

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA24-757

Filed 21 May 2025

Forsyth County, No. 22JRI000004-330

IN THE MATTER OF

MARIA ESTHER SALGADO

Appeal by petitioner from order entered 26 February 2024 by Judge Thomas W. Davis, V, in Forsyth County District Court. Heard in the Court of Appeals 26 February 2025.

Erin Woodrum for petitioner-appellant.

Assistant County Attorney Melissa Starr Livesay for respondent-appellee Forsyth County Department of Social Services.

ZACHARY, Judge.

Petitioner Maria Esther Salgado appeals from the trial court’s order (the “Placement Order”) directing Respondent Forsyth County Department of Social Services (“DSS”) to place her on the Responsible Individuals List. After careful review, we vacate and remand.

I. Background

Petitioner’s son “Emmanuel”¹ was born in July 2021. Within a few months of his birth, Emmanuel sustained serious nonaccidental physical injuries while in the care of his father and Petitioner. DSS investigated the incident and filed a juvenile petition.

On 29 April 2022, the trial court entered an order (the “Adjudication Order”) in which the court, *inter alia*, adjudicated Emmanuel to be an abused juvenile. Pertinent to the present appeal, in the Adjudication Order, the court found that it could not “exclude either parent as a possible source of” Emmanuel’s injuries, and that Emmanuel “was in the care of his parents at all relevant times.” Consequently, the court concluded that Emmanuel’s “parents created or allowed to be created a substantial risk of serious physical injury to [Emmanuel] by non-accidental means.”

On 2 June 2022, Petitioner received notice of the results of DSS’s investigative assessment, the agency’s determination that Emmanuel was an abused juvenile, and its decision to add her name to the Responsible Individuals List in accordance with N.C. Gen. Stat. § 7B-320(a). Petitioner initiated the present matter on 6 June 2022 by timely filing a petition for judicial review of her placement on the Responsible Individuals List.

This matter came on for hearing in Forsyth County District Court on 2 November 2022. DSS opened the hearing by moving to introduce into evidence a

¹ For ease of reading and to protect the minor juvenile’s identity, we adopt the pseudonym used in the parties’ briefs. See N.C.R. App. P. 42(b).

certified true copy of the Adjudication Order, to which Petitioner objected. Petitioner's counsel asserted that DSS was asking the trial court to take judicial notice of the Adjudication Order as a file "in the same cause," but argued that this would be error:

This is not the same cause. This is a different cause with some of the same parties, but different parties than the other cause.

This is to be an independent determination by [t]he [c]ourt of whether or not [DSS] can prove by the preponderance of the evidence, that [Petitioner] is responsible for the abuse of [Emmanuel].

This proceeding is meant to be a trial on that, and not just [t]he [c]ourt reading the Adjudication Order in the other case.

Counsel for DSS responded that its proffered exhibit was "a certified true copy of a court document" that was "sufficient to collaterally estop [Petitioner] from retrying this matter." Counsel further asserted:

[The Adjudication Order] reflects that [Petitioner] was present, she was represented by counsel; in fact, the same counsel who is present here today. She had the same interest in defending or putting on her presentation of evidence at the adjudication, if not more so than she does today.

The Responsible Individuals List addresses her access to other people's children; the adjudication relates to her care and potentially her access and ability to regain custody of her own child.

The trial court overruled Petitioner's objection and took judicial notice of the Adjudication Order, while recognizing the unique procedural posture presented by a Responsible Individuals List hearing:

[O]ver . . . Petitioner's objection, [t]he [c]ourt will take judicial notice of the Adjudication Order, taking into account the fact that our appellate courts have held that adjudication orders adjudicate the status of the minor child rather than responsibility of parents and caretakers for the adjudicated status of abuse[,] neglect[,] or dependency.

And [t]he [c]ourt will find that it is essentially the same matter, it involves the same minor. It involves [Petitioner]. And it is the case from which [Petitioner] was given notice that she would be put on the Responsible Individual[s] List.

So, with those caveats, [t]he [c]ourt will take judicial notice.

DSS then called its sole witness, the child protective services supervisor who participated in the investigation of Emmanuel's abuse. She testified that DSS determined that Emmanuel was an abused juvenile and that he "was in the care of both parents during the times when he sustained a sentinel injury, and a life-threatening injury." She further testified that "the case decision [to place Petitioner on the Responsible Individuals List] was based upon the rationale as set forward by [t]he [c]ourt in th[e] Adjudication Order," and that DSS then notified Petitioner that she would be placed on the Responsible Individuals List. After both parties questioned this witness regarding the timing of the notice and the filing of the petition for judicial review, DSS rested its case.

Petitioner opted not to present any evidence. Instead, Petitioner's counsel argued in support of her renewed motion to dismiss that the trial court could not "rely only on a prior court's order in making its determination" as to whether Petitioner

should be placed on the Responsible Individuals List. Petitioner’s counsel particularly focused on the difference between a Responsible Individuals List hearing and an adjudication hearing, noting that a parent in an adjudication hearing “is not on notice that their responsibility is being determined by that adjudication order; it is specifically the opposite. It is not their responsibility being determined.” Petitioner’s counsel agreed that the “court probably could not make a determination that [Emmanuel] was not an abused juvenile” but reiterated that “what [t]he [c]ourt [wa]s determining . . . [wa]s whether [DSS] has proven that [Petitioner] is the responsible individual for that abuse”; therefore, Petitioner’s counsel maintained, the trial court could not “make a determination only based on the admission of [the Adjudication] Order into evidence.”

The trial court then heard closing arguments and rendered its oral ruling, making “findings of fact by a preponderance of the evidence, based on the Adjudication Order, which [t]he [c]ourt has taken judicial notice of, as a prior [o]rder of this juvenile court, as well as the testimony of . . . [the] DSS supervisor.” The court made a series of findings drawn primarily from the findings of fact in the Adjudication Order and concluded that DSS “has shown, by a preponderance of the evidence, that [Emmanuel] was abused, and that [Petitioner] should be identified as a responsible individual.”

On 26 February 2024, the trial court entered the Placement Order, memorializing its oral ruling and ordering DSS to place Petitioner’s name on the

Responsible Individuals List. Petitioner timely filed notice of appeal.

II. Discussion

Petitioner argues on appeal that the trial court erred by finding that DSS met its burden of proof for ordering her placement on the Responsible Individuals List. We agree.

A. Standard of Review

When reviewing a trial court's order entered on a petition for judicial review of a notification of placement on the Responsible Individuals List pursuant to N.C. Gen. Stat. § 7B-320, this Court "must determine whether the findings of fact are supported by competent evidence, and whether the legal conclusions are supported by the findings of fact. If supported by competent evidence, the trial court's findings are binding on appeal even if the evidence would also support contrary findings." *In re Patron*, 250 N.C. App. 375, 381, 792 S.E.2d 853, 858 (2016) (cleaned up). However, we review the court's conclusions of law de novo. *Id.*

B. Analysis

This appeal presents an issue of first impression regarding the evidentiary procedure and standard for placement on the Responsible Individuals List: whether and to what extent the trial court may rely on the findings of fact in an adjudication order in a related juvenile proceeding to support its findings of fact in an order on a petition for judicial review from a notice of placement on the Responsible Individuals List. We thus begin with a brief overview of the statutory regime governing the

Responsible Individuals List.

1. The Responsible Individuals List

Our Juvenile Code requires that the Department of Health and Human Services “maintain a list of responsible individuals.” N.C. Gen. Stat. § 7B-311(b) (2023). “The Responsible Individuals List shall identify parents, guardians, caretakers or custodians who have been identified as responsible individuals in substantiated cases of abuse or serious neglect.” 10A N.C. Admin. Code 70A.0102(c) (2024). A “responsible individual” is defined, in relevant part, as “[a] parent . . . who abuses or seriously neglects a juvenile.” N.C. Gen. Stat. § 7B-101(18b). “The Department may provide information from this list to child caring institutions, child placing agencies, group home facilities, and other providers of foster care, child care, or adoption services that need to determine the fitness of individuals to care for or adopt children.” *Id.* § 7B-311(b). “Information from this list shall be used exclusively for the purpose of determining current or prospective employability or fitness to care for or adopt children.” 10A N.C. Admin. Code 70A.0102(c).

Pertinent to this appeal, the Juvenile Code provides that an individual may be placed on the Responsible Individuals List after “[t]he individual is properly notified pursuant to [N.C. Gen. Stat. §] 7B-320 and fails to file a petition for judicial review in a timely manner.” N.C. Gen. Stat. § 7B-311(b)(1). Section 7B-320 provides that “[a]fter the completion of an investigative assessment response that results in a determination of abuse or serious neglect and the identification of a responsible

individual, the [DSS] director shall personally deliver written notice of the determination to the identified individual in an expeditious manner.” *Id.* § 7B-320(a).

Section 7B-323 governs appeals from a DSS director’s determination to place an identified individual on the Responsible Individuals List, and provides:

If the district court undertakes a review of a [DSS] director’s determination of abuse . . . , a hearing shall be held pursuant to [N.C. Gen. Stat. §] 7B-323 at which the [DSS] director shall have the burden of establishing by a preponderance of the evidence abuse . . . and the identification of the individual seeking judicial review as a responsible individual.

Patron, 250 N.C. App. at 381, 792 S.E.2d at 858 (cleaned up); N.C. Gen. Stat. § 7B-323(e).

Subsection (b) governs the conduct of the hearing:

The hearing shall be before a judge without a jury. The rules of evidence applicable in civil cases shall apply. However, the court, in its discretion, may permit the admission of any reliable and relevant evidence, including, but not limited to, child medical evaluation reports and child and family evaluation reports that the director relied on to make the determination that abuse or serious neglect occurred, if the general purposes of the rules of evidence and the interests of justice will best be served by its admission.

N.C. Gen. Stat. § 7B-323(b). The issue of whether an identified individual should be placed on the Responsible Individuals List may be heard in the same proceeding as the adjudication of a juvenile, *see In re F.C.D.*, 244 N.C. App. 243, 251, 780 S.E.2d 214, 220 (2015), or it may be heard in a separate proceeding, *see Patron*, 250 N.C.

App. at 377, 792 S.E.2d at 856.

2. Findings of Fact

At issue in this case are the trial court’s findings of fact #14—stating that the court “accepts the findings of fact made in” the Adjudication Order—and #15, which itself contains 15 additional findings, derived from the Adjudication Order, that the court “specifically notes” were “directly relevant to the determination” of whether to place Petitioner on the Responsible Individuals List. Petitioner argues that the trial court improperly took judicial notice of the Adjudication Order’s findings of fact, in violation of her right to due process.

We need not address this argument, however. Even assuming, *arguendo*, that the trial court properly took judicial notice of the Adjudication Order’s findings of fact in the Placement Order, the challenged findings of fact are nevertheless insufficient to support Petitioner’s placement on the Responsible Individuals List. By relying wholly upon the Adjudication Order’s findings of fact to determine whether Petitioner abused Emmanuel, the court neglected its statutory responsibility to reach an independent determination regarding Petitioner’s eligibility for placement on the Responsible Individuals List.

The plain language of § 7B-323(b) clearly indicates that our General Assembly intended for the trial court to conduct its own independent determination of an identified individual’s alleged responsibility for abuse or neglect. *See* N.C. Gen. Stat. § 7B-323(b). The statute provides that, in addition to taking testimony, the trial court

may review the variety of pertinent reports and documentary evidence upon which an underlying adjudication was based. *Id.* Although by its own terms not an exclusive list, the given examples of admissible “reliable and relevant evidence”—namely, “child medical evaluation reports and child and family evaluation reports” supporting a determination that abuse or serious neglect occurred—bolster this interpretation of the court’s responsibility. *Id.* At a Responsible Individuals List hearing, the trial court may admit and consider the same documentary evidence that was relied upon to adjudicate a juvenile as abused or neglected. *Id.* But it does not necessarily follow that the court may also rely upon the judicial factfinding from another hearing that served a related but distinct purpose in determining whether an identified individual should be placed on the Responsible Individuals List.

An adjudication hearing on a juvenile petition and a hearing regarding placement on the Responsible Individuals List may arise from common facts—indeed, potentially from the same DSS investigation—and may even be heard together, but the hearings are distinct in important ways. The objective of a hearing on an identified individual’s placement on the Responsible Individuals List is to determine whether the DSS director has shown, by a preponderance of the evidence, that the person qualifies as a “responsible individual.” *Id.* § 7B-323(e). Yet it is well settled that, in an adjudication hearing, “[t]he adjudication of a child as abused concerns *only the status of the child, not the fault or culpability of the parent.*” *In re K.W.*, 272 N.C. App. 487, 491, 846 S.E.2d 584, 588–89 (2020) (emphasis added).

In contrasting these two hearings, Petitioner observes that “the parties are different, the type of file is different, the burden of proof is different, the consequences are different, the potential outcomes are different, the purposes are different, and the statutes are different.” That said, unless the issue is heard together with the juvenile adjudication, a separate hearing regarding an identified individual’s inclusion on the Responsible Individuals List is often preceded by prior judicial proceedings, *see, e.g., In re J.M.V.*, ___ N.C. App. ___, ___, 909 S.E.2d 347, 351–52 (2024) (parents’ placement on the Responsible Individuals List followed adjudication of their children as neglected and dependent), in which plentiful findings of fact have already been made in related matters, much like many adjudication, disposition, and termination hearings. Thus, we turn to well-established principles from those familiar contexts that address the propriety of a trial court’s reliance upon preexisting findings of fact found in prior orders.

For example, Petitioner cites *In re T.N.H.*, in which our Supreme Court held that “the trial court may not rely solely on prior court orders and reports” in its findings of fact in an order terminating parental rights “but must receive some oral testimony at the hearing and make an independent determination regarding the evidence presented.” 372 N.C. 403, 410, 831 S.E.2d 54, 60 (2019). This reasoning is consonant with the evidentiary provisions of N.C. Gen. Stat. § 7B-323(b), which our appellate courts have also determined require the trial court to “make an independent determination regarding the evidence presented” to support an identified individual’s

placement on the Responsible Individuals List. *Id.*

Moreover, in *In re J.C.M.J.C.*, “most of the trial court’s adjudicatory findings [we]re unsupported by *any evidence* other than the ‘First Seven Day Hearing Order.’ ” 268 N.C. App. 47, 57 n.8, 834 S.E.2d 670, 677 n.8 (2019). “Notwithstanding the trial court’s plenary authority to take notice of its own orders” in a juvenile matter, this Court recognized “that it [wa]s problematic to allow the trial court’s findings of fact in the ‘First Seven Day Hearing Order’ to serve as the sole evidentiary support for the great majority of the adjudicatory findings” in the court’s adjudication and disposition order. *Id.* at 56–57, 834 S.E.2d at 677.

Further, even if we assume, *arguendo*, that the Adjudication Order was properly admitted into evidence, Petitioner would have no way of challenging the evidentiary support for the existing findings and conclusions therein on appeal from the Placement Order, because the underlying evidence supporting the Adjudication Order was not admitted in any form at the Responsible Individuals List hearing below. Consequently, to allow the trial court to make findings and conclusions regarding Petitioner’s responsibility for Emmanuel’s abuse “simply by taking judicial notice of its prior findings in the [Adjudication O]rder risks insulating the adjudicatory findings from appellate review.” *Id.* at 57, 834 S.E.2d at 677.

DSS argues that the supervisor’s testimony provided sufficient evidence to support the Placement Order’s findings of fact, but this endeavor is fruitless. Unlike *T.N.H.*, in which the court’s findings of fact were “based, at least in part, on testimony

provided at the hearing, sufficient to demonstrate that the trial court made an independent determination regarding the evidence presented,” 372 N.C. at 410, 831 S.E.2d at 61, this case more closely resembles *J.C.M.J.C.*, in which “most of the trial court’s adjudicatory findings [we]re unsupported by *any evidence* other than” the prior order, 268 N.C. App. at 57 n.8, 834 S.E.2d at 677 n.8. The testimony adduced by DSS at the hearing regarding placement on the Responsible Individuals List merely corroborated the barest procedural facts about the existence and timeline of the investigation. DSS’s witness testified that “the case decision was based upon the rationale as set forward by [t]he [c]ourt in th[e] Adjudication Order.” Moreover, finding of fact #15—which details the factual basis for the court’s determination that Petitioner was an individual responsible for Emmanuel’s abuse—is wholly derived from the Adjudication Order, without substantial support from the testimony provided at the hearing.

Absent additional substantive evidence beyond the Adjudication Order—either in the form of more detailed testimony about the investigation and underlying abuse, or via “reliable and relevant” documentary evidence as contemplated by N.C. Gen. Stat. § 7B-323(b)—the findings of fact in the Placement Order are not “sufficient to demonstrate that the trial court made an independent determination regarding the evidence presented.” *T.N.H.*, 372 N.C. at 410, 831 S.E.2d at 61. The Placement Order must therefore be vacated.

III. Conclusion

For the foregoing reasons, we vacate the Placement Order and remand this matter for a new hearing on the petition for judicial review. On remand, the trial court may take additional evidence, in its discretion, consistent with N.C. Gen. Stat. § 7B-323(b).

VACATED AND REMANDED.

Judges COLLINS and GORE concur.

Report per Rule 30(e).