the findings are based on hearsay evidence.

Respondent-mother's trial counsel objected to portions of the Social Worker's testimony related to information from a CPS Report not in evidence. The trial court properly sustained the objection, but it allowed testimony about the investigation's initiation due to domestic violence allegations. However, any objection not raised at the trial court level is waived on appeal, and the testimony must be considered competent evidence. *In re J.C.L.*, 374 N.C. 772, 775 (2020). "It is also well-established that an objection to evidence may not be appealed if identical evidence was subsequently admitted without objection." *In re Morales*, 159 N.C. App. 429, 432 (2003).

Here, neither respondent-mother's nor respondent-father's counsel objected to most of the Social Worker's testimony, which supports the Adjudicatory Findings. The Social Worker testified, without objection, about respondent-parents' extensive CPS history in Mecklenburg County, corroborating Adjudicatory Findings 1–5. The Social Worker also testified, without objection, neither respondent-mother nor respondent-father had an appropriate alternative care plan for the children; father

was absent while mother was in the hospital; the children were unsupervised during mother's hospital stay; mother took no protective action to safeguard the juveniles in relation to her relationship with father; mother was hospitalized for approximately three days; and, both respondent-parents failed to communicate with CCDHS.

The Social Worker's testimony, as elicited by respondent-mother's counsel, indicated the juveniles were left home alone for an indeterminate amount of time after mother was admitted to the hospital. Respondents claimed the juveniles were living with their maternal grandmother at the time of the petition, but the Social Worker later clarified the children were alone, not with the grandmother. The trial court's findings the juveniles were home alone, and the parents lacked an appropriate care plan, are supported by clear and convincing evidence and are therefore conclusive, even if contrary evidence exists. *See In re Helms*, 127 N.C. App. 505, 511 (1997) ("In a non-jury neglect adjudication, the trial court's findings of fact supported by clear and convincing competent evidence are deemed conclusive, even where some evidence supports contrary findings."). This testimony, along with evidence respondent-father was absent while mother was in the hospital, supports the trial court's Adjudicatory Finding 6. The Social Worker's testimony asserting neither parent had an appropriate care plan, and respondent-father refused to speak with CCDHS further supports Adjudicatory Findings 7 and 8.

The Social Worker's testimony asserting respondent-mother had not taken any protective action to safeguard the juveniles regarding her relationship with

respondent-father, neither parent had an appropriate alternative care plan, and the juveniles were left home alone while father was absent during mother's three-day hospital stay supports Adjudicatory Findings 9 and 10.

Even if Adjudicatory Finding 11 is more properly considered a conclusion of law, it can still be reviewed based on its substance rather than its label. *See In re M.M.*, 230 N.C. App. 225, 231 (2013) (citation omitted) ("A mislabeled finding of fact which is in reality a conclusion of law will be reviewed as such."). Accordingly, the substance of the Adjudicatory Findings is supported by the evidence in the record.

The Juvenile Code defines a neglected juvenile as:

Any juvenile less than 18 years of age . . . whose parent . . .
. does any of the following:

a. Does not provide proper care, supervision, or discipline.

. . .

e. Creates or allows to be created a living environment
that is injurious to the juvenile's welfare.

. . .

In determining whether a juvenile is a neglected juvenile,
it is relevant whether that juvenile lives in a home where
another juvenile has . . . been subjected to abuse or neglect
by an adult who regularly lives in the home.

N.C.G.S. § 7B-101(15) (2023).

Consistent with § 7B-101(15), a history of abuse and neglect is relevant in determining whether the juveniles are neglected. Conduct that may cause or potentially cause injury to the child may include "subjecting the children to acts of

domestic violence and continuing to cohabitate in an abusive environment” *In re T.S.*, 178 N.C. App. 110, 114 (2006). “A parent’s refusal to cooperate with DSS’s attempts to offer services and a ‘long standing’ and ‘enduring’ history of domestic violence between the parents are factors that support an adjudication of neglect.” *In re J.C.*, 235 N.C. App. 69, 72 (citation omitted), *rev’d in part per curiam on other grounds*, 760 S.E.2d 778, 781 (2014).

Here, Social Worker Suarez’s testimony revealed a long history of neglect and domestic violence in the home, including fifteen substantiated reports. Given this history, there is clear evidence of neglect as defined by N.C.G.S. § 7B-101(15). *See In re C.M.*, 183 N.C. App. 207, 210 (2007) (quotation marks and citation omitted) (“Section 7B-101(15) affords the trial court 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.”). The trial court’s findings are supported by clear and convincing evidence from Suarez’s testimony.

Even without evidence of physical harm to the juveniles, clear and convincing evidence in the record supports the trial court’s Adjudicatory Findings that respondent-parents did not provide proper care, supervision, or discipline and allowed a living environment that is injurious to the juveniles’ welfare. “It is well-established 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 T.S.*, 178 N.C. App. 110, 113 (2006) (citation omitted).

Leaving four children under the age of ten home alone for three days places the children at risk. Given that respondent-parents continued to cohabitate in an abusive environment, resulting in the juveniles being left alone while respondent-mother was in the hospital, and the parents' refusal to cooperate with CCDHS's attempts to offer services, the trial court properly adjudicated the children neglected.

The Juvenile Code defines a dependent juvenile as:

A juvenile 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) (2023). An adjudication of dependency requires the trial court to "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 R.B.*, 280 N.C. App. 424, 437 (2021).

Here, the court properly addressed both prongs of dependency under N.C.G.S. § 7B-101(9), as required. First, the court found that respondent-parents were unable to provide care or supervision for the juveniles, relying on testimony from Social Worker Suarez, who detailed a long history of substantiated reports of domestic violence and neglect dating back to 2013. This history, along with the recent instance of respondent-mother being hospitalized for three days while respondent-father was absent and no plan was in place to supervise the juveniles, provided clear evidence

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supporting the court's finding of dependency. Second, the court found neither respondent had an appropriate alternative childcare arrangement, as both had failed to cooperate with CCDHS to develop a plan for the juveniles' care. The court's conclusions are supported by clear and convincing competent evidence, justifying the adjudication of dependency.

III.

The trial court's Adjudicatory Findings are supported by competent evidence in the record, and those findings sufficiently establish grounds for adjudicating the juveniles as neglected and dependent. The evidence presented, including the unobjected-to hearsay testimony of the social worker and the history of domestic violence and neglect, provided support for the trial court's conclusions. Accordingly, we affirm the trial court's adjudication of neglect and dependency.

AFFIRMED.

Judges TYSON and FLOOD concur.

Report per Rule 30(e).