

in the custody of the Greene County Department of Social Services ("DSS"). We affirm.

Around the time of A.R.'s birth in July 2010, DSS filed a juvenile petition alleging that A.R. was neglected. The petition was filed based on DSS's concern that respondent lived in an environment injurious to the juvenile's welfare and that respondent had not provided the infant with necessary medical care. The petition alleged that respondent had an extensive history with DSS and that she has an older child, M.M., who was taken into DSS custody in October 2009. At the time of removal of M.M., DSS had expressed concerns that respondent was unable to properly care for an infant due to her diagnoses of mental illness. M.M. had recently been adjudicated neglected, and her permanent plan was adoption and termination of parental rights. The petition further alleged that respondent failed to receive consistent prenatal care while pregnant with A.R., that she failed to show up for a required ultrasound appointment on three different occasions while pregnant with A.R., that she was uncooperative and combative with medical staff, and that she used illegal drugs while pregnant with A.R. Finally, the petition alleged that respondent lacked stable housing and was

unemployed. A.R. was taken into nonsecure custody at the same time the petition was filed.

On 13 and 22 October 2010, the trial court conducted an adjudication hearing. The trial court heard testimony from Thomas Pedigo, an outpatient psychotherapist who evaluated respondent, DSS social worker Kristin Mooring, and respondent herself. The trial court entered an adjudication order on 15 November 2010 concluding that A.R. was a neglected juvenile. The trial court held a separate disposition hearing on 6 December 2010 and entered a disposition order on 5 January 2011. In the order, the trial court concluded that A.R.'s best interest would be promoted and served by continuing custody with DSS. Respondent appeals.

On appeal, respondent challenges the adjudicatory order of the trial court and the disposition order based on the adjudication. She first challenges the competency of several findings of fact in the adjudicatory order arguing the following: (1) Findings of Fact 5, 18, 19, and 25 are based on inadmissible hearsay; (2) Findings of Fact 21 through 23 are based on irrelevant evidence of events which occurred after the petition was filed; (3) Findings of Fact 16 and 17 are not

supported by any evidence in the record; and (4) Finding 40 should be struck as an inappropriate conclusion of law. Second, respondent argues she can demonstrate prejudice from the admission of incompetent, irrelevant, and hearsay evidence because all of the challenged findings were crucial to the trial court's conclusion that A.R. was neglected, and the remaining, unchallenged findings are insufficient to support the adjudication.

I.

We first address respondent's challenges to the findings of fact. We only address challenged Findings 16, 17, and 21 through 23, which we find necessary to support the trial court's conclusion of neglect. We find the challenged Findings of Fact 5, 18, 19, 25 and 40 unnecessary to affirm the trial court's conclusion that A.R. was neglected, and we therefore decline to address them. See *In re T.M.*, 180 N.C. App. 539, 547, 638 S.E.2d 236, 240 (2006) ("[W]e agree that some of [the challenged findings] are not supported by evidence in the record. When, however, ample other findings of fact support an adjudication of neglect, erroneous findings unnecessary to the determination do not constitute reversible error.").

"Allegations of neglect must be proven by clear and convincing evidence. 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." *In re Helms*, 127 N.C. App. 505, 511, 491 S.E.2d 672, 676 (1997). If competent evidence supports the findings, they are "binding on appeal." *In re McCabe*, 157 N.C. App. 673, 679, 580 S.E.2d 69, 73 (2003).

The first set of challenged findings of fact pertain to respondent's conduct while pregnant with A.R.:

16. That the mother smoked cigarettes throughout the pregnancy.
17. That the mother was directed to receive an ultrasound to determine the cause for fetal cardiac pauses, but did not go to either appointment because on one occasion she had something else to do that she does not remember, and on the other occasion she believes that she had to be in Court for [M.M.], but she is not positive that the ultrasound was scheduled on the same day as Court and she did not request that the Court date be continued.

Respondent claims that neither of these findings is supported by the evidence. With respect to Finding 16, respondent argues that the finding implies she smoked from the beginning to the end of her pregnancy, when the only evidence at the hearing was

the social worker's testimony that respondent smoked "during" her pregnancy. Respondent argues "during" does not connote the same meaning as "throughout," and therefore claims "it is not possible to say that Mother smoked throughout the pregnancy or if she smoked only briefly at sometime during the pregnancy."

Respondent is correct in pointing out that DSS social worker Kristen Mooring testified that respondent smoked "during" her pregnancy, as opposed to "throughout" her pregnancy. However, we find no meaningful distinction between the two prepositions. Indeed, "during" is defined as "throughout the duration of." Merriam-Webster's Collegiate Dictionary p. 360 (10th ed. 1995). "Throughout" is similarly defined as "during the whole course or period of." *Id.* p. 1230. Thus, we reject respondent's argument that the word "during" connotes a different meaning than the word "throughout." Without regard to a specific frequency or length of time, the finding of fact was intended to demonstrate that respondent engaged in a harmful act during her pregnancy. Therefore, we conclude that Finding of Fact 16 is supported by clear and convincing evidence.

With respect to Finding of Fact 17, respondent argues that the record does not contain any evidence that respondent was "directed" to receive an ultrasound to determine the cause of

fetal cardiac pauses. Instead, respondent contends that the evidence demonstrates "she did receive an ultrasound early in her pregnancy." Respondent further contends she was "recommended" and "scheduled" to receive an additional ultrasound, which she argues is not the same as being "directed" to attend.

Again, we acknowledge the discrepancy between respondent's testimony at the hearing and the finding made by the trial court. In this finding, we acknowledge the difference in meaning between the two phrases. However, we find no meaningful distinction between the two. Respondent admitted that she had two ultrasounds scheduled to determine the cause of fetal cardiac pauses, that she attended neither appointment, and that she did not try to reschedule the ultrasound. After considering the totality of the finding, we see no need to strike the finding based on the discrepancy between "recommended" and "directed." This finding was intended to convey respondent's failure to receive proper prenatal care after being advised to do so, and any error in the finding is harmless. Accordingly, we find that Finding of Fact 17 is supported by clear and convincing evidence.

The second set of challenged findings of fact pertain to respondent's psychological evaluation:

21. That in late July, 2010, shortly after the birth of this juvenile, the mother . . . went to Rescare Home Care in Wilson, NC for a clinical assessment . . . by Thomas S. Pedigo and saw a psychiatrist for a medication evaluation.

22. That the Axis I diagnosis by Thomas Pedigo was Bipolar I Disorder, most recent episode, unspecified; Axis IV diagnosis was limited social network, no source of income, loss of custody of children.

23. That the psychiatrist, Ramaswamy V. Sriraman, M.D., found that [respondent] did not want to be placed on any medication and found that she had a "history of chemical abuse." Dr. Sriraman requested that [respondent] undergo a urine drug screen, but she did not comply with his request stating that she did not have the money to pay for the screening.

"Where the juvenile is alleged to be abused, neglected, or dependent, the rules of evidence in civil cases shall apply." N.C. Gen. Stat. § 7B-804 (2009). Here, respondent contends that Findings of Fact 21 through 23 are irrelevant and should have been excluded under North Carolina Rule of Evidence 401. Respondent objected to evidence related to her psychological exam, both before the hearing and at the time of Mr. Pedigo's testimony. The trial court overruled her objection and allowed Mr. Pedigo to testify.

We have stated the following regarding the relevancy of evidence:

Pursuant to the North Carolina Rules of Evidence, evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." N.C. Gen. Stat. § 8C-1, Rule 401 (2005). While "[a] trial court's rulings on relevancy technically are not discretionary and therefore are not reviewed under the abuse of discretion standard[,] . . . such rulings are given great deference on appeal." *State v. Wallace*, 104 N.C. App. 498, 502, 410 S.E.2d 226, 228 (1991).

In re E.P., 183 N.C. App. 301, 303-04, 645 S.E.2d 772, 773-74, *aff'd per curiam*, 362 N.C. 82, 653 S.E.2d 143 (2007).

Respondent argues that these findings are based on irrelevant evidence, because "evidence in the adjudicatory hearing is limited to a determination of the items alleged in the petition." *In re A.B.*, 179 N.C. App. 605, 609, 635 S.E.2d 11, 14 (2006) (citations omitted). Respondent contends because the psychological examination was administered after the petition was filed, the evidence was not relevant to the conditions alleged in the petition. Respondent also attempts to analogize the instant case to *Powers v. Powers*, 130 N.C. App. 37, 502 S.E.2d 398, *disc. review denied*, 349 N.C. 530, 526 S.E.2d 180 (1998). At issue in *Powers* was the admissibility of

the results of a blood alcohol test administered on the mother after DSS filed the neglect petition. *Id.* at 44, 502 S.E.2d at 402. The court noted that evidence regarding the mother's post-petition occurrences was admissible at disposition, but not at adjudication. *Id.* at 46, 502 S.E.2d at 403-04. Nonetheless, this Court stated that, "in a nonjury trial, if incompetent evidence is admitted and there is no showing the judge acted on it, the trial court is presumed to have disregarded it." *Id.* at 46, 502 S.E.2d at 404 (quoting *In re Oghenekevebe*, 123 N.C. App. 434, 438, 473 S.E.2d 393, 397 (1996)). This Court held in *Powers* that, since there was no evidence presented to the contrary, it was "presumed the trial court disregarded the post-petition occurrences for the adjudication portion of the hearing and only considered the evidence for the disposition stage." *Id.*

We disagree with respondent's argument, and find her reliance on *Powers* misplaced. In *Powers*, the blood alcohol tests at issue were discrete events and were not administered directly as result of the filing of a neglect petition. *Id.* at 44, 502 S.E.2d at 402-03. The instant case is distinguishable from *Powers* in that respondent's psychological examination was conducted solely for the purpose of determining whether

respondent is able to care for an infant given her potentially untreated mental illness. Due to the fact that mental illness is generally not a discrete event or one-time occurrence, we find that the psychological assessment was relevant to respondent's ability to care for her child, regardless of when it occurred. The petition filed by DSS contained allegations regarding respondent's mental illness and inability to care for a child, and these contested findings are certainly relevant to the existence or nonexistence of conditions alleged in the petition. See N.C. Gen. Stat. § 7B-802 (2009). Giving appropriate deference to the trial court's decision, we conclude that the trial court did not err in allowing Mr. Pedigo's testimony.

II.

Next, we turn to respondent's second argument that the findings of fact are not sufficient to support the trial court's conclusion that A.R. was a neglected juvenile. A neglected juvenile is defined as:

A juvenile who does not receive proper care, supervision, or discipline from the juvenile's parent, guardian, custodian, or caretaker; or who has been abandoned; or who is not provided necessary medical care; or who is not provided necessary remedial care; or who lives in an environment injurious to the juvenile's welfare; or who has been

placed for care or adoption in violation of law.

N.C. Gen. Stat. § 7B-101(15) (2009).

Respondent contends that without the challenged findings, the trial court did not have an adequate legal basis for its conclusion that A.R. was neglected. Respondent also invokes this Court's longstanding requirement "that there be 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 Safriet*, 112 N.C. App. 747, 752, 436 S.E.2d 898, 901-02 (1993) (quoting *In re Thompson*, 64 N.C. App. 95, 101, 306 S.E.2d 792, 796 (1983)). Respondent relies on the general rule that when an adjudication order finding neglect contains no finding of actual harm or a substantial risk of harm to the particular child, the case should be remanded. *Id.* at 753, 436 S.E.2d at 902. Respondent notes the *Safriet* exception to this general rule, where this Court affirmed an order without a finding as to harm or a substantial risk of harm when "all the evidence supports such a finding." Respondent argues that, without the challenged findings, the *Safriet* exception does not apply and the trial court's finding of neglect erroneously relied solely on the adjudication of neglect of M.M. Therefore, respondent

contends the evidence is insufficient to sustain the conclusion that A.R. suffered from an impairment or risk of impairment which supported an adjudication of neglect.

We disagree with respondent's argument. To begin, we find that several of the undisputed findings of fact support the trial court's adjudication of neglect. The undisputed findings of fact show that respondent has a history of substance abuse and failed to seek recommended treatment. Respondent used marijuana on at least one occasion while she was pregnant and ingested cocaine around the time she found out she was pregnant.

Furthermore, the conditions surrounding the removal of M.M. are pertinent to respondent's ability to care for A.R. The statutory definition of neglect provides that "[i]n 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. Gen. Stat. § 7B-101(15). This Court has held that, while the language regarding neglect of other children does not mandate a conclusion of neglect, the trial judge has discretion in determining the weight to be given to such evidence. *In re Nicholson*, 114 N.C. App. 91, 94, 440 S.E.2d 852, 854 (1994); *see In re P.M.*, 169 N.C. App. 423, 427,

610 S.E.2d 403, 406 (2005) (affirming conclusion of neglect of one child based on prior adjudication of neglect with respect to another child and ongoing unwillingness to accept responsibility). We have also indicated that circumstances surrounding a previously abused or neglected juvenile in the home are relevant to a neglect determination even if the juvenile in question never actually resided in the parent's home, as is the case here. See *In re A.S.*, 190 N.C. App. 679, 690, 661 S.E.2d 313, 320 (2008) ("When . . . the juvenile being adjudicated has never resided in the parent's home, 'the decision of the trial court must of necessity be predictive in nature, as the trial court must assess whether there is a substantial risk of future abuse or neglect of a child based on the historical facts of the case.'" (quoting *In re McLean*, 135 N.C. App. 387, 396, 521 S.E.2d 121, 127 (1999)), *aff'd per curiam*, 363 N.C. 254, 675 S.E.2d 361 (2009), *reh'g denied*, 363 N.C. 381, 678 S.E.2d 231 (2009)).

Here, the undisputed findings show that respondent did not cooperate with DSS regarding M.M.'s case. The findings also show subsequent lack of stability and cooperation by respondent in that she lacked transportation and stable housing and employment and failed to complete her GED as ordered.

Furthermore, the undisputed findings show that respondent's older child, M.M., was removed from the home and placed in DSS custody, had been adjudicated neglected, and that the trial court had recently approved a permanent plan of adoption for M.M. When taken with the findings discussed in the previous section, the findings of fact are sufficient to show that A.R. suffered from a substantial risk of physical, mental, or emotional impairment. Accordingly, we conclude that the trial court's findings of fact support its conclusion that the juvenile was neglected and that respondent suffered no prejudice.

Affirmed.

Judges McGEE and CALABRIA concur.

Report per Rule 30(e).