

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA 24-591

Filed 7 May 2025

Forsyth County, No. 24JA000010-330

IN THE MATTER OF: S.R.

Appeal by respondent from order entered 20 March 2024 by Judge Thomas W. Davis, V in District Court, Forsyth County. Heard in the Court of Appeals 19 March 2025.

*Sean P. Vitrano, for respondent-appellant mother.*

*Theresa A. Boucher, for petitioner-appellee Forsyth County Department of Social Services.*

*Hedrick Gardner Kincheloe & Garafalo, PLLC, by M. Duane Jones, for the Guardian ad Litem.*

ARROWOOD, Judge.

Respondent-mother (“mother”) appeals from a 20 March 2024 order adjudicating her child, S.R., abused and neglected.<sup>1</sup> For the following reasons, we affirm the trial court’s order.

---

<sup>1</sup> Initials are used to protect the identity of all minor children.

I. Factual Background

This case began with a juvenile petition filed by the Forsyth County Department of Social Services (“DSS”) on 17 January 2024, which alleged that S.R. was an abused and neglected juvenile. DSS was granted nonsecure custody pursuant to this petition, and an adjudication hearing was scheduled for 6 March 2024. The testimony and findings of fact tended to show the following.

Mother has five children, including S.R., all of whom were in the custody of DSS at the time of adjudication. The eldest three were adjudicated neglected on 16 May 2022 based on mother’s untreated mental illness and substance abuse and the presence of domestic violence in the home. The second youngest, T.J., born 17 December 2022, was determined to be substance exposed due to mother’s drug use.

T.J. was admitted to the hospital in April 2023 with a skull fracture and brain hemorrhaging that mother could not adequately explain. T.J. was ultimately adjudicated abused and neglected on 21 August 2023.

On 15 November 2023, mother reported to law enforcement that she had been raped by a man whom she had met at a gas station and invited to her home to use marijuana; she also alleged that he forced her to ingest cocaine. The investigation into these allegations stalled, as mother did not cooperate fully with the investigator, although mother argues that she cooperated to the best of her ability. S.R. was born later that year, on 9 December 2023, at 25 weeks gestation, diagnosed as “critically ill” with respiratory distress syndrome and a grade III/IV heart murmur, with a 50%

chance of surviving. At the time of the adjudication, paternity had not been established. Mother admitted to using marijuana on a daily basis during her pregnancy.

Mother has struggled with her mental health. She was diagnosed with bipolar disorder and schizophrenia and failed to engage in group mental health therapy between March 2023 and January 2024. She had failed to engage in consistent medication for her mental health in the past, although she reengaged with it in December 2023 after the birth of S.R. Mother testified that she had stopped taking her medication after her doctor became concerned it could increase her blood pressure and cause pre-eclampsia.

At the conclusion of the adjudication hearing, the trial court adjudicated S.R. an abused and neglected juvenile. At the disposition hearing on 20 March 2024, mother was granted two hours of visitation per week and DSS was relieved of reunification efforts. Mother appealed 18 May 2024.

## II. Discussion

Mother raises one issue on appeal, that the trial court erred in adjudicating S.R. as an abused juvenile. We disagree.

### A. Standard of Review

Our standard of review of an appeal from an adjudication of abuse “is whether the trial court’s findings of fact are supported by clear, cogent, and convincing evidence and whether its conclusions of law are supported by its findings of fact.” *In*

*re N.G.*, 186 N.C. App. 1, 12–13 (2007) (citation omitted). However, we will not reweigh the evidence presented to the trial court. *In re I.K.*, 377 N.C. 417, 426 (2021). Further, “[u]nchallenged findings of fact are deemed supported by the evidence and are binding on appeal.” *In re K.H.*, 281 N.C. App. 259, 266 (2022) (citation omitted). We review the trial court’s conclusions of law *de novo*. *In re D.H.*, 177 N.C. App. 700, 703 (2006). We are free to treat as conclusions of law, findings of fact that were mischaracterized by the trial court. *See In re T.H.T.*, 185 N.C. App. 337, 345 (2007).

B. Adjudication of Abuse and Neglect

Under the Juvenile Code, a juvenile may be adjudicated abused under a number of circumstances, two of which are applicable to the case *sub judice*: the juvenile’s parent either “[i]nflicts or allows to be inflicted upon the juvenile a serious physical injury by other than accidental means” or “[c]reates or allows to be created a substantial risk of serious physical injury to the juvenile by other than accidental means . . . .” N.C.G.S. § 7B-101(1)(a)–(b) (2023). A juvenile may be adjudicated neglected under seven circumstances, including when their parent fails to “provide proper care, supervision, or discipline,” or when their parent “[c]reates or allows to be created a living environment that is injurious to the juvenile’s welfare.” N.C.G.S. § 7B-101(15)(a), (e). The trial court may consider the fact that the juvenile lives in a home in which another juvenile was abused by an adult in the home when making a determination of neglect. N.C.G.S. § 7B-101(15).

Mother does not contest the trial court's adjudication of S.R. as neglected, only the adjudication of abuse. Therefore, we examine the record to determine whether there is clear, cogent, and convincing evidence supporting the findings of fact, and whether those findings support the conclusions of law that mother either inflicted serious, non-accidental physical injury on S.R., or that she created or allowed to be created a substantial risk of serious, non-accidental physical injury.

C. Findings of Fact and Conclusions of Law

The trial court made the following findings concerning S.R.'s condition after birth and the circumstances surrounding the birth, reproduced in pertinent part:

19. [S.R.] was born at 25 weeks gestation and has been diagnosed as a "critically ill patient" with respiratory distress syndrome. He is hospitalized in the Neonatal Intensive Care Unit.

20. [Mother] has untreated mental illness and substance abuse issues and she is diagnosed with Bipolar (*sic*) and Schizophrenia. [Mother] admits to using illegal substances during her pregnancy with [S.R.]. [S.R.] is a critically ill premature newborn who is intubated and dependent upon a ventilator and other life saving devices. [S.R.] has a "50/50 chance of living."

21. [S.R.] has significant medical challenges due to his premature birth. [S.R.] weighs two (2) pounds. He is intubated and dependent upon a ventilator. Attempts to wean him from the ventilator completely have not been successful. [S.R.] was found to have a grade III/IV heart murmur.

22. On or about January 10, 2024, [social workers] met with [mother] at [DSS Office]. . . . [Mother] admitted to regular marijuana use and when asked to consent to hair

follicle, nail and urine drug screening she declined and advised she was forced to use other drugs on November 15 causing her to go into preterm labor with [S.R.]. [Mother] reported that she was raped on November 15, 2023, and she reported that the trauma caused her water to break prematurely. . . .

. . .

43. [Mother] could have used cocaine by threat, but she should have been aware that such use was not good for an unborn child. Likewise, [mother] admittedly used marijuana daily which is also not good for an unborn child.

. . .

45. The Court does not have sufficient information as to why [S.R.] was born prematurely.

The court made the following pertinent conclusions<sup>2</sup> of law:

Finding of Fact 17. After hearing evidence presented to the Court, the Court finds that [S.R.] is an abused and neglected juvenile as pursuant to N.C.G.S. 7B-101(1) and 7B-101(15).

. . .

Finding of Fact 42. [S.R.] is at a substantial risk of serious physical injury and resides in an environment injurious to his well-being.

. . .

Conclusion of Law 2. [S.R.] is an abused and neglected juvenile as pursuant to N.C.G.S. 7B-101(1) and 7B-101(15).

---

<sup>2</sup> Findings of Fact 17 and 42 are labeled as such in the trial court's order, but are more properly considered as conclusions of law, and we recharacterize them accordingly.

The trial court did not make a finding of fact that mother inflicted serious bodily injury on S.R. Also, there were no findings that mother injured S.R. after he was born, nor did the court make a conclusion of law that mother inflicted injury on S.R. Therefore, we must review the findings and conclusions to determine whether mother's actions created a substantial risk of serious bodily injury by other than accidental means. We find that there was sufficient evidence and findings to determine that mother's actions did in fact create a substantial risk of non-accidental serious bodily injury to S.R.

The unchallenged findings of fact establish that mother used marijuana throughout her pregnancy with S.R. Mother has four other children in the custody of DSS, due in part to her use of illicit drugs and failure to complete substance abuse treatment. It is also apparent that mother used cocaine at least once, although it is unclear whether or not her use was voluntary. In addition, mother invited at least one person she only knew from meeting at a gas station to come to her home, by her own admission, to use drugs. She also testified that this person raped her causing her premature labor and her water to break. These reckless acts of inviting an unknown person into her home for the purpose of consuming illicit drugs while she was pregnant, standing alone, shows that she put herself and her unborn child at substantial risk. While the North Carolina case law is silent as to whether the use of a controlled substance during pregnancy, standing alone, can support an adjudication of abuse; there are a number of cases in which drug use during

pregnancy at least partially supported an adjudication of neglect. *See, e.g., In re G.T.*, 250 N.C. App. 50 (2016); *In re L.G.I.*, 227 N.C. App. 512 (2013).

In the case *sub judice*, it is uncontroverted that mother used marijuana on a regular basis during pregnancy; at one point in her life mother was a daily marijuana user. Mother claims that her illicit drug use is irrelevant to S.R.'s adjudication of abuse, which is simply incorrect. While the evidence of systematic illicit drug use is perhaps the most serious, mother also engaged in other actions that put S.R. at risk of non-accidental serious physical injury, including her reckless behavior in inviting an unknown person into her home for the purpose of consuming illicit drugs while she was pregnant. Mother claims that this, too, is irrelevant, but we are unconvinced. Inviting a previously unknown individual to one's home carries inherent risks regardless of the circumstances, and when this invitation includes the use of illicit drugs while pregnant, the risks increase exponentially. These findings support the conclusion that mother put S.R. at a substantial risk of serious physical injury by other than accidental means. Although the trial court made findings that it could not determine why S.R. was born prematurely, it could find from the evidence presented that mother's conscious acts led to the serious risk of premature birth and admittance into the NICU. In fact, "S.R. is a critically ill premature newborn who is intubated and dependent upon a ventilator and other life saving devices." We consequently hold that the trial court, under circumstances such as these, may take into consideration the use of illicit drugs during pregnancy while conducting an abuse adjudication.



While our case law supports an adjudication of neglect for a mother's use of illicit drug use during pregnancy, the facts and circumstances of this case, when taken as a whole, support the trial court's conclusion that S.R. was at a substantial risk of non-accidental physical harm while mother was pregnant with him. Thus, we find that the trial court sufficiently supported its conclusion that S.R. is an abused juvenile.

III. Conclusion

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

AFFIRMED.

Judges WOOD and FLOOD concur.

Report per Rule 30 (e).