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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-874

Filed 21 May 2025

Caswell County, Nos. 23JA000025-160, 23JA000026-160, 23JA000027-160,  
23JA000028-160

IN RE: K.B.I., K.D., K.J.P.G., K.H.G.,

Juveniles

Appeal by respondent from order entered 2 July 2024 by Judge James Grogan  
in Caswell County District Court. Heard in the Court of Appeals 22 April 2025.

*Stuart Watlington for petitioner-appellee Caswell County Department of Social  
Services.*

*Raleigh Divorce Law Firm, by Heather Williams Forshey and Xavier McLean,  
for appellee guardian ad litem.*

*Jason Senges for respondent-appellant mother.*

ZACHARY, Judge.

Respondent appeals from the trial court's order adjudicating her minor  
children "Kyle," "Ken," "Kevin," and "Kasey"<sup>1</sup> as neglected juveniles and maintaining  
their placement in the legal and physical custody of Petitioner Caswell County

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<sup>1</sup> To protect the identities of the juveniles, we use the pseudonyms to which the parties  
stipulated. See N.C.R. App. P. 42(b).

Department of Social Services (“CCDSS”). After careful review, we affirm.

### **I. Background**

Respondent is the mother of five children, the four youngest of whom are minors. Ken, Kevin, and Kasey’s father passed away in 2022; prior to his death, he and Respondent had an extensive history of serious domestic violence. Kyle’s father was identified by paternity testing during the pendency of these proceedings; he was not named a respondent in this matter.

On 1 September 2023, the Alamance County Department of Social Services (“ACDSS”) received a child protective services report reflecting concerns that Respondent and her four minor children were living in a home with no functioning utilities and that Respondent was exhibiting behaviors associated with mental illness or substance abuse. There had been nearly three dozen 9-1-1 calls to the home that year, including for “wellbeing checks, disturbance, assault, larceny-theft, domestic disturbance, breaking and entering, several suspicious person in vehicle, several [9-1-1] hang ups[,] property damage[,] and public service.” There were also concerns about the children’s educational progress and Respondent’s habit of keeping the children up and taking them walking along a busy highway at all hours of the night.

Respondent and her minor children were residing with her mother and stepfather when ACDSS transferred the in-home services case in this matter to CCDSS. Despite Respondent’s history of mental illness and substance abuse, she refused to complete a requested mental health evaluation and drug screen. In

addition, she refused to sign releases to allow CCDSS to obtain her mental health records and the children's medical records. CCDSS attempted to provide services for the family, but Respondent refused; she also failed to appear at three child-and-family team meetings in November and December 2023.

On 22 December 2023, CCDSS filed juvenile petitions alleging that all four of Respondent's minor children were neglected juveniles and seeking "direction from the [c]ourt" as to the children's best interests. On 23 January 2024, the matter came on for the first pre-adjudication hearing, after which the trial court ordered CCDSS to take nonsecure custody of the children; CCDSS placed the children in the custody of their maternal grandmother. Respondent continued to be uncooperative through the second pre-adjudication hearing on 6 February 2024, and although she had completed a psychological diagnostic evaluation by the third pre-adjudication hearing on 5 March 2024, she still refused to sign a consent form to release her records.

On 7 May 2024, the matter came on for an adjudication and disposition hearing in Caswell County District Court. After taking evidence in the adjudication portion of the hearing, the court adjudicated all four juveniles as neglected, and the matter proceeded to the disposition phase. The court ultimately ordered that CCDSS maintain custody of the children. The court memorialized its ruling in a written adjudication and disposition order entered on 2 July 2024, Respondent timely filed notice of appeal.

## **II. Discussion**

Respondent argues that the trial court's order must be reversed because "[t]he adjudication hearing was fundamentally unfair . . . when the trial court allowed and considered facts and circumstances that arose after the filing of the petition[s]." She further argues that the court's findings of fact "are not supported by competent and relevant evidence for an adjudication and do not support a conclusion of law of neglect for the juveniles." We disagree.

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

This Court reviews a trial court's order adjudicating a juvenile as neglected "to determine whether the trial court's findings of fact are supported by clear and convincing competent evidence and whether the court's findings support its conclusions of law. . . . Clear and convincing evidence is evidence which should fully convince." *In re M.H.*, 272 N.C. App. 283, 286, 845 S.E.2d 908, 911 (2020) (cleaned up). "If such evidence exists, the findings of the trial court are binding on appeal, even if the evidence would support a finding to the contrary." *In re T.H.T.*, 185 N.C. App. 337, 343, 648 S.E.2d 519, 523 (2007), *aff'd as modified*, 362 N.C. 446, 665 S.E.2d 54 (2008). "Unchallenged findings of fact are binding on appeal." *In re K.W.*, 272 N.C. App. 487, 492, 846 S.E.2d 584, 588 (2020).

Our appellate courts review a trial court's conclusions of law de novo. *In re K.S.*, 380 N.C. 60, 64, 868 S.E.2d 1, 4 (2022). When conducting de novo review, this Court "considers the matter anew and freely substitutes its own judgment for that of the trial court." *Id.* (cleaned up).

## **B. Analysis**

A “neglected juvenile” is defined, in pertinent part, as one “whose parent, guardian, custodian, or caretaker . . . [d]oes not provide proper care, supervision or discipline . . . [or c]reates or allows to be created a living environment that is injurious to the juvenile’s welfare.” N.C. Gen. Stat. § 7B-101(15) (2023). “Before adjudicating a juvenile neglected, the trial court must also find some physical, mental, or emotional impairment of the juvenile or a substantial risk of such impairment as a consequence of the failure to provide proper care, supervision, or discipline.” *In re K.C.*, 295 N.C. App. 363, 368, 905 S.E.2d 776, 781 (2024) (cleaned up). “But the trial court is granted 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.” *Id.* at 369, 905 S.E.2d at 781 (cleaned up). It is well established “that 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.” *Id.* (citation omitted).

“During the adjudication hearing, the trial court must determine whether the conditions alleged in the petition exist. *Evidence of events after the petition is filed is irrelevant to the determination of whether the child is neglected.*” *In re A.D.*, 278 N.C. App. 637, 641, 863 S.E.2d 317, 321 (2021) (emphasis added) (citation omitted).

On appeal, Respondent raises interrelated arguments concerning post-petition evidence introduced at the adjudication hearing and relied upon in the trial court’s order. First, she contends that the order “should be reversed due to a fundamentally

unfair adjudication hearing” in which the court allegedly failed to protect her and her children’s rights to due process. *See* N.C. Gen. Stat. § 7B-802 (“In the adjudicatory hearing, the court shall protect the rights of the juvenile and the juvenile’s parent to assure due process of law.”). Respondent posits that this hearing “must include fair procedures whereby the court excludes irrelevant testimony and the unnecessary taking of evidence.” Further, she suggests that “[a]llowing the extensive testimony about post-petition matters fundamentally tainted the adjudication hearing, depriving the parties of proper due process.”

However, CCDSS notes that Respondent never objected at the adjudication hearing to the introduction of the evidence that she now challenges on appeal. Nor did she object during CCDSS’s closing argument, when counsel used rhetoric—now challenged on appeal—that referenced circumstances that occurred after the petitions’ filing.

To the extent that Respondent’s appeal is premised upon alleged procedural violations of N.C. Gen. Stat. § 7B-802, she has waived appellate review by failing to express any concern with the trial court’s administration of the adjudication hearing below and by failing to object to any of the alleged violations of which she now complains on appeal. *See* N.C.R. App. P. 10(a)(1) (“In order to preserve an issue for appellate review, a party must have presented to the trial court a timely request, objection, or motion, stating the specific grounds for the ruling the party desired the court to make if the specific grounds were not apparent from the context.”); *see also*,

*e.g.*, *In re L.N.H.*, 382 N.C. 536, 541, 879 S.E.2d 138, 143 (2022) (recognizing that a respondent’s failure to object to the admission of certain evidence at the adjudication phase “waives appellate review of the issue”).

Further, to the extent that Respondent advances a constitutional due-process argument, she failed to raise any such argument below and thus has waived appellate review. *See, e.g., In re E.P.-L.M.*, 272 N.C. App. 585, 591, 847 S.E.2d 427, 433 (2020) (“It is well settled that an error, even one of constitutional magnitude, that [a respondent] does not bring to the trial court’s attention is waived and will not be considered on appeal.” (citation omitted)), *disc. review denied*, 376 N.C. 674, \_\_\_ S.E.2d \_\_\_ (2021).

Respondent also challenges several of the court’s findings of fact and conclusions of law, asserting that the “entire order intermixes pre-petition evidence and post-petition evidence such that it is impossible for this court, or the trial judge, to sort through properly.” “[P]ost-petition evidence generally is not admissible during an adjudicatory hearing for abuse, neglect or dependency.” *In re G.W.*, 286 N.C. App. 587, 594, 882 S.E.2d 81, 88 (2022) (citation omitted).

Respondent specifically challenges the trial court’s findings of fact #6–9, 13–15, 18, and 20–25 as containing post-petition evidence. We agree with Respondent that several of these findings improperly rely on post-petition evidence—specifically, significant portions of findings of fact #6–8 and all of finding #20, which concern the children’s educational performance and events that occurred after the petitions’

filing, as well as portions of findings #21–23 that concern the family’s post-petition living circumstances. “Consequently, we disregard these portions of [the court’s] findings” that contain inadmissible post-petition evidence. *Id.* at 596, 882 S.E.2d at 89.

Respondent further challenges findings #13–15 as improperly discussing the children’s status as of the date of the hearing. Except for the beginning of finding #13—which contains the trial court’s ultimate finding “that the allegations in the Petition[s] alleging neglect are accurate and that [Respondent] has not been providing for her children’s needs”—we agree with Respondent that findings #13 and 14 primarily concern the children’s status as of the date of hearing. Accordingly, we disregard these findings insofar as they improperly rely on post-petition evidence. *See id.*

However, Respondent overstates the degree to which consideration of post-petition evidence is prohibited at the adjudication phase and overlooks exceptions to the general rule upon which she relies. “While [Respondent] is correct that the purpose of an adjudicatory hearing is to determine only the existence or nonexistence of any of the conditions alleged in a petition, the general rule that post-petition evidence is not admissible during the adjudication hearing is not absolute.” *Id.* at 594, 882 S.E.2d at 88 (cleaned up). Pertinent to the case before us, “some post-petition evidence, like that which pertains to mental illness . . . , does not constitute a discrete event or one-time occurrence” but rather, concerns “fixed and ongoing circumstances

so that post-petition evidence about [mental illness] is allowed to be considered in a neglect adjudication.” *Id.* (cleaned up).

Consequently, as CCDSS contends, Respondent’s “mental health and the impact her cognitive abilities have on her ability to care for her children is squarely the type of on-going circumstance that falls within the evidentiary exception.” For example, we agree with the guardian ad litem that “it was proper for the trial court to consider the post-petition evidence of [Respondent]’s failure to complete a mental health evaluation after being ordered” to do so. Further, portions of challenged findings #15 and 21–24 plainly regard the “fixed and ongoing” circumstance of Respondent’s mental health, which “is allowed to be considered in a neglect adjudication.” *Id.* (cleaned up). We thus may consider these portions of the challenged findings. *See id.*

Respondent also challenges findings #5–6, 16, 18–20, and 26–27 “as recitations of testimony and not proper evidentiary findings of facts.” Our Supreme Court has repeatedly cautioned that “recitations of the testimony of each witness *do not* constitute *findings of fact* by the trial judge absent an indication concerning whether the trial court deemed the relevant portion of the testimony credible.” *In re A.E.*, 379 N.C. 177, 185, 864 S.E.2d 487, 495 (2021) (cleaned up). Nevertheless, “[t]here is nothing impermissible about describing testimony, so long as the court ultimately makes its own findings, resolving any material disputes.” *In re T.N.H.*, 372 N.C. 403, 408, 831 S.E.2d 54, 59 (2019) (citation omitted). “[T]he trial court must, through

processes of logical reasoning, based on the evidentiary facts before it, find the ultimate facts essential to support the conclusions of law.” *In re O.W.*, 164 N.C. App. 699, 702, 596 S.E.2d 851, 853 (2004) (cleaned up).

We conclude that Respondent is correct that the entirety of findings #19 and 26–27 are mere recitations of testimony; however, findings #5–6, 16, and 18 contain recitations of testimony mixed with proper evidentiary findings. Further, finding of fact #20, which we have already determined is based on improper post-petition evidence, is also based on recitation of testimony.

Even so, after careful review of the entire record before us, disregarding those findings of fact previously discussed and considering only those that remain, *see G.W.*, 286 N.C. App. at 596, 882 S.E.2d at 89, we are satisfied that the trial court’s proper findings document a troubling history of Respondent’s mental illness and the effects that the circumstances of the children’s living environment had on their welfare. These findings demonstrate that the court, “through processes of logical reasoning, based on the evidentiary facts before it, f[ou]nd the ultimate facts essential to support the conclusions of law.” *O.W.*, 164 N.C. App. at 702, 596 S.E.2d at 853 (cleaned up).

Respondent next argues that “[t]he evidence does not support a conclusion that the children were impacted by [her] alleged neglectful acts . . . at the time of the filing of the petition[s].” Respondent contends that “[t]he court could not have concluded the children [we]re neglected because it failed to address the impact the conditions of the home had on the children.” We disagree.

*Opinion of the Court*

Contrary to Respondent's argument, the evidence in this case supports a conclusion that the children were negatively impacted by Respondent's alleged neglectful behavior. In addition to the proper findings of fact detailing the effects of Respondent's behavior on her children and their respective health circumstances, the court also found that Respondent had not executed mental-health assessment consent releases necessary for CCDSS to "procure her history." Although Respondent had undergone one mental-health assessment as of the hearing, the court found that "she refused to sign the consent so [the provider] could not obtain her prior medical or mental health history records," and "that on more than one occasion [Respondent] . . . refused to sign adequate releases for [CCDSS] to get her past history records."

Respondent's ongoing refusal to consent to the release of her records in order to "complete the mental-health assessment is clear and convincing evidence tending to support a substantial risk of future neglect." *K.C.*, 295 N.C. App. at 370, 905 S.E.2d at 782. "Without these assessments, [Respondent] cannot get the proper treatment for the fixed and ongoing issues that impact her ability to provide adequate care for" her children. *Id.* (cleaned up). "[T]his information is relevant for a trial court to render a decision predictive in nature regarding the child[ren]'s environment." *Id.* (cleaned up). Thus, Respondent's argument fails to persuade.

Finally, Respondent contends that "[n]umerous allegations in the petition[s] are speculative and the findings of facts are not supported by competent evidence to prove the allegations." However, Respondent does not support this argument with

any citation to legal authority. Accordingly, this argument is abandoned. *See* N.C.R. App. P. 28(b)(6) (“Issues not presented in a party’s brief, or in support of which no reason or argument is stated, will be taken as abandoned.”); *see also, e.g., In re F.C.D.*, 244 N.C. App. 243, 250, 780 S.E.2d 214, 219 (2015) (recognizing that an issue was abandoned where the respondent “cite[d] no legal authority in support of her argument on this point”).

### **III. Conclusion**

For the foregoing reasons, we affirm the court’s adjudication of Respondent’s four minor children as neglected. Moreover, as Respondent raises no argument concerning the disposition portion of the order from which appeal is taken, the court’s disposition is also affirmed.

AFFIRMED.

Judges ARROWOOD and GRIFFIN concur.

Report per Rule 30(e).