NO. COA11-420

NORTH CAROLINA COURT OF APPEALS

Filed: 4 October 2010

IN THE MATTER OF:
A.C.G.

Caldwell County
No. 09 JA 14

Appeal by Respondent-Mother from adjudication and disposition orders entered 15 December 2010 by Judge Robert M. Brady in District Court, Caldwell County. Heard in the Court of Appeals 12 September 2010.

Lauren Vaughan for Caldwell County Department of Social Services, Petitioner-Appellee.

J. Thomas Diepenbrock for Respondent-Appellant Mother.

Ellis & Winters LLP, by Mary Kristen Kelly, for Guardian ad Litem.

McGEE, Judge.

The Caldwell County Department of Social Services (DSS) filed a juvenile petition on 29 January 2009, alleging that A.C.G. was an undisciplined juvenile. A.C.G. was adjudicated an undisciplined juvenile on 15 April 2009, based on her numerous "unlawful absences"

from school. The trial court determined that a return to A.C.G.'s home was contrary to her best interests, and placed her under protective supervision for three months. On that same date, DSS placed A.C.G. at Crossnore School.

DSS filed another juvenile petition on 6 July 2009, alleging that A.C.G. was a neglected and dependent juvenile. DSS recounted A.C.G.'s history of excessive absenteeism from school, and stated that A.C.G. had a history of medical and psychological problems. However, DSS cited a psychological evaluation that reported that Respondent-Mother may have either "'exaggerated or intentionally feigned'" A.C.G.'s medical and psychological problems. The evaluation recommended that Respondent-Mother not resume parenting of A.C.G. "due to a 'long established pattern and escalation of inappropriate medical care for both herself and her daughter that impacts her daughter's education, sense of well being, and ability to function socially[.]'" Accordingly, DSS alleged that A.C.G. lived in an environment injurious to her welfare.

Adjudicatory and dispositional hearings were held over several months from June 2010 through October 2010. The trial court filed written adjudicatory and dispositional orders on 15 December 2010. In the trial court's adjudicatory order, it found that:

> 13. This matter came on before the [c]ourt in all honesty with the plan by [DSS] for the

> [c]ourt to determine whether or not this was a Munchausen case. A Munchausen case is the type of case where the parent either actually causes illnesses in the child, or exacerbates conditions, or at least fabricates conditions. There are a number of different types of mental health issues that are very closely related to that, but this one was tried as a Munchausen matter.

The trial court found that it could not "affirmatively conclude that the case [was] one of Munchausen[.]" However, the trial court did find that Respondent-Mother suffered from some "other medical or mental health conditions" that caused her to subject A.C.G. to invasive medical procedures and doctor visits. Thus, the trial court concluded that A.C.G. was a neglected juvenile. In its disposition order, the trial court ordered that custody of A.C.G. remain with DSS. The trial court further ordered that the permanent plan for A.C.G. be reunification, and that Respondent-Mother enter into a case plan with DSS and be allowed supervised visitation. Respondent-Mother appeals.

Respondent-Mother's sole argument on appeal is that the trial court erred by adjudicating A.C.G. a neglected juvenile. We affirm the trial court's orders.

Our Court has stated:

> The role of this Court in reviewing a trial court's adjudication of neglect and abuse is to determine "(1) whether the findings of fact are supported by 'clear and convincing evidence,'

> and (2) whether the legal conclusions are supported by the findings of fact[.]" 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) (citations omitted), *aff'd as modified*, 362 N.C. 446, 665 S.E.2d 54 (2008).

"Neglected juvenile" is defined in N.C. Gen. Stat. § 7B-101(15) 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). N.C.G.S. § 7B-101(15) allows "the trial court 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." *In re McLean*, 135 N.C. App. 387, 395, 521 S.E.2d 121, 126 (1999).

Respondent-Mother challenges several of the trial court's findings of fact used to support its conclusion that A.C.G. was a neglected juvenile. In finding of fact number 15 in its adjudication order, the trial court found the following regarding A.C.G.'s medical

treatment by Dr. Michael DeSantis (Dr. DeSantis):

> 15. The [c]ourt also heard from a treating pediatrician, Dr. Michael DeSantis, who had treated [A.C.G.] over a long period of time. Dr. DeSantis, after a long period of time, began to be concerned about this being a possible Munchausen case. Numerous times [Respondent-Mother] brought [A.C.G.] to the doctor when the doctor could not find that there was anything medically wrong with [A.C.G.] and [Respondent-Mother] would insist on either second opinions or additional testing or screenings; perhaps sometimes involving invasive procedures, to the point that the doctors became concerned.

Respondent-Mother specifically disputes the trial court's finding that Dr. DeSantis could find nothing medically wrong with A.C.G. and that Respondent-Mother would insist on second opinions and additional and often unnecessary testing. However, the record is replete with evidence which supports the trial court's finding of fact. Dr. DeSantis testified that he had seen A.C.G. on 10 March 2006 for a complaint of chest pain. He had seen A.C.G. earlier for complaints of abdominal pain. A cardiologist had previously ruled out A.C.G.'s chest pain as being related to her heart. Dr. DeSantis testified that he became concerned because "we had moved from chest pain and abdominal pain, both without having organic sources or sources from the heart itself or the structural abdominal problem[.]" Dr. DeSantis further testified that: "I think at that time it just popped in my head there was a concern of this exaggeration, something

related to Munchausen Syndrome by proxy." Dr. DeSantis noted on 2 September 2008 that Respondent-Mother wanted A.C.G.

> to go through a colonoscopy, even though she has no significant diarrhea, melena, hematochezia. [Respondent-Mother] is concerned about possible Crohn's disease because their father passed away with it, but [A.C.G.] has not had any low grade fevers, or other GI bleeding. She has had no weight loss or malabsorption issues.

While there is evidence in the record that A.C.G. presented to Dr. DeSantis with objective symptoms that required treatment and, in some instances, additional testing that resulted in a diagnosis, the record nevertheless supports the trial court's finding that there were also numerous instances where nothing was found to be medically wrong with A.C.G., but Respondent-Mother still insisted on additional testing and second opinions.

Next, in finding of fact number 16 in the adjudication order, the trial court found:

> 16. There was testimony from Dr. Cynthia Brown, who qualified as an expert witness from Ash[e]ville, and the [c]ourt heard all of her qualifications. Dr. Brown found that in her opinion that this was a case where [A.C.G.] was "an abused child." Dr. Brown's specialty is in the field of identifying children that were the subject of abuse or neglect. In fact, Dr. Brown had indeed reviewed [A.C.G.'s] medical records that were available to her and she used the review of those medical records as a component of her determination and conclusion about [A.C.G.] being an abused juvenile. Her primary reasons that [A.C.G.] was abused were that [A.C.G.] had been subjected to numerous

> procedures that were unnecessary, some involving the taking of blood, perhaps colonoscopies, endoscopies or other invasive procedures that were not medically justified. Therefore, [A.C.G.] was being subjected to all of these procedures, which in any case could be painful, and were painful, or certainly risky; endoscopies and colonoscopies have degree of risk with them, and she did not feel that they were justified. One of the best ways to determine whether or not [A.C.G.] is being subjected to Munchausen or some other type of psychological issue with the mother or father was the "before and after" test, so to speak. To remove [A.C.G.] from the home and place [her] somewhere else to see if these same circumstances continued was helpful in making a determination.

Respondent-Mother disputes the accuracy of this finding of fact, arguing that Dr. Brown did not testify or state in her report that the primary reason A.C.G. was abused was because she had been subjected to the procedures recounted in finding of fact number 16. We disagree. Dr. Brown stated in her report that A.C.G. had "been abused by pediatric condition falsification." Dr. Brown noted that A.C.G. had been subjected to an "upper GI series, endoscopy with a biopsy," as well as a "pH probe, emptying scan, electrogastrogram, [and an] abdominal x-ray." Dr. Brown stated that these tests were the result of Respondent-Mother's "exaggerating and/or fabricating symptoms of illness." Thus, we conclude that finding of fact number 16 was supported by evidence in the record.

In finding of fact number 17 in the adjudication order, the trial

court found:

> 17. [T]his [c]ourt had removed [A.C.G.] from the home in April[] 2009, and [she] was placed at Crossnore, where within a couple of weeks after being placed at Crossnore [she] was taken off virtually all the medications she was on, except for perhaps two or three of them. When [A.C.G.] was removed from the home she was taking anywhere between twelve and fifteen medications for all kinds of various issues and maladies, and within a couple of weeks of being at Crossnore she was reduced down to about two medications with no ill effect, and she also began to attend school on a regular basis, and had very few unexcused absences, if any, and very few excused absences.

Respondent-Mother specifically argues that the evidence does not support the finding that "within a couple of weeks of being at Crossnore [A.C.G.] was reduced down to about two medications with no ill effect." We disagree.

Patricia Turbyfill (Ms. Turbyfill), a family nurse practitioner for Crossnore School, testified that when she initially saw A.C.G. on 19 April 2009, A.C.G. was taking the following medications: Prevacid, Singular, Phenergan, Ativan, Tylenol with codeine, Strattera, Zantac, Bentyl, Allegra, Zyrtec, Albuterol, Flonase, and Ultram. Ms. Turbyfill testified that she again saw A.C.G. on 27 May 2009. At that time, A.C.G. was no longer taking Ativan, Tylenol with codeine, Prevacid, or Ultram. She had also stopped taking either Allegra or Zyrtec, and had also begun decreasing her other medications. At the time of the adjudicatory hearing on 31 August

2010, A.C.G. was only taking Strattera and Celexa. Based on the above testimony, we find there was sufficient competent evidence to support the trial court's finding that, after A.C.G. was removed from Respondent-Mother's care and placed in Crossnore School, the amount of medication A.C.G. was taking dramatically decreased. While the trial court's finding regarding the timeline, i.e. that the medication was reduced "within a couple of weeks," is not a strictly accurate reflection of the evidence, we conclude that this error is harmless.

Respondent-Mother further contends that the finding – "with no ill effect" – ignores evidence that A.C.G. was still having difficulties, including the fact that she was cutting herself. However, no evidence was presented that any of the medications prescribed for A.C.G. were to prevent cutting, or that the reduction in medication caused A.C.G. to cut herself. Moreover, Ms. Turbyfill testified that, by December 2009, A.C.G., who had been described as moderately obese, had lost weight since her arrival at Crossnore School in April 2009, and her laboratory tests had improved. Furthermore, in a report dated 1 March 2010, Dr. Brown wrote that "in the year that she has not been in [Respondent-Mother's] care, [A.C.G.]'s health has improved dramatically and she has been weaned off most of her multiple medications." Finally, Dawn Behrend (Ms. Behrend), a psychologist with Appalachian Counseling and Evaluation

Center, testified that A.C.G. had done "exceptionally well academically" since beginning attendance at Crossnore School. Ms. Behrend testified that A.C.G. was doing so well academically that she was able to skip the eighth grade. Accordingly, we conclude that the trial court's finding that the reduction in A.C.G.'s medication resulted in "no ill effect" is supported by the evidence.

In its adjudication order, the trial court also found that:

> 18. Dr. Brown did not review the medical records from Crossnore, but the [c]ourt heard evidence from Patricia Kay Turbyfill, a nurse practitioner from Crossnore, who was familiar with [A.C.G.'s] medical records there, and her attendance there.
>
> 19. Combin[ing] these two witnesses together (Dr. Brown and Ms. Turbyfill), the [c]ourt can conclude that clearly something was going on in the household with [Respondent-Mother] when [A.C.G] was missing far too much school that was unjustified, and was being subjected to a number of medical procedures and doctor's visits that were both keeping [A.C.G.] from school, and also subjecting [her] to inappropriate medical procedures.
>
> 20. The [c]ourt cannot affirmatively conclude that the case is one of Munchausen, but the [c]ourt can conclude, and does conclude, and the expert witnesses confirmed, that there may be other medical or mental health conditions that would cause [Respondent-Mother] to behave in such a manner to subject [A.C.G.] to these types of medically invasive procedures and doctor visits, but the end result of neglect to [A.C.G.] would be the same.
>
> 21. So whether or not it is called Munchausen or some other condition, the [c]ourt believes

> there was some condition or some reason causing these problems that led to [A.C.G.'s] being neglected. It is very clear to the [c]ourt that even if [Respondent-Mother's] intentions were good, let's say she was an overly protective mother, or if there were other issues involving mental health issues with [Respondent-Mother], that the result to [A.C.G.] is the same, [she] is still in the [c]ourt's opinion, and the [c]ourt would find her a neglected juvenile, as a result of being in [Respondent-Mother's] home.

Respondent-Mother contends that these findings demonstrate that the trial court could not specifically determine from what condition Respondent-Mother allegedly suffered and why she cared for A.C.G. in the manner claimed by DSS. Furthermore, Respondent-Mother cites finding of fact number 14 in the trial court's adjudication order, in which it found:

> 14. There were several experts that testified. Interestingly, there were two experts that testified, one, Dawn Behrend, stating that this was clearly a case of Munchausen; and the other, Richard Welser, testifying that it was not, but neither one of those experts had reviewed any of either [Respondent-Mother's] medical records or [A.C.G.'s] medical records. The [c]ourt believes that review of medical records would be completely essential and necessary so the [c]ourt could know whether or not [A.C.G.'s] visits to the doctor were justified.

Respondent-Mother claims that the trial court's statement that the experts' "review of medical records would be completely essential and necessary so the [c]ourt could know whether or not [A.C.G.'s] visits to the doctor were justified" raises "an inference that the

trial court could not determine[,] based on the evidence[,] whether the visits to the doctors were or were not medically necessary." In sum, Respondent-Mother asserts that the trial court's findings that "something" was wrong with Respondent-Mother were insufficiently specific and do not support a conclusive finding that A.C.G. was a neglected juvenile due to living in an environment injurious to her welfare. We disagree.

First, finding of fact number 14 reflects the trial court's determination not to rely on the testimony presented by Ms. Behrend, in which Ms. Behrend concluded that this was a case of Munchausen, or the testimony of Dr. Welser, who concluded the opposite. Instead, the trial court relied on testimony provided by Dr. Brown and Ms. Turbyfill in reaching its findings and conclusions that A.C.G. was a neglected juvenile.

Second, "[t]he purpose of abuse, neglect and dependency proceedings is for the court to determine whether the juvenile should be adjudicated as having the status of abused, neglected or dependent." *In re J.S.*, 182 N.C. App. 79, 86, 641 S.E.2d 395, 399 (2007). Despite DSS's plan for the adjudicatory proceedings as noted in finding of fact number 13, the purpose of the adjudication proceeding was not to determine whether Respondent-Mother suffered from Munchausen by proxy or some other physical or mental disorder. *See id.* ("The purpose of the adjudication and disposition

proceedings should not be morphed on appeal into a question of culpability regarding the conduct of an individual parent."). Instead, the question to be determined at the adjudicatory hearing was whether A.C.G. suffered from neglect. Thus, it was irrelevant whether the trial court could make a finding as to Respondent-Mother's exact diagnosis. It was sufficient for the trial court to determine, based on the competent evidence presented and its findings of fact, that A.C.G. lived in an environment injurious to her welfare because she was subjected to excessive, unnecessary and injurious doctor's visits, medical procedures, and medication. Accordingly, we affirm the trial court's orders based on its conclusion that A.C.G. was a neglected juvenile.

Affirmed.

Chief Judge MARTIN and Judge CALABRIA concur.

Report per Rule 30(e).