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NO. COA11-501  
NORTH CAROLINA COURT OF APPEALS

Filed: 4 October 2011

IN THE MATTER OF:

W.D.P., III

Stokes County  
No. 10 JA 23

Appeal by respondents from adjudication and disposition orders filed 20 January 2011 by Judge Charles M. Neaves, Jr. in Stokes County District Court. Heard in the Court of Appeals 12 September 2011.

*No brief, for petitioner-appellee Stokes County Department of Social Services.*

*Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, L.L.P., by Jackson Wyatt Moore, Jr., for guardian ad litem.*

*David A. Perez, for mother, respondent-appellant mother.*

*Wyrick Robbins Yates & Ponton LLP, by Tobias S. Hampson, for respondent-appellant father.*

MARTIN, Chief Judge.

Respondents are the biological parents of W.D.P., III (hereinafter referred to by the stipulated pseudonym of "Weston"), who sustained a traumatic injury to the brain at the

age of four months. Respondents appeal from an order adjudicating Weston as an abused and neglected juvenile and from an order placing Weston in the custody of the Stokes County Department of Social Services (hereinafter "petitioner").

According to the court's adjudicatory findings of fact and supporting evidence, respondent-mother left Weston in the care of respondent-father on 21 April 2010 while she attended to an emergency concerning her mother. When respondent-mother returned home the next day, she observed that Weston did not look well. She noted that Weston was pale and stiff, fisting his hands, drooling, and twitching his mouth and tongue. Earlier in the day, respondent-father had observed that Weston was sweating and staring, with unusual eye movement. He decided not to seek medical attention until after respondent-mother returned home.

Respondents brought Weston to Morehead Hospital, where a CT scan revealed that Weston had sustained a subdural hemorrhage. Weston was transferred to Baptist Hospital and Brenner's Children's Hospital, where further testing and examination revealed the presence of a brownish-colored contusion under his chin, multiple bilateral rib fractures with varying degrees of callus formation suggestive of fractures sustained at different times, and a healing tibial fracture. Respondent-father

reported that Weston had fallen off a couch on 21 April 2010, that the rib fractures may have happened when he held Weston too tightly, and that the contusion under Weston's chin must have been caused by his knuckle when he fed the infant.

Dr. Sarah Sinal, a pediatrician, examined Weston and reviewed his medical records dating back to his birth. She could find nothing in Weston's medical records prior to 21 April 2010 to explain the nature and severity of Weston's symptoms and health issues he presented upon admission to Baptist Hospital. In Dr. Sinal's opinion, Weston's injuries were consistent with child abuse. Dr. Sinal thought that the proffered explanations for the injuries were not consistent with the injuries and were insufficient to explain the seriousness of the injuries, which included the subdural hematoma, a subarachnoid hemorrhage, a hypoxic brain injury, the rib fractures sustained at different times, a right tibial fracture, and a bilateral retinal hemorrhage. She believed the injuries were consistent with abusive head trauma of non-accidental origin or shaken baby syndrome.

The court ultimately found that Weston's injuries "were serious non-accidental injuries while in the father's care, and other non-accidental injuries while in the care of both parents." The court concluded that Weston was an abused and

neglected juvenile. The court ordered that Weston remain in the custody of petitioner. The court directed respondents to contact petitioner to set up a supervised visitation schedule with the child upon their releases from incarceration.

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Respondent-parents appeal, alleging collectively that (1) there was insufficient evidence to support the trial court's findings of fact and conclusions of law adjudicating that Weston suffered abuse and neglect while in the care of both parents and (2) that the trial court erred in vesting custody and visitation decisions regarding Weston with the petitioner. We affirm in part and remand in part.

An abused juvenile is one whose parent, guardian, custodian or caretaker "[i]nflicts or allows to be inflicted upon the juvenile a serious physical injury by other than accidental means" or who "[c]reates or allows to be created a substantial risk of serious physical injury to the juvenile by other than accidental means." N.C. Gen. Stat. § 7B-101(1)(a) & (b) (2009). A neglected juvenile is one "who does not receive proper care, supervision, or discipline from the juvenile's parent . . . or who lives in an environment injurious to the juvenile's welfare." N.C. Gen. Stat. § 7B-101(15). The allegations in a petition alleging that a juvenile is abused, neglected, or

dependent shall be proved by clear and convincing evidence. N.C. Gen. Stat. § 7B-805 (2009). "The question this Court must look at on review is whether the court made the proper determination in making findings and conclusions as to the status of the juvenile." *In re J.S.*, 182 N.C. App. 79, 86, 641 S.E.2d 395, 399 (2007).

#### Respondent-Father's Appeal

##### I.

Respondent-father specifically contends the evidence and the court's findings of fact do not support the conclusion of law and adjudication that Weston was an abused and neglected juvenile. He argues the court erred by incorporating evidence by reference to other documents and reciting evidence instead of independently making findings of fact. He also argues the evidence does not support the court's findings of fact that Weston's injuries were the result of non-accidental trauma and were consistent with shaken baby syndrome. He further argues that the adjudications are not supported by the findings of fact because (1) the court failed to make a requisite finding of fact that either parent inflicted the alleged injuries or allowed the alleged injuries to occur in order to support an adjudication that Weston was abused, and (2) the court failed to make

findings of fact establishing which of the alternative bases it relied upon in adjudicating Weston as neglected.

Respondent-father argues the court's findings regarding Weston's injuries are "nothing more than a recitation of the unsworn summary by Dr. Sinal and recitation of evidence, and, therefore, cannot support the trial court's ultimate findings of fact or conclusion of law." We reject this argument.

In juvenile proceedings, it is permissible for trial courts to consider all written reports and materials submitted in connection with those proceedings. Despite this authority, the trial court may not delegate its fact finding duty. Consequently, the trial court should not broadly incorporate these written reports from outside sources as its findings of fact.

*In re J.S.*, 165 N.C. App. 509, 511, 598 S.E.2d 658, 660 (2004) (citations omitted). "[A]lthough the trial court may properly incorporate various reports into its order, it may not use these as a substitute for its own independent review." *In re M.R.D.C.*, 166 N.C. App. 693, 698, 603 S.E.2d 890, 893 (2004), *disc. review denied*, 359 N.C. 321, 611 S.E.2d 413 (2005). The court is "required to make its own findings of fact based on those reports and any testimonial evidence presented" and must "tell this Court upon which assertions in those reports the trial court was relying." *In re A.S.*, 190 N.C. App. 679, 694, 661 S.E.2d 313, 322, *disc. review denied*, 362 N.C. 681, 669

S.E.2d 740 (2008), *aff'd per curiam*, 363 N.C. 254, 675 S.E.2d 361, *reh'g denied*, 363 N.C. 381, 678 S.E.2d 231 (2009).

Here, the court heard Dr. Sinal's testimony at the hearing. It then extracted as findings of fact portions of Dr. Sinal's report which concisely summarized Dr. Sinal's trial testimony. The court thus clearly communicated to this Court the assertions it was relying upon in making its findings. The fact that the court did not rewrite or rephrase the wording of the report does not mean the court did not conduct its own independent review. Furthermore, we do not agree that Findings of Facts 2(g), (h), (k), and (m) are recitations of third-party determinations, as respondent-father asserts, even though they contain phrases that could indicate a lack of independent assessment by the court. Findings 2(g) and (h) indicate the court accepted as fact that the parents presented the recited explanations for Weston's injuries, which were offered to the doctors at the hospital. These explanations were integral to Dr. Sinal's and the court's own determination in (h) that the parents' representations were not consistent with the degree and type of injury Weston suffered. Finally, even if Finding 2(m) is removed from the Adjudication Order because it says "Dr. Sinal reported," which would tend to indicate the court was just reciting third-party

statements, the court's other findings support conclusions of abuse and neglect.

Respondent-father next argues the court's two ultimate findings of fact as to the causes of Weston's injuries are not supported by Dr. Sinal's testimony or report. He submits Dr. Sinal neither testified that Weston's injuries were the specific result of shaken baby syndrome nor that they were non-accidental.

An order must contain findings as to "the ultimate facts established by the evidence, admissions and stipulations which are determinative of the questions involved in the action and essential to support the conclusions of law reached." *In re Anderson*, 151 N.C. App. 94, 97, 564 S.E.2d 599, 602 (2002) (quoting *Quick v. Quick*, 305 N.C. 446, 452, 290 S.E.2d 653, 658 (1982)). "Ultimate facts are the final resulting effect reached by processes of logical reasoning from the evidentiary facts." *Appalachian Poster Adver. Co. v. Harrington*, 89 N.C. App. 476, 479, 366 S.E.2d 705, 707 (1988) (citing *Woodward v. Mordecai*, 234 N.C. 463, 470, 67 S.E.2d 639, 644 (1951)), *supersedeas granted*, 343 N.C. 121, 468 S.E.2d 774, *rev'd on other grounds*, 343 N.C. 303, 469 S.E.2d 554 (1996). In reviewing a juvenile order, we examine the evidence to determine whether there is clear, cogent, and convincing evidence to support the



findings, and if we find there is such evidence, the findings are conclusive on appeal even though the evidence might support a finding to the contrary. *In re Hughes*, 74 N.C. App. 751, 758-59, 330 S.E.2d 213, 218 (1985). "The trial judge determines the weight to be given the testimony and the reasonable inferences to be drawn therefrom. If a different inference may be drawn from the evidence, he alone determines which inferences to draw and which to reject." *Id.* at 759, 330 S.E.2d at 218.

Dr. Sinal testified that Weston exhibited symptoms of shaken baby syndrome and that parents who shake infants to cause them to stop crying often have done it on more than one occasion. Dr. Sinal also noted that Weston had sustained rib fractures on more than one occasion as demonstrated by the different stages of healing among the fractures. This testimony supports the findings that the injuries were non-accidental and due to shaken baby syndrome. Furthermore, the medical reports incorporated in Finding of Fact 2(v) support these conclusions as they document the nature of Weston's injuries and opine that these injuries were indicative of child abuse and specifically shaken baby syndrome.

Respondent-father argues there is no ultimate finding of fact that (1) either parent inflicted or allowed to be inflicted a serious physical injury upon Weston by other than non-

accidental means, or (2) that either parent failed to provide care, supervision, discipline, medical, or remedial care, or a safe environment for Weston. He also argues the court failed to establish which of several alternative grounds it utilized in adjudicating Weston as neglected. We disagree.

"The 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 . . . [and] should not be morphed on appeal into a question of culpability regarding the conduct of an individual parent." *In re J.S.*, 182 N.C. App. at 86, 641 S.E.2d at 399. "[T]he determinative factors are the circumstances and conditions surrounding the child, not the fault or culpability of the parent." *In re Montgomery*, 311 N.C. 101, 109, 316 S.E.2d 246, 252 (1984). As noted at the outset, an abused juvenile is defined as one whose parent has inflicted or allowed to be inflicted upon the juvenile a serious physical injury by other than accidental means, and a neglected juvenile is defined as one who lives in an environment injurious to the juvenile's welfare. N.C. Gen. Stat. § 7B-101(1) & (15). The court's findings show that Weston sustained severe brain injuries and fractured ribs more than once, by other than accidental means, while residing in respondents' home and while in the care of one

or both of the respondents. We conclude the court's findings support the court's conclusions of law that Weston was an abused and neglected juvenile.

II.

Respondent-father next contends the court erred at disposition by delegating to petitioner the judicial function of establishing visitation at petitioner's sole discretion. We agree.

N.C.G.S. § 7B-905(c) provides:

Any dispositional order under which a juvenile is removed from the custody of a parent, guardian, custodian, or caretaker, or under which the juvenile's placement is continued outside the home shall provide for appropriate visitation as may be in the best interests of the juvenile and consistent with the juvenile's health and safety. If the juvenile is placed in the custody or placement responsibility of a county department of social services, the court may order the director to arrange, facilitate, and supervise a visitation plan expressly approved by the court.

N.C. Gen. Stat. § 7B-905(c) (2009). When a trial court decides to allow visitation, its dispositional order must include a provision specifying the time, place, and conditions under which visitation may be exercised. *In re E.C.*, 174 N.C. App. 517, 523, 621 S.E.2d 647, 652 (2005) (citing *In re Stancil*, 10 N.C. App. 545, 552, 179 S.E.2d 844, 849 (1971)). Although the court may place custody of the child with a department of social

services and may permit the director to arrange, facilitate, and supervise a visitation plan, the court must still expressly approve the plan. *Id.* at 522, 621 S.E.2d at 652. Failure to outline a visitation plan may result in remand to the trial court for establishment of a more detailed visitation plan by the court. *In re C.M. & M.H.M.*, 198 N.C. App. 53, 67, 678 S.E.2d 794, 802 (2009).

Here, the court's order only states that visitation may be allowed when respondents are released from incarceration and that respondents are to contact petitioner to set up a visitation schedule upon their release. The order provides no guidelines for visitation other than that visits are to be supervised. The order does not establish any criteria as to frequency, location, or duration. For these deficiencies, the portion of the order establishing visitation is remanded for the entry of an order establishing the terms and conditions of visitation.

#### Respondent-Mother's Appeal

##### I.

Respondent-mother contends, although the evidence established that Weston was abused and neglected, it did not establish that she participated in, or had knowledge of, the abuse or neglect. She argues the evidence does not support the

court's finding that Weston sustained non-accidental injuries while in the care of both parents. She also argues the findings do not support a conclusion that she neglected Weston.

As we noted in addressing a similar contention by respondent-father, the focus in an abuse or neglect proceeding is upon the status of the juvenile and not the culpability and fault of the parent. *In re J.S.*, 182 N.C. App. at 86, 641 S.E.2d at 399. The case of *In re J.A.G.*, 172 N.C. App. 708, 617 S.E.2d 325 (2005), relied upon by respondent-mother, is factually distinguishable. In that case, only one injury or incident was involved and the mother did seek immediate medical attention at that time. *Id.* at 715-16, 617 S.E.2d at 331. In the case at bar, however, Weston sustained multiple injuries to his ribs and a fracture of the leg over a period of time, and there is no evidence respondent-mother took Weston for medical treatment of those previous injuries. Considering respondent-mother's inaction regarding her child's several previous injuries, the court did not err in finding that both parents contributed to abuse and neglect preceding the brain trauma that led to Weston's hospital visits and was found to be caused by respondent-father.

Respondent-mother next contends the court's findings of fact in the disposition order are insufficient to support the court's conclusions of law that vesting custody with petitioner was in Weston's best interest, that petitioner was precluded from making reasonable efforts because of an immediate threat of harm to the juvenile, or that Weston's return to his home was contrary to his health, safety, welfare and best interests. The crux of her argument is that, since there was no evidence showing she personally abused or neglected Weston, the trial court should have inquired as to whether the child could be supervised in the home of respondent-mother or placed with a relative until respondent-mother was released from incarceration on pending criminal charges.

In the dispositional stage of a juvenile proceeding, the court is required to decide what disposition is in the best interest of the child. *In re O.W.*, 164 N.C. App. 699, 701, 596 S.E.2d 851, 853 (2004). The determination of the court is reviewable only for an abuse of discretion. *In re D.S.A.*, 181 N.C. App. 715, 720, 641 S.E.2d 18, 22 (2007), *appeal after remand*, 198 N.C. App. 702, 681 S.E.2d 866 (2009) (unpublished). "A ruling committed to a trial court's discretion is to be accorded great deference and will be upset only upon a showing that it was so arbitrary that it could not have been the result

of a reasoned decision." *White v. White*, 312 N.C. 770, 777, 324 S.E.2d 829, 833 (1985).

The court's findings of fact indicate that at the time of the adjudication and disposition hearing, respondent-mother was incarcerated awaiting trial on criminal charges associated with Weston's injuries; thus, she was not in a position to care for Weston in her own home. The report of the guardian ad litem, which was incorporated by reference as additional findings of fact, shows that Weston has extraordinary medical needs. It is unknown whether Weston's brain will recover and grow and develop. Weston has been diagnosed with cerebral palsy in both arms and legs. He is unable to swallow food due to brain damage so he must be fed through a tube placed in his stomach. Weston is unlikely to regain his sight in his right eye and although his left eye has healed, it is doubtful that his brain will recover sufficiently to regain full vision. Weston has been hospitalized for pneumonia and fevers of unknown origin. Weston's brain scans continue to reveal additional atrophy of his brain and possible bleeding in the brain. Weston has been residing with a foster family medically trained to meet Weston's needs. Weston's physical and mental development must be closely monitored, and the foster mother is well equipped to address

Weston's medical concerns. We thus conclude the court did not abuse its discretion by placing Weston in petitioner's custody.

III.

Respondent-mother also contends the court erred by failing to establish an appropriate visitation plan which sets forth the time, frequency or duration of her visits with Weston. For the reasons stated in our discussion of this issue in respondent-father's appeal, we remand the matter for the entry of an appropriate visitation order.

We affirm the adjudication order, affirm the disposition order in part, and remand the disposition order for entry of an appropriate visitation order.

Affirmed in part; remanded in part.

Judges McGEE and CALABRIA concur.

Report per Rule 30(e).