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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-155

Filed 2 April 2025

Mecklenburg County, No. 22JA465

IN THE MATTER OF: P.J.

Appeal by respondents from order entered 19 October 2023 by Judge Faith Fickling-Alvarez in Mecklenburg County District Court. Heard in the Court of Appeals 4 March 2025.

Kristina A. Graham, for petitioner-appellee Mecklenburg County Department of Youth and Family Services.

Matthew D. Wunsche for guardian ad litem.

Robinson & Lawing, LLP, by Christopher M. Watford, for respondent-appellant mother.

Peter Wood for respondent-appellant father.

PER CURIAM.

Respondent-Mother and Respondent-Father (collectively “Respondents”) appeal from a juvenile disposition order ceasing reunification efforts between respondents and their minor child, Paul.¹ On appeal, Respondents argue that the

¹ Pseudonyms have been used to protect the identities of the juveniles in this case. See N.C.R. App. P. 42(b).

trial court erred in determining that aggravating circumstances existed so as to permit cessation of reunification efforts pursuant to N.C.G.S. § 7B-901(c)(1). After careful review, we agree with Respondents' argument, but we vacate and remand because there is sufficient evidence in the Record from which the trial court could cease reunification efforts pursuant to N.C.G.S. § 7B-901(c)(3)(iii).

I. Factual and Procedural Background

Respondents are the biological parents of the minor child in this appeal, Paul. Respondents have been under investigation by Mecklenburg County Youth and Family Services ("YFS") since 20 September 2021 (the "initial case") due to allegations of physical abuse of Respondent-Mother's daughter, Stephanie.²

On 2 February 2022, an adjudication hearing in the initial case was held in Mecklenburg County District Court, after which the trial court adjudicated Stephanie as abused and neglected, and her other siblings, Sarah and Billy, as neglected. At the disposition, the trial court ceased reunification efforts with Respondents and ordered that all three children remain in the custody of YFS, with placement in foster care.

While the initial case was taking place, Paul was born to Respondents on 17 September 2022. Due to the initial case, YFS sent an investigative social worker to meet with Respondents following Paul's birth. The social worker conducted a safety

² Respondent-Mother is the biological mother of Stephanie, Sarah, Billy, and Paul; Respondent-Father is the biological father of only Billy and Paul.

assessment at the hospital, ultimately determining that Paul was “safe” to go home. At the time of the safety assessment at the hospital, the social worker, despite being sent for the safety assessment due to the initial case, did not review the records in the initial case *prior* to conducting the safety assessment. A home visit was scheduled for 23 September 2022, and following the visit, the social worker “deemed th[e] home as appropriate [for Paul] except for the crib and the gun lock.”

Following her review of existing YFS records in the initial case sometime after conducting the safety assessment, the social worker determined that Paul was at risk because he “resides in the same home where his siblings were in the recent past, subjected to abuse and neglect by the very same adults who regularly live in that home.” As a result, on 3 October 2022, YFS filed a juvenile petition in Mecklenburg County District Court, alleging that Paul was a neglected juvenile in that he was “at substantial risk of physical, mental, or emotional harm while under the care and supervision of his parents, and he therefore reside[d] in an injurious environment.”

On 14 December 2022, the trial court held an adjudication hearing. At the hearing, YFS presented evidence of the records from the initial case where Stephanie had been adjudicated abused and neglected, and her siblings were adjudicated neglected. From these records, the trial court found in Finding of Fact 5 that Respondents: “whooped” Stephanie using “belts, cords, and shoes”; tied her “hands and feet” “with sheets and t-shirts” and hung Stephanie “from a door”; have each “plac[ed] tape over [Stephanie’s] mouth so that she won’t talk”; and “yell[ed] at [her]

and ma[de] her do squats and push-ups.” The trial court also found that “the children have been told by [Respondent-Mother] not to tell anyone about these things.”

Based on this past evidence and Respondents’ election “not to put on any evidence at this adjudication hearing [for Paul],” the trial court further found, “[i]n this case involving a two-week-old infant, the [trial c]ourt must be predictive in nature in considering whether there is substantial risk of harm to the juvenile. There is no evidence that anything has substantially changed since the sibling[s] adjudication and disposition.” The trial court entered an order on 15 March 2023 adjudicating Paul to be a neglected juvenile. The matter came on for initial disposition hearing on 30 August 2023, and by order entered 19 October 2023, the trial court eliminated reunification as a plan between both Respondents and Paul, pursuant to N.C.G.S. § 7B-901(c)(1)b, c, and f. In Finding of Fact 7 of the initial disposition order, the trial court found:

[R]easonable efforts for reunification with [Respondents] are not required based upon the following . . . a court of competent jurisdiction has determined that [Respondents] ha[d] committed or encouraged . . . [c]hronic physical or emotional abuse[,] [t]orture[,] . . . [and] [a]ny other act, practice, or conduct that increased the enormity or added to the injurious consequences of the abuse or neglect, to wit: see further findings below.

From this order, Respondents timely filed a written notice of appeal.

II. Jurisdiction

This Court has jurisdiction to review this appeal from an initial order of

disposition and the adjudication order upon which it is based, pursuant to N.C.G.S. §§ 7A-27(b) and 7B-1001(a)(3) (2023).

III. Standard of Review

Where a parent “has challenged the sufficiency of the evidence to support the trial court’s finding of aggravated circumstances under N.C.G.S. § 7B-901(c), we review those findings to determine if they were supported by competent evidence.” *In re L.N.H.*, 382 N.C. 536, 546–47 (2022).

IV. Analysis

On appeal, Respondents argue that the trial court “committed reversible error in concluding aggravated circumstances existed under [N.C.]G.S. § 7B-901(c)(1)” because “[t]he trial court’s [F]inding of [F]act 7 is not supported by the evidence as it relies solely on evidence regarding past treatment of another child and not the child Paul, who is the subject of the dispositional order.” While we agree with this argument, the trial court may still cease reunification efforts in an initial disposition order pursuant to N.C.G.S. 7B-901(c)(3)(iii), in the event that a parent “has committed a felony assault resulting in serious bodily injury to the child or *another child* of the parent.” N.C.G.S. § 7B-901(c)(3)(iii) (2023) (emphasis added). We first address Respondents’ arguments as to N.C.G.S. § 7B-901(c)(1), and then turn to N.C.G.S. 7B-901(c)(3)(iii).

A. N.C.G.S. § 7B-901(c)(1)b, c, and f

Section 7B-901(c)(1) provides, in pertinent part:

(c) If the disposition order places a juvenile in the custody of a county department of social services, the court shall direct that reasonable efforts for reunification as defined in [N.C.]G.S. 7B-101 shall not be required if the court makes written findings of fact pertaining to any of the following, unless the court concludes that there is compelling evidence warranting continued reunification efforts:

(1) A court of competent jurisdiction determines or has determined that aggravated circumstances exist because the parent has committed or encouraged the commission of, or allowed the continuation of, any of the following upon *the juvenile*:

. . . .

b. Chronic physical or emotional abuse.

c. Torture.

. . . .

f. Any other act, practice, or conduct that increased the enormity or added to the injurious consequences of the abuse or neglect.

N.C.G.S. § 7B-901(c)(1) (2023) (emphasis added).

Therefore, “before eliminating reunification efforts . . . the trial court . . . [is] required to make written findings pertaining to one of the circumstances listed above” as to the juvenile of the matter. *L.N.H.*, 382 N.C. at 546. Moreover, “the trial court’s mere declaration that ‘there are aggravating circumstances that exist,’ without explaining what those circumstances are, is not sufficient to constitute a valid finding for purposes of N.C.G.S. § 7B-901(c).” *Id.* at 547. Finally, “N.C.G.S. § 7B-901(c)(1)f requires a showing of the existence of ‘any *other* act, practice, or conduct,’ which seems

. . . to require that the evidence in aggravation involve something in addition to the facts that rise to the initial adjudication of abuse and/or neglect.” *Id.* at 547–48 (citation omitted) (emphasis in original).

Here, in Finding of Fact 7, the trial court found that

reasonable efforts for reunification with [Respondents] are not required based upon the following . . . a court of competent jurisdiction has determined that [Respondents] ha[d] committed or encouraged . . . [c]hronic physical or emotional abuse[,] [t]orture[,] . . . [and] [a]ny other act, practice, or conduct that increased the enormity or added to the injurious consequences of the abuse or neglect, to wit: see further findings below.

Evidence proffered at the hearing established that Respondents did commit chronic physical or emotional abuse or torture of Paul’s half-sister, Stephanie, but not Paul, “the juvenile,” under the statute. Thus, the trial court erred in ceasing reunification efforts under N.C.G.S. § 7B-901(c)(1)b and c where it did not make findings of “chronic physical or emotional abuse,” *see* N.C.G.S. § 7B-901(c)(1)b, or “torture,” relating to Paul. *See* N.C.G.S. § 7B-901(c)(1)c.

Next, we turn to N.C.G.S. § 7B-901(c)(1)f, which allows for the trial court to cease reunification efforts if it finds that a respondent-parent has committed “any *other* act, practice, or conduct that increased the enormity or added to the injurious consequences of abuse or neglect.” N.C.G.S. § 7B-901(c)(1)f (emphasis added).

Here, YFS argues that the trial court “did make findings detailing the abuse and neglect suffered *by Paul’s siblings*,” which is an “other” act, and “like Paul, Billy[

in the initial case,] did not suffer physical or emotional abuse, nor was he tortured.” YFS explains that Billy had been adjudicated neglected because “exposure to abuse and torture was a ‘normalized’ practice within the home . . . [and] [t]his normalized practice increased the enormity and added to the injurious consequences of the neglect for Billy[,]” which is similar to Paul’s situation, where there are no findings of physical abuse or torture, but rather only findings of abuse and suffering by Paul’s siblings.

In *L.N.H.*, our Supreme Court addressed a similar argument set forth by the YFS in this case. There, the petitioner argued that N.C.G.S. § 7B-901(c)(1)f allowed the trial court to cease reunification efforts at the dispositional stage—based upon the *same factual allegations* that served as the basis for *adjudicating* the minor child in that case as abused and neglected. See *L.N.H.*, 382 N.C. at 547 (chronicling the facts of the case that led to the adjudication of the minor child as abused and neglected, including, *inter alia*, that the minor “sustained severe burns on the soles of her feet”). The Court disagreed with the petitioner’s argument, explaining that the “fundamental defect in [the petitioner]’s argument is that it relies upon evidence necessary to support the trial court’s adjudication of abuse and neglect to show the existence of conduct that exacerbated the consequences of that abuse and neglect.” *Id.* at 547. The Supreme Court held N.C.G.S. § 7B-901(c)(1)f “requires a showing of the existence of ‘any other act, practice, or conduct,’ which seems to us to require that the evidence in aggravation involve *something in addition to the facts that rise to the*

initial adjudication of abuse and/or neglect.” Id. at 547–48 (emphasis added).

Here, as Respondent-Mother notes in her appellate brief, “[t]he trial court does enter more findings that relate to Stephanie’s abuse . . . but never actually identifies what other act, practice, or consequence with respect to Paul’s neglect, formed the basis for its decision to find an aggravating circumstance.” Indeed, as Respondent-Mother contends, “the trial court simply makes no finding that identifies the required *other* act, practice, or consequence other than those *same* acts, practice, or consequence—namely Stephanie’s abuse—used to adjudicate Paul as neglected[,]” (emphases added), as is necessary to cease reunification efforts at an initial disposition hearing pursuant to N.C.G.S. § 7B-901(c)(1)f.

The factual allegations that served as the basis for the adjudication of Paul as a neglected juvenile—*standing alone*—“cannot[, therefore,] serve as conduct that ‘increased the enormity’ or ‘added to the injurious consequences’ of that conduct,” and the evidence does not support a determination that any of the aggravating factors specified in N.C.G.S. § 7B-901(c)(1) exist in this case. *Id.* at 548 (brackets omitted). Accordingly, we conclude the trial court erred in ordering YFS to cease reunification efforts between Respondents and Paul pursuant to N.C.G.S. § 7B-901(c)(1)f. *See id.* at 548.

B. N.C.G.S. § 7B-901(c)(3)(iii)

Although we have determined that the trial court committed reversible error in ceasing reunification efforts between Respondents and Paul at the initial

disposition hearing pursuant to N.C.G.S. § 7B-901(c)(1), our analysis does not end with that singular determination. In *L.N.H.*, the respondent-mother argued on appeal that “the trial court erred by eliminating reunification efforts as an initial disposition following adjudication.” 382 N.C. at 544. Our Supreme Court agreed with the respondent-mother, after concluding that the findings did not support a cessation of reunification efforts pursuant to N.C.G.S. § 7B-901(c)(1), but the Court, on its own, went on to observe that:

[W]e do believe that there *is* sufficient evidence in the record to support a determination by the trial court that reunification efforts were not required pursuant to N.C.G.S. § 7B-901(c)(3)(iii), which allows the cessation of reunification efforts in an initial dispositional order in the event that the parent ‘has committed a felony assault resulting in serious bodily injury to the child[.]’”

Id. at 548 (emphasis in original).

Section 7B-901(c)(3)(iii) allows for cessation of reunification efforts in an initial disposition order in the event that the parent “has committed a felony assault resulting in serious bodily injury to the child or *another child* of the parent[.]” N.C.G.S. § 7B-901(c)(3)(iii) (emphasis added). The Court noted that while “the trial court did not make the findings necessary to permit the cessation of reunification efforts with [the] respondent-mother based upon N.C.G.S. § 7B-901(c)(3)(iii), it certainly could have done so had it chosen to make such a determination.” *L.N.H.*, 382 N.C. at 548. Therefore, the Court “vacate[d] th[e] portion of the trial court’s order ceasing reunification efforts with [the] respondent-mother based on a finding

[of] the existence of aggravated circumstances” and “remand[ed] to the trial court with instructions to enter appropriate findings addressing the issue of whether efforts to reunify [the] respondent-mother with [the minor child] should be ceased pursuant to N.C.G.S. § 7B-901(c)[(3)(iii)].” *Id.* at 548.

Here, the evidence presented at the adjudication and disposition hearings established that Respondents had been charged with felony child abuse for their treatment of Paul’s half-sister, Stephanie, “another child” pursuant to N.C.G.S. § 7B-901(c)(3)(iii), and that Stephanie had suffered serious injuries due to the abuse by Respondents, not limited to being “bound and hung from a door as punishment for wetting her bed[,]” having her mouth “tap[ed]”, and having “several marks and scars on [her] in various stages of healing.”

Therefore, as in *L.N.H.*, we hold there is “sufficient evidence in the record to support a determination by the trial court that reunification efforts were not required pursuant to N.C.G.S. § 7B-901(c)(3)(iii).” *Id.* at 548. As a result, we “vacate th[e] portion of the trial court’s order ceasing reunification efforts . . . based on a finding [of] the existence of aggravated circumstances” and “remand to the trial court with instructions to enter appropriate findings addressing the issue of whether efforts to reunify” should cease pursuant to N.C.G.S. § 7B-901(c)(3)(iii). *See id.* at 548; *see also In re N.N.*, 907 S.E.2d 430, 442 (N.C. Ct. App. 2024) (concluding, like in *In re L.N.H.*, there was evidence in the record that the trial court could have ceased reunification efforts under N.C.G.S. § 7B-901(c)(3)(iii), and thus vacating and remanding for

further findings of fact “addressing the issue of whether efforts to reunify . . . should be ceased pursuant to N.C.G.S. § 7B-901(c)”.

V. Conclusion

After careful review, we conclude that the trial court erred in ceasing reunification efforts between Respondents and Paul pursuant to N.C.G.S. § 7B-901(c)(1). Because there is sufficient evidence in the Record, however, from which the trial court could cease reunification efforts, we remand for entry of further findings regarding cessation of reunification efforts pursuant to N.C.G.S. § 7B-901(c)(3)(iii). For the aforementioned reasons, the order of the trial court is vacated and remanded in part for further findings of fact.

AFFIRMED IN PART; VACATED AND REMANDED IN PART.

Panel consisting of Chief Judge DILLON and Judges ZACHARY and FLOOD.

Report per Rule 30(e).